

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into by and between the United States Department of Justice and the Consumer Product Safety Commission ("CPSC" or the "Commission") (collectively, "the Government"), and U.S. Home and Garden, Inc. ("USHG"), Easy Gardener, Inc. ("EGI"), Ampro, Inc. ("Ampro"), Weed Wizard Acquisition Corporation ("WWAC"), A.A.B.B., Inc. ("AABB") (formerly known as Weed Wizard, Inc.), and Norman Adams, James Anderson, Don Bryan, Mabel Bryan and Pam Butler ("AABB Shareholders"). This Agreement is based on the following facts and allegations.

The Government has asserted the position that USHG, EGI, Ampro, WWAC, AABB and the AABB Shareholders are liable for civil penalties based on the Government's allegations that USHG, EGI, Ampro, WWAC and AABB failed to timely inform the CPSC of defective products, specifically, the Weed Wizard and Weed Wizard Replacement Chain Kit manufactured or distributed by USHG, EGI, WWAC and AABB that create substantial product hazards and create unreasonable risks of serious injury or death to consumers. USHG, EGI, Ampro, WWAC, AABB, and AABB's Shareholders deny such allegations but are entering into this Agreement in order to resolve this matter, and their execution of this Agreement shall not constitute or be construed as an admission of liability.

THE PARTIES

USHG is a Delaware corporation located in San Francisco, California.

EGI is a Delaware corporation located in Waco, Texas. EGI is 100% owned by USHG.

Ampro is a Michigan corporation located in Waco, Texas. Ampro is 100% owned by USHG.

WWAC is a Delaware corporation located in Waco, Texas. WWAC is a wholly owned subsidiary of EGI.

AABB is a Georgia corporation located in Dahlonega, Georgia.

Norman Adams, James Anderson, Don Bryan, Mabel Bryan and Pam Butler are individuals who reside in Georgia and who are the shareholders of AABB.

The CPSC is an independent federal agency that was created to protect the public against unreasonable risks of injury from consumer products. The CPSC enforces the Consumer Product Safety Act ("CPSA"), 15 U.S.C. § 2051 *et. seq.* The headquarter offices of the CPSC are at 4330 East West Highway, Bethesda, Maryland. 16 C.F.R. § 1000.4(a).

THE LAW

Under the CPSA, "[e]very manufacturer of a consumer product distributed in commerce, and every distributor and retailer of such product, who obtains information which reasonably supports the conclusion that such product contains a defect which could create a substantial product hazard" must "immediately inform the Commission" of the defect unless the manufacturer, distributor, or retailer "has actual knowledge that the Commission has been adequately informed" of the defect. 15 U.S.C. § 2064(b)(2). The CPSA defines a "substantial product hazard" as a product defect that "creates a substantial risk of injury to the public." 15 U.S.C. § 2064(a)(2).

The CPSA also requires that "[e]very manufacturer of a consumer product distributed in commerce, and every distributor and retailer of such product, who obtains information which reasonably supports the conclusion that such product creates an unreasonable risk of serious injury or death" to "immediately inform the Commission" of the risk unless the manufacturer, distributor, or retailer "has actual knowledge that the Commission has been adequately informed" of the risk. 15 U.S.C. § 2064(b)(3). Regulations promulgated pursuant to the CPSA define "serious injury" to include any significant injury, including fractures and other injuries necessitating medical or surgical treatment. 16 C.F.R. § 1115.6(c).

The CPSA regulations provide that the requirement that reports be made "immediately" means "within 24 hours" after a company has obtained the requisite information regarding a defect or unreasonable risk. 16 C.F.R. § 1115.14(e). Because of this time limit, the regulations permit initial reports to be made by telephone to the CPSC's headquarters in Bethesda, Maryland. 16 C.F.R. § 1115.13(b), (c).

The CPSA regulations require that a full report be submitted to the CPSC, and that it include any complaints related to the safety of the product. 16 C.F.R. § 1115.13(d).

The failure to furnish information required by 15 U.S.C. § 2064(b) is a prohibited act under the CPSA. 15 U.S.C. § 2068(a)(4).

Any person who knowingly fails to furnish such information may be punished by the assessment of civil penalties. 15 U.S.C. § 2069(a)(1).

THE GOVERNMENT'S ALLEGATIONS

The Government alleges the following:

USHG describes itself as a leading manufacturer and marketer of a broad range of consumer lawn and garden products. Among its many products sold and distributed through April 2000 were the Weed Wizard, which is a plastic hub attachment containing metal chain links to be used on a weed trimmer, and the Weed Wizard Replacement Chain Kit, containing

replacement metal chain links without the plastic hub (collectively "the products").

The products were designed, marketed, and sold as replacements for string trimmer heads on almost any gas-powered weed trimmer.

Weed Wizard was marketed and sold in packaging that stated "The Solution to Trimmer Line Problems," "Fits 99% of All Gas Trimmers," and "Made in USA."

Weed Wizards were sold from May 1987 through April 2000 from between \$19 and \$25.

Weed Wizard Replacement Chain Kits were marketed and sold in packaging that stated "Fits All Models" and "Never Buy Line Again!"

Weed Wizard Replacement Chain Kits were sold from January 1992 through April 2000 for about \$8.

The products were advertised on national television and sold in home centers, mass merchants, discount stores and hardware stores.

The products were produced for sale to consumers for use in or around a household or residence.

The chain links of the products' metal chain can rapidly and unexpectedly detach during use, propelling the link into the air at a high velocity. If the metal link strikes the user or a bystander, it can penetrate skin and/or bone, causing serious injury or death.

The defect in the products created a substantial product hazard.

The products created an unreasonable risk of serious injury or death to consumers.

Between 1987 and 1998, AABB manufactured and distributed more than two million Weed Wizards throughout the United States.

Beginning in 1989, AABB learned of serious injuries caused by chain links of the products' metal chain that rapidly and unexpectedly detached during use, propelling the link into the air at a high velocity. In many instances, a metal chain link detached and penetrated or became embedded in a user's lower body or head, causing serious injury.

In 1992, AABB learned that the Queensland Government of Australia had banned the Weed Wizard because it was unsafe.

On August 24, 1997, three-year-old Peyton Pytlewicz was fatally injured when a chain link of a Weed Wizard being used by a family member detached and struck Peyton in the left

temple and lodged in her brain. Peyton died from this injury. Peyton's parents sued AABB for wrongful death.

Between 1989 and 1998, at least seven lawsuits were filed against AABB due to injuries caused by the products' detaching metal chain links. In addition, during this same time period, AABB settled at least eleven claims alleging serious injuries caused by the products' detaching metal chain links.

On February 25, 1998, USHG, WWAC and AABB agreed to an Asset Purchase Agreement, whereby USHG and WWAC purchased substantially all of AABB's property and assets.

As part of the Asset Purchase Agreement, AABB informed USHG and WWAC of eight lawsuits that had been filed against AABB due to injuries caused by the products' detaching metal chain links, and twelve settlements stemming from injuries caused by the products' detaching metal chain links.

Subsequent to WWAC's purchase on February 25, 1998, USHG and WWAC manufactured and distributed the products throughout the United States. More than 594,000 products were sold between the time of USHG's and WWAC's purchase of AABB and WWAC's voluntary recall of the products which commenced on May 3, 2000.

In August 1998, WWAC learned that the Queensland Government of Australia had previously banned the Weed Wizard metal chain product because it was unsafe.

In December 1998, AABB settled the wrongful death claim filed by the parents of Peyton Pytlewicz. Officers of USHG, EGI, Ampro and WWAC became aware of this settlement.

Between USHG's and WWAC's purchase of substantially all the assets of AABB on February 25, 1998 and December 13, 1999, USHG, EGI, Ampro and WWAC learned of at least five additional injuries caused by the products' detaching metal chain links.

On February 9, 2000, after considering the evidence, the CPSC made a preliminary determination that the products presented a substantial hazard to users and notified WWAC requesting that a recall be commenced. In response to the CPSC notice, WWAC agreed to conduct a recall of the products. The CPSC and WWAC announced the beginning of this recall on May 3, 2000. The recall involved about 2.7 million Weed Wizard trimmer heads with metal chains and about 857,000 trimmer replacement chain sets.

The non-governmental parties failed to report to the CPSC to notify it of these incidents or related injuries until after WWAC received a specific inquiry from the CPSC. Before July 1999 when WWAC reported to the CPSC in response to the CPSC's notification, USHG, EGI, Ampro, WWAC and AABB had obtained information that reasonably supported the conclusion

that the products contained a defect that could create a substantial product hazard, *i.e.*, a defect that could create a substantial risk of injury to the public.

Before July 1999 when WWAC reported to the CPSC in response to the CPSC's notification, USHG, EGI, Ampro, WWAC and AABB had obtained information that reasonably supported the conclusion that the products created an unreasonable risk of serious injury or death.

USHG, EGI, Ampro, WWAC and AABB knowingly violated 15 U.S.C. § 2068(a)(4) by failing immediately to furnish the CPSC with this information.

USHG's, EGI's, Ampro's, WWAC's, AABB's and AABB's Shareholders' RESPONSE

USHG, EGI, Ampro, WWAC, AABB, and AABB's Shareholders contest and deny the Government's allegations. USHG, EGI, Ampro, WWAC, AABB, and AABB's Shareholders have entered into this settlement in order to resolve this claim without the expense and distraction of litigation. By agreeing to this settlement, USHG, EGI, Ampro, WWAC, AABB, and AABB's Shareholders do not admit any of the allegations set forth above in this Agreement.

AGREEMENT OF THE PARTIES

The Government, USHG, EGI, Ampro, WWAC, AABB, and AABB's Shareholders have entered into this Agreement as follows:

1. USHG, EGI, Ampro, WWAC, AABB, and AABB's Shareholders agree to pay a civil penalty to the United States Treasury in the total amount of Eight Hundred and Eighty-Five Thousand Dollars (\$885,000.00) (the "Settlement Amount"), which sum shall be received by the United States Treasury within 15 days of the last signature on this Agreement. Payment of the Settlement Amount shall be made by electronic funds transfer pursuant to written instruction provided by the Government. If USHG, EGI, Ampro, WWAC, AABB, or AABB's Shareholders fail to make payment of the Settlement Amount within the time set forth above, starting the sixteenth day following the last signature on this Agreement, interest on the Settlement Amount shall accrue and be paid at the federal rate of interest under the provisions of 28 U.S.C. §§ 1961(a) and (b).
2. In consideration of the payment to be made in paragraph 1, the Government fully releases, acquits, and forever discharges USHG, EGI, Ampro, WWAC, AABB, AABB's Shareholders, and their current and former employees, agents, attorneys, shareholders, owners, subsidiaries, and representatives, from all claims, demands, liabilities, actions, or causes of action for a civil penalty, pursuant to sections 19(a)(4) and 20 of the CPSA, 15 U.S.C. §§ 2068(a)(4), 2069, for failure to report information supporting the conclusion that the

products (as defined above in "The Government's Allegations") had a potential for rapidly and unexpectedly detaching during use, propelling the link into the air at a high velocity, which potential was addressed in the Corrective Action announced May 3, 2000.

3. The Government further fully releases, acquits, and forever discharges USHG, EGI, Ampro, WWAC, AABB, AABB's Shareholders, and their current and former employees, agents, attorneys, shareholders, owners, subsidiaries, and representatives, from all claims, demands, liabilities, actions, or causes of action for a civil penalty, pursuant to sections 19(a)(4) and 20 of the CPSA, 15 U.S.C. §§ 2068(a)(4), 2069, for failure to report information supporting the conclusion that hazards other than the hazards covered by the foregoing paragraph 2 were presented by the products referenced in the foregoing paragraph 2, provided that such hazards were the subject of or potentially indicated by the documents and/or information provided to the Government in connection with the corrective action and civil penalty proceedings and investigations concerning the products referenced in paragraph 2. This release in paragraph 3 shall not extend to information not disclosed to the Government prior to the date of this Settlement and as to which the Government was not otherwise "adequately informed," as that term is used in Section 15(b) of the Consumer Product Safety Act, by the other information in the Government's possession.
4. Counsel for USHG, EGI, Ampro, WWAC, AABB, and AABB's Shareholders agree to withdraw Freedom of Information Requests S2060074, S2070031 and S2080155, and any appeals relating to these requests.
5. USHG, EGI, Ampro, WWAC, AABB, and AABB's Shareholders agree that the Government shall not be precluded from publicizing in full the terms of this Agreement, and the allegations set forth in this Agreement, notwithstanding the terms of Section 6(b) of the CPSA, 15 U.S.C. § 2055(b). The Government agrees to provide the parties with a courtesy copy of the press release regarding this Agreement prior to its release.
6. This Agreement shall be binding on and shall inure to the benefit of all heirs, successors and assigns of USHG, EGI, Ampro, WWAC, AABB, and AABB's Shareholders.
7. This Agreement constitutes the entire agreement between the parties and no additional terms or conditions exist or shall be implied or deemed to exist. No other representations, promises or inducements, written or oral, will be binding upon the parties to this Agreement.

8. This Agreement may be executed in separate counter-parts.

FOR UNITED STATES DEPARTMENT
OF JUSTICE

ROBERT B. MCCALLUM, JR.
Assistant Attorney General
Civil Division

By: _____
JEFFREY STEGER
JENNIFER BROOKS
Trial Attorneys
Office of Consumer Litigation
U.S. Department of Justice

Date: _____

FOR UNITED STATES CONSUMER
PRODUCT SAFETY COMMISSION

By: _____
MELISSA HAMPSHIRE
Acting General Counsel
ALAN SHAKIN
Assistant General Counsel
PATRICIA KENNEDY
BELINDA MITCHELL
Attorneys

Date: _____

FOR UNITED STATES DEPARTMENT
OF JUSTICE

ROBERT B. MCCALLUM, JR.
Assistant Attorney General
Civil Division

By: Jeffrey Steger
JEFFREY STEGER
JENNIFER BROOKS
Trial Attorneys
Office of Consumer Litigation
U.S. Department of Justice

Date: 10/25/02

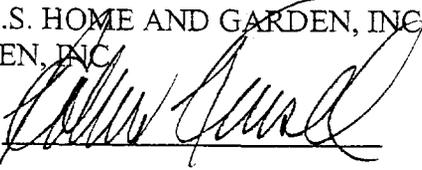
FOR UNITED STATES CONSUMER
PRODUCT SAFETY COMMISSION

By: Melissa Hampshire
MELISSA HAMPSHIRE
Acting General Counsel
ALAN SHAKIN
Assistant General Counsel
PATRICIA KENNEDY
BELINDA MITCHELL
Attorneys

Date: Oct 25, 2002

FOR U.S. HOME AND GARDEN, INC.
GARDEN, INC.

By:



Date:

Oct 24, 2002

COUNSEL TO U.S. HOME AND

By:

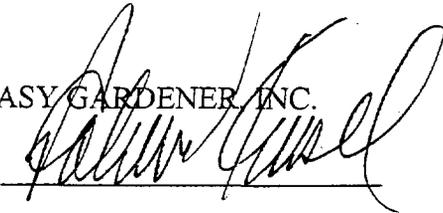

MAC DUNAWAY
Attorney
Dunaway & Cross

Date:

31 October 2002

FOR EASY GARDENER, INC.

By:



Date:

OCTOBER 24, 2002

COUNSEL TO EASY GARDENER, INC.

By:

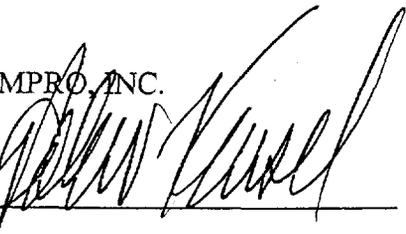

MAC DUNAWAY
Attorney
Dunaway & Cross

Date:

31 October 2002

FOR AMPRO, INC.

By:



Date:

October 24, 2002

COUNSEL TO AMPRO, INC.

By:


MAC DUNAWAY 31 October 2002
Attorney
Dunaway & Cross

Date:

31 October 2002

FOR WEED WIZARD ACQUISITION CORP.

By:



Date:

October 24, 2002

COUNSEL TO WEED WIZARD
ACQUISITION CORP.

By:


MAC DUNAWAY
Attorney
Dunaway & Cross

Date:

31 October 2002

FOR A.A.B.B., Inc.

By:

[Signature]
President

Date:

10-28-02

COUNSEL TO A.A.B.B.

By:

[Signature] *by proxy with express permission*
WILLIAM CUSTER
Attorney
Powell, Goldstein, Frazer &
Murphy LLP

Date:

10/31/02

NORMAN ADAMS

[Signature]

Date:

10-28-02

JAMES ANDERSON

[Signature]

Date:

10-28-02

~~DAVID BUTLER~~
DAM BUTLER

[Signature]

Date:

10-28-02

MABEL BRYAN

[Signature]

Date:

10-28-02

~~DAVID BUTLER~~

DON BRYAN

[Signature]

Date:

10-28-02