

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Michael DiPirro, a California citizen, and The Jones Stephens Corp., an Alabama Corporation ("Jones Stephens"), as of March __, 2000. The parties agree to the following terms and conditions:

WHEREAS:

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

B. Jones Stephens is a corporation, headquartered in Birmingham, Alabama, which distributes and/or sells products in the State of California that contain, or whose customary use and application are likely to produce fumes or gases which contain, certain chemicals listed pursuant to Proposition 65 (California Health & Safety Code §§25249.5 *et seq.*) ("listed chemicals"); and

C. The products that contain, or whose customary use and application are likely to produce fumes or gases which contain, one or more of the listed chemicals and which are covered by this Agreement are set forth in Exhibit 1 (the "Products"). The Products have been distributed and/or sold by Jones Stephens for use in California since at least August 4, 1995; and

D. On August 4, 1999, Michael DiPirro first served Jones Stephens and all of the requisite public enforcement agencies with a document entitled "60-Day Notice of Violation" which provided Jones Stephens and such public enforcers with notice that Jones Stephens was allegedly in violation of Health & Safety Code §25249.6 for failing to warn purchasers that certain products it sells in California expose users to Proposition 65-listed chemicals; and

E. On October 18, 1999, Michael DiPirro filed a complaint entitled Michael DiPirro v. Jones Stephens Corp., et al., (No. H209863-0) in the Alameda Superior Court, naming Jones Stephens as a defendant and alleging violations of Business & Professions Code §17200 and Health & Safety Code §25249.6 on behalf of individuals in California who allegedly have been exposed to listed chemicals contained in certain Jones Stephens products, or whose customary use and application are likely to have produced fumes or gases which contain such chemicals; and

F. Jones Stephens at all times denied and denies the material factual and legal allegations contained in the 60-Day Notice and the Complaint. Nothing in this Agreement shall be construed as an admission by Jones Stephens of any fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by Jones Stephens of any fact, finding, conclusion, issue of law, or violation of law. However, this paragraph shall not diminish or otherwise affect the obligations, responsibilities, and duties of Jones Stephens under this Agreement; and

G. DiPirro and Jones Stephens wish to compromise, settle and satisfy all claims, demands and disputes between them related to any of the Products sold, distributed or otherwise provided to consumers in the State of California prior to the Effective Date, as defined below, and to bind themselves to the covenants of this Agreement.

NOW THEREFORE, MICHAEL DiPIRRO AND JONES STEPHENS AGREE AS FOLLOWS:

1. **The "Effective Date" of This Settlement Agreement.** The "Effective Date" of this Settlement Agreement shall be the date upon which a Judgment Pursuant to Stipulation ("Stipulated Judgment") pursuant to Cal. Code Civ. Proc., § 664.6, is entered by the Superior Court for the County of Alameda, in the matter entitled Michael DiPirro v. Jones Stephens, Corp. et al., Case No. H209863-0, which Stipulated Judgment shall contain the terms of this Settlement Agreement in the form required by the Superior Court.

2. **Product Warnings on Jones Stephens Brand Products (Exhibit 1.)** Jones Stephens agrees that no later than the Effective Date, it shall not manufacture for sale or distribution, nor sell or distribute, in the State of California as a Jones Stephens branded product any of the Products listed on Exhibit 1 unless each such Product is accompanied by a label on, or affixed to, the Product or its packaging with the following statement:

"WARNING: This product contains a chemical known to the State of California to cause cancer and birth defects (or other reproductive harm.);"

or

"WARNING: This product contains lead, a chemical known to the State of California to cause cancer and birth defects (or other reproductive harm.)"

The warning statement shall be prominent and displayed at the point of sale with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual.

3. Modifications to Product Warnings. In the event applicable California warning regulations are subsequently amended in a manner that requires a warning different than the warnings set forth in paragraph 2 of this Settlement Agreement, Jones Stephens will comply with the new warning requirements and, within 30 days of the change, shall notify DiPirro of the change.

4. Jones Stephens Sales Data. Jones Stephens understands that the sales data provided to counsel for DiPirro by Jones Stephens was a material factor upon which DiPirro has relied to determine the amount of payments made pursuant to Health & Safety Code § 25249.7 (b) in this Agreement. To the best of Jones Stephens' knowledge, the sales data provided is true and accurate. In the event that DiPirro discovers facts which demonstrate to a reasonable degree of certainty that the sales data is materially inaccurate, the parties shall meet in a good faith attempt to resolve the matter within ten (10) days of Jones Stephens' receipt of notice from DiPirro of his intent to challenge the accuracy of the sales data. If this good faith attempt fails to resolve DiPirro's concerns, DiPirro shall have the right to rescind the Agreement and re-institute an enforcement action against Jones Stephens, provided that all sums paid by Jones Stephens pursuant to ¶¶ 6 and 7 are returned to Jones Stephens within ten (10) days from the date on which DiPirro notifies Jones Stephens of his intent to rescind this Agreement. In such case, all applicable statutes of limitation shall be deemed tolled for the period between the date DiPirro filed the instant action and the date DiPirro notifies Jones Stephens that he is rescinding this Agreement pursuant to this paragraph.

5. Product Characterization. Jones Stephens acknowledges that each of the Products listed in Exhibit A contains, or in the customary use or application of the Products is likely to produce fumes, gases or dust that contain, one or more substances known to the State of California to cause cancer and/or birth defects (or other reproductive harm.) In the event that Jones Stephens obtains analytical, risk assessment or other data ("Exposure Data") that shows an exposure to any or all Products poses "no significant risk" or will have "no observable effect," as such standard is applicable and as each is defined under Health & Safety Code § 25249.10 (c), Jones Stephens shall provide DiPirro with ninety (90) days prior written notice of its intent to limit or eliminate the warning provisions under this Agreement based on the Exposure Data and shall provide DiPirro with all such supporting Exposure Data. Within ninety (90) days of receipt of Jones Stephens' Exposure Data, DiPirro shall provide Jones Stephens written notice of his intent to challenge the Exposure Data (in the event that he chooses to make such a challenge.) If DiPirro fails to provide Jones Stephens written notice of his intent to challenge the Exposure Data within Ninety (90) days of receipt of Jones Stephens notice and the Exposure Data, DiPirro shall waive all right to challenge the Exposure Data, and

Jones Stephens shall be entitled to limit or eliminate the warning provisions required under this Agreement with respect to the Products to which the Exposure Data applies. If DiPirro timely notifies Jones Stephens of his intent to challenge the Exposure Data, DiPirro and Jones Stephens shall negotiate in good faith for a period not to exceed thirty (30) days following receipt of Jones Stephens' notice to attempt to reach settlement of this issue. If a settlement is not reached, DiPirro and Jones Stephens agree to submit such challenge to the superior court for determination, pursuant to the court's continuing jurisdiction of this matter under C.C.P. § 664.6 and this Agreement. The prevailing party shall be entitled to reasonable attorneys' fees and costs associated with bringing a motion brought under this paragraph to the court for determination.,

6. Payment Pursuant To Health & Safety Code §25249.7(b).

Pursuant to Health & Safety Code §25249.7(b), within five (5) business days of the Effective Date, Jones Stephens shall pay a civil penalty of \$3,000 by check made payable to "Chanler Law Group In Trust For Michael DiPirro." Penalty monies shall be apportioned by DiPirro in accordance with Health & Safety Code §25192, with 75% of these funds remitted to the State of California's Department of Toxic Substances Control.

7. Reimbursement of Fees and Costs. The parties acknowledge that DiPirro offered to resolve the dispute without reaching terms on the amount of fees and costs to be reimbursed, thereby leaving this open issue to be resolved after the material terms of the agreement had been reached, and the matter settled. Jones Stephens then expressed a desire to resolve the fee and cost issue concurrently with the settlement terms, so the parties tried to reach an accord on the compensation to DiPirro and his counsel under the private attorney general doctrine codified at C.C.P. section 1021.5. Within five (5) business days of the Effective Date of this Settlement Agreement, Jones Stephens shall reimburse DiPirro for his investigation fees and costs, expert fees, attorneys fees and costs, and any other costs incurred as a result of investigating, bringing this matter to Jones Stephens's attention, litigating and negotiating a settlement in the public interest in the total amount of \$6,500. Payment shall be made by check payable to the "Chanler Law Group."

8. DiPirro's Release Of Jones Stephens. DiPirro, by this Agreement, on behalf of himself, and on behalf of each of his employees, agents, representatives, attorneys, insurers, predecessors, successors, assignors and or assignees, and the People of the State of California (in his representative capacity) (the "DiPirro Releasors") hereby irrevocably releases and forever discharges Jones Stephens, independent sales' representatives working on Jones Stephens's behalf, and all entities to whom Jones Stephens, and/or Jones Stephens's independent sales' representatives, sold or distributed the Products listed in Exhibits 1, in California (the "Jones Stephens Releasees") from January 1, 1995 through and including the Effective Date, of and from any and all actions, causes of actions, suits and liabilities, claims, civil penalties, restitution, fees, costs, demands and damages, at law or in equity, of any nature

whatsoever, whether known or unknown, fixed or contingent, which the DiPirro Releasers have, or may have in the future, against the Jones Stephens Releasees arising out of the Jones Stephens Releasees' alleged violations of Proposition 65 and/or Business and Professions Code §§17200 *et seq.* based on Jones Stephens's alleged failure to provide a clear and reasonable warning concerning exposures with respect to lead and lead compounds with respect to the Products listed in Exhibit 1 distributed, sold or otherwise provided to consumers in any and all counties of California on or before the Effective Date **This release expressly excludes a waiver and release of any entity from whom Jones Stephens may have acquired any of the Products or raw materials listed in Exhibits 1.**

9. **Jones Stephens's Release Of Michael DiPirro.** Jones Stephens, by this Agreement, waives all rights to institute any form of legal action against DiPirro and his attorneys or representatives, for all actions or statements made by Michael DiPirro, and his attorneys or representatives, in the course of seeking enforcement of Proposition 65 or Business & Profession Code §§17200 *et seq.* against Jones Stephens.

10. **Stipulated Judgment.** Concurrently with the execution of this Agreement, DiPirro and Jones Stephens shall execute and file a Stipulated Judgment to be approved pursuant to CCP §664.6 by the Alameda Superior Court in accordance with the terms of this Agreement. If, for any reason, the Stipulated Judgment is not approved by the Court, this Agreement shall be deemed null and void.

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

12. **Attorneys' Fees In The Event Of A Dispute.** In the event that a dispute arises with respect to any provision(s) of this Agreement, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

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

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

Clifford A. Chanler
Chanler Law Group
Magnolia Lane
New Canaan, CT 06840-3801
(203) 966-9911

18. **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:

AGREED TO:

DATE: 3/14/00

DATE: 3/17/2000



Michael DiPirro
PLAINTIFF



Butch Jones
President
The Jones Stephens Corp.
DEFENDANT

Exhibit A

EXHIBIT 1

Product Number:

Description:

L 40-001

Lead Wool.


Exhibit B

EXHIBIT 2

I, John C. Mueller, Of Counsel to Baker & Hostetler, LLP, counsel for the Jones Stephens Corp., herein, hereby states that this Agreement was sent to the California Attorney General's Office by certified mail, return receipt requested, consistent with paragraph 17 hereof, on March 6, 2000.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed in the County of Los Angeles, California, this 15 day of March, 2000.


John C. Mueller