

FILED
San Francisco County Superior Court

MAR 31 1992

MICHAEL K. TAMONY, Clerk
BY Richard Deputy Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

ENVIRONMENTAL DEFENSE FUND,)	CASE NO. 939164
)	
Plaintiff,)	JUDGMENT ON STIPULATION FOR
)	ENTRY OF JUDGMENT
vs.)	
)	
TRU-TEST MANUFACTURING CO.,)	
)	
Defendant.)	

In the above-entitled action, plaintiff Environmental Defense Fund and defendant Tru-Test Manufacturing Co. having stipulated through their respective counsel, that judgment be entered pursuant to the terms of the settlement agreement entered into by the parties on March 5, 1992, said stipulation being attached hereto,

1 IT IS HEREBY ADJUDGED, ORDERED AND DECREED that judgment
2 be entered in accordance with the terms of the stipulation
3 between the parties.

4
5 3/27/92

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7  _____

8 Judge of the Superior Court

9 STUART R. FOLLAH

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

ENVIRONMENTAL DEFENSE FUND,)	CASE NO. 939164
)	
Plaintiff,)	STIPULATION FOR ENTRY OF
)	JUDGMENT
vs.)	
)	
TRU-TEST MANUFACTURING CO.,)	
)	
Defendant.)	

IT IS HEREBY STIPULATED, by and between plaintiff Environmental Defense Fund and defendant Tru-Test Manufacturing Co., through their respective counsel, that judgment in the above-entitled action be entered in accordance with the terms of the settlement agreement between the parties, executed on March 5, 1992, and which is attached hereto as Exhibit A.

DATED: 3/25/92.

CHANLER & LAZLO

By Cliff CM
Clifford A. Chanler
Attorneys for Plaintiff
Environmental Defense Fund

AMERICAN
BAR ASSOCIATION
OF DISTRICT OF COLUMBIA

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DATED: March 24, 1992

HAIGHT, BROWN & BONESTEEL

By *Jeffrey B. Margulies*
Jeffrey B. Margulies
Attorneys for Defendant
TRU-TEST MANUFACTURING CO.,
a division of COTTER & COMPANY



100% Recycled Paper
10% Post Consumer Waste

EXHIBIT A

() ()

SETTLEMENT AGREEMENT

On March 6, 1992 in San Francisco, California, the Environmental Defense Fund ("EDF") and Tru-Test Manufacturing Co. ("Tru-Test"), a division of Cotter & Company, agreed to the following terms and conditions:

WHEREAS:

EDF is a national not-for-profit membership organization established in 1967 and dedicated to the protection and rational use of natural resources, and to the preservation and enhancement of human health and the environment; and

Tru-Test is an Illinois-based company that currently manufactures products including paint strippers and adhesive removers which contain methylene chloride, also known as dichloromethane; and

On April 1, 1988, methylene chloride was officially listed by the State of California as a chemical known to cause cancer, pursuant to Health & Safety Code §25249.8; and

EDF seeks to protect the public health by eliminating the public's exposure to methylene chloride from all unnecessary sources including paint strippers, adhesive removers and other consumer products; and

EDF states that it has been determined by federal and state agencies that paint strippers and adhesive removers are two categories of products which contain the highest levels of methylene chloride; and

A list of the methylene chloride products which Tru-Test has manufactured for sale in California since April 1, 1989 is provided in attachment A (the "Products"); and

On September 30, 1991, EDF served Tru-Test with a document entitled, 60-DAY NOTICE: FAILURE TO WARN ABOUT TOXIC CHEMICAL EXPOSURE ("60-Day Notice"), which provided Tru-Test with notice that it was in violation of Health and Safety Code §25249.6 et seq. for failing to warn purchasers that certain of its products expose users to an unsafe level of methylene chloride; and

EDF believes that the intent of Proposition 65 is best served by the prompt elimination of toxic chemical exposures from the marketplace to the extent commercially feasible and, until the toxic chemical is eliminated, by reducing such exposures to the greatest extent possible.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Tru-Test agrees not to offer for retail sale, ship or cause to be shipped for retail sale in the State of California any product it manufactures containing methylene chloride as an intended ingredient after April 1, 1992. However, Tru-Test may ship such products into California for warehousing and ultimate sale to its customers outside the State of California.
2. On or before April 1, 1992, Tru-Test must provide to EDF a notarized letter certifying that all of its Products (as listed in attachment A) being shipped for sale in California do not contain methylene chloride.
3. If Tru-Test reformulates any product listed in attachment A to comply with the requirements of paragraph 1, Tru-Test shall not offer such a product for retail sale in California if it has as an intended ingredient any toxic chemical which is listed in 26 CCR §22-12000.
4. In order to ensure that Proposition 65 warnings are provided to its paint remover products containing methylene chloride currently for sale in California, Tru-Test will send a letter signed by a corporate manager or officer to all of its California retailers. The letter will contain the requisite warning materials and structured in a form substantially similar to the letter described in attachment B.
5. Any information provided pursuant to this Agreement shall not be deemed confidential and may be made available to the public upon request by any person or entity.
6. As costs and fees, Tru-Test shall pay EDF the sum of \$38,500 for investigation costs, in-house attorneys fees and outside attorneys fees and costs.
7. EDF, by this Agreement, waives all rights to institute action against Tru-Test (or any of its directors, officers, employees, agents, affiliates, divisions, subdivisions, successors or assigns), its distribution or retailers which sell Tru-Test's Products whether under Proposition 65, the Business & Profession Code §§17200 et seq., or any other statute or common law claim based on Tru-Test's failure to warn consumers about exposure to methylene chloride (as detailed in the 60-day notice) from exposures to any of the Products identified in attachment A.
8. The parties recognize that products covered by this Agreement are or may be regulated under federal statutes. Nothing in this Agreement shall be construed to mean that Proposition 65 or any of its implementing regulations require any of the specific acts or prohibitions set forth in this Agreement.

9. All payments to EDF are to be made payable to "Clifford A. Chanler In Trust for the Environmental Defense Fund," and sent to Chanler & Lazlo, Ghirardelli Square, 900 North Point, Ste. 450, San Francisco, CA 94109.

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

11. 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.

12. The terms of this Agreement shall be governed by the laws of the State of California.

13. This Agreement shall apply to and be binding upon Tru-Test, its directors, officers, employees, agents, affiliates, divisions, subdivision, successors and assigns.

14. All information required to be given to the parties shall be provided by registered mail and sent to :

1. David Roe
Environmental Defense Fund
5655 College Avenue
Oakland, CA 94618; and
2. Clifford A. Chanler
Chanler & Lazlo
Ghirardelli Square
900 North Point, Suite 450
San Francisco, CA 94109
3. Tru-Test Manufacturing Co.
Cotter & Company
2740 N. Clybourn Avenue
Chicago, IL 60614
Attn: General Counsel

15. Nothing in this Agreement shall be construed as an admission by Tru-Test 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 Tru-Test of any fact, finding, conclusion, issue of law, or violation of law. However, this paragraph shall not diminish or otherwise affect the obligation, responsibilities, and duties of Tru-Test under this Agreement. Tru-Test expressly denies any fact alleged in this matter, finding, conclusion, issue of law, or violation of law.

16. If a court of competent jurisdiction issues a final judgment determining that the Federal Hazardous Substances Act preempts

Proposition 65 for methylene chloride, or if Proposition 65 is otherwise determined to be unenforceable for the Products identified in attachment A, Tru-Test's obligations under paragraphs 1 through 3 of this Agreement shall cease. In such event, Tru-Test expressly waives any right to reimbursement for monies paid pursuant to paragraph 6 of this Agreement.

17. All the terms of this Agreement have been shown to the California Attorney General's Office, and that office has indicated that said terms and conditions are deemed to have resolved this entire matter, as evidenced by the attached letter from the California Attorney General's Office indicating that the facts in this matter do not merit any further action by the State of California.

18. EDF hereby waives application of Civil Code §1542 which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

19. Judgment shall be entered in accordance with the terms of this Agreement and approved pursuant to CCP §664.6.

20. 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:

By: Christine [Signature]
for the Environmental Defense Fund

AGREED TO:

By: [Signature] JFM
Tru-Test Manufacturing Co.
Division of Cotter & Co.

Dated: March 5, 1992

Dated: March 5, 1992

RECEIVED
MAR 10 1992
Cotter & Company
Law Dept.