

THE STATE OF TEXAS  
Plaintiff

v.

EAGLE SHIELD, INC. AND  
SAM CASTER, INDIVIDUALLY,  
Defendants

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IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

92<sup>nd</sup> JUDICIAL DISTRICT

**AGREED FINAL JUDGMENT WITH PERMANENT INJUNCTION**

On this date, came on for hearing the above entitled and numbered cause in which the State of Texas is Plaintiff and Eagle Shield Inc., and Sam Caster, individually, are Defendants. Through their respective attorneys of record, the parties wish to make the following stipulations and agree to the entry of this final judgment.

It is stipulated that the parties have compromised and settled Plaintiff's claim for injunctive relief, court costs, penalties, investigative costs and attorney's fees.

It is further stipulated that Plaintiff and Defendants agree to and do not contest the entry of this judgment.

It is further stipulated that Sam Caster, a signatory hereto, is an officer of Eagle Shield, Inc; that he is authorized to enter into this judgment; and that he has read this Agreed Final Judgment with Permanent Injunction and agrees to the entry of the same.

It is further stipulated that the Defendant, Eagle Shield, Inc. admits that on the basis of scientific tests conducted on its behalf the electronic pest control device known as the Electracat which it marketed and sold in Texas is not effective in either the control or eradication of common household pests.

The court then proceeded to read the pleadings and stipulations of the parties, and it appearing to the Court that all parties agree to the entry of this judgment and that they have approved its entry by the signatures of their attorneys and officers below:

*[Handwritten signatures and stamps]*  
DISTRICT CLERK

**IT IS THEREFORE ORDERED, ADJUDGED and DECREED** by the Court that Defendant Eagle Shield, Inc., a corporation, its successors and assigns, Sam Caster, individually and as an officer of Eagle Shield, Inc. and defendants' agents, representatives, and employees directly or through any corporation, subsidiary, division, or other entity, in connection with the advertising, offering for sale, sale or distribution of any good or service are permanently enjoined as follows:

a. advertising, offering for sale or selling the Electracat or any other electronic pest control device.

b. making any representation regarding the characteristics, ingredients, uses or benefits of any good unless, at the time of making the representation, you possess and reasonably rely upon competent scientific evidence that substantiates such representation.

c. representing directly or by implication, that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have.

d. employing any testimonial or endorsement regarding a good's characteristics, ingredients, uses or benefits that is inconsistent with competent scientific evidence.

e. failing to maintain accurately the following records which may be inspected by Consumer Protection Division staff members upon fifteen (15) days notice: copies of all promotional, advertising and sales materials; documents relating to the publication of testimonials or endorsements; documents which substantiate, contradict or otherwise relate to any claim which is a part of the promotional, advertising, or sales materials disseminated by Defendants directly or through any business entity. Such documentation shall be retained by Defendants for a period of two (2) years from the last date any such promotional, advertising or sales material is disseminated.

**IT IS FURTHER ADJUDGED** that the State of Texas have and recover from Defendants Eagle Shield, Inc and Sam Caster, jointly and severally, the sum of \$125,000 for investigative costs.

**IT IS FURTHER ORDERED** that the judgment hereby rendered shall bear interest at the rate of 10% per annum from date of signature hereon until paid.

**IT IS FURTHER ORDERED** that the State of Texas have all writs of execution and other process necessary to enforce this judgment.

The Defendants having accepted service of this Agreed Permanent Injunction, no service therefore on the Defendants is necessary.

All costs of Court are taxed against the party incurring the same.

All relief not granted herein is hereby denied.

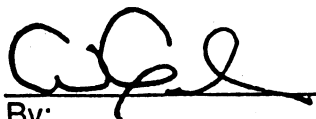
SIGNED this 24<sup>th</sup> day of January, 1991.

s/ Scott McCown

JUDGE PRESIDING

APPROVED AS TO FORM AND CONTENT:

DAN MORALES  
Attorney General Of Texas



By:  
WILLIAM O. GOODMAN  
Assistant Attorney General  
Assistant Chief for Litigation  
Consumer Protection Division  
State Bar No. 08160000

P.O. Box 12548  
Austin, Texas 78711-2548  
512-463-2021

BAUER, RENTZEL, MILLARD &  
HARDWICK



By:  
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State Bar No.

Attorneys for Defendants,  
Eagle Shield, Inc. and  
Sam Caster



SAM CASTER  
Individually, and as President,  
Eagle Shield, Inc.

2006 North Highway  
Grand Prairie, Texas 75050

NO. 91- 1355

THE STATE OF TEXAS  
Plaintiff

v.

EAGLE SHIELD, INC. AND  
SAM CASTER, INDIVIDUALLY,  
Defendants

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IN THE DISTRICT COURT

TRAVIS COUNTY, TEXAS

96<sup>th</sup> JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff the **State of Texas**, acting by and through Attorney General of Texas Dan Morales, complains of **Eagle Shield, Inc.** and **Sam Caster**, individually, Defendants, and for cause of action would respectfully show:

**JURISDICTION**

1. This action is brought by Attorney General Dan Morales, through his Consumer Protection Division, in the name of the State of Texas and is in the public interest under the authority granted him by §17.47 of the Texas Deceptive Trade Practices-Consumer Protection Act, TEX. BUS. & COM. CODE ANN. §17.41 *et seq.* (DTPA) upon the ground that Defendants have engaged in false, deceptive and misleading acts and practices in the course of trade and commerce as defined in, and declared unlawful by §§17.46(a) and (b) of the DTPA.

2. This action seeks to temporarily restrain and thereafter permanently enjoin Defendants from engaging in acts and practices more fully described below declared to be unlawful by the DTPA.

3. Additionally, this suit seeks civil penalties from Defendants as a result of their conduct herein alleged, pursuant to §17.47(c) of the DTPA. This suit also seeks restitution on behalf of identifiable persons, who suffered loss and damage as a result of Defendants' unlawful acts and practices as provided by §17.47(d) of the DTPA.

JUL 24  
MARCIA RODRIGUEZ, Secretary  
TO DISTRICT CLERK

4. Further, Attorney General Dan Morales seeks attorney's fees and investigative fees reasonable in relation to the efforts expended by his office in prosecuting this action and court costs as authorized by TEX. GOV. CODE §402.006 (c).

#### **PARTY DEFENDANTS AND SERVICE**

5. Defendant **Eagle Shield, Inc.** is a domestic corporation chartered by the State of Texas. Its registered agent is **Christopher H. Rentzel, who may be served** at the registered office of the corporation, **3745 Renaissance Tower, Dallas, Tx. 75270-2171.**

6. Defendant **Sam Caster** is the president of the defendant corporation. He formulates directs and controls the acts and practices of the corporate defendant, including the acts and practices herein set forth. **He may be served with process** at his home office and principal place of business at **2006 N. Hwy. 360, Grand Prairie, Tx. 75050, Dallas County, Texas.**

#### **VENUE**

7. Venue of this action lies in Travis County on the following grounds:

a. On the basis of TEX. CIV. PRAC. and REM. CODE §15.001 for the reason that the cause of action or a part thereof accrued in Travis County as alleged more fully below.

b. On the basis of Section 17.47(b) of the DTPA for the reason that the transaction which forms the basis of the cause of action brought against the Defendants occurred in Travis County as set forth more specifically below.

c. On the basis Section 17.47(b) of the DTPA for the reason that Defendants have done business in Travis County as set forth more specifically below.

#### **PUBLIC INTEREST**

8. By reason of the institution and operation of the unlawful practices set forth herein Defendant has and will cause immediate and irreparable injury, loss and damage to the State of Texas, and will also cause adverse effects to legitimate business enterprise which conducts its trade and commerce in a lawful manner in this

State. Therefore, the Attorney General of the State of Texas believes and is of the opinion that these proceedings are in the public interest.

### **TRADE AND COMMERCE**

9. Defendants are engaged in trade and commerce as that term is defined by §17.45(6) DTPA in that they are engaged in the manufacture, distribution, promotion, solicitation, advertisement and sale of pest control devices which they offer to the general public in the State of Texas.

### **ACTS OF AGENTS**

10. Whenever in this Petition it is alleged that Defendants did any act, it is meant that

- a. Defendants performed or participated in the act, or
- b. Defendants' officers, agents, or employees performed or participated in the act on behalf of and under the authority of the Defendants.

### **NOTICE BEFORE SUIT**

11. The Consumer Protection Division informed Defendants in general of the alleged unlawful conduct described below, at least seven days before filing suit, as may be required by §17.47(a) of the DTPA.

### **NATURE OF DEFENDANTS' CONDUCT**

12. Defendants are engaged in the advertising, offering for sale, sale and distribution of a product known as the "ElectraCat". The product is advertised as a non-chemical pest control device which purportedly produces "pulsed (uneven) high frequency vibrations that are stressful to pests." These "stressful vibrations" are distributed through house wiring, Model E-100, the skin of a metal building E-200, or through the minerals in the ground, E-300. Defendants tout that the device will rid farms, homes and businesses of roaches, spiders, crickets, fleas, ticks, ants, mice, rats, gophers, moles, snakes, scorpions and other pests. In truth and in fact, scientific tests

establish that the device emits no measurable vibrations, pulsed or otherwise, and that it does not in any measurable way either affect the behavior of or repel insects, arachnids, rodents or other common pests. The device is a hoax and stands on the same scientific footing as a perpetual motion machine.

13. Defendants market and distribute their product in the state of Texas and in other parts of the country through a multi-level sales organization using agents, referred to as "sales associates".

### DECEPTIVE TRADE PRACTICES

14. Defendants, in connection with the marketing of the Eagle Shield Electracat, disseminate, publish and distribute advertisements, promotional materials and videotapes for the purpose of promoting the sale of their product. These materials are commonly distributed by the sales associates to prospective purchasers and sales associates.

15. Through the use of promotional materials referred to in paragraph 14 and other sales and promotional materials, including scripted pitches, Defendants represented, directly and by implication, that:

- a. the Electracat produces pulsed high frequency vibrations that are stressful to pests;
- b. the Electracat will rid the infected area of roaches, spiders, crickets, fleas, ticks, ants, mice, rats, gophers, moles, snakes, scorpions, and other pests.
- c. the Electracat Model E-100 utilizes a buildings electrical grounding system to carry stressful vibrations into the pests' habitat.
- d. the Electracat Model E-200 utilizes the skin of a metal building to transmit the stressing frequency vibrations.
- e. the Electracat Model E-300 transmits vibrations through minerals in the ground.

16. In truth and in fact, contrary to Defendants representations set forth in Paragraph 15:



a. the Electracat does not produce any measurable high frequency vibrations. The Electracat produces electromagnetic energy at 60 and 120 Hertz frequency. 60 Hertz is the standard line frequency used in the United States. The Electracat, therefore, is no more effective in eradicating pests than a standard incandescent light bulb.

The foregoing conduct violates §17.46 (a) and (b) (5);

b. in laboratory tests conducted at Texas A& M University and in field tests conducted at Rockdale and Cameron, Texas involving roaches, the Electracat did not have any affect on the behavior of these pests. In a word, the Electracat is wholly ineffective as a pest control device or "stressing agent." See, **Exhibit 1: Gold, R., Report on Electracat, Texas A&M University (1990).**

The foregoing conduct violates §17.46 (a) and (b) (5);

d. inasmuch as the Electracat produces no known measurable physical output, other than electromagnetic energy found in all buildings and structures in the United States, no vibrations are distributed through household wiring, the skin of a metal building or through minerals in the ground.

The foregoing conduct violates §17.46 (a) and (b) (5)

### INJURY TO CONSUMERS

21. By means of the foregoing unlawful acts and practices, which were the producing cause of injury to consumers affected, Defendants have acquired money from identifiable persons to whom such money should be restored or who, in the alternative, are entitled to an award of damages.

### PRAYER

22. By reason of the institution and continued operation of the acts and practices described hereinabove, Defendants have violated and will continue to violate the laws as hereinabove alleged. Defendants, unless restrained by this Honorable Court, will continue violations of the laws of the State of Texas and immediate and irreparable injury, loss and damage will result to the State of Texas and to the general public.

23. **WHEREFORE, PREMISES CONSIDERED,** Plaintiff prays that Defendants be cited according to law to appear and answer herein; that after due

notice and hearing a TEMPORARY INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be issued restraining and enjoining Defendants Eagle Shield, Inc., a corporation, its successors and assigns, Sam Caster, individually and as an officer of Eagle Shield, Inc. and defendants' agents, representatives, and employees directly or through any corporation, subsidiary, division, or other entity, in connection with the advertising, offering for sale, sale or distribution of any good or service from making the following representations, doing the following acts and engaging in the following practices in the pursuit and conduct of trade or commerce within the State of Texas:

- a. advertising, offering for sale or selling the Electracat or any other electronic pest control device.
- b. making any representation regarding the characteristics, ingredients, uses or benefits of any good unless, at the time of making the representation, you possess and reasonably rely upon competent scientific evidence that substantiates such representation.
- c. representing directly or by implication, that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have.
- d. Employing any testimonial or endorsement regarding a good's characteristics, ingredients, uses or benefits that is inconsistent with competent scientific evidence.
- e. Failing to maintain accurately the following records which may be inspected by Consumer Protection Division staff members upon fifteen (15) days notice: copies of all promotional, advertising and sales materials; documents relating to the publication of testimonials or endorsements; documents which substantiate, contradict or otherwise relate to any claim which is a part of the promotional, advertising, or sales materials disseminated by Defendants directly or through any business entity. Such documentation shall be retained by Defendants for a period of two (2) years from the last date any such promotional, advertising or sales material is disseminated.

Plaintiff further prays for judgment against the Defendants, restoring all money or other property taken from identifiable persons by means of unlawful acts or practices, or in the alternative for damages to compensate for such losses.

And Plaintiff further prays for costs of Court, reasonable attorney fees pursuant to TEX GOV. CODE. §42.006 (c), and such other relief to which Plaintiff may be justly entitled.

DAN MORALES  
Attorney General of Texas

Will PRYOR  
First Assistant Attorney General

H. CLYDE FARRELL  
Chief, Consumer Protection Division

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WILLIAM O. GOODMAN  
Assistant Attorney General  
Assistant Chief  
Consumer Protection Division  
PO Box 12548  
Austin, TX 78711-2548  
(512) 463-2070  
Bar Card 08160000

STATE OF TEXAS       §  
COUNTY OF TRAVIS   §

BEFORE ME, the undersigned authority, on this day personally appeared **WILLIAM O. GOODMAN** who, after being by me duly sworn, upon his oath deposed and said:

"I am an Assistant Attorney General for the State of Texas and a member of the Consumer Protection Division and as such is authorized to make this affidavit. I have carefully read the allegations in the foregoing pleading. As required by §17.47(a) of the Consumer Protection Act, I have reason to believe that each and all of said allegations are true and correct."

\_\_\_\_\_  
**WILLIAM O. GOODMAN**  
Assistant Attorney General  
Consumer Protection Division

Subscribed and sworn to before me on the \_\_\_\_\_ day of \_\_\_\_\_, 1991.

\_\_\_\_\_  
Signature of Notary Public, State of Texas

\_\_\_\_\_  
Notary Public Stamp

# REPORT ON ELECTRACAT™

PREPARED BY

ROGER E. GOLD  
AND  
HARRY N. HOWELL

DEPARTMENT OF ENTOMOLOGY  
TEXAS A&M UNIVERSITY  
COLLEGE STATION TX

APRIL 6, 1990

## REPORT to EAGLE SHIELD

## I. Objective

To evaluate Electracat<sup>TM</sup> Model 100 under field conditions to determine the amount of reduction in German cockroach population caused by exposure to the device.

## II. Procedure

Two test sites were selected: Cordova Street Apartments, belonging to Rockdale Housing Authority, Rockdale, Texas, and West, North, and East Village Apartments, belonging to Cameron Housing Authority, Cameron, Texas. The buildings used were of brick veneer construction, and were of duplex, "four-plex", and single family arrangement. At Cameron, 85% of the buildings were duplexes and 15% were "4-plexes". In Rockdale, 76% were duplexes and 24% were single family dwellings.

In both locations the same 4 treatments were applied: 1) Electracat<sup>TM</sup> only, installed in the apartments by Sam Caster, President of Eagle Shield, Inc.; 2) Electracat<sup>TM</sup> along with an application of a pest control insecticide; (initially, Dursban LO<sup>R</sup> at 0.5% was applied at Rockdale, however, after 4 weeks, an application of Demon WP<sup>R</sup> at 0.2% was made. Only Demon WP<sup>R</sup> at 0.2% was applied in the Cameron apartments); 3) the same chemical application as in Treatment No. 2; 4) an untreated check.

In Rockdale, the Electracat<sup>TM</sup> only treatment consisted of 5 apartments, chemical only of 6 apartments, the combination of the two of 5 apartments and the untreated check of 4 apartments.— In the Cameron test, the Electracat<sup>TM</sup> only treatment consisted of 6 apartments, the chemical only treatment of 6 apartments, the combination treatment of 7 apartments and the untreated check of 6 apartments (Fig. 9).

Pre-treatment counts were conducted in all apartments by placing 6 Mr. Sticky<sup>R</sup> cockroach traps in each apartment for 24 hours. Five traps were placed in the kitchen: 1 each in the pantry, in an upper cabinet farthest from the refrigerator, in the cabinet above the stove, below the sink, and on the floor beside the refrigerator. One trap was placed in the bathroom on the floor between the toilet and next to the wall. The total number of German cockroaches per apartment was determined by summing the 6 trap counts (Fig. 1).

The treatments were arranged in an unbalanced, randomized block design with the pre-treatment counts used for blocking.

Within one week of the pre-treatment counts, Electracat<sup>TM</sup> devices were installed in Treatments 1 and 2 and the above described insecticide applications were applied in Treatments 2 and 3. Crack and crevice applications were

effected by use of a compressed airsprayer and were supervised by registered professional entomologists.

Post-treatment counts were made in the same manner as the pre-treatment counts. At Rockdale, post-treatment counts were conducted 1, 2, 4, 6, 8, 12, and 16 weeks post-treatment. At Cameron, post-treatment counts were conducted 1, 2, 4, and 12 weeks post-treatment.

### III. Results and Discussion

#### Rockdale

During the first three trapping periods at Rockdale, it became obvious that the Dursban LO<sup>R</sup> applications had not affected the German cockroach populations. For example, during the 1st and 2nd week post-treatments, all treatments showed an alternating reduction or increase in trap counts. By the 4th week, all treatments showed a statistically equal population reduction at ca. 40% (Fig. 1 and 2). During the 5th week post-treatment Demon WP<sup>R</sup> at 0.2% was applied to all apartments assigned to either chemical control treatment. Within 4 days, these apartments showed a 90% and an 86% population reduction. It can be considered that the chemical control treatments at Rockdale actually began with the 6th week post-treatment trapping period. Statistics on the Rockdale data contain the 6th, 8th, 12th, and 16th weeks only (Fig. 1, 2, 3, and 4).



These statistical tests indicate that Electracat<sup>TM</sup> + chemical control, with 95% reduction, and chemical control only, with 92.5% reduction, are statistically equal, and that the Electracat<sup>TM</sup> only, with 42.75% reduction, and the untreated check, with 41.75% reduction, are statistically equal to each other and statistically different from the two treatments containing chemical control (Fig. 3).

During the last trapping period, the Electracat<sup>TM</sup> + chemical control showed a 2% greater reduction in trap catch than did the chemical only. In the case of the Electracat<sup>TM</sup> only and the untreated check, there was an 18% difference in trap catch, with Electracat<sup>TM</sup> only showing a reduction in trap catch and the untreated check giving an increase of 10% in trap catch (Fig. 1).

#### Cameron

The only chemical application made in Cameron was with Demon WP<sup>R</sup> at 0.2%. The results through 12 weeks mirror those of the Rockdale test: chemical control only, with 88.8% reduction, was statistically equal to Electracat<sup>TM</sup> + chemical control, with 87% reduction; both were statistically different from Electracat<sup>TM</sup> only, with 24.20% increase, and the untreated check with a 24.2% increase. The Electracat<sup>TM</sup> only and the untreated check were statistically equal (Fig. 7).

During the last trapping period, Electracat<sup>TM</sup> + chemical treatment showed an 8% greater reduction in trap catch than did the chemical only treatment, with 92% vs. 84%. Electracat<sup>TM</sup> only showed a 205% increase in trap count, as opposed to a 101% increase in the untreated check, for a 104% difference between them (Fig. 5).

In neither test did the presence of an Electracat<sup>TM</sup> device in an apartment increase or decrease the number of German cockroaches trapped. Any statistically significant reduction in the number of German cockroaches trapped was due to the presence of a 0.2% application of Demon WP<sup>R</sup>. There was no statistical difference in the trap catch in the untreated check and the Electracat<sup>TM</sup> only apartments.

ELECTRA CAT

ROCKDALE

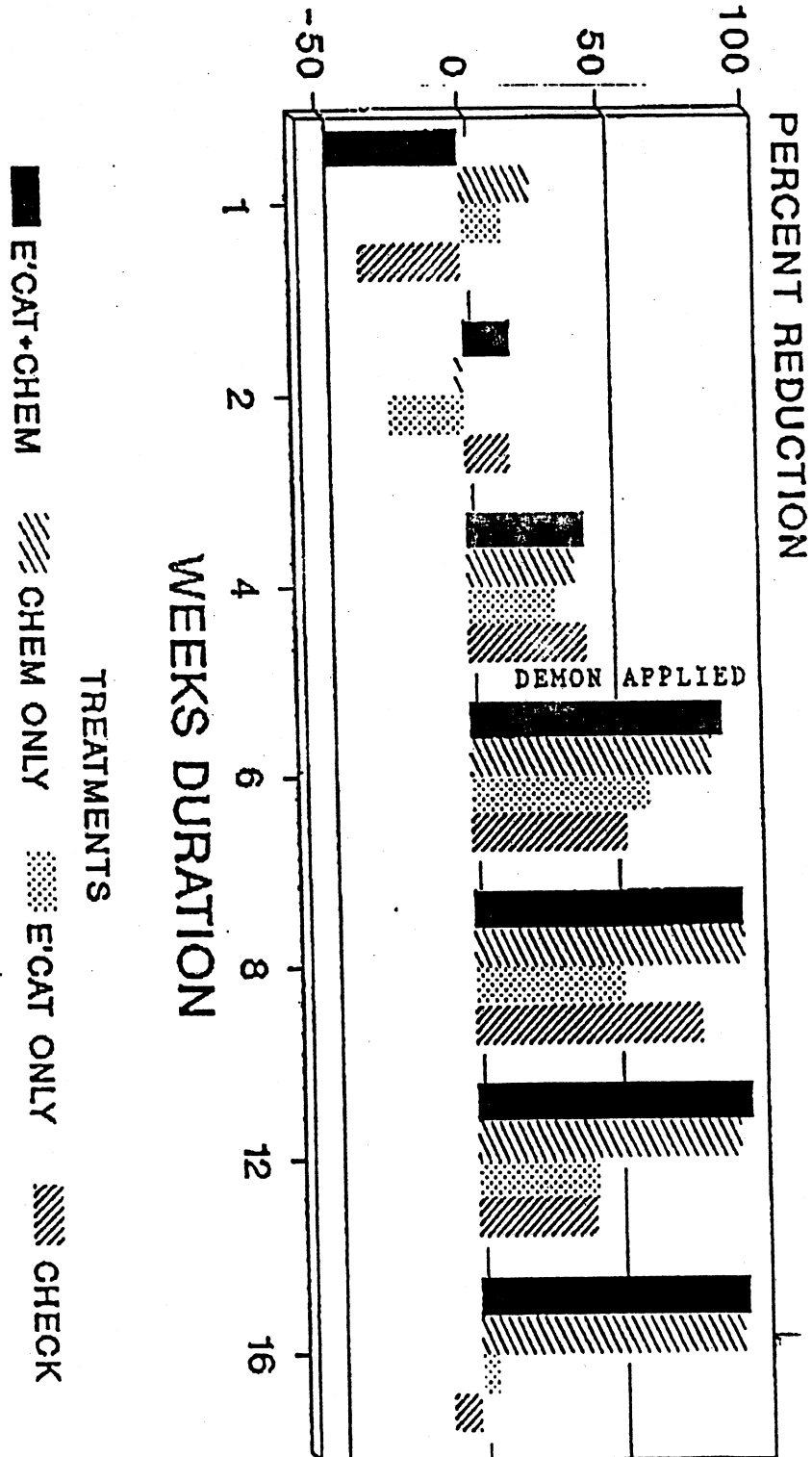
Fig. 1

TOTAL ADULTS AND NYMPHS PER 6 TRAPS

TRT	APT	PRE	1 WK	2 WK	4 WK	6 WK	8 WK	12 WK	16 WK
E/CAT+CHEM	142	49	122	33	33	15	1	2	OUT
	117	32	3	32	6	2	0	2	2
	152	15	<del>26</del>	14	18	7	5	2	2
	154	4	1	3	3	0	3	0	1
	134	7	4	6	1	0	0	0	0
	147	196				7	4	1	6
		AVG W/147	51				5	2	1
	AVG W/O 147	21	31	18	12				
	% REDUCTION		-46	18	43	90	96	98	96
CHEMICAL	153	396	320	481	273	59	16	28	28
	124	7	2	2	0	0	4	1	0
	126	45	25	22	13	6	0	0	0
	133	34	6	5	18	8	0	0	0
	140	13	15	7	6	0	0	0	0
	146	16	12	7	0	1	0	1	1
		AVG	85	63	87	52	12	3	5
	% REDUCTION		26	-3	39	86	96	94	94
ELECTRACAT ALONE	122	41	29	50	17	26	27	6	34
	147	196	140	239	99	OUT	OUT	OUT	OUT
	149	4	6	7	5	17	11	23	19
	129	27	54	51	62	37	64	61	99
	101	7	1	0	0	0	0	OUT	OUT
		AVG	55	46	69	37	20	26	30
	% REDUCTION		16	-26	33	64	54	45	8
UNTREATED CHECK	136	21	54	20	5	11	9	16	39
	128	58	52	43	23	25	OUT	OUT	OUT
	138	39	3	6	7	7	3	10	0
	135	18	52	12	20	3	0	5	OUT
	150	9	36	40	27	18	14	35	57
		AVG	29	39	24	16	13	7	17
	% REDUCTION		-36	17	43	56	78	43	-10

FIG. 2

# ELECTRACAT ROCKDALE TX



ROCKDALE TX

6, 8, 12 & 16 WEEKS

Fig. 3

Class	Levels	Values
WK	4	4 5 6 7
TRT	4	1 2 3 4

Analysis of Variance Procedure

Source	DF	Sum of Squares	Mean Square	F Value	Pr
Model	6	13223.50000	2203.91667	5.70	0.0
WK	3	2600.00000	866.66667	2.24	0.1
TRT	3	10623.50000	3541.16667	9.15	0.0
Error	9	3482.50000	386.94444		
Corrected Total	15	16706.00000			

T tests (LSD) for variable: Y

Alpha= 0.05 df= 9 MSE= 386.9444  
 Critical Value of T= 2.26  
 Least Significant Difference= 31.465

Means with the same letter are not significantly different

T Grouping	Mean	N	TRT
A	95.00	4	E'CAT+CHEM
A	92.50	4	CHEM ONLY
B	42.75	4	E'CAT ONLY
B	41.75	4	CHECK

Duncan's Multiple Range Test for variable: Y

Alpha= 0.05 df= 9 MSE= 386.9444

Number of Means      2      3      4  
 Critical Range      31.41 32.81 33.68

Means with the same letter are not significantly different

Duncan Grouping	Mean	N	TRT
A	95.00	4	E'CAT+CHEM
A	92.50	4	CHEM ONLY
B	42.75	4	E'CAT ONLY
B	41.75	4	CHECK

ROCKDALE TX

Fig. 4

6, 8, 12 & 16 WEEKS

Wilcoxon Scores (Rank Sums) for Variable Y  
Classified by Variable TRT

TRT	N	Sum of Scores	Expected Under H0	Std Dev Under H0	Mean Score
1	4	54.0	34.0	8.21583836	13.50000
2	4	46.0	34.0	8.21583836	11.50000
3	4	18.0	34.0	8.21583836	4.50000
4	4	18.0	34.0	8.21583836	4.50000

Average Scores were used for Ties

Kruskal-Wallis Test (Chi-Square Approximation)  
CHISQ= 11.733      DF= 3      Prob > CHISQ=

0.0084

Fig. 5

## ELECTRO-CAT

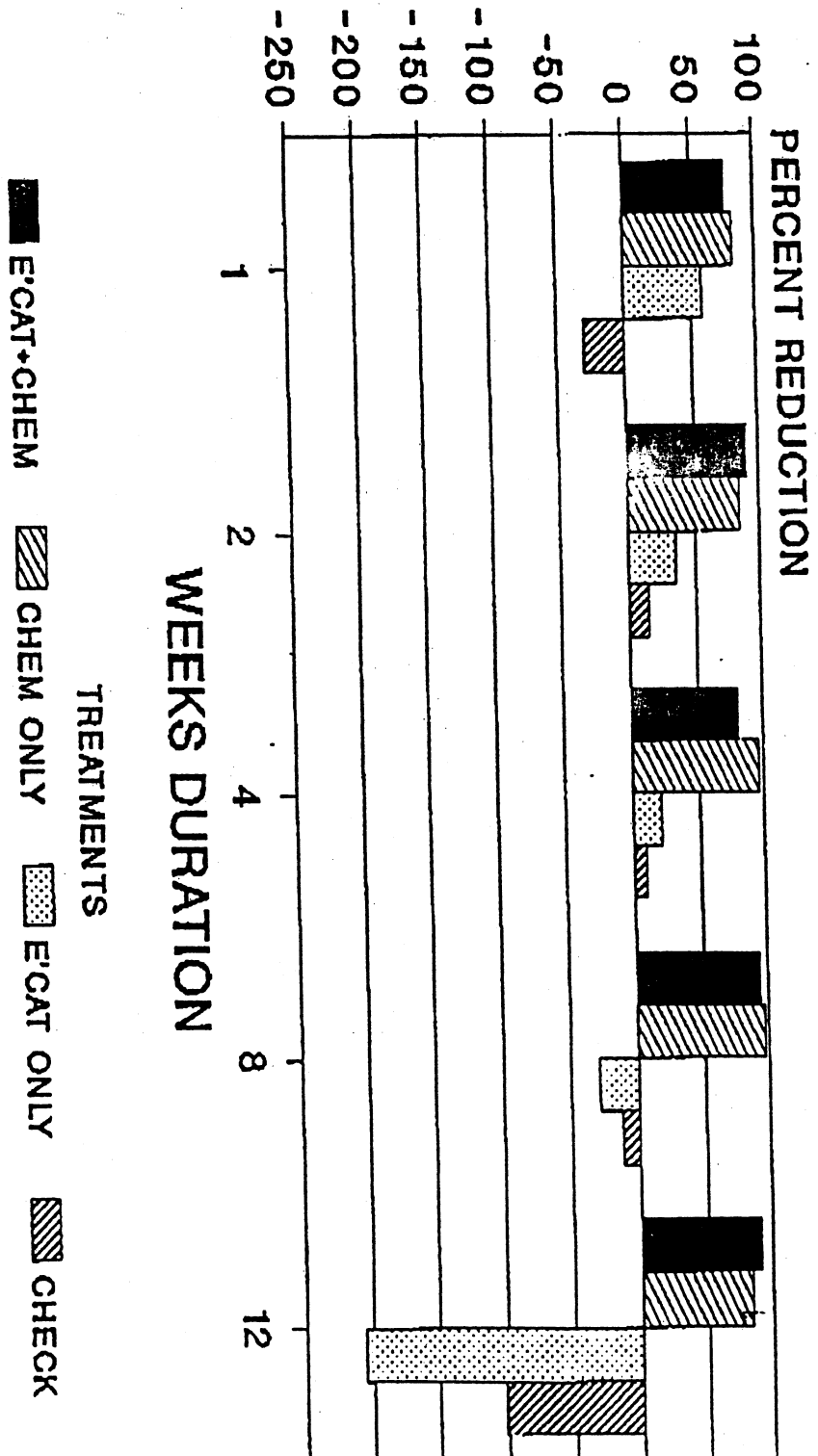
## CAMERON TX

## TOTAL ADULTS AND NYMPHS PER 6 TRAPS

APT	PRE	1 WK	2 WK	4 WK	8 WK	12 WK
<b>E'CAT+CHEM</b>						
55	17	2	5	7	2	0
56	3	3	0	1	0	0
118	61	24	5	10	8	6
136	100	12	0	7	1	3
139	6	4	6	3	0	1
145	3	0	0	0	0	4
148	3	0	2	8	0	1
AV	28	6	3	5	2	2
% REDUC		77	91	81	94	92
<b>CHEM</b>						
4	12	8	5	3	0	0
14	138	12	12	5	5	10
31	42	2	0	1	0	0
32	20	5	7	2	0	0
37	10	3	6	1	1	2
49	74	19	18	1	2	0
AVG	49	8	8	2	1	2
% REDUCTION		83	84	96	97	84
<b>E'CAT ONLY</b>						
120	5	4	4	2	3	18
134	9	6	3	2	20	9
138	3	4	3	0	0	1
140	11	11	5	20	46	49
141	146	49	100	117	152	237
142	3	1	0	0	8	60
AVG	30	13	19	24	38	62
% REDUCTION		58	35	20	-29	-205
<b>CHECK</b>						
38	5	5	1	0	1	6
40	17	19	19	16	22	19
45	3	5	4	1	10	33
117	89	163	98	115	127	220
119	30	5	8	7	10	31
133	11	4	4	2	5	2
AVG	26	34	22	24	29	52
% REDUCTION		-30	14	9	-13	-101

Fig. 6

# ELECTRACAT CAMERON TX





CAMERON TX

1, 2, 4, 8 & 12 WEEKS

Class	Levels	Values
WK	5	1 2 3 4 5
TRT	4	1 2 3 4

Analysis of Variance Procedure

Source	DF	Sum of Squares	Mean Square	F Value	Pr
Model	7	84315.95000	12045.13571	4.45	0.
WK	4	21475.80000	5368.95000	1.98	0.
TRT	3	62840.15000	20946.71667	7.74	0.
Error	12	32494.60000	2707.88333		
Corrected Total	19	116810.55000			

Duncan's Multiple Range Test for variable: X

Alpha= 0.05 df= 12 MSE= 2707.883

Number of Means      2      3      4  
 Critical Range    71.57 74.97 77.25

Means with the same letter are not significantly different

Duncan Grouping	Mean	N	TRT
A	88.80	5	CHEM ONLY
A	87.00	5	E'CAT+CHEM
B	-24.20	5	E'CAT ONLY
B	-24.20	5	CHECK

Fig. 8

## CAMERON TX.

1, 2, 4, 8 &amp; 12 WEEKS

Wilcoxon Scores (Rank Sums) for Variable X  
Classified by Variable TRT

TRT	N	Sum of Scores	Expected Under H0	Std Dev Under H0	
1	5	74.0	52.500000	11.4521315	14.
2	5	81.0	52.500000	11.4521315	16.
3	5	32.0	52.500000	11.4521315	6.
4	5	23.0	52.500000	11.4521315	4.

## Kruskal-Wallis Test (Chi-Square Approximation)

CHISQ= 14.668      DF= 3      Prob &gt; CHISQ= 0.0021

Fig. 9

CAMERON APARTMENTS				ROCKDALE APARTMENTS	
N/A	CHEM			E'CAT	
3	4			122	
N/A	CHEM			CHEM	CHEM
13	14			124	126
CHEM	CHEM			CK	N/A
31	32			128	130
CHEM	N/A			E+CHEM	E+CHEM
49	50			132	134
E'CAT	E'CAT			CK	CHEM
141	142			138	140
E+CHEM	E'CAT			CK	
139	140			136	
E+CHEM	N/A			E+CHEM	E+CHEM
145	146			142	144
N/A	E+CHEM			CHEM	
147	148			146	
N/A	CK			N/A	CK
39	40			148	150
CHEM	CK			E+CHEM	E+CHEM
37	38			152	154
E+CHEM	E+CHEM			E'CAT	E'CAT
55	56			101	103
CK	E+CHEM	CK	E'CAT	E+CHEM	E+CHEM
117	118	119	120	117	119
CK	E'CAT	N/A	E+CHEM	E'CAT	E'CAT
133	134	135	136	129	131
				CHEM	CK
				133	135
				N/A	E'CAT
				145	147
				E'CAT	N/A
				149	151
				CHEM	
				153	

**REPORT to EAGLE SHIELD****I. Objective**

To evaluate Electracat Model 200<sup>TM</sup> under laboratory conditions to determine the amount of increased movement in German cockroach populations caused by exposure to the device.

**II. Procedure**

Two-ply wood arenas, 2 ft. x 2 ft. x 2 ft. (w x l x h), were connected by a 4 in. x 4 in. x 13 ft. (w x h x l) runway. Both the arenas and the runways were covered by 1/4 in. clear plexiglas<sup>TM</sup>. On the outside wall of one of the arenas an Electracat Model 200<sup>TM</sup> was mounted; it was connected to a bare No. 12 copper wire affixed to the inside perimeter of the arena. Food and water were placed in both arenas and 100 each of male, female, and nymphal German cockroaches were placed in the arena containing the Electracat<sup>TM</sup> connection. The cockroaches were allowed to adjust to this environment for 24 hours. The Electracat<sup>TM</sup> devices in 3 of the arena pair treatments were connected to the electrical service, and the Electracat<sup>TM</sup> devices in 3 other arena pairs were not connected (controls). The 2 sets of 3 pairs of arenas were situated such that the energized Electracat<sup>TM</sup> devices were a minimum of 12 feet from any other arena. Temperature and relative humidity

sensors were installed in each chamber and that data recorded every hour.

At approximately the same time each day, the number of male, female, and nymphal German cockroaches in each arena and the number in each runway were visually counted. In the data summary, the 3 pairs containing the energized Electracat<sup>TM</sup> are designated Electracat 1A and 1B, Electracat 2A and 2B, and Electracat 3A and 3B; the 3 pairs containing the non-energized Electracat<sup>TM</sup> are designated control 1A and 1B, control 2A and 2B, and control 3A and 3B. The counts for the "A" arena are those within that box only; whereas, the counts for "B" include both the cockroaches in the runway and those in the non-Electracat<sup>TM</sup> containing box. In all cases the counts are totaled for graphing purposes (Annex A).

These counts were converted into percent migration data by dividing the number which had migrated from the Electracat<sup>TM</sup> chambers by the total number of cockroaches in the 2 chambers plus the runway. These percent migration counts were statistically analyzed to determine if there was a statistical difference between any of the 6 pairs of chambers, and if there was a statistical difference between the set of 3 with the Electracat<sup>TM</sup> energized and the control set.

### III. Results and Conclusions

When all 6 treatments (3 with Electracat<sup>TM</sup> energized and 3 without) are compared, the greatest migration occurred in a control chamber and the least migration occurred in an energized chamber (Fig. 1). When the energized group of 3 pairs of chambers is compared to the control set of 3 pairs there is no statistical difference between the average percent migration in either set (Fig. 2).

The presence or absence of an energized Electracat<sup>TM</sup> device did not increase or decrease the proportion of the population which migrated from that chamber to either the runway or to the other chamber. An average of 10% of the population migrated regardless of the treatment in these tests.

Temperature and relative humidity was recorded for each of the chambers hourly. This data was averaged over treatment and by day. The greatest difference observed between the Electracat<sup>TM</sup> chambers and the controls is 2°F. The energized Electracat<sup>TM</sup> does produce more heat than the non-energized Electracat<sup>TM</sup> devices affixed to the control chambers. This fact may be the source of the sometimes 2° difference in temperatures.

Fig. 1

PERCENT MIGRATION FROM ELECTRACAT CHAMBER

TREATMENT\*

DAY	E1	E2	E3	AVG	CK1	CK2	CK3	AV
1	4	11	10	8	8	20	7	1
4	4	11	22	12	10	17	5	1
5	6	9	16	10	10	6	8	
7	5	8	19	11	20	12	6	1
9	7	10	15	11	11	7	10	
11	2	6	9	6	13	8	61	2
12	3	7	17	9	15	8	16	1
13	3	8	17	9	10	3	13	
14	4	6	17	9	6	5	18	1
15	3	8	19	10	12	20	9	1
18	0	11	10	7	2	0	6	
19	3	10	13	9	7	6	0	
20	5	12	9	9	6	6	9	
21	3	19	17		8	0	17	
22	3	20	17	13		0	15	
25	3	17	14	11	4	0	18	
32	2	0	24	9	7	14	24	
39	2	0	18	7	25	33	34	
46	0	0	8	3	10	15	33	
53	0	0	0	0	0	33	40	
60	0	0	6	2	0	23	31	
67	30	21	31	27	20	47	48	
MEAN	4.2	8.8	14.9		9.6	12.9	19.4	
ACAT MEAN		9.3			ROL MEAN		14	

MEANS FOLLOWED BY THE SAME LETTER ARE NOT STATISTICALLY DIFFERENT AT THE 1% LEVEL

\*TREATMENT: E=ELECTRACAT ENERGIZED  
 CK=ELECTRACAT NOT ENERGIZED

Fig. 2

ANOVA FOR CHOICE CHAMBERS

Source	DF	Sum of Squares	Mean Square	F Value	Pr >
TRT	5	3098.765152	619.753030	6.62	0.0
Error	126	11795.500000	93.615079		
Corrected Total	131	14894.265152			

Duncan's Multiple Range Test for variable: Y

Number of Means	2	3	4	5	6
Critical Range	5.795	6.094	6.286	6.431	6.552

Means with the same letter are not significantly different.

Duncan Grouping	Mean	N	TRT
A	19.455	22	CHECK 3
B	14.909	22	E'CAT 3
B	12.864	22	CHECK 2
B	9.636	22	CHECK 1
B	8.818	22	E'CAT 2
C	4.182	22	E'CAT 1

TTEST PROCEDURE

Variable: Y

TRT	N	Mean	Std Dev	Std Error	Minimum	Maximum
1	22	9.303	5.279	1.12557165	0.000000	27.33333333
2	22	13.984	9.028	1.92493539	2.666667	38.33333333

Variances	T	DF	Prob> T
Unequal	-2.0996	33.9	0.0433
Equal	-2.0996	42.0	0.0418

For H0: Variances are equal, F' = 2.92 DF = (21,21) Prob>F' = 0.0175



CAUSE NO. 448,013

STATE OF TEXAS  
Plaintiff

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§

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

EAGLE SHIELD, INC., and  
SAM CASTER, Individually  
Defendants

331 st JUDICIAL DISTRICT

**JOINT MOTION TO MODIFY AGREED PERMANENT INJUNCTION**

NOW COME the State of Texas by and through Jim Mattox, Attorney General of the State of Texas, Plaintiff, represented herein by William O. Goodman, and Defendants, Eagle Shield, Inc., and Sam Caster, individually and as an officer of Eagle Shield, Inc. (hereinafter referred to as "Defendants") represented by Pam Reed, Attorney at Law and move for an Order modifying an Agreed Permanent Injunction previously granted herein and as grounds thereof would show the Court as follows:

1. On August 4, 1988, suit was filed by the Attorney General of Texas through his Consumer Protection Division against Eagle Shield, Inc. and Sam Caster, individually and as an officer of Eagle Shield, Inc. styled *State of Texas v. Eagle Shield, Inc., et al* , No.448,013 in the 331st Judicial District Court of Travis County, Texas.
2. On August 4,1988, the parties agreed to and signed an Agreed Final Judgment (hereafter Agreed Final Judgment ) which was signed by the Honorable Mace Thurman, Judge Presiding, on August 4, 1988 which disposed of the matters in controversy between the parties.
3. This Court has continuing jurisdiction of this injunction pursuant to §17.47 (e) of the Texas Deceptive Trade Practices Act and at common law. See *St. Louis Southwester Ry. Co of Texas v City of Tyler*, 422 S.W.2d 780 (Texas 1966).
4. The parties desire to modify the Agreed Permanent Injunction for the reasons stated in the Second Compromise Settlement Agreement which is attached hereto incorporated herein as Exhibit "A."

*John D. ...*  
JUDGE  
TRAVIS COUNTY, TEXAS

**WHEREFORE**, movants request that, on hearing of this motion the Court amend its prior Order dated August 4, 1988 granting an Agreed Permanent Injunction by entering the Order Amending Agreed Permanent Injunction which has been agreed to by the parties and which is attached hereto as Exhibit "B."

JIM MATTOX  
Attorney General Of Texas



---

WILLIAM O. GOODMAN  
Assistant Attorney General  
Assistant Chief for Litigation  
Consumer Protection Division  
State Bar No. 08160000

P.O. Box 12548  
Austin, Texas 78711-2548  
512-463-2021

PAM REED  
Attorney at Law



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Pam Reed  
1630 One American Center  
Austin, Texas 78701  
State Bar No. 16684500

Attorney for:  
Eagle Shield, Inc.,  
Sam Caster, individually and as  
President of Eagle Shield, Inc.

CAUSE NO. 448,013

STATE OF TEXAS  
Plaintiff

EAGLE SHIELD, INC., and  
SAM CASTER, Individually  
Defendants

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

331 st JUDICIAL DISTRICT

## SECOND COMPROMISE SETTLEMENT AGREEMENT

NOW COME the State of Texas by and through Jim Mattox, Attorney General of the State of Texas, Plaintiff, represented herein by William O. Goodman, and Defendants, Eagle Shield, Inc., and Sam Caster, individually and as an officer of Eagle Shield, Inc. (hereinafter referred to as "Defendants") represented by Pam Reed, Attorney at Law and move for and agree to this Compromise Settlement Agreement (hereinafter referred to as "Settlement" or "Agreement"):

WHEREAS, on August 4, 1988, suit was filed by the Attorney General of Texas through his Consumer Protection Division against Eagle Shield, Inc. and Sam Caster, individually and as an officer of Eagle Shield, Inc. styled State of Texas v. Eagle Shield, Inc., *et al*, No.448,013 in the 331st Judicial District Court of Travis County, Texas; and

WHEREAS, on August 4, 1988, the parties agreed to and signed an Agreed Final Judgment (hereafter Agreed Final Judgment ) which was signed by the Honorable Mace Thurman, Judge Presiding, on August 4, 1988 which disposed of the matters in controversy between the parties; and

WHEREAS, subsequent to the signing of the Agreed Final Judgment Defendants began marketing a thermostat device under the trade name "Comfort Module" and proceeded to make energy savings claims regarding said device; and

WHEREAS, subsequent to the signing of the Agreed Final Judgment Plaintiff, the State of Texas gave notice to the Defendants that in their marketing of the Comfort Module Defendants made claims that exceed substantiation ; and

**WHEREAS**, Defendants deny that they made claims in connection with the marketing of the Comfort Module that were not fully substantiated.

**NOW THEREFORE**, it is hereby stipulated and agreed by and between the parties by and through their attorneys that the above described claims and controversies be settled without regard to the truth or falsity of the same, but agree to a compromise and settlement to avoid continued substantial litigation pursuant to the following agreement:

1. This agreement is in compromise and settlement of:
    - a. all claims arising out of the above described conduct that the Attorney General of the State of Texas may have against Defendants under its authority pursuant to the Texas Deceptive Trade Practices-Consumer Protection Act, and or the Agreed Final Judgment ,and
    - b. all claims arising out of the above described conduct that the Defendants' may have pursuant to the Agreed Final Judgment previously signed, or any other law or statute relevant thereto.
  2. This agreement does not compromise or settle any claims that the Attorney General may have in connection with the marketing of Eagle Fund.
  3. The parties agree that within ten (10) days of the signing of this Second Compromise and Settlement Agreement that they will file a Joint Motion and Order to Modify the Agreed Permanent Injunction (hereafter Joint Motion), the contents of which have been agreed to by the parties and which is attached hereto and incorporated herein as Exhibit "A." Defendants represent that a duly authorized officer of Eagle Shield, Inc. has read the Joint Motion and that said officer, by affixing his signature to this Settlement Agreement, represents that he is authorized to execute the same; that he understands fully its terms and that he binds Eagle Shield, Inc., to the entry of the Amended Permanent Injunction.
  4. In the event a court having jurisdiction of the matter grants the Joint Motion, Defendants agree that they will not subsequently petition or move the Court to amend the Agreed Permanent Injunction for a period of fourteen (14) months from the date of the signing of this Second Compromise and Settlement Agreement.
- Joint Motion to Modify Agreed Permanent Injunction Page 4

5. The parties agree that in the event the court, after hearing on the Joint Motion refuses to enter the Order attached hereto as Exhibit "A", then the parties are free to pursue against each other any remedy in law or in equity to which they may be entitled. It is further specifically understood and agreed that this Second Compromise and Settlement Agreement does not in any way preclude or prohibit the Attorney General from taking whatever legal action it deems appropriate against Defendants for acts, practices or conduct occurring subsequent to the signing of this Second Compromise and Settlement Agreement.

#### **ATTORNEYS FEES**

6. Contemporaneously with the execution of this Settlement Agreement, Defendants, without admitting or denying the truth or falsity of any of Plaintiff's claims as stated above, but in order to avoid litigation, agree to tender to the Attorney General's Office a cashiers check in the sum of \$35,212.50 as Investigative Costs.

#### **MISCELLANEOUS**

7. This Settlement Agreement shall be incorporated in its entirety by way of an exhibit to the Joint Motion. The Joint Motion and Order shall be signed contemporaneously with the execution of this Settlement Agreement.

8. This Settlement Agreement is to be governed by and construed under the laws of the State of Texas.

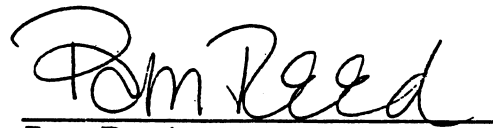
9. This Settlement Agreement may be executed in multiple original counterparts with the same force and effect as if all signatures were set forth upon a single instrument.

10. If any provision of this Settlement Agreement is or becomes invalid, illegal or unenforceable in any respect, the remaining provisions hereof shall not be in any way affected or impaired thereby.

EXECUTED THIS 26<sup>th</sup> DAY OF April,  
1989.

JIM MATTOX  
Attorney General Of Texas

PAM REED  
Attorney at Law

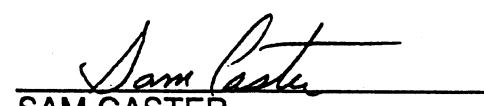


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Attorney for:  
Eagle Shield, Inc.,  
Sam Caster, individually and as  
President of Eagle Shield, Inc.



SAM CASTER  
2006 North Highway 360  
Grand Prairie, Texas 75050

Individually and as President of  
Eagle Shield, Inc.

STATE OF TEXAS  
Plaintiff

V.

EAGLE SHIELD, INC., and  
SAM CASTER, Individually  
Defendants

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

331 st JUDICIAL DISTRICT

**ORDER AMENDING AGREED PERMANENT INJUNCTION**

On the \_\_\_\_\_ day of April 1989 came on to be heard the Joint Motion to Modify Agreed Permanent Injunction filed by the State of Texas, Plaintiff and Eagle Shield, Inc., and Sam Caster, Defendants. The parties appeared by and through their respective attorneys of record and announced to the court that they have reached a compromise and settlement agreement as to the matters contained herein and desire that the Court enter this Order Amending the Agreed Permanent Injunction and give effect to such agreement.

After considering the pleadings, evidence, and arguments of counsel the Court finds that:

The Court has jurisdiction over the parties and subject matter of this cause.

The Court having reviewed the Compromise Settlement Agreement of the Parties attached hereto and incorporated herein as Exhibit "A" finds that the parties through their respective attorneys of record have considered and agreed to the making and entry of this Order amending the Agreed Permanent Injunction reflecting such settlement agreement, prior to the taking of any testimony, without trial or adjudication of any issue of fact or law herein, and without any admission of any party with respect to any issue of fact or law, and finding that the Defendants by entering into this Order Amending Agreed Permanent Injunction do not in any way admit any of the allegations made by the Plaintiff herein, but deny the same;

**IT IS THEREFORE ORDERED**, that the Agreed Permanent Injunction previously entered herein on August 4, 1988 is amended to read as follows:

**" IT IS THEREFORE ORDERED, ADJUDGED and DECREED** by the Court that Defendant Eagle Shield, Inc., a corporation, its successors and assigns, Sam Caster, individually and as an officer of Eagle Shield, Inc. and defendants' agents, representatives, and employees directly or through any corporation, subsidiary, division, or other entity, in connection with the advertising, offering for sale, sale or distribution of the foil shield insulation device variously known as Eagle Shield Radiant Barrier or any other home insulation material as home insulation material is defined by 16 CFR §460.2 are permanently enjoined as follows:

1. Representing, directly or by implication, any energy savings, fuel savings or utility cost savings that may be derived from the use of any product unless, at the time of making the representation, you possess and reasonably rely upon competent scientific evidence that substantiates such representation.

2. Until such time as you can establish to the satisfaction of the Attorney General or to this Court, upon application to modify this injunction, by competent scientific evidence the energy-savings claims made for its products, Defendants shall make no representation regarding energy savings, fuel savings, or utility cost savings for its products other than that

a. Defendants may represent that installation of the Eagle Shield Radiant Barrier may result in annual utility cost savings of between 3% and 8%, hereinafter; and

b. Defendants may represent that the installation of the Eagle Shield Comfort Module™ may result in annual utility cost savings of between 6% and 16% if and only if the disclosures required by paragraph 3 are made; and

c. Defendants may represent that the installation of the Eagle Shield Comfort Module™ and the Radiant Barrier combined may result in annual utility cost savings of between 8% and 23% if and only if the disclosures required by paragraph 3 are made; and

d. The savings ranges identified in subparagraphs a, b, and c shall be referred to herein as the "permitted ranges."



3. Where the results of any test required by this Agreed Permanent Injunction or the permitted ranges are used in connection with representations of energy savings, fuel savings or utility cost savings, all advertising and other sales promotional materials that contain the representation shall also clearly and conspicuously make the following disclaimers in exactly the following language in substantially similar format in at least the same type point size as the largest type point size in the text of any and all advertising or sales promotional materials:

a. "Your actual savings may vary. Find out why in the sellers fact sheet on R-values."

b.

## Annual Utility Savings

Your Savings may vary depending on how you presently set your thermostat, the age and condition of your home and your energy use for lights and appliances. The savings ranges below are the maximum savings you can expect with the installation of the Radiant Barrier and or Comfort Module.™

**3% to 8% Radiant Barrier Alone**  
Savings range with properly installed radiant barrier.

**6% to 12% Comfort Module™ Single Setback/Setup**

To achieve these savings, the Comfort Module™ must be programmed to provide a 5° setback/setup period of at least 12 hours For example:

<b>Cooling</b>		<b>Heating</b>	
75°	4 hours per day	75°	4 hours per day
80°	12 hours per day	70°	12 hours per day
75-80°	8 hours per day	75-70°	8 hours per day

**8% to 16% Comfort Module™ Dual Setback/Setup**

To achieve these savings, the Comfort Module™ must be programmed to provide one setback/setup period of 7° for 7 or more hours and one setback/setup period of 5° for at least 8 hours For example:

<b>Cooling</b>		<b>Heating</b>	
75°	4 hours per day	75°	4 hours per day
80°	8 hours per day	68°	15 hours per day
82°	7 hours per day	75-70°	5 hours per day
75-80°	4 hours per day		

**8% to 23% Combined Radiant Barrier and Comfort Module in Dual Setback/Setup Mode**

To achieve these savings requires the proper installation of the radiant barrier and the use of the Comfort Module in the Dual Setback/Setup mode with a 5° setup/setback of at least 16 hours a day.

c. The disclaimer required in paragraph 3( b) above shall be made in Helvetica Standard with boldface and boxes as indicated.

4. Making any representations regarding energy savings, fuel savings or utility cost savings that are inconsistent with the permitted ranges or that are inconsistent with competent scientific evidence. For the purposes of this Agreed Permanent Injunction by way of illustration only and not limitation the use of the words "significantly reduce," "dramatically reduce," "greatly reduce" and words of similar import are deemed inconsistent with the permitted ranges.
5. Employing any testimonial or endorsement regarding a product's quality for energy savings, fuel savings or utility cost savings that is inconsistent with the permitted ranges or that is inconsistent with competent scientific evidence.
6. Employing any testimonial or endorsement regarding a product's quality for energy savings, fuel savings, utility cost savings or any other attribute unless it is clearly and conspicuously disclosed that the person making the testimonial or endorsement is affiliated or connected with or a sales associate for Eagle Shield if in fact that is the case.
7. Misrepresenting, in any manner, the purpose, procedure, results or conclusions of any test or survey pertaining to the energy saving, utility cost saving or energy consumption characteristics of any product.
8. Reciting, quoting or using the results or conclusions of any test or survey pertaining to the energy saving, utility cost saving or fuel saving of any product without clearly and conspicuously disclosing that the organization or individual who conducted the test does not endorse the product nor vouch for any claim for the energy saving characteristics of the product unless in fact that is the case.
9. Making any reference to the National Aeronautics and Space Administration (NASA) whether through words or photographs without clearly and conspicuously making the following disclosure: "Eagle Shield, Inc. is not in anyway affiliated with, nor are any Eagle Shield, Inc. products endorsed by NASA."

10. Representing, directly or by implication, that the Eagle Shield Radiant Barrier or any other radiant barrier material used for home insulation is a significant new technology developed by NASA or words of similar import.
11. Representing, directly or by implication, that Eagle Shield, Inc. has sponsorship, approval, status, affiliation, or connection with another person or organization when it does not.
12. Causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another.
13. Employing or using the Better Business Bureau logo "pledged to arbitrate" or any other Better Business Bureau logo unless and until Eagle Shield, Inc. is a member of the local Better Business Bureau in all areas in which it markets its product.
14. Representing directly or by implication that the National Energy Specialists Association (NESA), a trade association, is an independent consumer organization, or that it is the Better Business Bureau of the energy industry, or that it is a consumer watchdog group, or any other representation that implies that NESA develops or enforces product standards for the protection of the consumer.
15. Misrepresenting, directly or by implication, the percentage of the total heat gain or loss for a space that is attributable to the heat gain or loss through the ceiling. For the purposes of this Agreed Permanent Injunction it is a misrepresentation to claim that more than 15% of the heat gain or 20% of the heat loss is through the ceiling in a residence unless and until the provisions of paragraph one (1) are complied with.
16. Misrepresenting or disparaging, directly or by implication, the performance, characteristics, or benefits of other insulating materials and or building products.
17. Failing to comply with the Federal Trade Commission regulation, "Labeling and Advertising of Home Insulation," 16 CFR § 460.1 *et seq.*

18. Representing directly or by implication that the installation of the radiant barrier will prolong the useful life of heating or air conditioning equipment unless and until the conditions of paragraph one (1) are complied with.

19. Employing any device that demonstrates the principle of radiant barriers without disclosing orally and in writing the following: "This box demonstrates the principle of radiant barriers. Temperature differentials found between the two sections of the box are not representative of the temperature variations that will occur when the barrier is installed in a residence."

20. Representing directly or by implication that the savings resulting from the installation of the product will pay for the product over a specified period of time.

21. Making or extending a guarantee or warranty that directly or by implication guarantees specific energy savings or utility cost savings over a specified period of time.

22. Representing that a guarantee or warranty confers or involves rights or remedies which it does not have or involve. For the purposes of this Agreed Permanent Injunction it is such a misrepresentation to describe a warranty as a satisfaction guarantee if you do not disclose that in fact there are conditions that restrict a full refund of the purchase price.

23. Employing an satisfaction guarantee or warranty of any type unless the following notice is clearly and conspicuously disclosed in at least 12 point type:

"Notice: This conditional satisfaction guarantee is not a guarantee of any specific energy savings or of a specific payback period.

It is simply a mechanism whereby a percentage of gross sales has been set aside to fund claims which may be made under this warranty. This is a limited warranty. Important restrictions apply. For example, in order to make a claim you must submit all utility bills for one year prior to purchase and for three years following purchase. Read the warranty carefully for other restrictions."

24. Making any representations regarding the warranty or satisfaction guarantee that are inconsistent with the permitted range or scientific evidence as ordered in paragraph one (1).

25. Misrepresenting, directly or by implication, the potential income to be earned by becoming a sales associate for Eagle Shield, Inc.

26. Employing a commission structure wherein a sales associate receives a commission or any other benefit or credit for purchases made by that sales associate.

27. Failing to maintain accurately the following records which may be inspected by Consumer Protection Division staff members upon fifteen (15) days notice: copies of all promotional, advertising and sales materials; documents relating to the publication of testimonials or endorsements; documents which substantiate, contradict or otherwise relate to any claim which is a part of the promotional, advertising, or sales materials disseminated by Defendants directly or through any business entity. Such documentation shall be retained by Defendants for a period of two (2) years from the last date any such promotional, advertising or sales material is disseminated.

28. Failing to distribute within 10 days of the date of this Order Amending Agreed Permanent Injunction, a copy of this Order to all present personnel, agents, representatives, or sales associates having sales, advertising or policy responsibilities with respect to the subject matter of the Order Amending Agreed Permanent Injunction; or entering into an employment or agency contract with any such person for a period of one year from the date of this Order Amending Agreed Permanent Injunction without first providing that person a copy of this Order Amending Agreed Permanent Injunction."

**IT IS FURTHER ORDERED** that the Attorney General have and recover of and from Eagle Shield, Inc., and Sam Caster, jointly and severally the sum of \$35,212.50 as investigative costs.

All costs of Court are taxed against the party incurring the same.

The Defendants having accepted service of this injunction, no service therefore on the Defendants is necessary.

The parties are allowed such writs or processes as may be necessary in the collection or enforcement of this Order All relief not expressly given is denied.

SIGNED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 1989.

\_\_\_\_\_  
JUDGE PRESIDING

**Agreed as to Form and Substance**

JIM MATTOX  
Attorney General Of Texas



\_\_\_\_\_  
WILLIAM O. GOODMAN  
Assistant Attorney General  
Assistant Chief for Litigation  
Consumer Protection Division  
State Bar No. 08160000

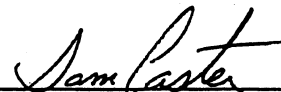
P.O. Box 12548  
Austin, Texas 78711-2548  
512-463-2021

PAM REED  
Attorney at Law



\_\_\_\_\_  
PAM REED  
1630 One American Center  
Austin, Texas 78701  
State Bar No. 16684500

Attorney for:  
Eagle Shield, Inc.,  
Sam Caster, individually and as  
President of Eagle Shield, Inc.



\_\_\_\_\_  
SAM CASTER  
2006 North Highway 360  
Grand Prairie, Texas 75050

Individually and as President of  
Eagle Shield, Inc.

CAUSE NO. 448,013

STATE OF TEXAS  
Plaintiff

V.

EAGLE SHIELD, INC., and  
SAM CASTER, Individually  
Defendants

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

331 JUDICIAL DISTRICT

**AGREED FINAL JUDGMENT**

On the 4 day of AUGUST, 1988 came on to be heard the above-entitled and numbered cause, wherein the State of Texas is Plaintiff and Eagle Shield, Inc., and Sam Caster are Defendants. The parties appeared by and through their respective attorneys of record and announced to the court that they have reached a compromise and settlement agreement as to the matters contained herein and desire that the Court enter this Agreed Judgment and give effect to such agreement; and the Court having reviewed the settlement agreement, then proceeded to confirm the settlement agreement of the parties, attached hereto and incorporated herein as Exhibit "A," and it appearing to the Court that the parties hereto, through their respective attorneys, have considered and agreed to the making and entry of this Agreed Final Judgment reflecting such settlement agreement, prior to the taking of any testimony, without trial or adjudication of any issue of fact or law herein, and without any admission of any party with respect to any issue of fact or law, and finding that the Defendant by entering into this Agreed Judgment does not in any way admit any of the allegations made by the Plaintiff herein, but denies the same;

**IT IS THEREFORE ORDERED, ADJUDGED and DECREED** by the Court that Defendant Eagle Shield, Inc., a corporation, its successors and assigns, Sam Caster, individually and as an officer of Eagle Shield, Inc. and defendants' agents, representatives, and employees directly or through any corporation, subsidiary, division, or other entity, in connection with the advertising, offering for sale, sale or distribution of the foil shield insulation device variously known as Eagle Shield Radiant Barrier or any other home insulation material as home insulation material is defined by 16 CFR §460.2 are permanently enjoined as follows:

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1. Representing, directly or by implication, any energy savings, fuel savings or utility cost savings that may be derived from the use of any product unless, at the time of making the representation, you possess and reasonably rely upon competent scientific evidence that substantiates such representation.

Until such time as you can establish to the satisfaction of the Attorney General or to this Court, upon application to modify this injunction, by competent scientific evidence the energy-savings claims made for its products, Defendants shall make no representation regarding energy savings, fuel savings, or utility cost savings for its products other than that Defendants may represent that installation of the Eagle Shield Radiant Barrier may result in annual utility cost savings of between 3% and 8%, hereinafter "permitted range."

Where the results of any test required by this Agreed Permanent Injunction or the permitted range are used in connection with representations of energy savings, fuel savings or utility cost savings, all advertising and other sales promotional materials that contain the representation must also clearly and conspicuously make the following disclaimer: "Your actual savings may vary. Find out why in the sellers fact sheet on R-values."

2. Making any representations regarding energy savings, fuel savings or utility cost savings that are inconsistent with the permitted range or that are inconsistent with competent scientific evidence. For the purposes of this Agreed Permanent Injunction by way of illustration only and not limitation the use of the words "significantly reduce," "dramatically reduce," "greatly reduce" and words of similar import are deemed inconsistent with the permitted range.

3. Employing any testimonial or endorsement regarding a product's quality for energy savings, fuel savings or utility cost savings that is inconsistent with the permitted range or that is inconsistent with competent scientific evidence.

4. Employing any testimonial or endorsement regarding a product's quality for energy savings, fuel savings, utility cost savings or any other attribute unless it is clearly and conspicuously disclosed that the person making the testimonial or endorsement is affiliated or connected with or a sales associate for Eagle Shield if in fact that is the case.

5. Misrepresenting, in any manner, the purpose, procedure, results or conclusion of any test or survey pertaining to the energy saving, utility cost saving or energy consumption characteristics of any product.
6. Reciting, quoting or using the results or conclusions of any test or survey pertaining to the energy saving, utility cost saving or fuel saving of any product without clearly and conspicuously disclosing that the organization or individual who conducted the test does not endorse the product nor vouch for any claim for the energy saving characteristics of the product unless in fact that is the case
7. Making any reference to the National Aeronautics and Space Administration (NASA) whether through words or photographs without clearly and conspicuously making the following disclosure: "Eagle Shield, Inc. is not in anyway affiliated with, nor are any Eagle Shield, Inc. products endorsed by NASA."
8. Representing, directly or by implication, that the Eagle Shield Radiant Barrier or any other radiant barrier material used for home insulation is a significant new technology developed by NASA or words of similar import.
9. Representing, directly or by implication, that Eagle Shield, Inc. has sponsorship, approval, status, affiliation, or connection with another person or organization when it does not.
10. Causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another.
11. Employing or using the Better Business Bureau logo "pledged to arbitrate" or any other Better Business Bureau logo unless and until Eagle Shield, Inc. is a member of the local Better Business Bureau in all areas in which it markets its product.
12. Representing directly or by implication that the National Energy Specialists Association (NESA), a trade association, is an independent consumer organization, or that it is the Better Business Bureau of the energy industry, or that it is a consumer watchdog group, or any other representation that implies that NESA develops or enforces product standards for the protection of the consumer.

13. Misrepresenting, directly or by implication, the percentage of the total heat gain or loss for a space that is attributable to the heat gain or loss through the ceiling. For the purposes of this Agreed Permanent Injunction it is a misrepresentation to claim that more than 15% of the heat gain or 20% of the heat loss is through the ceiling in a residence unless and until the provisions of paragraph one (1) are complied with.

14. Misrepresenting or disparaging, directly or by implication, the performance, characteristics, or benefits of other insulating materials and or building products.

15. Failing to comply with the Federal Trade Commission regulation, "Labeling and Advertising of Home Insulation," 16 CFR § 460.1 *et seq.*

16. Representing directly or by implication that the installation of the radiant barrier will prolong the useful life of heating or air conditioning equipment unless and until the conditions of paragraph one (1) are complied with.

17. Employing any device that demonstrates the principle of radiant barriers without disclosing orally and in writing the following: "This box demonstrates the principle of radiant barriers. Temperature differentials found between the two sections of the box are not representative of the temperature variations that will occur when the barrier is installed in a residence."

18. Representing directly or by implication that the savings resulting from the installation of the product will pay for the product over a specified period of time.

19. Making or extending a guarantee or warranty that directly or by implication guarantees specific energy savings or utility cost savings over a specified period of time.

20. Representing that a guarantee or warranty confers or involves rights or remedies which it does not have or involve. For the purposes of this Agreed Permanent Injunction it is such a misrepresentation to describe a warranty as a satisfaction guarantee if you do not disclose that in fact there are conditions that restrict a full refund of the purchase price..

Employing an satisfaction guarantee or warranty of any type unless the following notice is clearly and conspicuously disclosed in at least 12 point type:

"Notice: This conditional satisfaction guarantee is not a guarantee of any specific energy savings or of a specific payback period.

It is simply a mechanism whereby a percentage of gross sales has been set aside to fund claims which may be made under this warranty. This is a limited warranty. Important restrictions apply. For example, in order to make a claim you must submit all utility bills for one year prior to purchase and for three years following purchase. Read the warranty carefully for other restrictions."

21. Making any representations regarding the warranty or satisfaction guarantee that are inconsistent with the permitted range or scientific evidence as ordered in paragraph one (1).
22. Misrepresenting, directly or by implication, the potential income to be earned by becoming a sales associate for Eagle Shield, Inc.
23. Employing a commission structure wherein a sales associate receives a commission or any other benefit or credit for purchases made by that sales associate.
24. Failing to maintain accurately the following records which may be inspected by Consumer Protection Division staff members upon fifteen (15) days notice: copies of all promotional, advertising and sales materials; documents relating to the publication of testimonials or endorsements; documents which substantiate, contradict or otherwise relate to any claim which is a part of the promotional, advertising, or sales materials disseminated by Defendants directly or through any business entity. Such documentation shall be retained by Defendants for a period of two (2) years from the last date any such promotional, advertising or sales material is disseminated.
25. Failing to distribute within 10 days of the date of this Agreed Final Judgment, a copy of this Agreed Final Judgment to all present personnel, agents, representatives, or sales associates having sales, advertising or policy responsibilities with respect to the subject matter of the Agreed Final Judgment; or entering into an employment or agency contract with any such person for a period of two years from the date of this Agreed Final Judgment without first providing that person a copy of this Agreed Final Judgment.

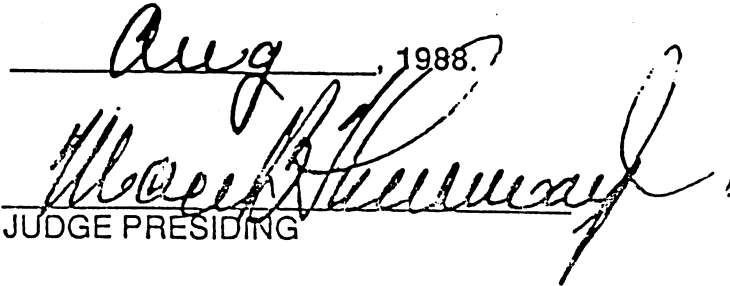
IT IS FURTHER ORDERED that the Attorney General have and recover of and from Eagle Shield, Inc., and Sam Caster, jointly and severally the sum of \$32,500~~0~~.00 as investigative costs.

All costs of Court are taxed against the party incurring the same.

The Defendants having accepted service of this injunction, no service therefore on the Defendants is necessary.

The parties are allowed such writs or processes as may be necessary in the collection or enforcement of this Judgment. All relief not expressly given is denied.

SIGNED THIS 4 DAY OF Aug, 1988.

  
JUDGE PRESIDING

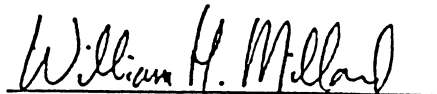
JIM MATTOX  
Attorney General Of Texas



By:  
WILLIAM O. GOODMAN  
Assistant Attorney General  
Assistant Chief for Litigation  
Consumer Protection Division  
State Bar No. 08160000

P.O. Box 12548  
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512-463-2021

BAUER, RENTZEL, MILLARD &  
HARDWICK



By:  
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Suite 630  
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State Bar No. 14055100

Attorneys for Defendants,  
Eagle Shield, Inc. and  
Sam Caster



SAM CASTER  
Individually, and as President,  
Eagle Shield, Inc.

2006 North Highway  
Grand Prairie, Texas 75050

CAUSE NO. \_\_\_\_\_

STATE OF TEXAS  
Plaintiff

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

EAGLE SHIELD, INC., and  
SAM CASTER, Individually  
Defendants

\_\_\_\_\_ JUDICIAL DISTRICT

**COMPROMISE SETTLEMENT AGREEMENT**

NOW COME the State of Texas by and through Jim Mattox, Attorney General of the State of Texas, Plaintiff, represented herein by William O. Goodman, and Defendants, Eagle Shield, Inc., and Sam Caster, individually and as an officer of Eagle Shield, Inc. (hereinafter referred to as "Defendants") and move for and agree to this Compromise Settlement Agreement (hereinafter referred to as "Settlement" or "Agreement"):

WHEREAS, on \_\_\_\_\_, 1988, suit was filed by the Attorney General of Texas through his Consumer Protection Division against Eagle Shield, Inc. and Sam Caster, individually and as an officer of Eagle Shield, Inc. styled State of Texas v. Eagle Shield, Inc., *et al*, No. \_\_\_\_\_ in the \_\_\_\_\_ Judicial District Court of Travis County, Texas.

WHEREAS, by this action the State of Texas pursuant to the Texas Deceptive Trade Practices--Consumer Protection Act is alleging that Defendants are engaging in false, misleading and deceptive acts and practices in connection with the distributing, marketing and sale of a foil shield insulation device variously known as Eagle Shield Radiant Barrier, to wit: falsely representing energy savings, fuel savings, utility cost savings and other misrepresentations regarding the benefits that may accrue by installation of the device all in violation of Tex. Bus & Comm Code Ann. §17.46 *et seq.*;

WHEREAS, Defendants deny that they have engaged in or are engaging in false, misleading or deceptive acts and practices in connection with the distribution, marketing, and sale of the Eagle Shield Radiant Barrier within the State of Texas.;

**NOW THEREFORE**, It is hereby stipulated and agreed by and between the parties by and through their attorneys that the above entitled action be settled as to the claims by the State of Texas against Defendants, which claims the Defendants deny without regard to the truth or falsity of any allegations of the original petition, but agree to a compromise and settlement to avoid continued substantial litigation pursuant to the following agreement:

1. This agreement is in compromise and settlement of all claims arising out of the above described conduct that the Attorney General of the State of Texas may have against Defendants under its authority pursuant to the Texas Deceptive Trade Practices--Consumer Protection Act.

2. The Defendants, Eagle Shield, Inc., and Sam Caster, individually and as an officer of Eagle Shield, Inc., agree to be enjoined by entering into an agreed permanent injunction enjoining Defendants and their agents, representatives, and employees from:

A. Representing, directly or by implication, any energy savings, fuel savings or utility cost savings that may be derived from the use of any product unless, at the time of making the representation, you possess and reasonably rely upon competent scientific evidence that substantiates such representation.

Until such time as you can establish to the satisfaction of the Attorney General or to this Court, upon application to modify this injunction, by competent scientific evidence the energy-savings claims made for its products, Defendants shall make no representation regarding energy savings, fuel savings or utility cost savings for its products other than that Defendants may represent that installation of the Eagle Shield Radiant Barrier may result in annual utility cost savings of between 3 and 8%, hereinafter "permitted range."

Where the results of any test required by this Agreed Permanent Injunction or the permitted range are used in connection with representations of energy savings, fuel savings or utility cost savings, all advertising and other sales promotional materials that contain the representation must also clearly and conspicuously make the following disclaimer: "Your actual savings may vary. Find out why in the sellers fact sheet on R-values."

B. Making any representations regarding energy savings, fuel savings or utility cost savings that are inconsistent with the permitted range or that are inconsistent with competent scientific evidence. For the purposes of this Agreed Permanent Injunction, by way of illustration only and not by limitation, the use of the words "significantly reduce," "dramatically reduce," "greatly reduce" and words of similar import are deemed inconsistent with the permitted range.

C. Employing any testimonial or endorsement regarding a product's quality for energy savings, fuel savings or utility cost savings that is inconsistent with the permitted range or that is inconsistent with competent scientific evidence.

D. Employing any testimonial or endorsement regarding a product's quality for energy savings, fuel savings, utility cost savings or any other attribute unless it is clearly and conspicuously disclosed that the person making the testimonial or endorsement is affiliated or connected with or a sales associate for Eagle Shield if in fact that is the case.

E. Misrepresenting, in any manner, the purpose, procedure, results, or conclusion of any test or survey pertaining to the energy saving, utility cost saving or energy consumption characteristics of any product.

F. Reciting, quoting or using the results or conclusions of any test or survey pertaining to the energy saving, utility cost saving or fuel saving of any product without clearly and conspicuously disclosing that the organization or individual who conducted the test does not endorse the product nor vouch for any claim for the energy saving characteristics of the product unless in fact that is the case.

G. Making any reference to the National Aeronautics and Space Administration (NASA) whether through words or photographs without clearly and conspicuously making the following disclosure: "Eagle Shield, Inc. is not in anyway affiliated with, nor are any Eagle Shield, Inc. products endorsed by NASA."



H. Representing, directly or by implication, that the Eagle Shield Radiant Barrier or any other radiant barrier material used for home insulation is a significant new technology developed by NASA or words of similar import.

I. Representing, directly or by implication, that Eagle Shield, Inc. has sponsorship, approval, status, affiliation, or connection with another person or organization when it does not.

J. Causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another.

K. Employing or using the Better Business Bureau logo "pledged to arbitrate" or any other Better Business Bureau logo unless and until Eagle Shield, Inc. is a member of the local Better Business Bureau in all areas in which it markets its product.

L. Representing directly or by implication that the National Energy Specialists Association (NESA), a trade association, is an independent consumer organization, or that it is the Better Business Bureau of the energy industry, or that it is a consumer watchdog group, or any other representation that implies that NESA develops or enforces product standards for the protection of the consumer.

M. Misrepresenting, directly or by implication, the percentage of the total heat gain or loss for a space that is attributable to the heat gain or loss through the ceiling. For the purposes of this Agreed Permanent Injunction it is a misrepresentation to claim that more than 15% of the heat gain or 20% of the heat loss is through the ceiling in a residence unless and until the conditions of paragraph 2 are complied with.

N. Misrepresenting or disparaging, directly or by implication, the performance, characteristics, or benefits of other insulating materials and or building products.

O. Failing to comply with the Federal Trade Commission Regulation, "Labeling and Advertising of Home Insulation," 16 CFR § 460.1 *et seq.*

P. Representing directly or by implication that the installation of the radiant barrier will prolong the useful life of heating or air conditioning equipment unless and until the conditions of paragraph 2 are complied with.

Q. Employing any device that demonstrates the principle of radiant barriers without disclosing orally and in writing the following: "This box demonstrates the principle of radiant barriers. Temperature differentials found between the two sections of the box are not representative of the temperature variations that will occur when the barrier is installed in a residence."

R. Representing directly or by implication that the savings resulting from the installation of the product will pay for the product over a specified period of time.

S. Making or extending a guarantee or warranty that directly or by implication guarantees specific energy savings or utility cost savings over a specified period of time.

T. Representing that a guarantee or warranty confers or involves rights or remedies which it does not have or involve. For the purposes of this Agreed Permanent Injunction it is such a misrepresentation to describe a warranty as a satisfaction guarantee if you do not disclose that in fact there are conditions that restrict a full refund of the purchase price.

U. Employing any satisfaction guarantee or warranty of any type unless the following notice is clearly and conspicuously disclosed in at least 12 point type:

"Notice: This conditional satisfaction guarantee is not a guarantee of any specific energy savings or of a specific payback period.

It is simply a mechanism whereby a percentage of gross sales has been set aside to fund claims which may be made under this warranty. This is a limited warranty. Important restrictions apply. For example, in order to make a claim you must submit all utility bills for one year prior to purchase and for three years following purchase. Read the warranty carefully for other restrictions."

V. Making any representations regarding the warranty or satisfaction guarantee that are inconsistent with the permitted range or scientific evidence as ordered in paragraph 2.

W. Misrepresenting, directly or by implication, the potential income to be earned by becoming a sales associate for Eagle Shield, Inc.

X. Employing a commission structure wherein a sales associate receives a commission or any other benefit or credit for purchases made by that sales associate.

Y. Failing to maintain accurately the following records which may be inspected by Consumer Protection Division staff members upon fifteen (15) days notice: copies of all promotional, advertising and sales materials; documents relating to the publication of testimonials or endorsements; documents which substantiate, contradict or otherwise relate to any claim which is a part of the promotional, advertising, or sales materials disseminated by Defendants directly or through any business entity. Such documentation shall be retained by Defendants for a period of two (2) years from the last date any such promotional, advertising or sales material is disseminated.

Z. Failing to distribute within 10 days from the date of this Agreed Final Judgment, a copy of this Agreed Final Judgment to all present personnel, agents, representatives, or sales associates having sales, advertising or policy responsibilities with respect to the subject matter of the Agreed Final Judgment; or entering into an employment or agency contract with any such person for a period of two years from the date of this Agreed Final Judgment without first providing that person a copy of this Agreed Final Judgment.

#### **ATTORNEYS FEES**

3. Contemporaneously with the execution of this Settlement Agreement, Defendants, without admitting or denying the truth or falsity of any allegations of the Plaintiff's Original Petition, but in order to avoid litigation, agree to tender to the Attorney General's Office a cashiers check in the sum of \$32,500.00 as Investigative Costs.

MISCELLANEOUS

4. This Settlement Agreement shall be incorporated in its entirety by way of an exhibit to the Agreed Final Judgment which is attached hereto as Exhibit "A". The Agreed Final Judgment shall be signed contemporaneously with the execution of this Settlement Agreement.
5. This Settlement Agreement is to be governed by and construed under the laws of the State of Texas.
6. This Settlement Agreement may be executed in multiple original counterparts with the same force and effect as if all signatures were set forth upon a single instrument.
7. If any provision of this Settlement Agreement is or becomes invalid, illegal or unenforceable in any respect, the remaining provisions hereof shall not be in any way affected or impaired thereby.

EXECUTED THIS 1st DAY OF August, 1988.

JIM MATTOX  
Attorney General Of Texas



WILLIAM O. GOODMAN  
Assistant Attorney General  
Assistant Chief for Litigation  
Consumer Protection Division  
State Bar No. 08160000

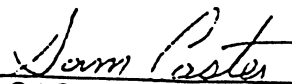
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BAUER, RENTZEL, MILLARD &  
HARDWICK



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Attorneys for:  
Eagle Shield, Inc.,  
Sam Caster, individually and as  
President of Eagle Shield, Inc.



SAM CASTER  
2006 North Highway 360  
Grand Praire, Texas 75050

Individually and as President of  
Eagle Shield, Inc.

CAUSE NO. 448,013

STATE OF TEXAS  
Plaintiff

V.

EAGLE SHIELD, INC. and  
SAM CASTER, individually  
Defendants

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

331 JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, THE STATE OF TEXAS, hereinafter called Plaintiff acting by and through Attorney General JIM MATTOX, complaining of and against SAM CASTER, individually and EAGLE SHIELD, INC. hereinafter called Defendants, and for cause of action would respectfully show the Court the following:

**JURISDICTION**

1. This suit is brought by Attorney General Jim Mattox, through his Consumer Protection Division in the name of the State of Texas under the authority granted to him by §17.47 of the Texas Deceptive Trade Practices Act, TEX. BUS. & COMM. CODE ANN. §17.41 *et seq.* [hereinafter "DTPA"] upon the ground that Defendants have engaged in false, misleading and deceptive acts and practices in the conduct of trade or commerce as defined and declared unlawful by §17.46(a) and (b) of the DTPA.

2. This action seeks to permanently restrain and enjoin Defendants from engaging in acts and practices more fully described below declared to be unlawful by the DTPA.

3. Additionally, this suit seeks civil penalties from Defendants as a result of their conduct herein alleged, pursuant to §17.47 (c) of the DTPA. This suit also seeks restitution on behalf of identifiable persons who suffered loss and damage as a result of Defendants' unlawful acts and practices as provided by §17.47(d) of the DTPA.

FILED

AUG 4 8 43 AM '88

*John D. [Signature]*

4. Further, Attorney General Jim Mattox seeks attorney's fees reasonable in relation to the efforts expended by his office in prosecuting this action and court costs as authorized by TEX. GOV. CODE §402.006 (c).

#### **PARTIES DEFENDANT AND SERVICE**

5. Defendant **Sam Caster** is the president of the corporate defendant Eagle Shield, Inc. He formulates directs and controls the acts and practices of the corporate defendant, including the acts and practices herein set forth. He may be served with process at his home office and principal place of business 2006 N. Hwy. 360, Grand Prairie, Texas 75050, Dallas County, Texas.

6. Defendant Eagle Shield, Inc. is a corporation chartered by the State of Texas. Its registered agent is **Christopher H. Rentzel**, who may be served at the registered office of the corporation, 3745 Renaissance Tower, Dallas, Texas 75270-2171.

#### **VENUE**

7. Venue of this action lies in Travis County on the following grounds:
- a. On the basis of Texas Civil Practices and Remedies Code §15.001 V.T.C.A. for the reason that the cause of action or a part thereof accrued in said county as alleged more fully below.
  - b. On the basis of Section 17.47(b) of the Texas Consumer Protection Act for the reason that the transaction which forms the basis of the cause of action brought against the Defendants occurred in Travis County as set forth more specifically below.

#### **PUBLIC INTEREST**

8. By reason of the institution and operation of the unlawful practices set forth herein Defendants have and will cause immediate and irreparable injury, loss and damage to the State of Texas, and will also cause adverse effects to legitimate business enterprise which conducts its trade and commerce in a lawful manner in this State. Therefore, the Attorney General of the State of

Texas believes and is of the opinion that these proceedings are in the public interest.

#### **TRADE AND COMMERCE**

9. Defendants are engaged in trade and commerce as that term is defined by §17.45(6) DTPA in that they are engaged in the manufacture, distribution, promotion, solicitation, advertisement and sale of radiant barrier insulation which they offer to the general public in the State of Texas.

#### **NOTICE BEFORE SUIT**

10. At least seven (7) days before instituting this action, the Consumer Protection Division informed Defendants herein in general of the alleged unlawful conduct of which complaint is made as required by §17.47(a) of the Consumer Protection Act.

#### **EXHIBITS**

11. Pursuant to the provisions of TEX. R. CIV. P. 59, all written instruments attached to this pleading and referred to as exhibits are deemed a part of this pleading for all purposes.

#### **ACTS OF AGENTS FOR DEFENDANTS**

12. Whenever in this petition it is alleged that Defendants Sam Caster and Eagle Shield, Inc. did any act or thing, it is meant that the officers, agents, or employees of said defendants performed or participated in such act or thing and in each instance the officers, agents, or employees of Sam Caster and Eagle Shield, Inc. were then authorized to and did in fact act on behalf of Defendants herein. Specifically, the Defendant Sam Caster participated personally in the wrongful acts and omissions alleged, and personally performed, authorized or ratified the deceptive acts and practices of which complaint is made herein.

#### **NATURE OF DEFENDANTS' CONDUCT**

13. Defendants are engaged in the advertising, offering for sale, sale and distribution of a product known as the "Eagle Shield Radiant Barrier" (hereinafter sometime referred to as "radiant barrier" or "product ") The product is advertised as a residential energy-savings device that will greatly reduce residential utility bills. The product is home insulation as "home insulation" is

defined by 16 CFR §460.2, Federal Trade Commission Regulation, Labeling and Advertising of Home Insulation.

14. Defendants market and distribute their product in the state of Texas and throughout the rest of the country through a multi-level sales organization using agents, referred to as "sales associates.". Sales associates sell the radiant barrier product by holding meetings in locations such as hotels as well as selling directly in the home of prospective purchasers.

#### **DECEPTIVE TRADE PRACTICES**

15. Defendants, in connection with the marketing of the Eagle Shield Radiant Barrier, disseminate, publish and distribute advertisements, promotional materials and promotional videotapes for the purpose of promoting the sale of their product. These materials are commonly distributed by the sales associates to prospective purchasers and sales associates.

16. Among the advertisements and other sales promotional materials disseminated by Defendants are the materials identified as Exhibits A-B which are attached.

17. Through the use of promotional materials referred to in paragraphs 11 and 12 and other sales and promotional materials, including scripted pitches Defendants represented directly and by implication, that:

a. Eagle Shield, Inc is endorsed by or a member of the Better Business Bureau, Dunn and Bradstreet, Chamber of Commerce and NASA;

b. all purchasers of Eagle Shield products can avail themselves of the Better Business Bureau Arbitration Service;

c. the Eagle Shield radiant barrier is an important, significant and unique new invention developed by NASA and "brought to earth" by Eagle Shield;

d. 93% of summer heat gain in a residence is caused by solar radiation conducted through the ceiling and roof into living areas;



- e. 50% to 75% of winter heat loss in a residence is caused by radiant heat conducted through the ceiling and roof into attic areas;
- f. Traditional mineral, organic, fibrous or cellular insulation materials, storm windows and caulking effectively reduce heat gain in summer by only 7% and heat loss in winter by only 25%-50%;
- g. the Eagle Shield Radiant Barrier will reduce radiant heat gain in a residence by up to 93% in summer and reduce radiant heat loss by up to 50% in winter;
- h. in order to save energy and reduce utility bills, the Eagle Shield Radiant Barrier is needed on all homes, even those containing attic insulation with an R value of R-26 or greater;
- i. the Eagle Shield Radiant barrier when installed in a typical residence will significantly, dramatically or greatly reduce utility bills;
- j. a homeowner installing the Eagle Shield Radiant Barrier will typically save between 18%-40% on his or her utility bills;
- k. a homeowner installing Eagle Shield Radiant Barrier will prolong the useful life of his or her heating and air conditioning equipment;
- l. competent scientific tests prove the energy savings claims made for the Eagle Shield Radiant Barrier;
- m. the Eagle Shield Radiant Barrier because it is double sided will double the energy savings that can be expected from a single sided radiant barrier;
- n. the Eagle Shield Radiant Barrier was tested and proved effective by the Oak Ridge Federal Lab, the Tennessee Valley Authority, the Florida Solar Energy Center, the University of Mississippi, Northeastern Illinois University and Texas A&M University;
- o. the demonstration employing the black box proves the energy savings claims made for the Eagle Shield Radiant Barrier;

p. results of consumer usage, as evidence by consumer endorsements, prove that Eagle Shield Radiant Barrier will result in utility saving between 28% to 60%;

q. all consumer endorsements which appear in sales promotional materials for the Eagle Shield Radiant Barrier were obtained from individuals or other entities who, at the time of providing their endorsements, were independent from all of the individuals and entities that marketed the Eagle Shield Radiant Barrier;

r. the consumer endorsements that appear in advertisements and sales promotional materials for the Eagle Shield Radiant Barrier reflect the typical or ordinary experience of members of the public who have used the Eagle Shield Radiant Barrier;

s. the Eagle Shield Radiant Barrier essentially costs nothing because the monthly payments for the product are considerably less than the monthly utility savings;

t. the Eagle Shield Radiant Barrier is guaranteed to pay for itself within three years of installation;

u. the Eagle Shield guarantee is administered by NESA, an independent, non-profit organization that functions as the Better Business Bureau of the alternative energy industry;

18. In truth and in fact, contrary to Defendants representations set forth in Paragraph 17:

a. Eagle Shield, Inc. is not a member of nor endorsed by Dunn and Bradstreet, the Chamber of Commerce or NASA.

The foregoing conduct violates §17.46 (a) and (b) (2), (5);

b. Not all purchasers can avail themselves of the Arbitration Services of the Better Business Bureau. Only those purchasers living in Tarrant County, Texas, area can use the arbitration services.

The foregoing conduct violates §17.46 (a) and (b) (2), (5), (12);

c. The Eagle Shield Radiant Barrier is not an important, significant or unique new invention. The technology and the product have been available since the early 1940's.

The foregoing conduct violates §17.46 (a) and (b) (2), (5);

d. Nowhere near 93% of summer heat gain in a residence is caused by solar radiation conducted through the ceiling and roof into living areas. In Texas residences typically less than 15% or less of heat gain comes from this source.

The foregoing conduct violates §17.46 (a) and (b) (5);

e. Nowhere near 50% to 75% of winter heat loss in a residence is caused by radiant heat conducted through the ceiling into attic areas. Typically less than 20% can be attributable to this source in Texas residences.

The foregoing conduct violates §17.46 (a) and (b) (5);

f. Traditional insulation materials will significantly reduce heat loss or gain.

The foregoing conduct violates §17.46 (a) and (b) (5), (8);

g. The Eagle Shield Radiant Barrier will not reduce radiant heat gain in a residence by up to 93% in summer nor reduce radiant heat loss in winter by up to 50%. The majority of radiant heat gain or loss is attributable to building components other than the ceiling or roof. In a typical Texas residence the radiant barrier will reduce summer heat loss by between 5 and 8% and in winter will reduce heat gain by between 2 and 8%.

The foregoing conduct violates §17.46 (a) and (b) (5), (7);

h. The Eagle Shield Radiant Barrier is not needed in all homes and is especially not needed in those homes containing attic insulation of R-26 or greater.

The foregoing conduct violates §17.46 (a) and (b) (5);

i. The Eagle Shield Radiant Barrier will not significantly, dramatically, or greatly reduce utility bills. With proper installation modest reductions in utility bills can be expected.

The foregoing conduct violates §17.46 (a) and (b) (5);

j. A homeowner installing the Eagle Shield Radiant Barrier can expect an annual savings of only between 3 and 8% on utility bills.

The foregoing conduct violates §17.46 (a) and (b) (5), (7);

k. Installation of the Eagle Shield Radiant Barrier will not significantly prolong the useful life of heating and cooling equipment.

The foregoing conduct violates §17.46 (a) and (b) (5), (7);

l. Competent scientific tests do not prove the energy savings claims made for the Eagle Shield Radiant Barrier.

The foregoing conduct violates §17.46 (a) and (b) (5), (7);

m. Double-sided radiant barriers are not significantly more effective than single-sided radiant barriers in reducing energy consumption.

The foregoing conduct violates §17.46 (a) and (b) (5), (7);

n. The Eagle Shield Radiant Barrier was not tested by the institutions identified in paragraph 17 n.

The foregoing conduct violates §17.46 (a) and (b) (2), (3),(5);

o. Although the "black box" demonstrates the principle of radiant barriers, temperature differentials found between the two sections of the box are not representative of the temperature variations that will occur when the barrier is installed in a residence;

The foregoing conduct violates §17.46 (a) and (b) (5);

p. Consumer testimonials are anecdotal and do not establish that the installation of the Eagle Shield Radiant Barrier will result in utility savings of between 28 and 60%.

The foregoing conduct violates §17.46 (a) and (b) (5);

q. Some, if not all, consumer endorsements that appeared in sales promotional materials for the Eagle Shield Radiant Barrier were obtained from individuals who, at the time they provided the endorsements, were not independent of all individuals and entities that have marketed the Eagle Shield Radiant Barrier.

The foregoing conduct violates §17.46 (a) and (b) (2), (5);

r. The consumer endorsements that appear in sales materials do not reflect the typical or ordinary experience of members of the public who have used the Eagle Shield Radiant Barrier.

The foregoing conduct violates §17.46 (a) and (b) (5);

s. The Eagle Shield Radiant Barrier may cost significantly more than any utility savings realized within the first three years of installation.

The foregoing conduct violates §17.46 (a) and (b) (5);

t. The Eagle Shield Radiant Barrier will not under typical circumstances pay for itself within three years of installation.

The foregoing conduct violates §17.46 (a) and (b)(5);

u. NESA is not an independent organization that functions as "the Better Business Bureau of the alternative energy industry," but rather serves exclusively as a marketing tool for alternative energy companies.

The foregoing conduct violates §17.46 (a) and (b) (2), (5);

19. The sales promotional materials referred to in paragraph 16 above represent, directly and by implication, that defendants had a reasonable basis for making, at the time they were made, the representations alleged in paragraph 17. In truth and in fact defendants had no reasonable basis for such representations. Therefore said sales materials are false misleading and deceptive in violation of § 17.46(a) of the DTPA.

## **VIOLATION OF LABELING AND ADVERTISING OF HOME INSULATION RULES**

20. Defendants in distributing, marketing and selling the Eagle Shield Radiant Barrier have wholly failed to comply with 16 CFR §460.1 *et seq.* Violation of this federal regulation is declared to be a deceptive trade practice. In this regard Defendants have failed to:

- a. Test for R values as required by §460.5;
- b. Test for representative thickness as required by § 460.6;
- c. Label their product as required by § 460.12;
- d. Create and distribute fact sheets as required by §460.13;
- e. Create and distribute installation receipts as required by §460.17;
- f. Make the savings claim disclosure as required by § 460.19;

The foregoing conduct violates §17.46(a) and (b) (23).

## **INJURY TO CONSUMERS**

21. By means of the foregoing unlawful acts and practices, which were the producing cause of injury to consumers affected, Defendants have acquired money from identifiable persons to whom such money should be restored or who, in the alternative, are entitled to an award of damages.

## **PRAYER**

22. By reason of the institution and continued operation of the acts and practices described hereinabove, Defendants have violated and will continue to violate the laws as hereinabove alleged. Defendants, unless restrained by this Honorable Court, will continue violations of the laws of the State of Texas and immediate and irreparable injury, loss and damage will result to the State of Texas and to the general public.

**WHEREFORE, PREMISES CONSIDERED,** Plaintiff prays that Defendants be cited according to law to appear and answer herein; that after due notice and hearing a TEMPORARY INJUNCTION be issued; and upon final hearing a PERMANENT INJUNCTION be issued restraining and enjoining Defendants Eagle Shield, Inc., a corporation, its successors and assigns, Sam Caster, individually and as an officer of Eagle Shield, Inc. and defendants' agents, representatives, and employees directly or through any corporation, subsidiary,

division, or other entity, in connection with the advertising, offering for sale, sale or distribution of the foil shield insulation device variously known as Eagle Shield Radiant Barrier or any other home insulation material as home insulation material is defined by 16 CFR §460.2 from making the following representations, doing the following acts and engaging in the following practices in the pursuit and conduct of trade or commerce within the State of Texas:

A. Representing, directly or by implication, any energy savings, fuel savings or utility cost savings that may be derived from the use of any product unless, at the time of making the representation, you possess and reasonably rely upon competent scientific evidence that substantiates such representation.

Until such time as you can establish to the satisfaction of the Attorney General or to this Court, upon application to modify this injunction, by competent scientific evidence the energy-savings claims made for its products, Defendants shall make no representation regarding energy savings, fuel savings or utility cost savings for its products other than that Defendants may represent that installation of the Eagle Shield Radiant Barrier may result in annual utility cost savings of between 3 and 8%, hereinafter "permitted range."

Where the results of any test required by this Agreed Permanent Injunction or the permitted range are used in connection with representations of energy savings, fuel savings or utility cost savings, all advertising and other sales promotional materials that contain the representation must also clearly and conspicuously make the following disclaimer: "Your actual savings may vary. Find out why in the sellers fact sheet on R-values."

B. Making any representations regarding energy savings, fuel savings or utility cost savings that are inconsistent with the permitted range or that are inconsistent with competent scientific evidence. For the purposes of this Agreed Permanent Injunction, by way of illustration only and not by limitation, the use of the words "significantly reduce," "dramatically reduce," "greatly reduce" and words of similar import are deemed inconsistent with the permitted range.

C. Employing any testimonial or endorsement regarding a product's quality for energy savings, fuel savings or utility cost savings that is inconsistent

with the permitted range or that is inconsistent with competent scientific evidence.

D. Employing any testimonial or endorsement regarding a product's quality for energy savings, fuel savings, utility cost savings or any other attribute unless it is clearly and conspicuously disclosed that the person making the testimonial or endorsement is affiliated or connected with or a sales associate for Eagle Shield if in fact that is the case.

E. Misrepresenting, in any manner, the purpose, procedure, results, or conclusion of any test or survey pertaining to the energy saving, utility cost saving or energy consumption characteristics of any product.

F. Reciting, quoting or using the results or conclusions of any test or survey pertaining to the energy saving, utility cost saving or fuel saving of any product without clearly and conspicuously disclosing that the organization or individual who conducted the test does not endorse the product nor vouch for any claim for the energy saving characteristics of the product unless in fact that is the case.

G. Making any reference to the National Aeronautics and Space Administration (NASA) whether through words or photographs without clearly and conspicuously making the following disclosure: "Eagle Shield, Inc. is not in anyway affiliated with, nor are any Eagle Shield, Inc. products endorsed by NASA."

H. Representing, directly or by implication, that the Eagle Shield Radiant Barrier or any other radiant barrier material used for home insulation is a significant new technology developed by NASA or words of similar import.

I. Representing, directly or by implication, that Eagle Shield, Inc. has sponsorship, approval, status, affiliation, or connection with another person or organization when it does not.

J. Causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another.



K. Employing or using the Better Business Bureau logo "pledged to arbitrate" or any other Better Business Bureau logo unless and until Eagle Shield, Inc. is a member of the local Better Business Bureau in all areas in which it markets its product.

L. Representing directly or by implication that the National Energy Specialists Association (NESA), a trade association, is an independent consumer organization, or that it is the Better Business Bureau of the energy industry, or that it is a consumer watchdog group, or any other representation that implies that NESA develops or enforces product standards for the protection of the consumer.

M. Misrepresenting, directly or by implication, the percentage of the total heat gain or loss for a space that is attributable to the heat gain or loss through the ceiling. For the purposes of this Agreed Permanent Injunction it is a misrepresentation to claim that more than 15% of the heat gain or 20% of the heat loss is through the ceiling in a residence unless and until the conditions of paragraph 2 are complied with.

N. Misrepresenting or disparaging, directly or by implication, the performance, characteristics, or benefits of other insulating materials and or building products.

O. Failing to comply with the Federal Trade Commission Regulation, "Labeling and Advertising of Home Insulation," 16 CFR § 460.1 *et seq.*

P. Representing directly or by implication that the installation of the radiant barrier will prolong the useful life of heating or air conditioning equipment unless and until the conditions of paragraph 2 are complied with.

Q. Employing any device that demonstrates the principle of radiant barriers without disclosing orally and in writing the following: "This box demonstrates the principle of radiant barriers. Temperature differentials found between the two sections of the box are not representative of the temperature variations that will occur when the barrier is installed in a residence."

R. Representing directly or by implication that the savings resulting from the installation of the product will pay for the product over a specified period of time.

S. Making or extending a guarantee or warranty that directly or by implication guarantees specific energy savings or utility cost savings over a specified period of time.

T. Representing that a guarantee or warranty confers or involves rights or remedies which it does not have or involve. For the purposes of this Agreed Permanent Injunction it is such a misrepresentation to describe a warranty as a satisfaction guarantee if you do not disclose that in fact there are conditions that restrict a full refund of the purchase price.

U. Employing any satisfaction guarantee or warranty of any type unless the following notice is clearly and conspicuously disclosed in at least 12 point type:

"Notice: This conditional satisfaction guarantee is not a guarantee of any specific energy savings or of a specific payback period.

It is simply a mechanism whereby a percentage of gross sales has been set aside to fund claims which may be made under this warranty. This is a limited warranty. Important restrictions apply. For example, in order to make a claim you must submit all utility bills for one year prior to purchase and for three years following purchase. Read the warranty carefully for other restrictions."

V. Making any representations regarding the warranty or satisfaction guarantee that are inconsistent with the permitted range or scientific evidence as ordered in paragraph 2.

W. Misrepresenting, directly or by implication, the potential income to be earned by becoming a sales associate for Eagle Shield, Inc.

X. Employing a commission structure wherein a sales associate receives a commission or any other benefit or credit for purchases made by that sales associate.

Y. Failing to maintain accurately the following records which may be inspected by Consumer Protection Division staff members upon fifteen (15) days notice: copies of all promotional, advertising and sales materials; documents relating to the publication of testimonials or endorsements; documents which substantiate, contradict or otherwise relate to any claim which is a part of the promotional, advertising, or sales materials disseminated by Defendants directly or through any business entity. Such documentation shall be retained by Defendants for a period of two (2) years from the last date any such promotional, advertising or sales material is disseminated.

Z. Failing to distribute within 10 days from the date of this Agreed Final Judgment, a copy of this Agreed Final Judgment to all present personnel, agents, representatives, or sales associates having sales, advertising or policy responsibilities with respect to the subject matter of the Agreed Final Judgment; or entering into an employment or agency contract with any such person for a period of two years from the date of this Agreed Final Judgment without first providing that person a copy of this Agreed Final Judgment.

Plaintiff further prays for judgment against the Defendants, restoring all money or other property taken from identifiable persons by means of unlawful acts or practices, or in the alternative for damages to compensate for such losses.

And Plaintiff further prays for costs of Court, reasonable attorney fees pursuant to TEX GOV. CODE. §42.006 (c), and such other relief to which Plaintiff may be justly entitled.

Respectfully submitted,

JIM MATTOX  
ATTORNEY GENERAL OF TEXAS

MARY F. KELLER  
FIRST ASSISTANT ATTORNEY GENERAL

DAVID A. TALBOT, JR.  
SPECIAL ASSISTANT, CONSUMER  
AFFAIRS

H. CLYDE FARRELL  
CHIEF, CONSUMER PROTECTION  
DIVISION

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Consumer Protection Division  
P. O. Box 12548  
Austin, Texas 78711  
(512) 463-2070  
Bar Card 08160000

STATE OF TEXAS       §  
COUNTY OF TRAVIS   §

BEFORE ME, the undersigned authority, on this day personally appeared WILLIAM O. GOODMAN who, after being by me duly sworn, upon his oath deposed and said:

"I am an Assistant Attorney General for the State of Texas and a member of the Consumer Protection Division and as such is authorized to make this affidavit. I have carefully read the allegations in the foregoing pleading. As required by §17.47(a) of the Consumer Protection Act, I have reason to believe that each and all of said allegations are true and correct."

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WILLIAM O. GOODMAN  
Assistant Attorney General  
Consumer Protection Division

Subscribed and sworn to before me on the \_\_\_\_\_ day of \_\_\_\_\_,  
1988.

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Signature of Notary Public, State of Texas

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Notary Public Stamp