

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

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STATE OF MISSOURI, ex rel.
Attorney General JEREMIAH W. (JAY) NIXON

CASE NO. **97 4024-CV-0** *Sow*

STATE OF ALABAMA, ex rel.
Attorney General BILL PRYOR,

SETTLEMENT
AGREEMENT

STATE OF ALASKA, ex rel.
Attorney General BRUCE M. BOTELHO,

STATE OF ARIZONA, ex rel.
Attorney General GRANT WOODS,

STATE OF ARKANSAS, ex rel.
Attorney General WINSTON BRYANT,

STATE OF CALIFORNIA, ex rel.
Attorney General DANIEL E. LUNGREN,

STATE OF COLORADO, ex rel.
Attorney General GALE A. NORTON,

STATE OF CONNECTICUT, ex rel.
Attorney General RICHARD BLUMENTHAL,

STATE OF DELAWARE, ex rel.
Attorney General M. JANE BRADY,

DISTRICT OF COLUMBIA, ex rel.
Corporation Counsel CHARLES F.C. RUFF,

STATE OF FLORIDA, ex rel.
Attorney General ROBERT A. BUTTERWORTH,

STATE OF GEORGIA, ex rel.
Attorney General MICHAEL J. BOWERS,

STATE OF HAWAII, ex rel.
Attorney General MARGERY S. BRONSTER,

STATE OF IDAHO, ex rel.
Attorney General ALAN G. LANCE,

STATE OF ILLINOIS, ex rel.
Attorney General JIM RYAN,

STATE OF INDIANA, ex rel.
Attorney General JEFFREY A. MODISSETT,

STATE OF IOWA, ex rel.
Attorney General THOMAS J. MILLER,

STATE OF KANSAS, ex rel.
Attorney General CARLA J. STOVALL,

COMMONWEALTH OF KENTUCKY, ex rel.
Attorney General A.B. CHANDLER III,

STATE OF LOUISIANA, ex rel.
Attorney General RICHARD P. IEYOUB,

STATE OF MAINE, ex rel.
Attorney General ANDREW KETTERER,

STATE OF MARYLAND, ex rel.
Attorney General J. JOSEPH CURRAN, JR.,

COMMONWEALTH OF MASSACHUSETTS, ex rel.
Attorney General SCOTT HARSHBARGER,

STATE OF MICHIGAN, ex rel.
Attorney General FRANK J. KELLEY,

STATE OF MINNESOTA, ex rel.
Attorney General HUBERT H. HUMPHREY III,

STATE OF MISSISSIPPI, ex rel.
Attorney General MIKE MOORE,

STATE OF MONTANA, ex rel.
Attorney General JOSEPH P. MAZUREK,

STATE OF SOUTH CAROLINA, ex rel.
Attorney General CHARLES MOLONY CONDON,

STATE OF SOUTH DAKOTA, ex rel.
Attorney General MARK W. BARNETT,

STATE OF TENNESSEE, ex rel.
Attorney General CHARLES W. BURSON,

STATE OF TEXAS, ex rel.
Attorney General DAN MORALES,

STATE OF UTAH, ex rel.
Attorney General JAN GRAHAM,

STATE OF VERMONT, ex rel.
Attorney General JEFFREY L. AMESTOY,

COMMONWEALTH OF VIRGINIA, ex rel.
Attorney General JAMES S. GILMORE, III,

STATE OF WASHINGTON, ex rel.
Attorney General CHRISTINE O. GREGOIRE,

STATE OF WEST VIRGINIA, ex rel.
Attorney General DARRELL V. MCGRAW, JR.,

STATE OF WISCONSIN, ex rel.
Attorney General JAMES E. DOYLE,

STATE OF WYOMING, ex rel.
Attorney General WILLIAM U. HILL,

Plaintiffs,

v.

AMERICAN CYANAMID COMPANY,

Defendant.

-----X

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into this 29th day of January, 1997, by and between the Plaintiff States (States), all of which are identified in the caption of this Settlement Agreement, and American Cyanamid Company (American Cyanamid or Defendant). All parties are further defined in the Complaint and Consent Decree and Final Judgment, which are to be filed in this Court contemporaneously with this Settlement Agreement. The Consent Decree and Final Judgment is attached hereto.

The States have conducted an investigation into American Cyanamid's resale pricing practices for certain crop protection chemicals (CPC) as defined in the Complaint and Consent Decree and Final Judgment.

The States allege that certain of American Cyanamid's marketing programs and policies violated the Sherman Act, 15 U.S.C. § 1, and various related state antitrust and unfair competition laws as more completely alleged in the States' Complaint.

American Cyanamid denies that any of its conduct violated any law, including the antitrust laws of the United States or any state antitrust or unfair competition laws.

The States and American Cyanamid have determined that it is in their best interests to resolve this dispute and that all of the States' claims set forth in the Complaint should be settled in order to avoid the uncertainty, expense and delay that protracted, complex antitrust litigation would represent.

NOW, THEREFORE, without adjudication of any issue of fact or law, or admission of wrongdoing, and upon the agreement of the Parties, the Parties enter into this Settlement Agreement and agree to and understand the terms of this Settlement Agreement set forth herein.

I. DEFINITIONS

All definitions contained in the Complaint and Consent Decree and Final Judgment filed in this matter apply to this Settlement Agreement as if fully restated herein, including:

A. "American Cyanamid" or "Defendant" means American Cyanamid Company and its affiliates, subsidiaries, divisions and other organizational units of any kind that sold crop protection chemicals as those chemicals are defined herein; their successors and assigns; their officers, directors, employees, agents, representatives and other persons acting on their behalf.

B. "Crop Protection Chemicals" (hereinafter "CPC") means chemical products that are used, among other things, to control or eliminate unwanted disease, insects, plants, and fungi around crops.

C. "Dealer" means any person, corporation or entity not owned by American Cyanamid, that in the course of its business purchases any CPC from American Cyanamid or a distributor and sells that CPC in or into the United States of America.

D. "Plaintiffs," "Plaintiff States" and "States" are used interchangeably and mean the undersigned States (including the District of Columbia and the Commonwealth of Puerto Rico), by and through their Attorneys General, in their sovereign capacities.

E. "Rebate" means a payment of money by Defendant to a dealer based, in whole or in part, on the dealer's conduct or performance;

F. "Resale Price" means any price, price floor, price ceiling, price range, mark-up formula, discount or margin of profit used by any dealer for pricing any CPC. "Resale price" includes, but is not limited to, any established or customary resale price.

The following additional definitions shall also apply to this Settlement Agreement:

G. "Parties" means the signatories to this Settlement Agreement and the entities they represent.

H. "Settlement Administrator" means the Antitrust Unit of the New Mexico Attorney General's Office.

II. BENEFIT AND BINDING EFFECT

A. All of the obligations of this Settlement Agreement that are binding upon American Cyanamid shall also be binding upon its successors, assigns and legal representatives.

B. The terms of this Settlement Agreement shall be binding on, and shall inure to the benefit of, the Parties and their successors.

III. SETTLEMENT AGREEMENT AND RELATED DOCUMENTS

The Complaint, Consent Decree and Final Judgment, and this Settlement Agreement shall be filed under the same case number and relate to the same operative facts, theories and claims for relief set forth in the Complaint. This Settlement and the Consent Decree and Final Judgment reflect the agreement between the parties to settle the claims set forth in the Complaint in this matter. The terms and agreements contained in this Settlement Agreement that are not also contained in the Consent Decree and Final Judgment are in addition to the terms and agreements contained in the Consent Decree and Final Judgment. If it is determined by the parties or the court with continuing jurisdiction in this matter that a conflict exists between any provision(s) in the Consent Decree and Final Judgment and any provision(s) of this Settlement Agreement, the Consent Decree and Final Judgment shall control the agreement between the parties.

IV. DURATION OF CONSENT DECREE AND FINAL JUDGMENT
AND OF SETTLEMENT AGREEMENT

Except as provided otherwise, the terms of the Consent Decree and Final Judgment, and all other terms and agreements set forth in this Settlement Agreement, shall be in effect for a period of ten (10) years from the date of the court's final approval of the Consent Decree and Final Judgment and this Settlement Agreement.

V. PAYMENT TO THE STATES

A. In complete settlement of all of the States' claims set forth in the complaint, Defendant shall pay to the States the settlement sum of a total of seven million three hundred thousand dollars (\$7.3 million). Such payment shall be made to the Attorney General of New Mexico, either by certified check or by wire transfer within ten (10) business days after Defendant receives notice of the court's entry of the Consent Decree and Final Judgment. A portion of the settlement sum shall be deposited in the previously-established account at the National Association of Attorneys General to enhance future state antitrust enforcement. An additional portion of the settlement sum shall be apportioned among those states identified in **Appendix A** and shall be used to benefit the agricultural community in individual states, at the sole discretion of the Attorney General of each State so designated. Each designation is specified in **Appendix A**, attached hereto and incorporated by reference in the Consent Decree and Final Judgment.

B. The remainder of the settlement sum not covered by paragraph A, shall be apportioned among the states in the amounts determined exclusively by the attorneys general of the States as indicated on **Appendix B**, attached hereto and incorporated by reference in the Consent Decree and Final Judgment. Each State's share of the amount indicated in **Appendix B**

shall be used by such state for one or more of the following six (6) purposes, as determined by the attorney general of each such state at his or her exclusive option, and as otherwise consistent with law:

1. Reimbursement of the costs and expenses of this investigation that were incurred by such states or their agencies;
2. Antitrust, or consumer protection enforcement by the attorney general of such state;
3. Deposit into a state antitrust/consumer protection revolving account for use in accordance with the state laws governing that account;
4. Deposit into a fund exclusively dedicated to assisting the state attorney general to defray the cost of experts, economists, and consultants in multistate antitrust investigations and litigations;
5. Deposit into the National Association of Attorneys General Antitrust Education and Training Fund; and/or
6. Such other use the respective States' attorneys general deem appropriate.

VI. RELEASES, WAIVERS AND COVENANTS NOT TO SUE

A. In consideration of the Settlement Agreement, each State hereby releases, compromises and discharges all claims or causes of action it has had, has, or may have in the future against American Cyanamid in its sovereign capacity regarding American Cyanamid's past conduct and based on both:

1. The matters alleged in the Complaint which arise out of or are in furtherance of any of the operative conduct, acts, or conspiracies, alleged therein; and

2. Federal antitrust laws and state antitrust and unfair competition laws in which the states seek civil penalties, injunctive relief or damages in their proprietary capacity.

B. In consideration of the States' release, waivers and covenants set forth in this section, American Cyanamid releases, compromises, discharges, and covenants not to sue or prosecute the states, officers, employees, agents or attorneys for reimbursement of any and all costs incurred in producing documents and answers to written interrogatories in response to investigative demand(s) issued by any Attorney General's office in this matter or for any other causes of action arising out of or relating to this litigation or the States' related investigation.

C. Plaintiff State of Missouri, by and through Special Chief Counsel Bennett Rushkoff, will request from all states that are not Plaintiff States a statement regarding such nonplaintiff states' present intention to bring suit or otherwise pursue against Defendant any of the facts or claims contained in the Complaint filed herewith. Any responses received by Special Chief Counsel Bennett Rushkoff from nonplaintiff states shall be forwarded to Defendant prior to execution of the Settlement Agreement.

VII. LIMITATIONS TO RELEASES AND COVENANTS NOT TO SUE

A. The waivers, releases and covenants not to sue set forth in section VI of this Settlement Agreement do not, and are not intended to, waive, release, or in any way affect claims possessed by any person or entity other than Plaintiff States in their sovereign capacity and as parens patriae on behalf of the welfare and economy of those States.

B. Except for the waivers, releases and covenants not to sue in section VI of this Settlement Agreement, the States expressly reserve their rights to file an action against any person or entity other than American Cyanamid for any claims for relief or causes of action set

forth in the Complaint and for any such relief the States deem appropriate.

VIII. COMPLIANCE WITH CONSENT DECREE AND FINAL JUDGMENT

A. For purposes of determining or securing compliance with the Consent Decree and Final Judgment, representatives of the undersigned states shall be permitted, upon written request and reasonable notice, subject to the right of American Cyanamid to have counsel present, and subject to any legally recognized privilege, during normal office hours to inspect and copy all files, sales records, contracts, correspondence, memoranda, journals, minutes, agendas, calendars, books, accounts, advertising copy or other documents, or electronically-stored information, in the possession or under the control of American Cyanamid relating to the subject matter of the Consent Decree and Final Judgment.

B. In addition to the rights and obligations for monitoring compliance with the Consent Decree and Final Judgment as set forth therein, American Cyanamid shall:

1. Distribute in a timely manner, a copy of the injunctive provisions of the Consent Decree and Final Judgment to all of its officers, management employees, dealers, distributors, agents, and representatives having sales or policy responsibilities with respect to CPC sold in or into the United States of America.

2. For a period of three (3) years after the date on which this order becomes final, provide the letter attached as Appendix C, together with a copy of the Consent Decree and Final Judgment, to each person who becomes an officer, management employee, agent, or representative having sales or policy responsibilities with respect to American Cyanamid's CPC sold in or into the United States of America, within thirty (30) days of the commencement of such person's employment or affiliation with American Cyanamid.

3. Require each of its officers, management employees, agents, and representatives having sales or policy responsibilities with respect to American Cyanamid's CPC sold in or into the United States of America, to sign and submit to American Cyanamid within thirty (30) days of the receipt thereof a statement that: (a) acknowledges receipt of the Consent Decree and Final Judgment; (b) represents that the undersigned has read and understands the Consent Decree and Final Judgment; and (c) acknowledges that the undersigned has been advised and understands that noncompliance with the Consent Decree and Final Judgment may subject American Cyanamid to penalties for violation of the Consent Decree and Final Judgment.

4. For a period of three (3) years, submit to the Chief Counsel for Antitrust Unit, Missouri Attorney General's Office, Post Office Box 899, Jefferson City, MO 65102, an annual declaration under oath, as to the fact and manner of its compliance with the provisions of this section. The declaration may be executed by a company designee who has responsibility for ensuring compliance with this section.

C. No information or documents obtained pursuant to this section shall be divulged by plaintiff to any person other than a duly authorized agent or employee of Plaintiffs, except for the purpose of securing compliance with the Consent Decree and Final Judgment, or as otherwise required by law.

IX. CONDITIONS PRECEDENT TO SETTLEMENT TAKING EFFECT

A. This Settlement Agreement shall become effective once all Parties have signed this document and the court has approved and signed the Consent Decree and Final Judgment. The Parties will exercise their best efforts to obtain entry of the Consent Decree and Final Judgment

by this court. The Parties will not seek to appeal such entry or approval, modify the Consent Decree and Final Judgment, and/or take any action, directly or indirectly, which might prevent or delay the Consent Decree and Final Judgment from becoming final.

B. Each signatory to this document, by his or her signature, expressly represents that he or she is fully authorized by the Party he or she represents to execute this Settlement Agreement. This Settlement Agreement may be executed on separate signature pages or in counterparts with the same effect as if all Parties had signed the same instrument.

C. If, for any reason, the court declines to approve, sign and enter the Consent Decree and Final Judgment, then this entire Settlement Agreement and all terms, conditions and obligations herein are rescinded and become null and void.

X. MISCELLANEOUS

A. This Settlement Agreement, and the Consent Decree and Final Judgment filed contemporaneously with this Settlement Agreement, contain the entire agreement and understanding of the Parties. This Settlement Agreement shall not be modified except in writing, signed by each of the Parties hereto or by their authorized representative; provided, however, that the States and American Cyanamid may jointly modify the terms of this Settlement Agreement solely for the purpose of facilitating the details of settlement administration.

B. This Settlement Agreement shall in no way limit or restrict other rights or remedies that may be available to the States that are not the subject of the Complaint and Consent Decree and Final Judgment filed herewith.

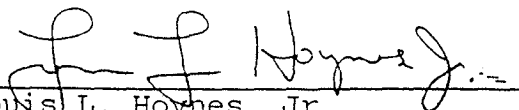
C. No part of the Settlement Amount shall constitute, nor shall it be construed or treated as constituting, a payment in lieu of treble damages, fines, penalties, forfeitures or punitive

recoveries, nor have the States sought the imposition of any of the foregoing as part of this Settlement Agreement.

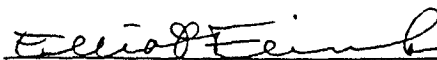
D. This Settlement Agreement is entered into and shall be construed in accordance with the laws of the State of Missouri.

AGREED AND CONSENTED TO:

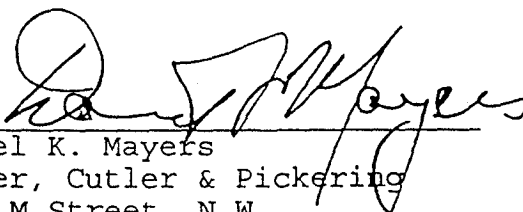
FOR AMERICAN CYANAMID COMPANY



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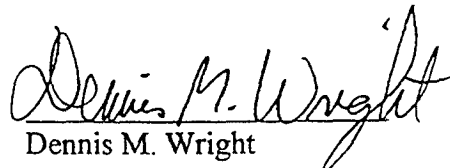
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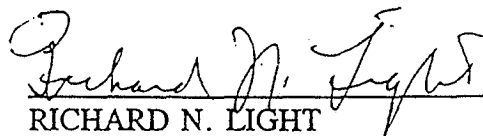
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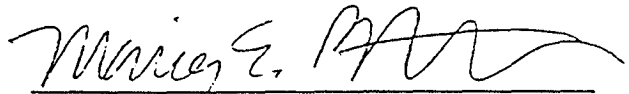
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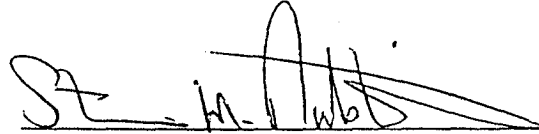
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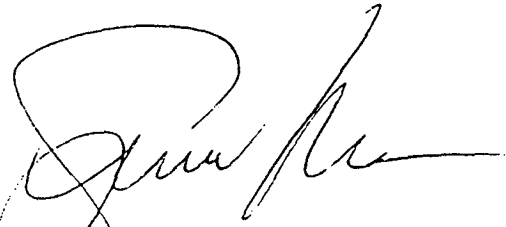
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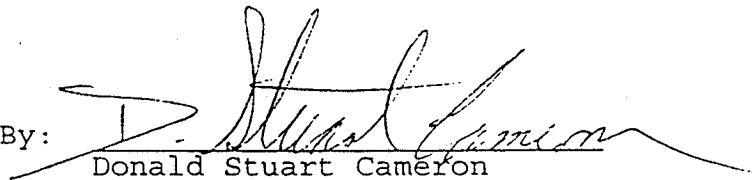
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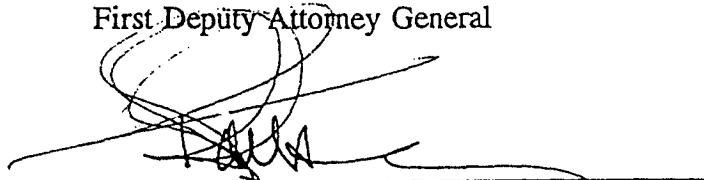

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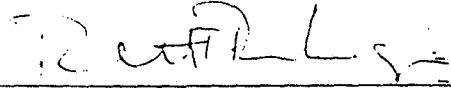
MARGERY S. BRONSTER
Attorney General of Hawaii

JOHN W. ANDERSON
First Deputy Attorney General

A handwritten signature in black ink, appearing to read "Ted Gamble Clause", is written over a horizontal line. The signature is somewhat stylized and includes a large circular flourish.

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ALAN G. LANCE
Attorney General of Idaho

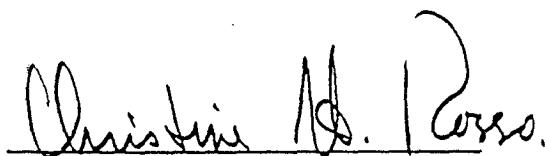


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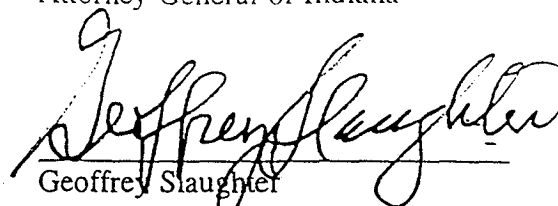
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Deputy Attorney General

Carole Doris
Chief, Public Advocacy Div.

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JEFFREY A. MODISETT
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Facsimile: (317) 232-7979

American Cyanamid Settlement Agreement

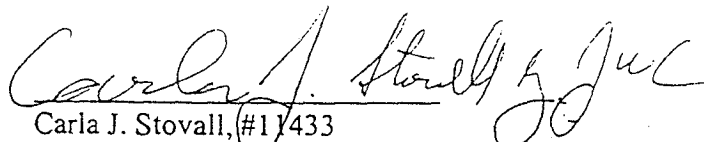
Respectfully submitted,

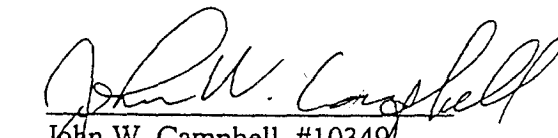
THOMAS J. MILLER
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DAVID R. SHERIDAN
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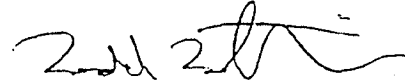


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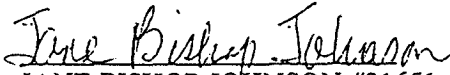
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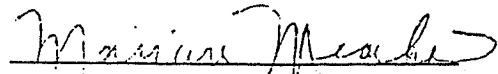

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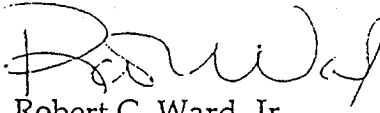
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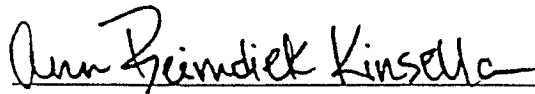
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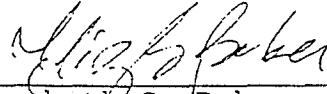
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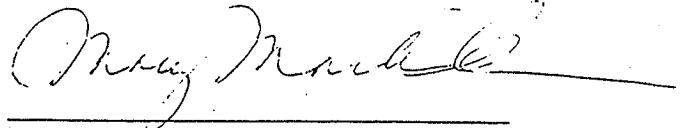
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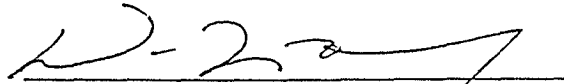
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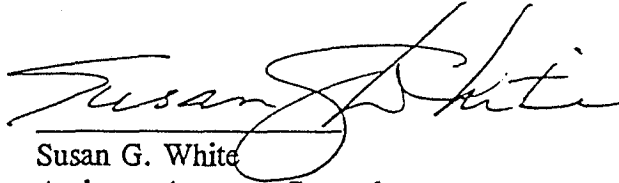
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A handwritten signature in cursive script, appearing to read "Susan G. White". The signature is written in black ink and is positioned above the typed name.

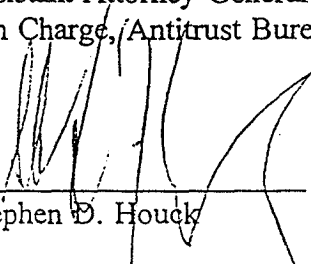
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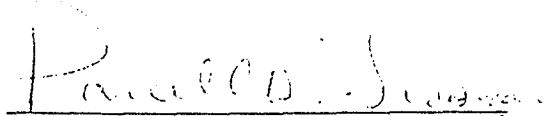
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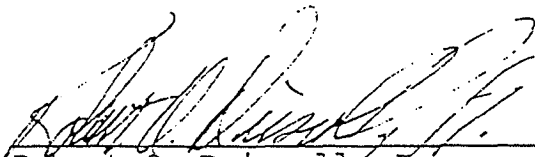
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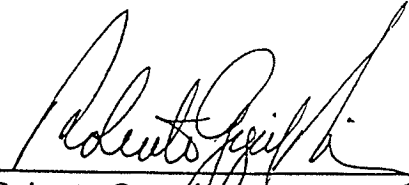
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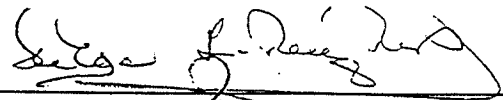
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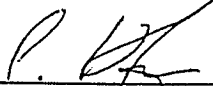
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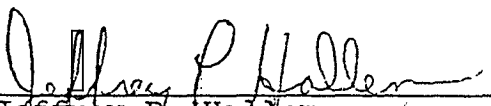
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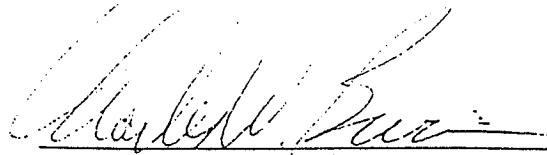
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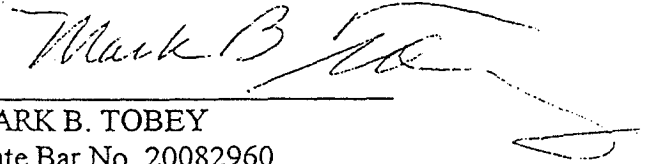
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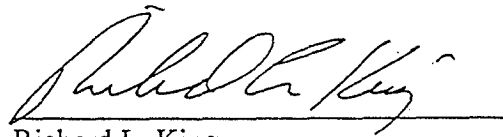
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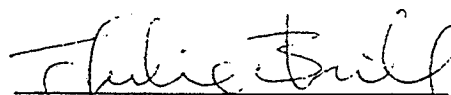


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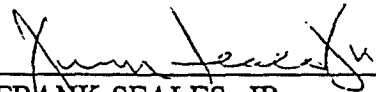



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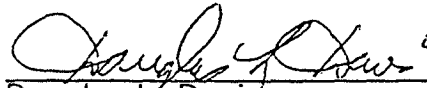
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