

JUN 11 2008

LOS ANGELES  
SUPERIOR COURT

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF LOS ANGELES-CENTRAL CIVIL WEST COURTHOUSE

11	CONSUMER ADVOCACY	)	CASE NO. BC365839
12	GROUP, INC., in the interest	)	
13	of the Public,	)	<del>[PROPOSED]</del> ORDER APPROVING
14	Plaintiff	)	<del>SETTLEMENT AND JUDGMENT</del>
15	v.	)	BETWEEN CONSUMER ADVOCACY GROUP,
16	CHANDLER'S ROOFING, INC.,	)	INC. AND AMERI TECH CONSTRUCTION,
17	et al.,	)	INC.
18	Defendants.	)	Judge: Anthony J. Mohr
19		)	Place: Dept. 309
20		)	Date: June 4, 2008
21		)	Time: 10:00 a.m.
		)	Action Filed: February 6, 2007
		)	Discovery Cut-off: May 4, 2008
		)	Trial: June 4, 2008

22 On June 4, 2008, at 10:00 a.m., the Honorable Anthony J. Mohr, in Department 309 of  
23 this Court, heard the motion for judicial approval of settlement of action between plaintiff,  
24 Consumer Advocacy Group, Inc. ("CAG"), and, Ameri Tech Construction, Inc. ("Ameri Tech").  
25 Appearances are in the record. The Court, having considered the documents filed in connection  
26 with this matter and arguments of counsel, has arrived at the following conclusions and SO  
27 ORDERS:  
28

1 A. CAG and Ameri Tech have executed a Settlement Agreement ("Proposed Settlement"),  
2 attached as Exhibit A, which CAG submitted to this Court for approval pursuant to Proposition  
3 65 (Health & Saf. Code, §§ 25249.5 et seq.).  
4

5 B. This Court has considered the Proposed Settlement and determined that it represents a  
6 fair, reasonable, and adequate settlement between CAG and Ameri Tech.

7 **FINDINGS OF FACT AND ORDER APPROVING PROPOSED SETTLEMENT**

8 1. The Proposed Settlement provides that Ameri Tech will:

- 9
- 10 • Change its business practices in order to reduce exposures of Proposition 65-listed  
11 chemicals to its employees and the public;
  - 12 • Provide warnings to its employees that satisfy the "clear and reasonable" warning  
13 requirement under Proposition 65;
  - 14 • Pay CAG \$17,500 for its attorney fees and costs; and
  - 15 • Pay \$500 to an entity, CAG, in lieu of a civil penalty.
- 16

17 2. The court grants the Motion for Judicial Approval of Settlement between CAG  
18 and Ameri Tech in its entirety pursuant to Health and Safety Code section 25249.7, subdivision  
19 (f)(4) after making the following findings.

20 a. CAG followed all procedural rules in seeking approval of the Proposed  
21 Settlement;

22 b. The Proposed Settlement properly requires Proposition 65 compliant warnings  
23 for extant exposures to Proposition 65-listed chemicals;

24 c. The mandated award of \$17,500 in attorney fees and costs is appropriate and  
25 reasonable under California law given the total fees and costs incurred by  
26 CAG and its counsel of record in prosecuting this action;  
27  
28

- 1 d. The mandated payment in lieu of a civil penalty of \$500 to an entity,  
2 Consumer Advocacy Group, Inc., is proper in light of the criteria set forth in  
3 California Code of Regulations, title 11, section 3203, subdivision (b).;  
4  
5 e. The terms of the Proposed Settlement are in the public interest consistent with  
6 Health and Safety Code section 25249.7, subdivision (d); and  
7  
8 f. CAG adequately represented the public interest in entering into the Proposed  
9 Settlement.

10 JUDGMENT

- 11 1. The Court approves the [Proposed] Settlement, an executed copy of which is attached as  
12 Exhibit A, as the Judgment of this Court resolving this action between plaintiff,  
13 Consumer Advocacy Group, Inc., and defendant, Ameri Tech Construction, Inc.  
14  
15 2. The Court Clerk is to enter this Judgment as the Judgment of the Court as to defendant,  
16 Ameri Tech Construction, Inc.  
17  
18 3. The Court retains jurisdiction to monitor and supervise compliance with this settlement.  
19  
20 4. Except as otherwise set forth in the Proposed Settlement, each party shall bear its own  
21 attorney fees and costs.

*Separate judgment must be served and lodged.*

22 Dated: JUN 11 2008  
23 ~~2008~~

24 ANTHONY J. MOHR

25 THE HONORABLE ANTHONY J. MOHR  
26 JUDGE OF THE SUPERIOR COURT  
27  
28

## **EXHIBIT A**

SETTLEMENT AGREEMENT BETWEEN CONSUMER ADVOCACY GROUP, INC.  
AND AMERI TECH CONSTRUCTION, INC.

Consumer Advocacy Group, Inc., on behalf of itself and suing in the public interest pursuant to Health and Safety Code section 25249.7, subdivision (d), ("CAG"), and Ameri Tech Construction, Inc. ("Ameri Tech") (collectively, the "Parties") enter into this agreement ("Settlement Agreement") to settle the case entitled *Consumer Advocacy Group, Inc. v. Chandler's Roofing, Inc., et al.* filed on February 6, 2007, and pending in the Superior Court of California for the County of Los Angeles Case No. BC365839 ("Lawsuit"), as follows:

**1.0 Introduction**

1.1 CAG is an entity based in Los Angeles, California that seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances found in consumer and industrial products. Ameri Tech disputes this.

1.2 CAG alleges that Ameri Tech is a company that employs ten or more persons and acts primarily as a roofing contractor. Ameri Tech disputes this.

1.3 CAG alleges that Ameri Tech uses roofing materials, some of which contain asphalt or coal tar, the use of which allegedly exposes persons to acetaldehyde; arsenic (inorganic arsenic compounds); benz[a]anthracene; benzene; benzo[a]pyrene; benzo[b]fluoranthene; benzo[k]fluoranthene; beryllium and beryllium compounds; 1,3-butadiene; cadmium and cadmium compounds; carbazole; chromium (hexavalent compounds); chrysene; dibenz[a,j]acridine; dibenz[a,h]anthracene; dibenzo[a,c]pyrene; dibenzo[a,h]pyrene; dibenzo[a,i]pyrene; dibenzo[a,l]pyrene; dichloromethane (methylene chloride); formaldehyde (gas); indeno[1,2,3-cd]-pyrene; lead and lead compounds; 5-methylchrysene; nickel and nickel compounds; silica, crystalline; tetrachloroethylene (perchloroethylene); toluene diisocyanate; trichloroethylene; carbon disulfide; mercury and mercury compounds; and toluene (collectively, "Covered Chemicals"). Ameri Tech disputes this. The roofing products that consist of, contain, or result in exposure to either asphalt or coal tar, and which are covered by the Settlement Agreement are binders, felts, base sheets, cap sheets, surfacing materials, membrane systems, insulation materials, substrates, shingles, roll roofing, felt underlayments, flashings, coatings, mastics, cements, adhesives, caulking compounds, roofing kettles, tank trucks, vehicles used to tow roofing kettles to, from, and within job sites, torches, hot-air welders, other heating equipment, spreaders, felt-laying machines, roof removal equipment, including but not limited to roof cutters, and hand tools.

1.4 The Covered Chemicals are substances listed in the regulations promulgated under the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code sections 25249.5 et seq. ("Proposition 65") as chemicals known to the State of California to cause cancer and/or reproductive harm. Ameri Tech disputes this.

1.5 On February 8, 2006, CAG served public enforcement agencies and Ameri Tech with a document entitled "60-Day Notice of Violation" ("Notice"). The Notice alleged that Ameri Tech violated Proposition 65 by failing to warn its employees and other persons in California that some of the roofing materials used by Ameri Tech expose those persons to the Covered Chemicals. Ameri Tech disputes this.

1.6 On February 6, 2007, CAG filed the Lawsuit alleging Ameri Tech violated Proposition 65 by exposing employees and other persons to Covered Chemicals contained in certain roofing products without providing "clear and reasonable" warnings. Such alleged exposures constitute "occupational" and "environmental" exposures within the meaning of California Code of Regulations, title 22, section 12601. Ameri Tech denies the material allegations of the Lawsuit, and denies liability for the cause of action alleged in the complaint.

1.7 For purposes of this Settlement Agreement only, the Parties stipulate that this Court has jurisdiction: (i) over the allegations of violations contained in the CAG Complaint and Notice, (ii) over Ameri Tech as to the acts alleged, and (iii) to enter judgment based on this Settlement Agreement.

1.8 The Parties enter into this Settlement Agreement pursuant to a settlement of certain disputed claims between the Parties as alleged in the CAG Complaint and Notice for the purpose of avoiding prolonged and costly litigation between the parties hereto.

1.9 The Parties enter into this Settlement Agreement to settle disputed claims between the Parties.

1.10 By execution of this Settlement Agreement, the Parties do not admit any facts or conclusions of law, including, but not limited to, facts or conclusions of law regarding any violation of Proposition 65, or any other statutory, regulatory, common law, or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, including, but not limited to, any admission concerning the meaning of the terms "knowingly and intentionally expose" or "clear and reasonable warning" as used in Health and Safety Code section 25249.6. Nothing in this Settlement Agreement, nor compliance with the terms of this Settlement Agreement, shall constitute or be construed as evidence of an admission or evidence of fault, wrongdoing, or liability by Ameri Tech, its

officers, directors, employees, or parent, subsidiary or affiliated corporations, in any administrative or judicial proceeding or litigation in any forum. Except for the cause of action and allegations settled and compromised, nothing in this Settlement Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense that CAG or Ameri Tech may have against one another in any other pending legal proceeding.

## **2.0 Release**

2.1 Upon judicial approval of the settlement between the Parties and the expiration of time in which to appeal the same, CAG releases and discharges Ameri Tech, its affiliates, subsidiary and parent corporations, and/or their affiliated companies, and each of their officers, directors, agents, servants, partners, stockholders, attorneys, employees, representatives, and each of their respective successors and assigns (collectively, the "Released Parties") from all known and unknown rights, claims, causes of action, damages, suits, penalties, liabilities, injunctive relief, declaratory relief, and attorney fees, costs and expenses related to or arising out of the facts and claims alleged in the Lawsuit. (However, this Settlement Agreement pertains only to roofing operations conducted under the name Ameri Tech Construction, Inc. or Ameri Tech Roofing Co. or names similar to Ameri Tech Construction, Inc. or Ameri Tech Roofing Co. and it does not extend to roofing operations conducted under names wholly different from those mentioned in this sentence.) Without limiting the foregoing, the Parties intend the scope of this release to cover all Claims Covered (as defined in Section 3.1 below) as to the Released Parties put in controversy by the Lawsuit.

2.2 CAG is aware of the contents of Section 1542 of the Civil Code of California. CAG acknowledges that the claims released in section 2.1 above may include unknown claims and waives Section 1542 as to any such unknown claims. Section 1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

CAG acknowledges and understands the significance and consequences of this specific waiver of Civil Code Section 1542.

## **3.0 Claims Covered**

3.1 This Settlement Agreement is a final and binding resolution between the CAG and the Released Parties of the following claims and causes of action:

All claims, known or unknown, that were or could have been asserted in the lawsuit arising out of allegations that the Released Parties violated Proposition 65 or any other statutory or common law because of Released Parties' operations.

#### **4.0 Defendant's Duties**

4.1 Ameri Tech agrees to provide Proposition 65 warnings and to take actions intended to prevent, reduce, or mitigate exposure to the Covered Chemicals arising from using roofing products, in the manner prescribed below. Within sixty days after entering into this Settlement Agreement, Ameri Tech shall provide Proposition 65 warnings to its California employees who use roofing products containing Covered Chemicals by incorporating such warnings into the chemical hazard warnings and training provided in its hazard communication training plans, as part of compliance with the California Hazard Communication Standard under California Code of Regulations, title 8, section 5194.

4.2 Within sixty days after entering into this Settlement Agreement, Ameri Tech shall post a Proposition 65 warning sign conspicuously at each of its places of business where employees who handle roofing products containing Covered Chemicals are likely to see and read the warning sign, such as a locker room where employees store their gear or near a time clock that employees use regularly. For the purposes of this Settlement Agreement, such places of business shall not include job sites at which Ameri Tech performs services, but which are not owned and operated by Ameri Tech. The Proposition 65 warning sign shall set forth the following warning statement:

**WARNING: This area contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.**

Asphalt, coal tar, and other roofing or waterproofing materials contain chemicals known to the State of California to cause cancer and/or reproductive hazards. Exposure to these chemicals occurs during the installation, repair or removal of roofing and waterproofing materials containing asphalt, coal tar, or other bituminous binders and other types of roofing or waterproofing materials. Exposures may occur not only from the roofing or waterproofing materials you are working with but also from the solvents, mastics, cements, sealants, caulking compounds and other products and equipment that may be used in the operation. Always familiarize yourself with the hazards of the materials and equipment you are using and follow the precautions indicated on product labels, Material Safety Data Sheets and your health and safety training program.



The Parties agree that this warning shall be deemed "clear and reasonable" for purposes of Proposition 65 for any chemical contained in roofing products or to which exposure occurs from use of roofing products.

4.3 CAG maintains that environmental and consumer product exposures occur because of the presence of Covered Chemicals in certain roofing products, and that warnings for such exposures are required. Ameri Tech disputes this. In recognition of the measures adopted below and the effect those measures will have, the Parties agree that warnings for environmental exposures are not required.

4.4 The Parties agree that Ameri Tech shall institute certain measures to reduce or mitigate occupational or environmental exposures to the Covered Chemicals arising from the use of certain roofing products. The Parties agree to these measures with the mutual understanding and expectation that such measures will reduce and mitigate exposure to the Covered Chemicals arising from the use of certain roofing products to or within the levels such that warnings for "consumer product" or "environmental" exposures would not be required. Beginning within sixty days after entering into this Settlement Agreement, Ameri Tech shall do the following:

- 4.4.1 Ensure that tank trucks and kettles with a capacity greater than 200 gallons will have operational thermostatic heating controls.
- 4.4.2 Incorporate the following instructions in its chemical hazard training plan for employees, as part of its compliance with the California Hazard Communication Standard, set forth at California Code of Regulations, title 8, section 5194.
  - 4.4.2.1 Employees shall restrict access to tank trucks and kettles in which roofing products are heated for application to those employees whose job responsibilities require them to be present.
  - 4.4.2.2 Employees shall not heat any roofing product to a temperature that is higher than the manufacturer's specifications for that material.
  - 4.4.2.3 Employees shall verify the temperature of heated roofing products with a thermometer on a regular basis, to ensure that roofing products are not heated higher than the applicable manufacturer's specifications.
  - 4.4.2.4 Employees will work upwind from tank trucks and kettles whenever it is practical to do so.
  - 4.4.2.5 Employees will keep kettle lids closed except when necessary to: (i) add or remove roofing product from the kettles, (ii) check the temperature of the roofing product in

the kettles; (iii) the check the volume or quality of the roofing product in the kettles; or (iv) perform similar activities.

4.4.2.6 Employees shall position tank trucks and kettles as close to the point of application as practical in order to minimize heat loss.

Ameri Tech shall train its employees in the health hazards of roofing products in their work area(s), and the measures that they can take to protect themselves from these hazards, including specific procedures that the employer has implemented to protect employees from exposure to hazardous substances, such as appropriate work practices, emergency procedures, and use of personal protective equipment. Ameri Tech shall periodically monitor its employees' conduct to promote full compliance with all the requirements of this paragraph.

## **5.0 Payments**

5.1 Defendants' Payment in Lieu of Civil Penalties. Ameri Tech shall pay to CAG, a corporation commenced for the purpose of furthering environmental causes, the sum of \$500.00. Payment shall be made to "Consumer Advocacy Group, Inc." CAG will use the payment for such projects and purposes related to environmental protection, worker health and safety, or reduction of human exposure to hazardous substances (including administrative and litigation costs arising from such projects), as CAG may choose. CAG agrees to provide its address and federal tax identification number to Ameri Tech.

5.2 Payment to Yeroushalmi & Associates. Ameri Tech shall pay \$17,500.00 to CAG for its attorney fees and costs. The check shall be made payable to "Yeroushalmi & Associates." CAG represents and warrants that CAG has authorized the payment of attorney fees and costs, and that the payment and any application and/or distribution of such payment will not violate any agreement between CAG and its attorneys or with any other person or entity. CAG releases and agrees to hold harmless the Released Parties with regard to any issue concerning the allocation or distribution of the amount paid under this section. Yeroushalmi & Associates agrees to provide its address and federal tax identification number to Ameri Tech.

## **6.0 Authority To Enter Into Settlement Agreement**

6.1 CAG represents that its signatory to this Settlement Agreement has the authority to enter into this Settlement Agreement on behalf of CAG and to bind legally CAG. Ameri Tech represents that its signatory to this Settlement Agreement has the authority to enter into this Settlement Agreement on behalf of Ameri Tech and to bind legally Ameri Tech.

**7.0 Attorney General Review**

7.1 Consistent with section 3003(a) of Title 11 of the California Code of Regulations, CAG shall submit this Settlement Agreement to the Attorney General's Office for review within five days of the Parties' execution of this Settlement Agreement.

**8.0 Execution in Counterparts and Facsimile**

8.1 This Settlement Agreement may be executed in counterparts, which taken together shall be deemed to constitute the same document. A facsimile or PDF signature shall be as valid as the original.

**9.0 Entry of Judgment Pursuant to Settlement Agreement Required**

9.1 CAG shall submit this Settlement Agreement to the Court for consideration as required by Health and Safety Code section 25249.7, subdivision (f)(4). CAG will provide the Court with the necessary information to allow the Court to make the findings required by Health and Safety Code section 25249.7, subdivision (f)(4)(A)-(C).

9.2 This Settlement Agreement shall be void in the event the Court does not ultimately approve this settlement as required by Health and Safety Code section 25249.7, subdivision (f)(4)(A)-(C).

**10.0 Modification of Settlement Agreement**

10.1 Any modification to this Settlement Agreement shall be in writing by all Parties hereto.

**11.0 Application of Settlement Agreement**

11.1 This Settlement Agreement shall apply to, be binding upon, and inure to the benefit of, the CAG and the Released Parties identified above.

**12.0 Severability**

12.1 In the event that a court of competent jurisdiction finds unenforceable any of the provision of this Settlement, such finding shall not affect adversely the validity of the enforceable provisions.

**13.0 Governing Law**

13.1 The laws of the State of California shall govern the terms of this Settlement Agreement.

**14.0 Attorney Fees**

14.1 Should a dispute arise with respect to any provision(s) of the Settlement Agreement, and such dispute is resolved by the Court or through mediation, arbitration, or other alternative dispute resolution proceeding, the prevailing party in such action or proceeding shall be entitled to recover costs and reasonable attorney fees.

**15.0 Notification Requirements**

15.1 Any notice required or permitted hereunder shall be effective only if in writing and delivered in person or sent by telecopy, certified or registered mail return receipt requested, or traceable overnight delivery service, to the following designees:

For CAG:

Reuben Yeroushalmi  
Yeroushalmi & Associates  
3700 Wilshire Blvd., Suite 480  
Los Angeles, CA 90010  
Fax: 213.382.3430

For Ameri Tech:

Philip Yong-Ho Kim, Esq.  
Law Offices of Philip Y. Kim  
25 E Foothill Blvd  
Arcadia, CA 91006  
Fax: 714.882.7757

Any party may change its designee(s) for purposes of notification by providing notice of such change pursuant to this section.

Dated: 4/7/08

By: *Ryan B. Marcus Pres.*

CONSUMER ADVOCACY GROUP, INC.

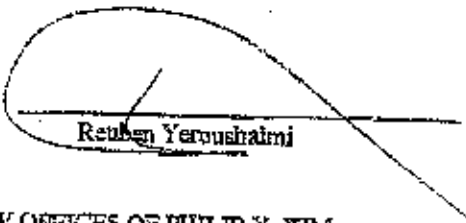
Dated: \_\_\_\_\_

By:   
~~AMERJ TECH CONSTRUCTION, INC.~~

As to form only:


YERUSHALMI & ASSOCIATES

Dated: 4-8-2008

By:   
Reuben Yerushalmi

LAW OFFICES OF PHILIP Y. KIM

Dated: 4-4-2008

By:   
Philip Kim, Esq.