

May 1, 1996

## PROPOSITION 65 LITIGATION

This is a summary of litigation concerning Proposition 65. It is prepared by the California Attorney General's office as a courtesy, based on information available to us. In using this summary, please be advised that:

- The list does **not** include information about 60-day notices that did not result in any further action or that resulted in contractual settlements; only complaints actually filed in court are included.
- The list is based on information obtained by the Attorney General from various sources, and we cannot be responsible for errors or omissions, regardless of their origin.
- We do not have complete information regarding all Proposition 65 actions, and numerous actions are not included on this list. Even for those suits that are listed, we sometimes do not have current information.
- The list generally omits Proposition 65 claims that are subsidiary parts of other ongoing litigation (e.g., a discharge claim merely added to a pre-existing CERCLA claim).
- The list is not updated on a regular schedule, but only as time and resources permit.
- The list is available only on specific individual request.
- The cases are listed, generally, by filing date, within the following categories:
  - A. Enforcement Suits by Public Agencies.
  - B. Enforcement Suits by Private Persons.
  - C. Suits Against State Agencies or Officials.

To request a copy of this list or to suggest corrections or updates, please call either Deputy Attorney General Craig Thompson, (916) 327-7851, or Deputy Attorney General, Ed Weil, (510) 286-1364.

## A. ENFORCEMENT SUITS BY PUBLIC AGENCIES

1. *People v. Coleman, et al.* (Alameda County Superior Court No. H-135162-2, filed July 27, 1988).

Summary: Suit by the Alameda County District Attorney against three companies alleged to have sold lantern mantles, exposing consumers to thorium dioxide, a listed carcinogen, without the required warning.

Status: Settlement entered March 30, 1989. Settlement consisted of a \$30,000 judgment for civil penalties under *Business & Professions Code* §17200 and specified warnings on new packages.

2. *People v. Safeway Stores, Inc., et al.* (San Francisco Superior Court No. 897576, filed September 30, 1988).

Summary: Suit by the Attorney General against tobacco companies, retail grocery chains and Ingredient Communication Council (ICC) for failure to provide clear and reasonable warning in conjunction with the sale of cigars and pipe tobacco. Defendants purported to have provide warnings through use of ICC's "800 number" system.

Status: Settlement with tobacco companies entered October 18, 1988, providing for package labeling of cigars and pipe tobacco and payment of \$150,000 in costs. Motion to Intervene of parties that provided 60-day notice (Environmental Defense Fund, Sierra Club, Natural Resources Defense Council, and Campaign California), was granted as to cause of action under *Business & Professions Code* only, subject to certain conditions. Case continued through various pleadings, motions, and discovery until November 29, 1990, when Consent Judgment as to remaining defendants was entered. All defendants agreed not to rely on an 800-number system to provide warnings for tobacco products. Settlement required the remaining defendants to pay \$750,000 (\$625,000 penalties, \$50,000 costs to Attorney General, \$75,000 attorney's fees to interveners).

3. *People v. Webb and Associates, et al.* (Solano County Superior Court No. 103136, filed December 28, 1988).

Summary: Suit by Solano County District Attorney against builder, advertising agency that published brochure describing Proposition 65, and California Building Industry Association based on failure to warn about exposures from chemicals used in construction of new homes, and on misleading and overbroad statements concerning the nature of the duty to warn. (Sometime referred to as the "overwarning" suit.)

Status: On March 22, 1993, a final judgment pursuant to stipulation was entered providing that the Building Industry Association would provide its members with appropriate and specific warning information and materials to enable them to provide warnings of exposure to formaldehyde contained in construction materials.

4. *People v. PPG Industries, et al.* (Solano County Superior Court No. 103194, filed January 3, 1989).

Summary: Suit by Solano County District Attorney for failure to provide clear and reasonable warning in conjunction with sale of certain commercial paints, solvents, and resins.

Status: Settlement entered January 3, 1989, prohibiting certain forms of warnings and requiring payment of \$50,000 in penalties and \$25,000.

5. **Typewriter Correction Fluid Cases:** *People v. Gillette Co.* (San Francisco Superior Court No. 897576, filed September 28, 1989); *People v. Wite-Out Co.* (Alameda County Superior Court No. 661621-0, filed February 21, 1990); *People v. Wirth International* (Alameda County Superior Court No. 669921-1, filed September 11, 1990).

Summary: Suits by the Attorney General alleging that typewriter correction fluids exposed users to TCE, a listed reproductive toxin, and that no warning had been provided. Gillette manufactured "Liquid Paper," the largest selling brand, Wite-out made "Wite-Out" brand, and Wirth made similar products sold under other labels. Wirth had reformulated product shipped after date warning was required, but took no action with respect to "pipeline" of existing products in chain of distribution and sale.

Status: A settlement lodged the same day as the filing of the complaint required Gillette to pay \$275,000 in civil penalties and \$25,000 in costs and fees. An injunction required Gillette to place advertisements in newspapers warning of the danger and offering to exchange current bottles for a less hazardous formulation. Gillette also agreed to reformulate the product so that it would not pose a risk requiring proposition 65 warning. For purpose of settlement, suit was consolidated with *Environmental Defense Fund v. Gillette*, San Francisco Superior Court No. 911267 (filed September 28, 1989), a *Business & Professions Code* §17200 suit based on the same violation, following up on a 60-day notice on this matter given by EDF. Several months later, Wite-Out agreed, in a settlement lodged the same day as the filing of the complaint, to pay \$50,000 in civil penalties, to reformulate its products and to provide warnings to consumers about old formula. Wirth, which only failed to warn with respect to the "pipeline" of old product, agreed to pay \$17,500 to a local drug abuse education program, specifically including

education concerning the dangers of sniffing correction fluids, and injunctive relief similar to that agreed to by the other companies.

6. *People v. Santa Maria Chili and People v. McGhan Medical Corporation & Mentor Corporation* (Santa Barbara County Superior Court Nos. SM 64010 and 178922, filed October 9-10, 1989).

Summary: Complaints by the Attorney General alleged that these three facilities used ethylene oxide as a sterilant and exposed people in the area surrounding their facilities to this chemical without providing warnings.

Status: Almost contemporaneously with the filing of the complaints, the county health officer issued orders restricting these emissions. The Air Pollution Control District for Santa Barbara County then issued a rule governing the emissions. On October 24 and 26, 1990, respectively, Mentor and McGhan entered into settlements. They agreed to pay penalties of \$125,000 each and to refrain from further emissions of ethylene oxide. A consent judgment with *Santa Maria Chili* was filed on April 10, 1991, in which it agreed to pay \$225,000 in civil penalties and permanently refrain from ethylene oxide emissions.

7. *People of the City of Los Angeles v. San Joaquin Helicopters, Inc., et al.* (Los Angeles Superior Court No. BC005249, filed July 10, 1990).

Summary: This action is directed at the California Department of Food and Agriculture "Medfly Project," involving the aerial spraying of Malathion in the Los Angeles area. It alleges that Malathion and the bait that it is sprayed with include trace contaminants of Proposition 65 listed chemicals, in violation of the warning and discharge requirements. It also raises the issue of whether the governmental exemption applies to private entities carrying out activities at the direction of government agencies. The action includes other claims against the Medfly Project not directly related to Proposition 65.

Status: Plaintiffs' application for a temporary restraining order to block spraying was denied on July 12, 1990. The court indicated from the bench that the helicopter company might fall within the governmental agency exemption, and that an injunction would not prevent the spraying, because the government could conduct the spraying itself. The court also indicated that listed chemicals did not appear to be present in amounts sufficient to require a warning. The case was ordered to be coordinated with other cases challenging the Medfly project and is pending.

8. *People v. H.W. Andersen Products and Andersen Products of California*, (San Francisco Superior Court No. 921748, filed July 17, 1990).

Summary: Suit by the Attorney General alleging that defendant manufactured and sold a desk-top medical sterilizer device which uses ethylene oxide to sterilize medical products. The complaint alleges that use of the device in its unvented configuration exposes users and others to very high levels of ethylene oxide and that no Proposition 65 warning was given. The suit alleged violations of Proposition 65, the Unfair Competition Act (based on violations of OSHA and pesticide labeling laws), and *Business & Professions Code* §17500 (false and misleading advertising). The company apparently stopped selling the model in 1989.

Status: A joint Attorney General-Andersen letter was sent in December 1990, to the company's California customers informing them of the lawsuit and the dangers of using the unvented sterilizer. The letter said that the company would not provide customers using the old sterilizer with new ethylene oxide ampules until after an inspection by either Cal-OSHA or the Department of Health Services of the customer's ventilation system to assure that it would not result in exposures above Cal-OSHA or Proposition 65 limits. On September 9, 1993, a judgment pursuant to stipulation was entered providing that the "old" product would no longer be sold, that purchasers of the older model would be offered a discount on a new model that provides better ventilation, and for payment of \$12,000 in costs.

9. **Los Angeles/Orange County Ethylene Oxide Emission Cases:**

- a. *People v. Griffith Micro Science* (Los Angeles County Superior Court No. BC006063, filed July 18, 1990).

Summary: The Attorney General filed suit alleging that defendant emitted into the air ethylene oxide, which is listed under Proposition 65 as both a reproductive toxin and a carcinogen, one of a handful of chemicals so listed. The complaint alleged that these emissions into the ambient air exposed persons in the area surrounding the plant to ethylene oxide without a prior clear and reasonable warning. This case is one of a group filed on the same day against the five largest ethylene oxide emitters in the state, *infra*, all of which alleged violations of Proposition 65, *Health & Safety Code* §41700 (air toxics nuisance statute) and the *Business & Professions Code*. Griffith had been the highest known emitter of ethylene oxide in California, emitting a total of more than 150,000 pounds per year. It had "warned" by placing ads once in the classified sections of three weekly newspapers. The Attorney General alleged that these notices did not provide clear and reasonable warning.

Status: Both of this defendant's facilities have installed scrubbers on at least part of their processes, which greatly reduced emissions. After the Attorney General filed a motion for a preliminary injunction requiring warnings, defendant agreed to provide mailed notices to some 4500 nearby residents. In a settlement filed May

1, 1991, defendant agreed to pay \$250,000 in civil penalties and costs. In addition, Griffith also agreed to relinquish air emission credits, to which it was entitled, valued at \$850,000 making the total value of the settlement roughly \$1.1 million.

- b. *People v. Baxter Healthcare Corporation* (Los Angeles County Superior Court No. BC006061, filed July 18, 1990).

Summary: Defendant Baxter Pharmaseal's plant was estimated to have emitted 16,000 lbs. of ethylene oxide in 1989 without any treatment or controls. The only "warnings" provided were two small newspaper notices saying that the facility "may" "contain" chemicals causing cancer.

Status: Defendant provided warning through newspaper advertisements containing a map of the affected area. A stipulated judgment was executed by the parties in August 1991 and entered by the court in October 1991. It provides that Baxter will relinquish Emission Reduction Credits valued at \$42,000, pay a civil penalty of \$358,000, and provide an improved newspaper warning that includes a map of the affected area as long as emissions continue.

- c. *People v. Bentley Laboratories and Baxter Healthcare Corporation* (Orange County Superior Court No. 630727, filed July 18, 1990).

Summary: This case involves Bentley Laboratories, Inc., in Irvine, also owned by Baxter Healthcare Corp., which at one time emitted close to 33,000 lbs. of ethylene oxide per year without any treatment or controls. This company provided the same of purported newspaper warnings as did the other Baxter defendant.

Status: On September 3, 1991, the court entered a judgment pursuant to stipulation providing that the defendant would pay \$200,000 in civil penalties. By that time, the Defendant had stopped using ethylene oxide at the premises.

- d. *People v. Botanicals International, Inc.* (Los Angeles Superior Court No. BC006060, filed July 18, 1990).

Summary: This case involves Botanicals International, Inc., the second largest ethylene oxide emitter in the State in 1988 and 1989. During those years, Botanicals provided no Proposition 65 warning at all.

Status: Consent judgment filed on March 6, 1991, requiring Botanicals to operate control equipment reducing its emissions by 99.9%. Botanicals also agreed to pay \$500,000 in civil penalties and costs.

- e. *People v. Sterilization Services and Vacudyne* (Orange County Superior Court No. 630728, filed July 18, 1990).

Summary: The complaint alleged that in 1988 and 1989 the facility emitted more than 30,000 lbs. per year of ethylene oxide without any treatment or controls. During these years, the company provided no Proposition 65 warning at all. Sterilization Services, with less than ten employees, is exempt from Proposition 65, so the Proposition 65 cause of action was alleged only against Vacudyne. The Attorney General alleged that Vacudyne in fact operates and controls the actions of the subsidiary, and therefore was independently liable for causing the exposures.

Status: On October 21, 1991, the court entered a stipulated judgment providing that the Defendants would stop emitting ethylene oxide, in compliance with a new South Coast Air Quality Management District regulation, by January 1, 1992, and until then would provide a warning through a one-quarter page newspaper ad showing a map of the affected area. Defendant was required to pay a total of \$300,000: \$175,000 in civil penalties and \$125,000 to fund Proposition 65 enforcement and investigation activities of the Attorney General.

10. *People v. Talson Corp.* (Solano County Superior Court No. 109963, filed July 30, 1990).

Summary: Suit by the Solano County District Attorney alleging that manufacturer of paint stripper, "Tai-Strip" distributed the product for sale in California without providing clear and reasonable warning that use of the product would cause exposure to methylene chloride, a listed chemical.

Status: Case dismissed after defendant provided evidence that it was and generally had been providing a warning consistent with Proposition 65.

11. *People v. Blue Coral, Inc.* (Solano County Superior Court No. 110190, filed August 16, 1990).

Summary: Suit by the Solano County District Attorney alleging that manufacturer of two radiator flushes, "McKay Heavy Duty Radiator Flush" and "Mechanics Brand Heavy Duty Radiator 81OB" violates the discharge requirement of Proposition 65, because they contain listed chemicals are normally drained into municipal sewers.

Status: Final Judgment Pursuant to Stipulation entered December 1, 1992. It provides that the defendant will not sell the product in California, unless it is ultimately determined to be lawful (in other pending cases under other statutes brought by various law enforcement authorities). Defendant paid \$12,000 in costs.

12. **Paradichlorobenzene Cases:** *People v. Willert Home Products, Inc., et al.*, (San Francisco Superior Court No. 924886, filed October 16, 1990); also *People v. Excell Products Corp.*, (San Francisco Superior Court No. 924887, filed October 16, 1990); *People v. Sanitoy Inc.*, (San Francisco Superior Court No. 924888, filed October 16, 1990).

Summary: Suits by the Attorney General against manufacturers of moth control products, room fresheners, and household deodorizers made almost entirely of paradichlorobenzene. Willert Home products, maker of "Enoz," "Willert" and "Reefer-Galler" products, provided warning labels on products packaged after January 1, 1990, but did nothing with respect to "pipeline" of existing products and language of warning was not adequate. Excell Products, maker of "Excell" brand, provided no warning, nor did Sanitoy, distributor of a small number of diaper pail deodorizers.

Status: Consent Judgment filed with each complaint. Willert agreed to improve warning language, offer retailers chance to exchange unlabeled product for labeled product, and place newspaper advertisements giving consumers who purchased the product without a warning the opportunity to mail or call a toll-free number to obtain a refund on purchased products. Labeling of FIFRA-registered products must be in compliance with EPA requirements, or warnings will be provided through shelf signs. In view of the nature of the violation, costs of refund and advertising program were accepted as restitution in lieu of penalties. (In February 1992, U.S. EPA approved Willert's request to include the Proposition 65 warning on the FIFRA-approved package label.) Excell agreed to similar injunctive provisions, but because it had obtained direct advantage over its competitors by its failure to warn, it also was required to pay a penalty of \$27,000 (on total sales volume of \$54,000). Sanitoy agreed to similar injunctive relief. It had sold only \$10,000 of product during the time in question and paid no civil penalty.

13. *People v. Bio-Rad Laboratories, Inc.* (Contra Costa County Superior Court No. C-90-05401, filed December 12, 1990).

Summary: The complaint alleged that this Richmond biotechnology company emitted as much as 60,000 pounds per year of chloroform, a listed carcinogen, without providing a warning. It sought penalties and an injunction under Proposition 65 and penalties under the Unfair Competition Act for violations of Bay Area Air Quality Management District rules and regulations, which required installation of emission control technology. The case was brought jointly by the Attorney General and the Contra Costa District Attorney. A 60-day notice from Citizens for a Better Environment originally brought the violations to the prosecutors' attention.

Status: On March 29, 1991, the Court entered a Consent Judgment providing that Bio-Rad will comply with an order of the Bay Area Air Quality Management District

requiring elimination of all chloroform emissions and payment of civil penalties and costs totaling \$550,000, \$187,000 of which will be used to fund future costs of Proposition 65 investigation and enforcement by the Attorney General. Bio-Rad also agreed in a separate administrative proceeding before the BAAQMD to pay a penalty of \$150,000 to the district for violation of its rules and regulations.

14. *People v. Amvac Corporation and Bio-Strip, Inc.* (Los Angeles Superior Court No. BC017081, filed December 13, 1990).

Summary: Suit by the Attorney General alleged that the Bio-Strip household pest strip (a strip of material that is hung in a room to repel insects) exposed users to the carcinogen DDVP (also known as dichlorvos) in an amount posing a significant risk.

Status: A Consent Judgment was entered on June 10, 1992. It provides for a total settlement value of \$250,000, consisting of \$30,000 in penalties, \$70,000 in costs, and surrender of \$150,000 worth of transferable Emission Reduction Credits belonging to the defendant. The Defendant also agreed to provide warnings either through labels, shelf signs, or display box signs, and to specific provisions assuring that these materials are provided to retailers and distributors of the products.

15. *People v. Baccarat, Inc., et al.* (San Francisco Superior Court No. 932292, filed May 16, 1991).

Summary: Suit by the Attorney General against 17 manufacturers and 1 retailer of leaded crystal decanters alleging that use of these decanters to hold liquids meant for ingestion exposes persons to lead. Testing showed that alcoholic beverages stored in these decanters for 24 hours reached a lead level from 100 to 800 parts per billion (compared to drinking water standards of 15 to 50 parts per billion). See also "Mangini Leaded Crystal Cases" under Enforcement Suits by Private Parties.

Status: A few defendants withdrew their product from the market at the start of the litigation, so no injunctive relief was sought against them. On October 4, 1991, the Superior Court issued a preliminary injunction requiring in-store warnings by the other defendants. Defendants Waterford, Polo, Rosenthal, Villeroy & Boch, Gorham and Orrefors also stipulated to final judgments requiring warnings and paying (separately) penalties and costs totaling \$232,015. Defendants Baccarat, Lalique, Daum and St. Louis stipulated to a preliminary injunction which also provided that it would be vacated if the decanters are reformulated to eliminate lead leaching, as established under a specific testing protocol. Defendant Baccarat developed a "cementation" process for its new decanters, which creates a

layer inside the decanter that prevents lead leaching, so the injunction requiring warnings for its decanters was vacated.

16. **Lead in Wine Cases:** *People v. Gallo Vineyards, Inc., et al.* (San Diego Superior Court No. 640951, filed August 6, 1991).

Summary: Suit by the Attorney General alleging that thirteen wineries have exposed persons to lead through the use of lead foil caps on the bottles. Some of the lead is deposited onto the lip of the bottle, where it passes into the wine when poured. Four private suits concerning the same issue also were filed in the same court: *Armendariz v. Safeway Stores, Inc., et al.*, No. 638657, filed June 7, 1991 (suit against retailers under *Business & Professions Code* §17200, amended on August 6, 1991 to allege claim under Proposition 65); *Lockhon v. Robert Mondavi Winery, et al.*, No. 640698 (filed July 31, 1991) (suit against wineries under *Business & Professions Code* §17200); *Lockhon and Mangini v. Ernest and Julio Gallo Winery, et al.*, No. 641038 (filed August 7, 1991) (class action suit alleging nine different statutory and common law causes of action based on failure to disclose presence of lead). Another similar action, *Armendariz and Lockhon v. Robert Mondavi Winery*, No. 65215 was filed on May 19, 1992.

Status: All of these cases were assigned for all purposes to Judge Judith L. Haller. On December 6, 1991, the court approved a settlement of the Attorney General's action concerning lead foil caps only, which provides that the parties will stop using lead caps, will pay \$700,000 into a fund that provides warning signs and media ads promoting a "wipe before you pour" campaign throughout 1992, and an additional \$200,000 in penalties. Additional parties not sued that wished to enter into the settlement and accept the duties under it were given 90 days to "opt in." The settlement was approved over the objections of the private plaintiffs, who claimed the Attorney General did not "diligently prosecute" the action under *Health & Safety Code* §25249.7(d). Nearly 300 additional parties opted into the settlement and judgment pursuant to the stipulation entered on May 7, 1992. On February 7, 1992, private plaintiffs filed a Second Amended Complaint alleging violations of Proposition 65 and other issues based on the presence of "in situ" lead, i.e., lead in the wine itself. A series of demurrers and motions to strike, followed by amendments to the pleadings and further motions, culminated on October 9, 1992, in an order sustaining demurrers to or striking all of the private plaintiffs' claims primarily on the grounds that: 1) claims concerning lead foil caps were barred by the Attorney General's settlement; 2) claims concerning "in situ" lead failed because compliance with the alcoholic beverage warning program established by regulation for alcoholic beverages satisfied the duty to warn with respect to any chemical constituent of the beverage, including lead; and 3) other claims concerning alleged misrepresentations failed to state facts sufficient to state a cause of action. On December 7 and 8, 1992, the Court

entered stipulated dismissals with prejudice as to all defendants in return for an undisclosed sum.

17. *People v. Signet-Armorlite* (San Diego Superior Court No. 641085, filed August 8, 1991); (consolidated with *EDF v. Signet-Armorlite*, No. N52441, filed August 8, 1991).

Summary: Suit by the Attorney General alleging that a manufacturer of eyeglasses located in San Marcos (northern San Diego County) exposed persons in the area surrounding its facility to methylene chloride. Emissions of methylene chloride were as high as 800,000 pounds in 1989. The company had provided a small newspaper notice, which the complaint alleged were inadequate in form and content. Environmental Defense Fund, which provided a 60-day notice about the violation, filed a companion suit under the Unfair Competition Act (*EDF v. Signet-Armorlite*, S.D. Superior Ct. No. N52441, filed August 8, 1991), and the two cases were consolidated.

Status: Judgment pursuant to stipulation was entered on December 24, 1992. The stipulation recognizes defendants' efforts to reduce emissions. Defendant was required to publish a one-quarter page newspaper advertisement showing the approximate boundaries of the area in which persons were exposed to a level above the no significant risk number set by the state. Defendant was also required to give mailed or delivered notices to those who were still exposed at a level requiring a warning. Defendant paid a total of \$75,000 to plaintiffs; \$45,000 in civil penalties and costs to the Attorney General and \$30,000 to the Environmental Defense Fund for attorneys' fees and costs. Since the judgment was filed, we understand that emissions have been reduced further and a warning may no longer be required.

18. **Ceramic Tableware Cases:** *People v. Josiah Wedgwood & Sons, et al.* (San Francisco Superior Court No. 938430, filed November 12, 1991); *People v. A.T. Finney, et al.* (San Francisco Superior Court No. 964212, filed October 5, 1994).

Summary: Suit by the Attorney General alleging that ten manufacturers of ceramic tableware have exposed persons to lead leaching from the glaze used on the product. Environmental Defense Fund filed a companion suit under the Unfair Competition Act (*EDF v. Wedgwood*, San Francisco Superior Court No. 938428).

Status: Three separate Consent Judgments were submitted to the court on January 15, 1993, settling the Attorney General's action and EDF's companion action as to all defendants, requiring: 1) warnings to be given through in-store signs and symbol, a small yellow triangle, on or near the article; 2) warnings on a pattern specific basis for flatware exceeding .226 parts per million lead concentration in the standard AOAC/ASTM 24-hour leaching test (. 100 ppm for hollowware); 3) a specific testing and sampling program for each defendant's products; 4) payments

of \$2.3 million, composed of a . \$1 million payment to establish the Tableware Education and Enforcement Fund, which will conduct public education activities concerning lead in tableware, and provide some further funding for enforcement; \$600,000 in civil penalties; and \$700,000 in attorney's fees, costs, and for further enforcement by EDF; 5) defendants to either reduce lead levels in flatware that requires warnings by 50 % over five years (hollowware by 25 % over five years) or pay \$1.3 million more in civil penalties.

*People v. A.T. Finney, et al.* is a follow-up suit against 26 British, German, and Japanese manufacturers. A consent judgment submitted to the court the same day as the complaint, and entered on October 21, 1994, provides similar relief to that provided in *Wedgwood*, and \$279,000 in civil penalties, costs, attorneys' fees, and contributions to the Tableware Education and Enforcement Fund. As part of the agreement, Environmental Defense Fund, which participated in the agreement, dismissed *EDF v. WMF Hutschenreuther*, No. 940265, *EDF v. Nikko Ceramics, Inc.*, No. 940267, *EDF v. Sasaki, Inc.*, No. 940268, and *EDF v. Wade Ceramics, Inc.*, No. 940269.

19. *People v. McDonnell Douglas Corporation* (Los Angeles Superior Court No. BC055494, filed May 13, 1992).

Summary: Suit by the Attorney General alleging McDonnell Douglas had violated Proposition 65, the Unfair Competition Act, and *Health and Safety Code* §41700 (air toxics nuisance statute) through emissions of hexavalent chromium, lead, methylene chloride, perchloroethylene, 1,4, dioxane and TCA from its Long Beach, Torrance, Culver City and Huntington Beach facilities. The company had provided a newspaper notice, which the complaint alleged was inadequate in form and content. (The allegations concerning the Huntington Beach facility initially were contained in a suit filed in Orange County, No. 689482, which was dismissed without prejudice and then realleged in the other action in an amended complaint filed July 20, 1992.)

Status: Defendant initially agreed to provide an improved newspaper warning. Defendant demurred to complaint on ground that newspaper warnings as a matter of law comply with the statute, and other grounds. After amendment of the pleadings, the court overruled the demurrer in April 1993. After substantial discovery, on August 23, 1994, the court approved a consent judgment against *McDonnell-Douglas* concerning its Long Beach and Huntington Beach facilities requiring appropriate community warnings of exposure to carcinogenic hexavalent chromium, installation of emission control equipment costing \$600,000, and \$125,000 in civil penalties, costs and attorney's fees. The Torrance and Culver City facilities have ceased operations for reasons unrelated to Proposition 65.

20. *People v. Hickory Springs of California, Inc.* (Los Angeles Superior Court No. BC057005, filed June 8, 1992).

Summary: Suit by the Los Angeles County District Attorney against a polyurethane products manufacturer alleging that Hickory Springs had violated Proposition 65 and the Unfair Competition Act through emissions of methylene chloride from its facility, which were as high as 750,000 pounds in 1989. The facility provided a notice in the Spanish-language newspaper La Opinion, but the complaint alleged that the notice was not designed to be read, that many of the exposed individuals do not speak Spanish, and that relatively few subscribe to La Opinion.

Status: A stipulation for entry of judgment and judgment pursuant to stipulation filed June 18, 1992, provided for delivery of mailed warning notices in English and Spanish to a defined area, plus delivery of a remedial mailed notice to persons in a broader area that should have received warnings, but for whom warnings are no longer required because the facility has reduced its emissions. Defendant paid \$30,000 (\$20,000 in litigation costs and \$10,000 to the Public Health Foundation of Los Angeles for Proposition 65 enforcement).

21. *People v. American Home Products Corporation* (Alameda County Superior Court No. 708104-2, filed November 4, 1992); and *People v. McKesson Corporation* (Alameda County Superior Court No. 708103-3, filed November 4, 1992).

Summary: Suit by Attorney General against manufacturers of "Preparation H" (American Home Products) and "Valu-Rite" (McKesson) hemorrhoidal treatments. Products contain phenyl mercuric nitrate (PMN), and all "mercury compounds" are listed as a reproductive toxin. (These products are commonly used by pregnant women, and similar mercury compounds have been found to be embryotoxic.)

Status: Consent Judgments were filed on the same day as the complaints. Defendant its agreed to remove PMN from the product, to immediately stop shipping any product containing PMN, to offer exchanges of old stock to retailers and distributors, and to pay \$14,000 in costs.

22. **Lead in Faucets Cases:** *People v. American Standard, et al.* (San Francisco Superior Court No. 948017, filed December 15, 1992).

Summary: Suit by the Attorney General alleging that sixteen manufacturers of kitchen and bathroom faucets have violated both the warning requirement and the discharge requirement due to lead in brass components of the faucets, which leaches into water that remains in the faucets for a significant period of time, e.g., several hours. Natural Resources Defense Council and the Environmental Law Foundation filed a similar suit covering non-residential faucets as well, with causes of action based on Proposition 65 and some additional theories. (*NRDC et*

*al. v. Price Pfister, et al.*, San Francisco Superior Court No. 948024, filed December 15, 1992).

Status:

On May 18, 1993, the Court ordered certain defendants to provide warnings through labels, store signs or package inserts, in a form somewhat different than that advocated either by plaintiffs or defendants. In September 1994, a modification to that order was entered. Settlements described below now cover warnings as well as reductions in exposure.

The discharge issue is before the California Supreme Court. On May 5, 1994, Judge Carlos Bea sustained defendants' demurrer to the "discharge" claim of the complaint, concluding that residential tapwater is not a "source of drinking water" under *Health and Safety Code* §25249.5. On May 25, 1994, plaintiffs filed a petition for writ of mandate in the Court of Appeal. On July 25, 1994, the Court of Appeal, First Appellate District, issued an order to show cause, and on June 12, 1995, that court issued an opinion holding that Proposition 65's discharge provision does not apply to the leaching of lead from residential faucets. The court interpreted the term "source of drinking water" to cover only "California lakes, rivers, streams, ground waters, and man-made storage facilities and aqueducts . . . ." The Attorney General requested rehearing and several environmental groups filed motions to intervene for the purpose of seeking review from the California Supreme Court. The motions to intervene were granted, and the request for rehearing was denied July 12, though the court made several changes to its original opinion. The Attorney General and the environmental group-intervenors filed separate petitions seeking review by the California Supreme Court. On September 14, 1995, the California Supreme Court granted the Attorney General's petition for review on the penal statute" issue (i.e., whether every statute that contains a civil penalty provision must be construed strictly against the prosecutor), and instructed the parties also to brief the issue of whether a faucet is a "source of drinking water" within the meaning of Proposition 65. At the same time, the Court denied the environmental groups' petition for review on both issues.

On May 10, 1994, in *NRDC v. Price Pfister*, Judge Cahill overruled defendants' demurrer to the "standing" of NRDC, ruling that NRDC's direct Prop. 65 cause of action includes "non-residential" faucets not covered by the Attorney General's complaint, and that the Unfair Competition Act claims concerning the same faucets are not barred by the Attorney General's suit.

NRDC's suit was assigned to Judge John Munter for all purposes, while the Attorney General's case remained assigned to Judge Bea. On September 7, 1994, the Attorney General's motion to consolidate the cases was denied. Defendants refiled a motion to dismiss or to stay the NRDC case before Judge Munter, and it was denied on October 21, 1994. On July 30, 1995, the Court of Appeal denied

Price Pfister's request for a writ on NRDC's standing, and the California Supreme Court denied the same request on September 14, 1995.

Three small companies among the initial defendants entered into settlements agreeing to provide faucet warnings through "hang tags" placed on the faucets, and to comply with the strictest standard ultimately agreed upon or ordered in the case as to lead discharge levels, and to pay specified costs and attorneys' fees. Manville Manufacturing settled on August 19, 1993, paying \$60,000; B&K Industries settled on June 8, 1994, paying \$90,000; and Woodmark International settled on the same date, paying \$50,000. Nu-Tone settled on November 18, 1994, paid a total of approximately \$36,500. On August 31, 1995, a motion was filed with the San Francisco Superior Court seeking approval of a settlement with seven more defendants: American Standard, Inc., Elkay Manufacturing Company, Masco Corporation of Indiana (manufacturer of "Delta and "Peerless" faucets), Moen, Inc., Universal-Rundle Corporation, Elger Manufacturing, Inc., and the United States Brass Corporation. They agreed to reduce lead leaching levels over five years (in exchange for a waiver of penalties), and make payments toward fees, costs, and public education. The settlement calls for the amount of lead leaching into the drinking water to be reduced to less than .5 micrograms per day in 65 percent of each defendant's faucets sold in California by December 31, 1996, in 80 percent of the faucets by December 31, 1997, in 90 percent of the faucets by December 31, 1998, and in 95 percent of the faucets by December 31, 1999. These manufacturers also agreed, starting December 1, 1996, to place "hang tag"; warnings on all faucets that leach lead at a level requiring warnings. Judge Bea approved the settlements over objections by non-settling defendants, and judgment was entered on October 5, 1995.

At the end of 1995, settlements were reached with the remaining defendants. With respect to Price Pfister, the largest manufacturer of faucets for the California market, the settlement required essentially the same lead reductions as agreed to by the defendants that had settled previously--in one regard, Price Pfister will achieve reductions somewhat earlier. It will pay \$100,000 in civil penalties, \$200,000 in funds to be used to reimburse the Attorney General's Office for the cost of the prosecution, and \$500,000 to provide funding for lead education and reduction activities. It will also pay attorneys fees to the private litigants who had filed a coordinated action. The total payment will amount to \$2,400,000. At roughly the same time, Sterling Plumbing Group, Kohler, Inc., and the Chicago Faucet Company reached settlements with similar injunctive relief. Sterling and Kohler will pay \$180,000 and Chicago Faucet will pay \$120,000. Combined, the settling companies make roughly 90% of all faucets sold in California. Also included in the settlements is Whirlpool Corporation, which makes "instant hot water dispensers" that now comply with all Proposition 65 standards. It agreed to payments totaling \$60,000. The settlements were approved by the court in February 1996. The California Supreme Court is expected to hear the case

pending before it notwithstanding the settlements because of the significant legal issues it involves and because certain changes in the injunctive relief would occur if the Court of Appeal decision on the discharge issue is overturned.

23. *People v. Quemetco, Inc.* (Los Angeles Superior Court No. BC 080112, filed April 30, 1992).

Summary: Suit by Los Angeles District Attorney alleging failure to provide appropriate community warnings of lead air emissions from facility in City of Industry.

Status: Judgment pursuant to stipulation entered April 30, 1993, providing for \$107,500 in civil penalties, litigation costs, and payments to the Los Angeles Health Department for various lead-related projects. Defendant will provide newspaper warnings four times per year, and a mailed warning once per year.

24. **Spray Paint Cases:** (*People v. The Sherwin-Williams Company* (San Francisco Superior Court No. 952433, filed June 10, 1993); *As You Sow v. The Sherwin-Williams Company* (San Francisco Superior Court No. 954568, filed August 31, 1993); *People v. Ace Hardware, et al.* (No. 954993, filed September 17, 1993); *As You Sow v. Longs Drugs, et al.* (No. 957067, filed December 14, 1993).

Summary: Actions brought by the Attorney General and by citizen group, based on 60-day notices provided by citizen group, against makers of spray paints, coatings, and adhesives that expose users to toluene, for failure to warn. The Attorney General sued The Sherwin-Williams Company, Ace Hardware, DAP, Inc., Devcon and Cotter & Company. As You Sow sued these same companies and others in its first complaint, and a variety of retailers in the *Longs Drug* complaint.

Status: On September 29, 1993, defendants removed *As You Sow v. Sherwin-Williams* to federal court on diversity grounds. On December 21, 1993, the court granted As You Sow's remand petition on the ground that a suit by an uninjured party on behalf of the public interest is not within the federal courts' jurisdiction under Article III of the Constitution. (The court awarded As You Sow \$36,000 in attorneys' fees and costs in connection with the removal and remand.)

In January, 1994, As You Sow filed various motions for preliminary injunction and to intervene in the Attorney General's two cases. On January 14, 1994, all four cases were consolidated for pretrial purposes and assigned for all purposes to Judge Stuart R. Pollak for all purposes.

In February, 1994, the Attorney General reached settlements with Sherwin-Williams, DAP, Devcon and Ace Hardware, requiring warnings, including detailed follow-up provisions where the warnings are provided by sending signs to retail stores, and assessing penalties and costs totaling \$1.2 million. The penalties can be reduced up to \$372,000 if the companies make specified efforts

to remove toluene and other hazardous solvents from the products. As You Sow objected to the substantive terms of the settlements, and the court stayed other proceedings pending a motion for approval of the settlements. The motion was submitted, but in the interim, As You Sow settled with Sherwin-Williams, DAP, Devcon, and Ace Hardware, thereby mooting its objections. The settlements were entered as consent judgments in April 1994.

The only party named both by As You Sow and the Attorney General that did not settle is Cotter & Company, supplier of True Value stores. Cotter demurred to As You Sow's complaint, and on April 22, the court overruled the demurrer, ruling that As You Sow's amendment of its complaint to include a Proposition 65 claim, filed after the Attorney General's complaint, was valid because As You Sow initially sued Cotter first, even though it only stated an Unlawful Business Practices claim when originally filed. On June 23, 1994, the court granted the Attorney General's motion to reconsider that ruling, and sustained the demurrer to As You Sow's Proposition 65 claim. In addition, it granted a stay of As You Sow's Unlawful Business Practices claim, and granted As You Sow permissive intervention in the Attorney General's case, limited by the standards set forth in *Mann v. Superior Court*, 53 Cal.App.2d 272, 280-281.

As You Sow ultimately dismissed the complaint against the retailers, and has proceeded against other companies, reaching settlements, amending the defendants into the case as "Doe" defendants, and obtaining court approval of a variety of settlements. Pursuant to a stipulation and order entered August 29, 1994, no settlements were to be entered as judgments of the court unless the Attorney General is first given the opportunity to review and comment on them. As You Sow's motion to lift the stay of its case was denied on October 14, 1994.

On June 9, 1995, the court approved a settlement of the Attorney General's case against Cotter. Cotter will pay \$155,000 in penalties, \$100,000 in restitution to environmental projects through the California Public Health Foundation ("CPHF"), \$10,000 to the Proposition 65 Enforcement Fund in the CPHF and \$10,000 to the Attorney General's office, for a total settlement of \$275,000. As You Sow challenged the settlement on two grounds: first that it was entitled to a portion of the penalties and second that the court should give some of the restitution money to projects suggested by As You Sow. The court rejected both arguments. Cotter has appealed, as it reserved its right to do, from the court's decision that Proposition 65 is not preempted by the Hazardous Substances Act. Cotter also filed a motion for summary judgment against As You Sow, seeking dismissal of As You Sow's separate action on the grounds that the consent judgment with the People had been approved by the court. As You Sow dismissed its action on August 3, 1995, mooting the summary judgment motion.

25. *People v. The General Electric Company* (San Francisco Superior Court No. 956505, filed November 18, 1993), see also *Mangini v. The General Electric Company* (San Francisco Superior Ct. No. 956124, filed November 4, 1993).

Summary: Suits filed by the Attorney General and a private citizen alleging warning and discharge violations caused by "freezer water supply kits, " which connect automatic icemakers to the household water supply, and contain leaded brass. The *Mangini* case is limited to Unlawful Business Practices, based on Prop. 65 violation.

Status: Both actions dismissed without prejudice, April 6, 1994, based on new evidence regarding exposures.

26. *People v. Trojan Battery* (Los Angeles Superior Court No. BC 094480, filed December 6, 1993).

Summary: Suit by Los Angeles District Attorney alleging failure to provide appropriate community warnings due to lead emissions from battery recycler. The complaint also alleged violations of *Health and Safety Code* §41700 (air toxic nuisances) and *Business & Professions Code* §17200.

Status: A judgment pursuant to stipulation was entered January 10, 1995. It required a retroactive warning for past exposures and a continuing warning in the Los Angeles Times for current exposures. Trojan was required to pay \$20,000 in costs and attorneys' fees, \$20,000 as civil penalties, and \$10,000 as a specified charitable donation.

27. *People v. Haws Drinking Faucet Company* (San Francisco Superior Court No. 958141, filed January 27, 1994), see also *Mangini v. Haws Drinking Faucet Company* (San Francisco Superior Court No. 952872, filed June 25, 1993) and *Mangini v. Haws Drinking Faucet Company* (San Francisco Superior Court No. 958265, filed February 1, 1994).

Summary: Suits alleging warning and discharge violations caused by leaded brass components of drinking fountains and water coolers. The Attorney General's suit is the only one seeking relief directly under Proposition 65. The *Mangini* cases were based on the Unfair Business Practices Act. The first alleges violations of Proposition 65's warning requirement, while the second alleges violations of the discharge violation.

Status: A consent judgment was filed in court on March 31, 1995. Haws is enjoined from selling all coolers in California other than those meeting specifications contained in the settlement. In addition, Haws will provide water coolers in an amount equal to \$132,400 wholesale value to be used at the discretion of the Attorney General to replace water coolers in public schools that are leaching high

levels of lead. It will also pay \$25,000 to fund the program, \$75,000 in attorneys fees to a private party that filed suit, and \$5,000 to our office. The water cooler distribution program has begun. The Attorney General hopes to distribute approximately 400 coolers throughout the state pursuant to the settlement.

28. *People v. Unocal, et al.* (San Luis Obispo County Superior Court No. CU 075194, filed March 23, 1994); also *Surfers' Environmental Alliance v. Union Oil Company of California, et al.*, (San Luis Obispo County Superior Ct. No. 075205, filed March 24, 1994).

Summary: Suit by the Attorney General and several other state agencies alleging legal violations arising from long-term spill of millions of gallons of "diluent" at the Guadalupe Oil Field. Proposition 65 causes of action, which are only a part of the complaint, are based on presence of benzene and toluene in diluent, and alleged failure to warn persons on nearby beach of exposure, and discharge of chemicals to groundwater below the field. *Surfers' Environmental Alliance* case, filed next day, also included a variety of theories, including Proposition 65, based on Attorney General's alleged failure to diligently prosecute.

Status: In *Surfers'*, defendant demurred to Proposition 65 causes of action on the ground that failure to diligently prosecute could not properly be alleged the day after the Attorney General's suit was filed and that private suit could not avoid bar caused by Attorney General's suit simply by naming related corporate entity. On August 11, 1994, the demurrer to that cause of action was sustained. That case no longer involves Proposition 65, though other claims were allowed to proceed. In *People*, an amended complaint was filed on July 22, 1994. Defendants filed a demurrer, which was overruled. On July 9, 1995, the court granted the People's motion to remove the case from "fast track" and vacate an October 2, 1995, trial date. A status conference is scheduled for February 1996. Discovery and various scientific studies are underway.

29. *People v. Aermotor Pumps and Water Systems, et al.* (Alameda County Superior Court No. 733686-7, filed April 18, 1994), consolidated with *Environmental Defense Fund v. Sta-rite, Inc.* (Alameda County Superior Ct. No. 733842-9, filed April 18, 1994).

Summary: Suit by the Attorney General alleging that three manufacturers of submersible well pumps (Aermotor, Inc., Goulds Pumps, and Sta-Rite, Inc.), have violated both the warning requirement and the discharge requirement due to lead contained in brass components of the pumps that leaches into drinking water. Environmental Defense Fund and Natural Resources Defense Council filed a companion suit against the same three defendants, and also against another manufacturer, F.E. Myers, under Proposition 65 and under the Unfair Competition Act, based on Proposition 65, and additional theories.

Status: By stipulation, the defendants agreed to stop selling leaded brass pumps, to begin manufacturing lead-free pumps, and to consolidate the cases. Defendants demurred to the Attorney General's complaint on the ground that no "discharge" violation was stated, among other things, and on the ground that EDF and NRDC had no standing to sue. On October 5, 1994, the Superior Court overruled both demurrers. Goulds Pumps filed an appeal of the decision regarding standing, arguing that private parties may not sue under *Business & Professions Code* §17200 *et seq.* when a suit by the Attorney General is pending. On July 21, 1995, the court entered judgments reflecting a settlement of all of the cases (Sta-Rite settled shortly thereafter). Defendants agreed to sell lead-free pumps in the future and to pay \$550,000 in penalties, fees, costs, and a contribution to public education on lead in drinking water issues. Goulds dismissed its pending writ in the Court of Appeal regarding private party standing. A settlement between the environmental groups and Myers, in addition to lead reduction, required a payment of \$36,000 to the lead in water fund and for attorneys' fees and costs.

30. *People v. GNB Incorporated* (Los Angeles Superior Court No. BC 07921 1, filed July 13, 1994).

Summary: Suit by Los Angeles District Attorney alleging failure to provide appropriate community warnings of lead emissions caused by battery manufacturing facilities in City of Industry and Vernon. Companion to *California Earth Corps. v. GNB, Inc.* (L.A. Superior Court No. BC 079212), under Enforcement Suits by Private Persons).

Status: Judgment pursuant to stipulation in both cases signed July 13, 1994, providing for warnings, emission reductions, and payment of \$165,000 in attorney's fees, civil penalties, payments to California Earth Corps. for environmental projects, and payments to the Los Angeles Public Health Foundation.

31. *People v. Ariens Company* (San Francisco Superior Court No. 969549, filed May 12, 1995.)

Summary: Suit by the Attorney General alleging failure to provide clear and reasonable warnings of exposures to various listed chemicals from small gasoline engines, e.g., law mowers, chain saws, etc. The Attorney General received a notice concerning the violations from the Pacific Justice Center.

Status: Judgment pursuant to stipulation was filed contemporaneously with the complaint, approved by the court on May 30, 1995, and a judgment was entered June 1, 1995. The settlement requires that warnings be provided on the products or in the operator's manuals, that newspaper warning ads be placed to cover past sales, and that defendants pay a total of \$894,000. That sum includes the cost of the newspaper ads (\$178,000), civil penalties (\$176,000), costs to the Attorney

Genera (\$40,000), payments to the California Public Health Foundation for future Proposition 65 enforcement (\$150,000), and attorneys' fees to the Pacific Justice Center, which gave a 60 day notice of the violations (\$300,000).

## **B. ENFORCEMENT SUITS BY PRIVATE PERSONS**

1. *Thoms, et al. v. Berkeley Horticultural Nursery, et al.* (Alameda County Superior Court No. 638680-5, filed May 12, 1988).

Summary: Suit by employees of plant nursery arising from exposure to asbestos during removal of insulation.

Status: Settled in May 1989, pursuant to a confidential agreement.

2. *Environmental Defense Fund, et al. v. The Gillette Company* (San Francisco Superior Court No. 911267, filed September 28, 1989).

Summary: See Typewriter Correction Fluid Cases under Enforcement Suits by Public Agencies.

3. *Northcoast Environmental Center and Clean Air Network v. Louisiana-Pacific* (Humboldt County Superior Court No. 90DR0227, filed August 8, 1990).

Summary: Suit alleged that defendant's "flakeboard" plant in Arcata exposes persons to Proposition 65 chemicals, particularly formaldehyde, and that no clear and reasonable warning has been given to those exposed. The complaint said that the risk posed to residents surrounding the facility had been calculated as greater than one excess case of cancer in an exposed population of 100,000. The complaint alleged that under the regulations the type of notice required to be given is "a notice mailed or otherwise delivered to each occupant in the affected area at least once in any three month period.

Status: Judgment entered in June 1992, pursuant to plaintiffs' acceptance of defendant's §998 offer for \$5,000 in attorney's fees and costs.

4. *Citizens for a Better Environment v. Systron Donner Corporation* (Contra Costa County Superior Court No. C-90-04539, filed October 18, 1990).

Summary: Suit followed a 60-day notice alleging that weapons guidance systems manufacturer in Concord exposed residents of surrounding area to chloroform and methylene chloride without providing warning.

Status: Consent Judgment entered October 18, 1990. Defendant agreed to pay \$55,000 (\$22,000 to be provided to independent environmental group for Proposition 65

enforcement and \$33,000 costs and attorney's fees to CBE), and to discontinue use of chloroform and methylene chloride.

5. *Environmental Defense Fund v. Dowbrands, Inc.* (San Francisco County Superior Court No. 927893, filed January 30, 1991).

Summary: The complaint alleges K2r spotlifter contains perchloroethylene in an amount posing a significant risk of cancer to product users. No warning was provided. EDF and Sierra Club California provided a 60-day notice to public prosecutors.

Status: Consent Judgment entered in January 1991, providing that Dowbrands will reformulate the product to remove perchloroethylene and offer customers an opportunity to exchange old product for new product. In addition, Dowbrands agreed to pay \$115,000, partly attorney's fees and costs, and partly to be placed in a trust fund for further enforcement of Proposition 65.

6. *Citizens for a Better Environment and International Ladies' Garment Workers' Union v. Sawyer of Napa, Inc.* (Napa County Superior Court No. 61687, filed February 11, 1991).

Summary: Suit follows 60-day notice alleging that defendant exposed persons near its tannery to perchloroethylene.

Status: The Attorney General appeared as amicus curiae supporting plaintiffs on certain issues raised in pre-trial motions, and the court ruled that "knowing and intentional exposure" does not require an intent to harm or intent to violate the law, and that computer-based air-dispersion modeling may be used to show ambient air exposures. A four week trial was held in Napa County Superior Court beginning January 13, 1992. The trial judge found for the defendant, concluding that there had been no knowing and intentional exposure (based on evidence concerning the amount of emissions), and that any exposure was below the "no significant risk" level. Plaintiffs' motion for a new trial was denied, as was defendant's motion for attorney's fees.

In an unpublished opinion dated April 21, 1994, the Court of Appeal concluded that substantial evidence supported the trial court's conclusion that the level of exposure was below the level requiring a warning and therefore declined to reach any other' issues.

7. *Mangini Leaded Crystal Cases: (Mangini v. Waterford, et al. (San Francisco County, Superior Court No. 931884, filed May 3, 1991); Mangini v. Baccarat, Inc., et al. (No. 932724); Mangini v. Saks & Company, et al. (No. 938173); Mangini v. Durand (No. 952402, filed June 9, 1993).*

Summary: The first suit, "*Mangini I*," was a private suit brought under Business and Professions Code §17200, and amended to include a Proposition 65 claim on the

same day the Attorney General's suit (*People v. Baccarat, Inc.*, supra), was filed. In *Mangini v. Baccarat*, the plaintiff sought relief against a broader group of companies, and the suit included leaded crystal stemware, not just crystal - decanters. In *Mangini v. Saks & Company*, plaintiffs sue four retailers for failing to provide warnings. In *Mangini v. Durand*, another manufacturer is sued, after other companies settled.

Status: In 1991, the superior court denied a motion for preliminary injunction in deference to the Attorney General's action. The pleadings were expanded beyond the crystal decanters covered in the Attorney General's action to include a large number of companies selling crystal stemware, e.g. wine glasses. A stipulated judgment was entered in *Mangini v. Saks & Company* on November 4, 1992. Terms of that settlement were sealed.

On June 3, 1993, a consent judgment in the first three actions, all consolidated, was entered under the caption *Mangini v. Action Industries, et al.* In that settlement, several dozen companies agreed 1) to provide a joint in-store warning for leaded crystal, unless their products are shown to leach no detectable lead; 2) to pay \$795,000, composed of \$362,500 to UCSF for lead research, \$60,000 to the California Public Health Foundation for lead education activities, \$322,500 in attorney's fees, and \$50,000 in costs.

In June 1993, a separate action was filed against Durand, a large manufacturer that did not join the "industry-wide" settlement. On January 14, 1994, a preliminary injunction requiring warnings for certain Durand products was entered. Beginning on May 15, 1994, and continuing for eight weeks, the matter was tried to the court before Judge John Munter. The case was then settled for a total of - \$375,000 in fees and costs, with Durand giving the same warnings as the defendants in *Action Industries*.

8. *Armendariz Lead in Wine Cases (Armendariz v. Safeway Stores, Inc., et al. (San Diego County Superior Court No. 638657, filed June 7, 1991); Lockhon v. Robert Mondavi Winery, et al. (No. 640698, filed July 31, 1991); Lockhon and Mangini v. Ernest and Julio Gallo Winery et al. (No. 641038, filed August 7, 1991); Armendariz and Lockhon v. Robert Mondavi Winery, (No. 65215, filed on May 19, 1992)).*

Summary: See *Lead in Wine Cases*, under *Enforcement Suits by Public Agencies*, supra.

9. *Environmental Defense Fund v. Signet-Armorlite (San Diego County Superior Court No. 927893, filed August 8, 1991).*

Summary: See *People v. Signet-Armorlite*, under *suits by public agencies*, supra.

10. *Environmental Defense Fund Ceramic Tableware Cases (EDF v. Wedgwood, et al.* (San Francisco County Superior Court No. 938428, filed November 12, 1991); also *EDF v. WMF Hutschenreuther* (No. 940265, filed January 31, 1992); *EDF v. Royal Worcester, Ltd.* (No. 940266, filed January 31, 1992); *EDF v. Nikko Ceramics, Inc.*, (No. 940267, filed January 31, 1992); *EDF v. Sasaki Inc.* (No. 940268, filed January 31, 1992); *EDF v. Wade Ceramics, Ltd.* (No. 940269, filed January 31, 1992). Also: *EDF v. Arita Corp.* (S.F. Superior Ct. No. 959962, filed April 5, 1994); *EDF v. Durand International* (S.F. Superior Ct. No. 959963, filed April 5, 1994); *EDF v. Quimper Faience* (S.E Superior Ct. No. 959964, filed April 5, 1994); *EDF v. Whole Earth Access* (S.E Superior Ct. No. 959966, filed April 5, 1994); *EDF v. Gien of France* (S.E Superior Ct. No. 956006, filed April 6, 1994); *EDF v. Gibson Overseas, Inc.* (S.F. Superior Ct. No. 960007, filed April 6, 1994)). EDF has also brought cases against Tiffany, Royal Copenhagen, Baccarat, Pier 1 Imports, Cost Plus Imports, Bed and Bath, and Signature. We do not yet have case numbers or filing dates for these.

Summary: See Ceramic Tableware Cases under Enforcement Suits by Public Agencies, *supra*. EDF cases against Arita, Durand, Quimper Faience, Whole Earth Access, Gien of France, and Gibson Overseas were brought independently, not in conjunction with any case brought by the Attorney General.

Status: Consent Settlements similar to the industry settlement in *People v. Josiah Wedgwood, supra*; have been reached with all parties but Gibson Overseas. (In two of the cases, the agreement has been negotiated but may not yet have been signed.) EDF has concluded based on evidence provided by Gibson that it was not in violation.

11. *Near v. United Airlines, et al.* (San Francisco Superior Ct. No. 939259, filed December 19, 1991).

Summary: Complaint against United Airlines, American Airlines, Alaska Airlines, and Southwest Airlines, alleging failure to warn of smoking in terminals and in conjunction with sale of alcoholic beverages in terminal "clubs" and on airplanes.

Status: Consent Judgment filed with complaint providing for in terminal warnings of smoking and posting of "safe harbor" alcoholic beverage warning in terminal. Defendants paid \$40,000 attorneys fees and \$60,000 contribution to City of Hope.

12. *Badenell, et al. v. Zurn Industries, et al.* (U.S. District Court, Central District of Calif., No. 92-2993 KN (KX); originally filed December 16, 1,991, San Luis Obispo County Superior Court).

Summary: Complaint by employees of Wilkinson Regulator, a manufacturer of brass parts in Paso Robles. Alleges failure to warn of workplace exposures to lead, and

violation of discharge requirement through disposal of water containing lead to groundwater and wells.

Status: Proposed settlement has been filed in court but is not yet approved. An injunction requires cleanup of the hazardous waste discharged outside the plant, improved working conditions in the plant, construction of a new, pressurized lunch-room (to prevent lead exposures to workers while eating), revamping of workers' safety training, and an independent consultant to review plant for regulatory compliance. Four individual plaintiffs will receive payments of \$37,500 a piece, and defendants will pay attorneys' fees in the amount of \$325,000.

13. *Environmental Defense Fund Paint Stripper Cases (EDF v. Sunnyside Corporation* (S.F. Superior Ct. No. 939163, filed December 10, 1991); *EDF v. Tru-Test Manufacturing Co.* (No. 939164, filed December 10, 1991); *EDF v. Savogran Company* (No. 939165, filed December 10, 1991); *EDF v. Star Bronze Company Inc.* (No. 939166, filed December 10, 1991); *EDF v. W.M. Barr* (No. 939162, filed December 10, 1991); *EDF v. Thompson & Formby* (No. 941282, amended complaint filed March 17, 1992); *EDF v. Parks Corporation* (No. 941281, filed March 11, 1992)).

Summary: Complaints filed by Environmental Defense Fund alleging failure to warn of exposure to methylene chloride by manufacturers of paint strippers and removers. Significant issues included whether Consumer Product Safety Commission warning stating that methylene chloride has "been shown to cause cancer in certain laboratory animals" complies with Proposition 65; whether manufacturers are liable where warning materials are sent to distributors or retailers but warnings are not posted; and whether manufacturers must warn for products shipped before expiration of one-year "grace period" after listing of chemical, but sold after the expiration of the period. EDF served 60-day notices on at least 13 other companies, many of which entered into non-litigation settlements.

Status: In April 1992, the court granted plaintiff's motions for preliminary injunctions against Sunnyside, Savogran, Star Bronze and Tru-Test, requiring that warning materials be provided to retailers and distributors for all products being sold, and requiring extensive follow-up to assure that retailers actually post the warnings. The Attorney General appeared as an amicus on some of the legal issues. Similar injunctions later were entered against Thompson & Formby and Parks. Appeals of some of these injunctions were taken, but were dismissed after the underlying cases settled. Generally similar settlements against all parties other than Parks provided for reimbursement of costs and attorney's fees (totaling \$471,200, of which \$190,000 was a payment by Thompson & Formby), provision of warning materials with specific follow-up procedures to assure that they are posted, and the promotion and provision of alternative stripper products that do not contain methylene chloride. On October 29, 1992, on motions for summary adjudication

in *EDF v. Thompson & Formby*), the court held that: 1) the Consumer Product Safety Commission warning as a matter of law does not comply with Prop. 65 because it does not clearly communicate that methylene chloride is known to the State of California to cause cancer; 2) the fact that a product was shipped before expiration of the one-year grace period after listing of the chemical does not absolve the manufacturer of the duty to warn; and 3) a manufacturer has no duty to warn for products shipped to states other than California, unless it knew and intended that they ultimately would be sold in California.

Case against Parks went to jury trial in March 1994. Jury awarded, on special verdict form, civil penalties of \$2 per can for each can with the weaker "federal" methylene chloride warning and \$2,500 per can for each can with no warning at all, totaling \$210,000 in civil penalties. Judgment for the penalty was entered March 8. Parties settled equitable relief, providing for future warnings. On May 24, 1994, the court awarded EDF \$191,000 in attorney's fees and costs. On EDF's motion to reconsider, that award was increased to \$350,000 on September 6, 1994.

14. *As You Sow v. Ashland Chemical, Inc.*, (San Francisco Superior Court No. 966954, filed February 1, 1995).

Summary: The complaint alleges that Ashland failed to warn consumers of their products that use would expose them to toluene and benzene and seeks relief under Proposition 65 and under Business & Professions Code §17200.

Status: On April 24, 1995, Ashland filed a demurrer to plaintiff's complaint alleging that the 60-day notice was inadequate and that the inadequacy of the notices requires dismissal of the suit. On May 26, 1995, the Attorney General filed an amicus brief in support of defendant's demurrer. The Attorney General argued that the plaintiff's notice is inadequate because it simply recites a list of some chemicals subject to the law without adequately describing the products in which they are found. (The Attorney General did not assert that the time, date, and location of each violation must necessarily be given in the 60 day notice.) The Attorney General stated that the notice deprives the Attorney General and District Attorneys of their opportunity to act intelligently in determining whether to bring suit within the 60 day period. On September 8, 1995, the demurrer was overruled in part and sustained in part. The court found that AYS had properly noticed several categories of products, but had not given adequate notice as to several other categories. AYS was given leave either to strike the latter categories from the complaint or re-notice them and amend the complaint after the expiration of the notice period. Extensive discovery has been undertaken by the parties, and a trial is expected in 1996.

15. *Hernandez v. Black & Decker, Inc.* (Santa Clara County Superior Court No. 742016), filed July 17, 1994.

Summary: Plaintiff's complaint alleges that defendants manufactured and distributed Repel Dog and Cat Repellent which contains paradichlorobenzene without a proper warning as required by Proposition 65. Plaintiff also alleges violation of Business and Professions Code §17200. Plaintiff seeks injunctive relief, statutory penalties, attorney's fees and costs.

Status: On December 6, 1994, three defendants, the Security Products Company of Delaware, Black & Decker and Universal Cooperatives, Inc., filed a demurrer challenging the court's jurisdiction because of plaintiff's failure to provided these defendants with the requisite 60-day notice. On December 8, 1994, the court sustained the demurrer by these defendants' as to all causes of action without leave to amend.

16. *As You Sow v. Akzo Nobel Coatings, Inc.*, (Marin County Superior Court No. 161842, filed October 12, 1994).

Summary: Akzo Nobel manufactures and distributes paint products, including paints, primers, enamels, lacquers, urethanes, accelerators, hardeners, reducers, toners, bases, sealers, adhesives, fillers, putties, cleaners, and additives. AYS filed a complaint on October 12, 1994, alleging violations of Business & Professions Code §17200 and Health & Safety Code §25249.6 on behalf of the citizens of the State of California who were allegedly exposed to toluene, carbon black, formaldehyde, chromium, lead and lead compounds, silica, aluminum flake, C.I. Pigment Brown 24, antimony trioxide, toluene diisocyanate, cadmium, nickel, ethylene glycol, and monomethyl ether.

Status: On January 31, 1995, AYS and Akzo Nobel entered into a settlement agreement. Under this agreement, Akzo Nobel agreed to label certain of its automotive paint and paint-related products with Proposition 65 warnings. Akzo-Nobel agreed to pay AYS \$35,000 for enforcement of Proposition 65 and educational purposes and to pay a \$20,000 penalty plus fees and costs.

17. *As You Sow v. BASF Corporation et al.* (Marin County Superior Court No. 161844, filed October 11, 1994).

Summary: AYS filed a complaint alleging violations of Business & Professions Code §17200 and Health & Safety Code §25249.6 on behalf of individuals who were allegedly exposed to chromium, formaldehyde gas, nickel compounds, toluene, and lead compounds in BASF's automotive paint products.

Status: On October 21, 1994, the parties entered into a settlement agreement. Under the terms of the agreement, BASF agreed not to ship any products without proper warning labels. BASF agreed to pay \$5,750 to AYS's Proposition 65 Investigation Fund, \$1,750 to Citizens for a Better Environment, \$36,500 in attorney's fees and costs, and a \$70,000 penalty.

18. *As You Sow v. United Gilsonite Labs* (Marin County Superior Court No. 162034).

Summary: Case brought by As You Sow alleging inadequate warnings for their products containing Proposition 65-listed chemicals.

Status: Defendant demurred to plaintiffs complaint on grounds that plaintiff failed to state a cause of action, arguing that the 60-day notice was vague. On February 1, 1995, the court overruled defendant's demurrer. The case has settled for upgraded warnings. Plaintiff waived fees and penalties.

19. *People United for a Better Oakland (PUEBLO) v. American Brass & Iron Foundry* (Alameda County Superior Court No. 708543-3, filed November 17, 1992).

Summary: Complaint by an Oakland community group alleging failure to warn by a brass foundry, primarily based on lead emissions.

Status: In March, 1993 the Attorney General, on behalf of the People of the State intervened. On November 19, 1993, the court approved a consent judgment under which the foundry will spend \$270,000 on control equipment that will reduce lead emissions by 99%, provide appropriate community warnings, and pay \$50,000 in costs and fees.

20. *Alviso Community Organization (OCA), et al. v. George C. Maciel, et al.* (Santa Clara County Superior Court No. 723808, First Amended Complaint containing Prop. 65 claim filed November 25, 1992).

Summary: Complaint by an Alviso community group alleging failure to warn of exposure to asbestos caused by continuing activities on land made of fill containing asbestos. Wetlands in the area have been filled with materials including asbestos since the 1960's, and the complaint alleges that continuing truck use of the land for truckyards and construction-related activities raises asbestos-laden dust. The complaint also alleges nuisance, trespass and negligence claims. Defendants are a variety of owners and operators of sites in the area.

Status: After granting class certification, and granting certain preliminary injunctions, on October 5, 1994, the court approved a settlement limiting the disputed activities in the area, and providing over \$1 million for medical monitoring, attorney's fees and other costs.

21. *Dennison-Leonard v. Stanford University* (Santa Clara County Superior Court No. 726942, filed December 3, 1992).

Summary: Complaint by residents of Escondido Village married student housing facility at Stanford alleging failure to warn of exposure to lead through lead-based paints at the facility.

Status: On October 12, 1994, the court entered a judgment pursuant to a settlement under which warnings will be provided, lead abatement activities will be undertaken, and blood-lead testing will be provided for children living in the housing. Defendant will pay \$166,265 in penalties, fees, and costs.

22. *Natural Resources Defense Council, et al. v. Price Pfister, et al.* (San Francisco Superior Court No. 948024, filed December 15, 1992).

Summary: See Lead in Faucets Cases, under suits by public agencies, supra.

23. *California Earth Corps v. Laminating Company of America* (Orange County Superior Court No. 706/25, filed March 10, 1993).

Summary: Complaint by citizen group concerning methylene chloride emissions from facility in Garden Grove.

Status: Judgment pursuant to settlement entered August 19, 1993, providing that defendant would continue its existing phase-out of methylene chloride and pay \$1,500 in costs and future enforcement funds to plaintiff.

24. *As You Sow Nail Polish Cases (As You Sow v. Revlon, Inc., et al.* (San Francisco Superior Court No. 950766, filed April 5, 1993); *As You Sow v. Orly International, et al.* (San Francisco Superior Court No. 950767, filed April 5, 1993); *As You Sow v. Apple Cosmetics, et al.* (San Francisco Superior Court No. 950768, filed April 5, 1993); *Cosmetic, Toiletry, and Fragrance Association (CTFA) v. As You Sow* (originally filed as Sacramento County 533231, April 12, 1993, assigned No. 952884 on change of venue to San Francisco).

Summary: Complaints by citizen group against makers of nail polish containing toluene for failure to warn. *CTFA v. As You Sow* was a declaratory relief action by trade association seeking declarations concerning certain risk and exposure assessment issues underlying the determination of whether a warning is required.

Status: Various proceedings concerning preliminary injunctions immediately followed the filing of the complaints. *CTFA* filed its action in Sacramento County and filed a coordination petition, but *As You Sow's* motion to change venue to San Francisco was granted before any action was taken on the petition. *Apple*

*Cosmetics* action was dismissed, and *Revlon* and *Orly International* actions were consolidated under the caption *As You Sow v. Noxell*.

A number of defendants, including Revlon and Maybelline, settled separately, for various amounts of attorney's fees, and commitments to remove toluene from the product, or to warn.

On August 24, 1993, a settlement was concluded with a number of makers of products intended primarily for use by professional nail technicians. The settlement with these "Professional Defendants" provided that attorney's fees of \$206,000 would be paid to As You Sow, and warnings would be commenced as of March 1, 1994, in a form approved by the Attorney General, unless a future study of nail salon exposures proved, as determined by the Attorney General, that -exposures were below the level requiring a warning. (The Attorney General was not a party to the cases or the agreements, however.) Based on a study prepared by the defendants, in March 1994, the Attorney General determined that the study showed that warnings were not required for salon customers, but did not prove that warnings were not required for technicians, who are present in the salon all day. Accordingly, the Attorney General approved a warning program intended to warn workers only.

On September 24, 1993, a settlement was concluded with CTFA and 13 other makers of "home use" nail polish, under which the defendants paid \$330,000 in attorney's fees and costs to As You Sow. Defendants agreed to reformulate or warn by March 1, 1994, with the ability to extend the time period to September 1, 1994, by sending a letter to the Attorney General stating that they had attempted to reformulate but could not do so. CTFA agreed to dismiss its declaratory relief action.

25. *Gonzales, et al. v. Sam's Group, Inc. dba Rubber Stampede, et al.* (Alameda County Superior Court No. 714908-3, filed April 7, 1993).

Summary: Complaint by employee of "Rubber Stampede," a Berkeley rubber-stamp factory, and others alleging exposure to toluene without warning, as well as various wrongful discharge claims. At time of suit, company had shut down plant in question and opened a new facility in Oakland.

Status: On September 1, 1994, court entered settlement providing that defendant would hire a consultant to review training, warning, equipment at new facility concerning hazard communication, and any recommendations of the consultant would be implemented within 90 days of his report. Defendant also paid \$150,000 in penalties, damages, fees and costs.

26. *Mangini v. Haws Drinking Faucet Company* (San Francisco Superior Ct. No. 952872, filed June 25, 1993) and *Mangini v. Haws Drinking Faucet Company* (San Francisco Superior Ct. No. 958265, filed February 1, 1994)).

Summary: See *People v. Haws Drinking Faucet Company*, under Enforcement Actions by Public Agencies.

27. *California Earth Corps v. Quenell Enterprises, Inc.* (Los Angeles Superior Court No. BC 086292, filed July, 1993).

Summary: Suit by citizen group alleging failure to provide appropriate community warnings of lead from facility in City of Commerce.

Status: Judgment pursuant to stipulation entered August 13, 1993, providing for warnings, lead emission reductions, and \$36,000 in attorney's fees and payments to California Earth Corps for environmental activities.

28. *As You Sow Spray Paint Cases: As You Sow v. The Sherwin-Williams Company*: (San Francisco Superior Court No. 954568, filed August 31, 1993); *As You Sow v. Longs Drugs, et al.* (No. 957067, filed December 14, 1993); *As You Sow v. U.S. Chemical & Plastic, et al. (Dupont)* (No. 963417, filed August 31, 1994); *As You Sow v. Grow Group, Inc.* (No. 964288, filed October 7, 1994)); *As You Sow v. Yenkin-Majestic Paint Corp.* (PPG Industries) (Marin County Superior Court No. 161458, filed August 30, 1994).

Summary: See Spray Paint cases under Enforcement Suits by Public Agencies. The cases against U.S. Chemical & Plastic and against Grow Group involve similar allegations, except these cases involved occupational and consumer exposures whereas *Sherwin-Williams* involved only consumer exposures. These cases are not encompassed within the consolidated matters referred to, supra, and are not the subjects of actions by the Attorney General.

Status: Judgments pursuant to stipulation were entered against Du Pont on February 27, 1995, and against PPG on February 23, 1995. Dupont agreed not to ship products listed in the settlement containing Proposition 65 chemicals into California without a specified warning. Du Pont will reprint product labels to include appropriate Proposition 65 warnings. Du Pont will contribute \$11,000 to Santa Clara Center for Occupational Safety and Health for educational purposes; \$10,000 to West County Toxics Coalition for assisting low and moderate income residents in environmental issues; \$8,000 to AYS's Proposition 65 Investigation Fund for research; \$2,200 to Citizens for a Better Environment for public education. In addition, Du Pont will pay AYS \$58,800 for attorney's fees and costs and an additional \$40,000 civil penalty. An additional \$130,000 is due in the event that Du Pont fails to invest \$10,000 in employee and jobber training or formulates or sells any new automotive paint products that contain cadmium, lead

or chromium. PPG Industries also agreed to place warning labels on all automotive coating products that contain Proposition 65 chemicals, reprint labels, and provide for employee and jobber training. PPG Industries will pay attorney's fees and costs of \$49,110. PPG Will pay a \$10,000 civil penalty. PPG will contribute \$ 10,000 to AYS for educational and enforcement purposes. PPG agreed to make a 10% reduction in the sale of products that contain certain percentages of lead compounds in 1995, 1996, and 1997. Furthermore, PPG agreed not to formulate any new products that contain heavy metal components. If PPG is unable to comply with these conditions it will pay a \$60,000 fine per year. Our information on the other cases listed is incomplete.

29. *Mangini v. The General Electric Company* (San Francisco Superior Ct. No. 956125, filed November 4, 1993).

Summary: See *People v. The General Electric Company*, under Enforcement Actions by Public Agencies.

30. *Environmental Law Foundation v. Jeneric/Pentron, Inc.* (San Francisco Superior Court No. 957039, filed December 13, 1993).

Summary: Alleges failure to warn by manufacturer of dental amalgam of exposure to mercury caused by fillings in teeth.

Status: Judgment pursuant to stipulation entered December 14, 1993, providing for manufacturer to provide warnings on product containers, and to send dentists warning signs for posting, along with instructions and return card to indicate compliance. Defendant paid \$26,400 in penalties, fees and costs. (See related case *Committee of Dental Alloy and Amalgam Manufacturers and Distributors v. Henry*, under suits against state agencies and officials, concerning this issue.)

31. *California Earth Corps v. Delco Remy, Inc.* (Orange County Superior Court Case No. 723202, filed January 6, 1994).

Summary: In this case, California Earth Corps (CEC) alleged that Delco Remy failed provide an adequate Proposition 65 concerning lead exposures to persons who worked at or lived near the company's battery manufacturing facility in Anaheim, California. While Delco Remy had published a small "notice" in the Orange County Register, CEC claimed that the notice was not clear or conspicuous, and that it failed to warn persons that they were being exposed to listed chemicals.

Status: In a settlement entered on May 15, 1995, Delco agreed to (1) publish adequate, quarterly Proposition 65 warnings in the Orange County Register; (2) mail a copy of the warning to certain residents who live closest to the facility; (3) enhance maintenance programs at the facility; (4) enhance monitoring and record keeping

procedures at the facility; (5) conduct enhanced source testing; (6) install baghouse filter bags with 99.993% efficiency at ten baghouses at the facility; and (7) make settlement payments of \$165,000, including \$20,000 in civil penalties, a \$6,000 donation to the California Public Health Foundation, and a \$139,000 payment to CEC for attorneys' fees, costs, programs and environmental activities.

32. *Pacific Justice Center v. Terminix, Inc., et. al.* (Humboldt County Superior Court No. 94 DR0068, filed April 18, 1994).

Summary: Alleges asbestos exposure as a result of work on asbestos-containing tile by a contractor at elementary school in Cutten, California.

Status: Settled for a payment of \$10,000 to Californians for Alternatives to Toxics, an organization that does education in schools on toxic hazards, and \$40,000 in attorneys' fees.

33. *Environmental Defense Fund and Natural Resources Defense Council v. Sta-rite, Inc., et al.* (Alameda County Superior Ct. No. 733842-9, filed April 18, 1994).

Summary: See *People v. Aermotor Pumps and Water Systems*, under Enforcement Actions by Public Agencies.

34. *California Earth Corps v. GNB Incorporated* (Los Angeles Superior Court No. BC 079212, filed July 13, 1994).

Summary: Suit by citizen group alleging failure to provide appropriate community warnings of lead emissions caused by battery manufacturing facility in City of Industry. Companion to *People v. GNB, Inc.* (L.A. Superior Ct. Court No. BC 079211, under Enforcement Suits by Public Agencies).

35. *California Earth Corps v. Thakar* (Riverside County Superior Court No. 254720, filed August 29, 1994).

Summary: Suit by citizen group alleging failure to provide appropriate community warnings of lead from aluminum recycling facility in Corona.

Status: Judgment pursuant to stipulation entered August 30, 1994, providing for warnings, lead emission reductions, and \$36,000 in attorney's fees and payments to California Earth Corps for environmental activities.

36. *Mateel Environmental Justice Foundation v. Mitsubishi Caterpillar Forklift America, et al.* (Alameda County Superior Court No. 744653-5, filed December 7, 1994.)

Summary: Case brought against Mitsubishi Caterpillar when that company joined the Industrial Truck Association in declaratory relief action, see *Industrial Truck Association and Mitsubishi Caterpillar Forklift America v. Henry and Lungren, infra*.

Status: Case settled when manufacturer of Mitsubishi Caterpillar's engines opted-in, agreeing to injunctive and monetary relief in *Mateel Environmental Justice Foundation v. Caterpillar, infra*.

37. *Mateel Environmental Justice Foundation v. Caterpillar Inc., et al.* (San Francisco County Superior Court No. 965969, filed December 20, 1994.)

Summary: Alleged that operators of heavy diesel equipment were being exposed to diesel engine exhaust, and other listed chemicals which are components of diesel engine exhaust, without required warnings.

Status: A proposed settlement was filed December 28, 1994, and became final July 28, 1995. The settlement required warnings to appear either on the equipment or in the operator's manual. Companies wishing to join the settlement were allowed to opt-in if they were willing to agree to its terms. Over 200 companies eventually did so. The settlement also required payment of \$100,000 in civil penalties, provided \$100,000 for warning advertisements to run in industry and union magazines, and payment of \$280,000 in attorneys' fees.

38. *Environmental Defense Fund v. C. Palmer Manufacturing, Inc., Lee Precision, Inc., and Do-It Corp., Hiltis Molds* (San Francisco Superior Court No. 968260, filed March 23 1995); *Environmental Defense Fund v. Blount, Inc. [RCBS], Cabela's, Lyman Products Corp., Midway Rapine Bullet Mold Manufacturing Co., Gander Mountain, Inc., Midsouth Shooter Supply Co.* (San Francisco Superior Court No. 970929, filed July 10, 1995).

Summary: The complaint alleges violations of Health & Safety Code §25249.5 and Business and Professions Code §17200 for failure to warn that molded-lead hobby products expose the consumer to levels of lead higher than permitted by law. The complaint seeks penalties, restitution, injunctive and declaratory relief.

Status: Litigation continuing.

39. *Mateel Environmental Justice Foundation v. Accu-Tek, et al.* (Alameda County Superior Court No. 752023-5, filed June 2, 1995).

Summary: The complaint names 85 defendants, all corporations that allegedly manufacture, distribute or sell guns and ammunition. Plaintiff alleges that when guns are discharged, a cloud of lead vapor and particles is discharged along with the bullet. Plaintiff alleges that lead vapor also comes from the chemicals used in the primer

of the bullet. Plaintiff alleges that persons shooting guns, as well as those standing nearby, breath lead vapor and particles. Plaintiff claims that defendants failed to warn guns users that guns and ammunition would result in exposure to chemicals known to cause cancer and birth defects. Plaintiff seeks injunctive relief, statutory penalties, attorney's fees and costs.

Status: Litigation proceeding.

40. *Mateel Environmental Justice Foundation v. Pacific Gas & Electric, et al.* (San Francisco County Superior Court No. 970215, filed June 9, 1995.)

Summary: Suit alleging that those who "touch, stand, play or work near" utility poles are exposed to seven separate Proposition 65-listed chemicals in the absence of clear and reasonable warnings. The defendants include Pacific Bell and two companies involved in the manufacture of utility poles. The complaint alleges that residents inhale vapors while waiting for the bus, and that children who play around the poles inhale the vapors, ingest contaminated wood chips, get contaminated slivers under their skin and ingest contaminated oils.

Status: Litigation proceeding.

41. *Bostean v. Becton-Dickinson Consumer Products* (Napa County Superior Court No. 73219, filed June 16, 1995).

Summary: Suit against manufacturer of thermometers for failure to provide warning for mercury exposures from damaged or cracked thermometers. Also alleged violations of Health and Safety Code §26638 and Business and Professions Code 17200 et seq.

Status: Judgment pursuant to stipulation signed June 16, 1995, specifies a warning that must be included with thermometers and instructions on what to do about disposal or breakage. Judgment also provides for \$20,000 in civil penalties (all to the government) and \$30,000 in attorneys' fees and costs to plaintiff.

42. *Mateel Environmental Justice Foundation v. Louisiana Pacific Lumber Co.* (Alameda County Superior Court No. 757198-7, filed September 15, 1995.)

Summary: Complaint alleges that people who work with or touch green treated lumber are exposed without warning to hexavalent chromium and arsenic. The complaint alleges that arsenic comes off on people's hands when they touch the wood and that arsenic and hexavalent chromium are inhaled when the wood is sawed, planed, or sanded. The current complaint alleges Proposition 65 violations by Louisiana Pacific but alleges related violations by other companies also selling

green treated lumber in California. These other, companies are the subject of a second sixty day notice under Proposition 65.

Status: Litigation proceeding.

43. *Mateel Environmental Justice Foundation v. Heitman Properties, Ltd.* (San Francisco County Superior Court No. 972669, filed September 21, 1995.)

Summary: Complaint alleges exposures, without warnings, to carbon monoxide, benzene, acetaldehyde, and formaldehyde, all found in automobile exhaust. Defendant is a commercial property management firm. Complaint alleges that commercial property managers are responsible for exposures to listed chemicals in underground parking garages in buildings they manage.

Status: Litigation proceeding. See also *Heitman Properties, Ltd. v. Wilson. Lungren, et al., infra*, under Suits Against State Agencies or Officials.

44. *Mateel Environmental Justice Foundation v. Koll Management Services, et al.* (San Francisco County Superior Court No. 972670, filed September 21, 1995.)

Summary: Case identical to Heitman Properties, supra, but against several different commercial property management firms as well as several parking companies.

Status: Litigation with some parties continues. With respect to Cushman & Wakefield of California, a property management firm, a judgment pursuant to a settlement agreement was approved by the court and filed on January 4, 1996. Cushman & Wakefield agreed to post specified warning signs at the entrance to parking garages on specified properties no later than June 1, 1996. It also agreed to pay \$30,000 in what was denominated civil penalties, \$5,000 to the Public Health Foundation, \$15,000 to the plaintiff for distribution to nonprofit organizations "involved with and interested in toxic chemical and air pollution issues" and \$15,000 in attorneys' fees.

## **C. SUITS AGAINST STATE AGENCIES OR OFFICIALS**

1. *"Duke I": AFL-CIO, et al. v. Deukmejian, et al.* (Sacramento County Superior Court No. 348195, filed February 27, 1987); Court of Appeal decision reported (1989) 212 Cal.App.3d 425.

Summary: Suit by labor and environmental groups challenging original February 27, 1987, list of carcinogens and reproductive toxins as insufficient on ground that it failed to include certain animal carcinogens included on another statutory list specifically incorporated by reference in Proposition 65.

Status: On July 20, 1989, the Court of Appeal, Third District, unanimously affirmed the Superior Court's granting of an injunction requiring expansion of the list as sought by plaintiffs.

2. *Committee for Uniform Regulation and Labeling v. Book, et al.* (U.S., District Court, Northern District of California No. C 88-0730-EFL, filed February 26, 1988).

Summary: Suit by association of food producers against state (initially Secretary of Health and Welfare Agency, since changed to Director of Office of Environmental Health Hazard Assessment) and Attorney General alleging that the warning requirement of the statute, as applied to food, is unconstitutional as violating the Commerce, Due Process, Equal Protection and Free Speech clauses; is preempted by the U.S. Food, Drug and Cosmetic Act, and violates the California Constitution's "single subject" and "misleading ballot title" requirements.

Status: On October 21, 1988, the court granted defendants' motion to dismiss the equal protection and freedom of speech claims with prejudice, dismissed the state constitutional claims without prejudice, and declined to dismiss the preemption, due process and commerce clause claims. On March 10, 1989, the court denied plaintiff's motion for partial summary judgment on the grounds of express federal preemption as to labeling requirements for meat and poultry products, on the ground that Plaintiff had not shown that it had standing, based on limited evidence concerning the presence of listed chemicals in its members' products. A discovery dispute concerning CURL's refusal to seek information from its member companies culminated in a court ruling in August 1990, requiring CURL to at least attempt to obtain information from its members, but the members declined to provide any information. By agreement with the defendants and the Court, plaintiffs did not pursue the action pending further developments in other cases such as CSMA and Duke II. In March 1994, the parties stipulated to a dismissal without prejudice of the entire case.

3. *"Duke II": AFL-CIO, et al. v. Deukmejian, et al.* (Sacramento County Superior Court No. 502541, filed May 31, 1988).

Summary: Labor and environmental groups challenged California Code of Regulations §12713, which provides that products subject to regulation under the federal Food, Drug and Cosmetic Act are deemed not to pose a significant risk of cancer, until a more specific standard for a given chemical is set by regulation. (The regulation did not apply to reproductive toxins.)

Status: The superior court ruled in favor of plaintiffs, and the case was appealed to the Court of Appeal, Third District. On December 28, 1992, the plaintiffs and defendants (but not intervening industry groups) signed an agreement to resolve the litigation. The state agreed to continue its program of setting no significant

risk levels for chemicals of importance to industry as soon as possible, with a goal of 30 new no significant risk levels by July 1, 1993. The state also agreed to repeal the regulation at issue here on that date. Defendants also paid \$800,000 attorney's fees and costs. The Court of Appeal- granted defendants' motion to dismiss the appeal, and the regulation was repealed in October 1993.

4. *Nicolle-Wagner v. Deukmejian, et al.* (Los Angeles County Superior Court No. C689725, filed June 17, 1988).

Summary: Alleged that Vitamin A should be placed on the list of reproductive toxins.

Status: Plaintiff voluntarily dismissed complaint. The state ultimately did list retinol/retinyl esters in daily doses over 10,000 IU as a reproductive toxin, with notation that daily dose of 8,000 IU is recommended for normal reproductive function.

5. *"Duke III": AFL-CIO, et al. v. Deukmejian. et al.* (Sacramento County Superior Court No. 359223, filed June 22, 1988).

Summary: Suit alleging that California *Health and Safety Code* §25249.8(b) requires Advisory Panel to designate certain other organizations as "authoritative bodies" whose determination that a chemical causes cancer or reproductive harm would then automatically place a chemical on the Proposition 65 list.

Status: Plaintiffs' motion for summary judgment was granted. OEHHA subsequently adopted a regulation governing the "authoritative bodies" procedure for adding chemicals to the list, 22 *CCR* §12306. The Scientific Advisory Panel subsequently identified as authoritative bodies the U.S. Environmental Protection Agency, the International Agency for Research on Cancer, the National Toxicology Program, the National Institute of Occupational Safety and Health, and the Food and Drug Administration. Following these actions, the case was dismissed.

6. *Ingredient Communication Council, Inc. v. Lungren* (Sacramento County Superior Court No. 504601, filed September 27, 1988); 2 Cal.App.4th 1480 (1992) petition for review denied April 23, 1992.

Summary: Suit by operator of "800 number" information service against Attorney General for declaratory relief on issue of whether plaintiff's warning system provides clear and reasonable warning under statute and regulations. Attorney General cross-complained, seeking declaratory relief that the system did not provide a clear and reasonable warning for the purposes of Proposition 65 and an injunction requiring the plaintiff to provide notice of this to those using it.

Status: After a two-week court trial, the court ruled in August 1989 that the 800 number system operated by plaintiff does not provide the clear and reasonable warning required by Proposition 65. The injunction requested by the Attorney General was also granted. The Court of Appeal affirmed, holding that implementing regulations did not confer "safe harbor" status on toll-free telephone systems, and that the system in question did not meet the statutory and regulatory requirement to provide a warning that consumers are likely to see, rather than merely to invite inquiries. Plaintiff's petition for review in the California Supreme Court was denied on April 23, 1992.

7. *Chemical Manufacturers Association, et al. v. California Health and Welfare Agency, et al.*, (U.S. District Court, Eastern District of California, No. CIVS-88-1615 LKK-JFM, filed December 16, 1988).

Summary: Suit by chemical manufacturers alleging that warning requirement may not be applied to workers because it is preempted by the federal Occupational Safety and Health Act and the federal Hazard Communication Standard.

Status: Plaintiffs' motion for a preliminary injunction barring enforcement of Proposition 65 was denied. In August 1990, the court granted defendants' request for a stay of the case, pending action by the California Occupational Safety & Health Standards Board to incorporate Proposition 65 into the State OSHA Plan, which was done on December 17, 1991. (See California Labor Federation, *infra*.) The stay was lifted, and on cross-motions for summary judgment, the court ruled on April 11, 1994, that the case was mooted by the adoption of the Proposition 65 regulations in the State Plan, and dismissed the case.

8. *D-Con Company, Inc. v. Clifford L. Allenby, et al.*, (U.S. District Court, Northern District of California No. C-89-0332-FMS, filed February 3, 1989) (opinion reported 728 F.Supp. 605 (N.D.Cal. 1989).

Summary: Plaintiff alleged that Proposition 65 is preempted as to plaintiff's products by Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). Also alleged violation of the Commerce Clause.

Status: Court granted defendants' motion for summary judgment on the FIFRA claim on November 13, 1989. (728 F.Supp. 605.) Court held that FIFRA preempts only labeling requirements and that Proposition 65 does not, on its face, require warnings to be given on labels. After the conclusion of the CSMA litigation, *infra*, plaintiff agreed to dismiss commerce clause claim without prejudice, and case was concluded as of November 25, 1992.

9. *Chemical Specialties Manufacturers Association v. Allenby, et al.* (U.S. District Court, Northern District of California No. C-90-0211-FMS) (originally filed in Central District,

March 2, 1989), 744 F.Supp. 934 (N.D.Cal. 1990); aff'd, 958 F.2d 941 (9th Cir. 1992), cert. denied sub nom. *Chemical Specially Manufacturers Association v. Book*, U.S. 113 S.Ct. 80, October 5, 1992.

Summary: Suit alleging that Proposition 65's warning requirements are preempted as to exposures to pesticides and consumer products regulated under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), and under the Federal Hazardous Substances Act (FHSA). (Suit initially contained a claim of preemption under OSHA, but that claim was dismissed without prejudice.)

Status: Initially filed in the Central District, the case was first transferred to the Eastern District and again to the Northern District, where it was assigned to the judge who heard *D-Con*. On September 11, 1990, summary judgment for defendants was granted. The court found that both FIFRA and FHSA preempt only certain state "labeling" requirements, and that point-of-sale warning materials that satisfy Proposition 65 are not labeling as defined in FIFRA and FHSA. Plaintiff appealed, and the Ninth Circuit affirmed in all respects on March 11, 1992. Plaintiff's petition for certiorari was denied on October 5, 1992.

10. *Nicolle-Wagner v. Deukmejian, et al.* (Los Angeles County Superior Court No. C733003, filed August 2, 1989; appeal reported at (1991) 230 Cal.App.3d 652).

Summary: Action for injunctive and declaratory relief challenging 22 CCR §12501, a Proposition 65 regulation exempting certain "naturally occurring substances" in foods from warning requirements, as inconsistent with statute.

Status: Defendants' motion for summary judgment was granted, based on the conclusion that the distinction between natural and artificial substances in foods furthered the purpose of the statute and was within the agency's discretion. The Court of Appeal affirmed. 230 Cal.App.3d 652 (as modified, May 24, 1991).

11. *California Labor Federation v. Occupational Safety & Health Standards Board*, opinion reported at (1990) 221 Cal.App.3d 1547.

Summary: Original writ proceeding challenging failure of state Occupational Safety and Health Standards Board to include Proposition 65 in state OSHA plan.

Status: In July 1990, the state Court of Appeal granted the writ, and ordered the Occupational Safety and Health Standards Board to incorporate Proposition 65 into the state plan. After two adoptions of an emergency regulation, a permanent regulation incorporating the provisions of Proposition 65 into the plan took effect on December 17, 1991.

12. *AFL-CIO, et al. v. Wilson, et al.* (San Francisco Superior Court No. 957488, filed December 28, 1993).

Summary: This was an action for injunctive and declaratory relief challenging action of Office of Environmental Health Hazard Assessment on December 21, 1993, by which it changed the previous listing of "methyl bromide, " to "methyl bromide as a structural fumigant. " Methyl bromide had been listed on January 1, 1993, pursuant to Health and Safety Code §25249.8(b) provision requiring listing of a chemical "if an agency of the state or federal government has formally required it to be labeled or identified as causing cancer or reproductive toxicity " (known as "administrative listing"), based on earlier U.S. EPA and California Department of Pesticide Regulation requirements that reproductive toxicity warning be provided for methyl bromide when used as a structural fumigant.

Status: On December 29, 1993, plaintiffs sought a temporary restraining order blocking publication of change in listing, which was denied. Court then granted application to intervene of California Grape and Tree Fruit League, Western Growers Association, California Farm Bureau Federation, and Sun-Diamond Growers of California. Defendants opposed plaintiffs' motion for a preliminary injunction on the ground that since "methyl bromide" had been placed on the list not by the Science Advisory Board, but administratively pursuant to the warning requirement of another agency, OEHHA had discretion to limit the listing to the manner of use for which the other agency had required a warning. The motion for a preliminary injunction was denied on January 21, 1994. Whether to add "methyl bromide" in general to the list was referred to the Developmental and Reproductive Toxicant Committee of the Science Advisory Board, which, on May 5, 1994, voted 7-0 that methyl bromide had not been "clearly shown" (the statutory standard) to cause reproductive toxicity. In October 1994, plaintiffs agreed to dismiss their complaint without prejudice.

13. *Committee of Dental Amalgam Alloy Manufacturers and Distributors, et al. v. Henry, et al.* (U.S. District Court, Southern District of California No. 931439B (BTM), filed September 21, 1993).

Summary: Alleges that Proposition 65 is preempted as to dental mercury and dental amalgam by Medical Device Amendments of federal Food Drug and Cosmetic Act. Preemption clause, 21 U.S.C. §360k(a), preempts "additional or different" state requirements from those adopted by FDA for medical devices. Also alleges violation of the Commerce Clause.

Status: Application of Environmental Law Foundation to intervene as defendant was granted on November 18, 1993. (See *Environmental Law Foundation v. Jeneric/Pentron, Inc.*, under citizen suits.) On August 24, 1994, Judge Rudi Brewster, on cross-motions for summary judgment, found Proposition 65

preempted as to plaintiffs' products on the grounds that 1) FDA had reviewed whether reproductive toxicity warnings should be required, and had not required them, thus constituting a preemptive "exercise of its authority"; and 2) general requirement that all prescription devices have warnings of side effects also constituted a preemptive requirement. A final order was entered on September 16, 1994. The decision is reported at 871 F.Supp 1278. Defendants filed a notice of appeal, and argument in the Ninth Circuit took place on March 5, 1996.

14. *Industrial Truck Association and Mitsubishi Caterpillar Forklift America v. Henry and Lungren* (U.S. District Court, Southern District 947-1738-R LSP, filed November 14, 1995).

Summary: Plaintiffs, in complaint naming the Attorney General and the Director of the State Office of Environmental Health Hazard Assessment as defendants, alleged that Proposition 65's warning requirement was preempted in certain circumstances by the federal Occupational Health and Safety Act. Specifically, the plaintiffs claimed that Proposition 65 could not be interpreted so as to require manufacturers of diesel engines to provide warnings to workers who are exposed to diesel fumes from those engines in the workplace.

Status: On June 27, 1995, the court has granted the defendants' motion to dismiss the plaintiffs' complaint and denied the plaintiffs' summary judgment motion. The court ruled that the federal standards did not require warnings for the exposures in question and the state is not prevented by federal law from doing so. On September 5, 1995, Judge Rhoades denied a motion to reconsider. Plaintiffs filed a notice of appeal to the Ninth Circuit on September 21, 1995.

15. *Heitman Properties Ltd., et al. v. Wilson, Lungren, et al.*, (Los Angeles Superior Court No. BC134361, filed August 28, 1995).

Summary: Plaintiffs sued Governor, Attorney General, and Secretary of Health and Welfare Agency after receiving a 60 day notice of alleged violations due to exposures without warnings in parking garages managed by plaintiff. Complaint seeks declaratory relief that Proposition 65 does not apply to the operators or owners of parking garages (because they do not emit listed substances), that various code sections and regulations are unconstitutionally overbroad as applied to defendants, and that exposures in parking garages operated by plaintiff are below the levels requiring a warning.

Status: Defendants demurred to the complaint on September 28, 1995, arguing that declaratory relief against these defendants was unnecessary and therefore improper because the issues raised would be more properly litigated in the enforcement case brought against these plaintiffs by the Pacific Justice Center. A

hearing on the demurrer was postponed, and on January 30, 1996, plaintiffs dismissed the case.