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David Bush, State Bar No. 154511
Jennifer Henry, State Bar No. 208221
BUSH & HENRY
ATTORNEYS AT LAW
4400 Keller Avenue, Suite 200
Oakland, CA 94605
Tel: (510) 577-0747

ENDORSED
FILED
ALAMEDA COUNTY

MAY 9 - 2001

CLERK OF THE SUPERIOR COURT
By JEFFERY K. JUE
Deputy

Clifford A. Chanler, State Bar No. 135543
CHANLER LAW GROUP
Magnolia Lane (off Huckleberry Hill)
New Canaan, CT 06840
Tel: (203) 966-9911

Attorneys for Plaintiff
MICHAEL DIPIRRO

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

MICHAEL DIPIRRO)	No. H215631-6
)	
Plaintiff,)	
)	<u>CONSENT JUDGMENT</u>
v.)	
)	
TACC INTERNATIONAL CORPORATION;)	
and DOES 1 through 1000,)	
)	
Defendants.)	
_____)	

This Consent Judgment ("Agreement") is entered into by
and between Michael DiPirro, a California citizen, and
Illinois Tool Works Inc. ("ITW"), a Delaware corporation, for
its division known as TACC International ("TACC"), as of

CONSENT JUDGMENT

1 April 26, 2001 (the "Effective Date"). The parties agree to
2 the following terms and conditions:

3 **WHEREAS:**

4 A. Michael DiPirro is an individual residing in
5 San Francisco, California, who seeks to promote awareness of
6 exposures to toxic chemicals and improve human health by
7 reducing or eliminating hazardous substances contained in or
8 produced by consumer and industrial products;

9 B. The TACC division of ITW ("ITW/TACC")
10 currently manufactures, distributes and/or sells adhesive
11 remover in the State of California that allegedly contain
12 chemicals listed pursuant to Proposition 65 (California
13 Health & Safety Code §25249.5 et seq.) including methylene
14 chloride (the "Listed Chemicals");

15 C. The products that allegedly contain one or
16 more of the "Listed Chemicals" and which are covered by this
17 Agreement are set forth in Exhibit A (the "Products"). The
18 Products have been manufactured, distributed, and/or sold by
19 ITW/TACC for use in California since at least July 12, 1997;
20 and

21 D. On July 12, 2000, Michael DiPirro first served
22 TACC and other public enforcement agencies with a document
23 entitled "60-Day Notice of Violation" which provided TACC and
24 such public enforcers with notice that TACC was allegedly in

25 CONSENT JUDGMENT

1 violation of Health & Safety Code §25249.6 for allegedly
2 failing to warn purchasers that certain products it sells, or
3 otherwise offers for use in California expose users to
4 Proposition 65-listed chemicals; and

5 E. On September 22, 2000, Michael DiPirro filed a
6 complaint entitled Michael DiPirro v. TACC International
7 Corporation; et al. in the Alameda County Superior Court,
8 naming TACC as a defendant and alleging violations of
9 Business & Professions Code §17200 and Health & Safety Code
10 §25249.6 on behalf of individuals in California who allegedly
11 have been exposed to the "Listed Chemicals" contained in or
12 produced by certain TACC products.

13 F. ITW, in the interest of efficiency, answered
14 Michael DiPirro's complaint against TACC on March 21, 2001,
15 and desires to resolve this case without further litigation.

16 G. Nothing in this Agreement shall be construed
17 as an admission by ITW of any fact, finding, issue of law, or
18 violation of law, nor shall compliance with this Agreement
19 constitute or be construed as an admission by ITW of any
20 fact, finding, conclusion, issue of law, or violation of law.
21 However, this paragraph shall not diminish or otherwise
22 affect the obligations, responsibilities, and duties of ITW
23 under this Agreement.

24
25 CONSENT JUDGMENT

1 NOW THEREFORE, MICHAEL DIPIRRO AND ITW AGREE AS FOLLOWS:

2 1. Product Warnings. Beginning 30 days after the
3 Effective Date, ITW agrees that it will not knowingly sell
4 (or cause to be sold) any Products that contain the Listed
5 Chemicals for sale in the State of California unless such
6 Products comply with section 1.1 below:

7 1.1 All Products that contain methylene
8 chloride shall bear the following warning statement:

9 WARNING: This product contains methylene
10 chloride, a chemical known to the
11 State of California to cause
12 cancer";

13 or

14 "WARNING: This product contains a chemical
15 known to the State of California to
16 cause cancer";

17 The warning statement shall be prominently
18 placed upon the Product's label with such conspicuousness, as
19 compared with other words, statements, designs or devices on
20 the label as to render it likely to be read and understood by
21 an ordinary individual under customary conditions of purchase
22 or use.

23 2. Payment Pursuant To Health & Safety Code
24 \$25249.7 (b). Pursuant to Health & Safety Code \$25249.7(b),
25 ITW shall pay a civil penalty of \$1,000.00 (one thousand
26 dollars). The payment of \$1,000.00 shall be paid within ten

CONSENT JUDGMENT

1 (10) calendar days of the Effective Date. The penalty
2 payment is to be made payable to "Chanler Law Group In Trust
3 For Michael DiPirro". Penalty monies shall be apportioned by
4 DiPirro in accordance with Health & Safety Code §25192, with
5 75% of these funds remitted to the State of California's
6 Department of Toxic Substances Control.

7 **3. Reimbursement Of Fees And Costs.** The parties
8 acknowledge that DiPirro offered to resolve the dispute
9 without reaching terms on the amount of fees and costs to be
10 reimbursed, thereby leaving this open issue to be resolved
11 after the material terms of the agreement had been reached,
12 and the matter settled. ITW then expressed a desire to
13 resolve the fee and cost issue concurrently with other
14 settlement terms, so the parties tried to reach an accord on
15 the compensation due to DiPirro and his counsel under the
16 private attorney general doctrine codified at C.C.P. §1021.5.

17
18 ITW shall reimburse DiPirro for his fees and costs,
19 incurred as a result of investigating, bringing this matter
20 to ITW's attention, litigating and negotiating a settlement
21 in the public interest. ITW shall pay \$6,200.00 (six
22 thousand two hundred dollars) for all attorneys' fees, expert
23 and investigation fees, and litigation costs. ITW agrees to
24 pay the total sum of \$6,200.00 within ten (10) calendar days

25 CONSENT JUDGMENT

1 of the Effective Date. Payment should be made payable to the
2 "Chanler Law Group".

3 **4. Michael DiPirro's Release Of ITW.** Michael
4 DiPirro, by this Agreement, on behalf of himself, his agents,
5 representatives, attorneys, assigns and the citizens of the
6 State of California, waives all rights to institute or
7 participate in, directly or indirectly, any form of legal
8 action, and releases all claims, liabilities, obligations,
9 losses, costs, expenses, fines and damages, against ITW and
10 its subsidiaries, affiliates, divisions, subdivisions,
11 brands, employees, agents, distributors, retailers, and/or
12 customers, and the successors and assigns of any of them,
13 whether under Proposition 65 or the Business & Profession
14 Code §17200 et seq. based on ITW's alleged failure to warn
15 about exposure to the Listed Chemicals contained in or
16 produced by any of the Products.

17 **5. ITW's Release Of Michael DiPirro.** ITW, by
18 this Agreement, waives all rights to institute any form of
19 legal action against Michael DiPirro and his attorneys or
20 representatives, for all actions or statements made by
21 Michael DiPirro, and his attorneys or representatives, in the
22 course of seeking enforcement of Proposition 65 or Business &
23 Profession Code §17200 against ITW.

24
25 CONSENT JUDGMENT

1 **6. Court Approval.** If, for any reason, this
2 Consent Judgment is not approved by the Court, this Agreement
3 shall be deemed null and void.

4 **7. Severability.** In the event that any of the
5 provisions of this Agreement are held by a court to be
6 unenforceable, the validity of the enforceable provisions
7 shall not be adversely affected.

8 **8. Attorney's Fees.** In the event that a dispute
9 arises with respect to any provision(s) of this Agreement,
10 the prevailing party shall be entitled to recover costs and
11 reasonable attorneys' fees.

12 **9. Governing Law.** The terms of this Agreement
13 shall be governed by the laws of the State of California.

14 **10. Notices.** All correspondence to Michael
15 DiPirro shall be mailed to:

16 David R. Bush or Jennifer Henry
17 Bush & Henry
18 4400 Keller Ave., Suite 200
19 Oakland, CA 94605-4229
20 (510) 577-0747

21 All correspondence to ITW shall be mailed to:

22 Peter Hsiao or
23 Siegmond Shyu
24 Morrison & Foerster, LLP
25 555 West Fifth Street
26 Suite 3500
 Los Angeles, CA 90013-1024
 (213) 892-5200

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11. **Compliance With Reporting Requirements.** The parties agree to comply with the reporting form requirements referenced in Health & Safety Code §25249.7(f). As of the Effective Date, the California Attorney General's reporting forms are not available. DiPirro represents, however, that his counsel will send a copy of this Agreement to the California Attorney General's Office prior to or concurrently with the presentation of the Consent Judgment to the Alameda County Superior Court.

12. **Counterparts and Facsimile.** This Agreement may be executed in counterparts and facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

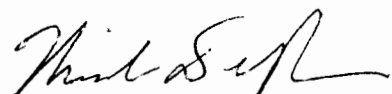
13. **Authorization.** The undersigned are authorized to execute this Agreement on behalf of their respective parties and have read, understood and agree to all of the terms and conditions of this Agreement.

AGREED TO:

DATE: 4/25/01

AGREED TO:

DATE: _____



Michael DiPirro
PLAINTIFF
CONSENT JUDGMENT

Illinois Tool Works Inc.
DEFENDANT

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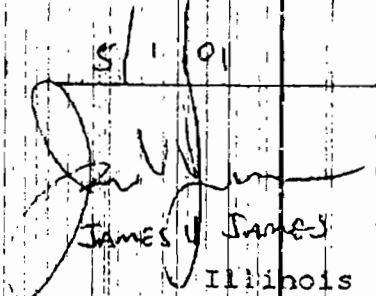
AGREED TO:

AGREED TO:

DATE: _____

DATE: 5/1/01

Michael DiPirro
CONSENT JUDGMENT


James V. James
Illinois
General Marshall TAC


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APPROVED AS TO FORM:

APPROVED AS TO FORM:

DATE: April 26, 2001

DATE: _____



David Bush
Attorneys for Plaintiff
MICHAEL DIPIRRO

Siegmond Shyu
Attorneys for Defendant
ILLINOIS TOOL WORKS INC.

CONSENT JUDGMENT

1 APPROVED AS TO FORM:
2

APPROVED AS TO FORM:

3 DATE: _____
4

DATE: 5-3-01

5 _____
6 David Bush
7 Attorneys for Plaintiff
8 Defendant
9 MICHAEL DIPIRRO

Siegmund Shyu
Siegmund Shyu
Attorneys for

ILLINOIS TOOL WORKS
INC.

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CONSENT JUDGMENT

Exhibit A

EXHIBIT A

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1. Adhesive remover products, including but not limited to, STA-PUT Adhesive Remover Aerosol and STA-PUT Adhesive Remover Liquid.