

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

RED DOG MOBILE SHELTERS, LLC,	§	
	§	
Plaintiff,	§	
	§	
v.	§	NO. 3:13-CV-03757-K
	§	
RISING S COMPANY LLC AND RIG	§	
SAFE COMPANY,	§	
	§	
Defendants.	§	

FINAL JUDGMENT AND AGREED PERMANENT INJUNCTION

Plaintiff Red Dog Mobile Shelters, LLC (“Red Dog”), Rising S Company LLC (“Rising S Company) and Clyde W. Scott doing business as Rig Safe Company (“Rig Safe”) (collectively Rising S Company and Rig Safe are referred to as “Defendants”) having entered into a settlement agreement and having resolved all issues in this Action and having as part of their settlement agreement stipulated to the entry of this Final Judgment and Agreed Permanent Injunction and the facts supporting the findings made herein the Court, pursuant to the agreement of the parties and applicable law including the Federal Rules of Civil Procedure, enters judgment as follows.

IT IS ORDERED, ADJUDGED, and DECREED that:

1. The Court has jurisdiction over the subject matter in this Action and over all parties herein.
2. Venue is proper in this District and Court.

3. Defendants admit those allegations of the Complaint necessary for the Court to find jurisdiction, venue, factual basis, and legal basis, for entry of this Final Judgment and Agreed Permanent Injunction and for the enforceability of this Final Judgment and Agreed Permanent Injunction.

4. Red Dog designs and manufactures above ground mobile storm shelters which it rents to various companies throughout the United States primarily engaged in the oil and gas industry. Red Dog's above ground mobile storm shelters are covered by various United States patents which Red Dog owns, including but not limited to United States Patent Numbers D685,921 and 8,534,001. United States Patent Numbers D685,921 and 8,534,001 were duly and legally issued by the United States Patent and Trademark Office after full and fair examination and are valid and enforceable.

5. Defendants Rising S Company and Clyde W. Scott have done and are doing business under the assumed name/trade name Rig Safe Company. Rig Safe Company is a sole proprietorship of Clyde W. Scott.

6. Defendants have offered for sale within or into the United States above ground mobile storm shelters.

7. Defendants have advertised above ground mobile storm shelters including but not limited to on various websites including <http://www.risingsbunkers.com/> and <http://www.rigsafe.com/> and www.youtube.com/.

8. The parties have agreed to enter into a permanent injunction.

9. Plaintiff is entitled to a Permanent Injunction pursuant to applicable law including 35 U.S.C. § 283 and 15 U.S.C. § 1116 as Plaintiff has been and will continue to be injured and to suffer immediate and irreparable injury and damage absent entry of this permanent injunction, Plaintiff has no adequate remedy at law for these injuries, the injury and damage to Plaintiff outweighs any hypothetical damage that an injunction may cause Defendants, and the public interest favors the issuance of an injunction in this case.

10. Defendants, their officers, agents, servants, employees, attorneys and other persons who are in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise as well as Defendants' members, managers, directors, owners, proprietors, and representatives are enjoined and restrained immediately:

- a. and for the term of the '001 Patent from making, using, selling, offering to sell, or otherwise distributing within the United States, or importing into the United States any products that infringe one or more claims of the '001 Patent, directly and indirectly (by inducement and/or contributory infringement), including any above ground mobile storm shelters;
- b. and for the term of the '001 Patent from making, using, selling, offering to sell, or otherwise distributing within the United States, or importing into the United States protective shelters comprising: an enclosure

having at least a floor, at least one sidewall coupled to the floor, a door, and a roof coupled to the at least one sidewall, wherein the roof includes an aperture located proximate a point of low static air pressure during a high-velocity wind event; one or more members that elevate the floor above a substrate, wherein when the protective shelter is deployed on the substrate a substantially enclosed sub-floor region is formed that is bounded by the protective shelter and the substrate; and an air duct providing airflow communication between the substantially enclosed sub-floor region and an exterior region of the enclosure via the aperture;

- c. and for the term of the '001 Patent from making, using, selling, offering to sell, or otherwise distributing within the United States, or importing into the United States protective shelters comprising: an enclosure having at least a floor, at least one sidewall coupled to the floor, a door, and a roof coupled to the at least one sidewall; one or more members that elevate the floor above a substrate; and a ballast disposed beneath the floor; wherein: the protective shelter and the substrate bound a substantially enclosed sub-floor region; the roof includes an aperture located proximate a point of low static air pressure during a high-velocity wind event; and the protective shelter further includes an air duct providing airflow communication between the substantially

enclosed sub-floor region and an exterior region of the enclosure via the aperture;

- d. and for the term of the '001 Patent from making, using, selling, offering to sell, or otherwise distributing within the United States, or importing into the United States protective shelters comprising: an enclosure having at least a floor, at least one sidewall coupled to the floor, a door, and a roof coupled to the at least one sidewall, wherein the protective shelter has a first axis and an orthogonal second axis both parallel to a plane including the floor of the enclosure; one or more members that elevate the floor above a substrate; ballast disposed beneath the floor; a first deck section extending from a first end of the enclosure along the first axis; and ballast disposed in the first deck section;
- e. and for the term of the '001 Patent from making, using, selling, offering to sell, or otherwise distributing within the United States, or importing into the United States protective shelters comprising: an enclosure having at least a floor, at least one sidewall coupled to the floor, a door, and a roof coupled to the at least one sidewall, wherein the protective shelter has a first axis and an orthogonal second axis both parallel to a plane including the floor of the enclosure, and wherein the protective shelter has a greater first dimension along the first axis and a lesser second dimension along the second axis; multiple rails that extend along

the first axis, are coupled to the enclosure, and support the protective shelter on a substrate; first and second deck sections coupled to the rails, wherein the first and second deck sections extend substantially symmetrically from the enclosure along the first axis; and a ballast disposed in one or more locations in the protective shelter, including at least one location in a set including beneath the floor, in the first deck section, and in the second deck section;

- f. and for the term of the '001 Patent from making, using, selling, offering to sell, or otherwise distributing within the United States, or importing into the United States protective shelters comprising: an enclosure having at least a floor, at least one sidewall coupled to the floor, a door, and a roof coupled to the at least one sidewall; wherein the protective shelter has a first axis and an orthogonal second axis both parallel to a plane including the floor of the enclosure; multiple members that elevate the floor above a substrate; first and second deck sections supported by the multiple members, wherein the protective shelter has a greater first dimension along the first axis and a lesser second dimension along the second axis and the first and second deck sections extend substantially symmetrically from the enclosure along the first axis; wherein: the protective shelter and the substrate bound a substantially enclosed sub-floor region; the roof includes an aperture located proximate a point of

low static air pressure during a high-velocity wind event; and the protective shelter further includes an air duct providing airflow communication between the substantially enclosed sub-floor region and an exterior region of the enclosure via the aperture;

- g. and for the term of the '001 Patent from making, using, selling, offering to sell, or otherwise distributing within the United States, or importing into the United States a method of deploying a protective shelter, said method comprising: transporting, to an installation site having a substrate, a protective shelter including: an enclosure having at least a floor, at least one sidewall coupled to the floor, a door, and a roof coupled to the at least one sidewall, wherein the roof includes an aperture located proximate the a point of low static air pressure during a high-velocity wind event; one or more members that elevate the floor above a substrate; an air duct; and placing the protective shelter on the substrate to form a substantially enclosed sub-floor region bounded by the protective shelter and the substrate, wherein the protective shelter provides airflow communication between the substantially enclosed sub-floor region and an exterior region of the enclosure via the aperture;
- h. and for the term of the '001 Patent from making, using, selling, offering to sell, or otherwise distributing within the United States, or importing into the United States a method of deploying a protective shelter, said

method comprising: transporting, to an installation site having a substrate, a protective shelter including: an enclosure having at least a floor, at least one sidewall coupled to the floor, a door, and a roof coupled to the at least one sidewall, wherein the protective shelter has a first axis and an orthogonal second axis both parallel to a plane including the floor of the enclosure; one or more members that elevate the floor above a substrate; a ballast disposed beneath the floor; a deck extending from a first end of the enclosure along the first axis and supported by the one or more members; and ballast disposed beneath the deck; and placing the protective shelter on the substrate;

- i. and for the term of the '001 Patent from making, using, selling, offering to sell, or otherwise distributing within the United States, or importing into the United States a method of deploying a protective shelter, said method comprising: transporting, to an installation site having a substrate, a protective shelter including: an enclosure having at least a floor, at least one sidewall coupled to the floor, a door, and a roof coupled to the at least one sidewall, wherein the protective shelter has a first axis and an orthogonal second axis both parallel to a plane including the floor of the enclosure; multiple rails that elevate the floor above a substrate; first and second decks supported by the rails, wherein the protective shelter has a greater first dimension along the first axis

and a lesser second dimension along the second axis and the first and second decks extend substantially symmetrically from the enclosure along the first axis; and a ballast disposed beneath at least one of a set including the floor, the first deck and the second deck; and placing the protective shelter on the substrate;

- j. and for the term of the '001 Patent from making, using, selling, offering to sell, or otherwise distributing within the United States, or importing into the United States protective shelters comprising: an enclosure having at least a floor, at least one sidewall coupled to the floor, a door, and a roof coupled to the at least one sidewall, wherein the protective shelter has a first axis and an orthogonal second axis both parallel to a plane including the floor of the enclosure, and wherein the protective shelter has a greater first dimension along the first axis and a lesser second dimension along the second axis; multiple elongate members extending along the first axis that are coupled to the enclosure and support the protective shelter on a substrate; first and second deck sections coupled to the elongate members, wherein the first and second deck sections extend substantially symmetrically from the enclosure along the first axis; and a ballast disposed in one or more locations in the protective shelter, including at least one location in a set including

beneath the floor, in the first deck section, and in the second deck section;

- k. and for the term of the '001 Patent from making, using, selling, offering to sell, or otherwise distributing within the United States, or importing into the United States a method, comprising: transporting, to an installation site having a substrate, a protective shelter including: an enclosure having at least a floor, at least one sidewall coupled to the floor, a door, and a roof coupled to the at least one sidewall, wherein the protective shelter has a first axis and an orthogonal second axis both parallel to a plane including the floor of the enclosure, and wherein the protective shelter has a greater first dimension along the first axis and a lesser second dimension along the second axis; multiple elongate members extending along the first axis that are coupled to the enclosure and support the protective shelter on the substrate; first and second deck sections coupled to the elongate members, wherein the first and second deck sections extend substantially symmetrically from the enclosure along the first axis; and a ballast disposed in one or more locations in the protective shelter, including at least one location in a set including beneath the floor, in the first deck section, and in the second deck section; and placing the protective shelter on the substrate;

- l. and for the term of the '921 Patent from making, using, selling, offering to sell, or otherwise distributing within the United States, or importing into the United States any products that infringe one or more claims of the '921 Patent, directly and indirectly (by inducement and/or contributory infringement), including any above ground mobile storm shelters;
- m. and for the term of the '921 Patent from making, using, selling, offering to sell, or otherwise distributing within the United States, or importing into the United States protective shelters which in the eye of the ordinary observer giving such attention as a purchaser usually gives are designed substantially the same as Red Dog's above ground mobile storm shelters;
- n. from advertising, manufacturing, distributing, and/or using a storm shelter that is substantially similar in the design, presentation, size, shape, text, graphics, combination of text and graphics, placement, order and/or technique to Plaintiff's above ground mobile storm shelters and which causes and/or is likely to cause confusion as to the source, sponsorship, affiliation, connection or association of Red Dog's products and services with that of Defendants' products and services;
- o. regarding above ground mobile storm shelters from making false or misleading statements of fact, false or misleading descriptions, or falsely

characterizing the origin, in connection with goods or services, by using in commerce words, terms, names, symbols or devices, and/or combinations thereof, and false and misleading descriptions of fact and/or false or misleading representations of fact, which are likely to cause confusion, or to cause mistake, or to deceive as to the approval of their goods, services or commercial activities by another person, and/or in commercial advertising or promotion, misrepresent the nature, characteristics, or qualities of their or another's goods, services or commercial activities including but not limited to the following words, terms, names, symbols or devices, and/or combinations thereof: (i) to "offer services to oil field sites to provide the workers a safe place to shelter during storms or tornados;" (ii) their tornado shelters are mobile and "can be installed and left in place during construction, drilling, and processing;" (iii) to "build these shelters 8' x 14' standard with a 4" x 4" torque tube placed down the center since these shelters are intended to be moved from site to site," which "increases the collapse rate from ~32 tons all the way up to ~64 tons;" (iv) "Rising S tornado shelters exceed every FEMA requirement set fourth [sic] in the 320 & 361 guidelines as well as the 2008 standards from ICC500/FEMA;" (v) "The shelter's specially engineered design uses the high winds to it's [sic] advantage by allowing nature's force to increase it's [sic] virtual weight," claiming that

the shelter effectively “weighs 110,000+ pounds in 350+ mph winds” and stating that “no matter how violent the winds - the shelter will not budge;” (vi) “This greatly exceeds the 250 mph minimum required by FEMA as well as the American Society of Civil Engineers wind loads on structures guidelines;” (vii) their “tornado shelter’s design not only increases it’s stability, but it adds significant structural strength as well;” (viii) their shelters are “engineered to withstand impacts by even the heaviest wind-borne objects;” (ix) “Rig Safe is a leader in tornado shelter technology. We specialize in steel shelters; above-ground and below. Our steel shelters come with a lifetime guarantee on all craftsmanship, they are delivered and installed all over the world and can be customized to order. There is nothing better, nothing stronger than a RIG SAFE shelter!” (x) that their above ground mobile shelters come in different sizes “10ft - (holds 15-20) - PURCHASE: \$47,400 LEASE: \$185/day (6 month terms)” and “20ft - (holds 40-50) - PURCHASE: \$67,400 LEASE: \$240/day (6 month terms);” (xi) features of their anchor-less above ground tornado shelters include “Constructed from quarter inch plate-steel and reinforced steel arch & ribbing, Dual Entry/Exit design, Rated for wind speeds exceeding the 250mph minimum required by FEMA, Solar powered lighting and air-conditioning, Available in 2 sizes: 10ft shelter (holds about 10-15) &

20ft shelter (holds about 20-30), . . . , Guaranteed to be free of manufacturing defects and damaged units are repaired on site;” (xii) under the heading “How does it work” that: “In fluid dynamics, Bernoulli’s principle says that for an inviscid flow (no viscosity), an increase in the speed of the fluid occurs simultaneously with a decrease in pressure or a decrease in the fluid’s potential energy. So this basically means that an object of a particular shape and mass weighing a half-million pounds can be lifted by a wind moving at 150mph. So the same low pressure that was used as a lifting force can be made to push an object down. This downward force anchors the shelter to the earth’s surface and prevents the Rig Safe from being moved by the high winds of a tornado;” (xiii) that their above ground tornado shelters are “Completely FEMA compliant, rated for wind speeds exceeding the 250 MPH minimum required by FEMA;” (xiv) that their above ground tornado shelters are “Available in 2 sizes: 10ft model (holds 20-30 people) 20 ft model (holds 40-50 people);” (xv) “Rig Safe units are available for lease or purchase with flexible volume pricing options;” (xvi) “Bernoulli’s Principle ‘states that for an inviscid flow (without viscosity), an increase of the speed of the fluid (wind) occurs simultaneously with a decrease in pressure or a decrease in the fluid’s potential energy;” (xvii) “Bernoulli’s Principle ‘WHICH MEANS the

wind moves much faster across the top of the shelter because of its arch design. This in turn creates compressed wind and a downward force on the shelter;” and (xviii) “Bernoulli’s Principle ‘The faster the wind blows the more virtual weight is applied in a downward force. The unit basically becomes heavier in high winds!;” and

- p. and for the term of the '001 Patent, absent Red Dog’s prior written approval, from, directly or indirectly, in the United States make, manufacture, create, produce, construct, assemble, build, fabricate, design, use, sell, offer to sell, lease, rent, convey, transport, move, carry, ship, transfer, import, advertise, market and/or promote (in any media or manner whatsoever, including but not limited to, on printed or written materials, in audio or video broadcasts, on the Internet, on websites, in domain names, on social media, in metatags, in URLs, or for any Internet-based search engine or other Internet traffic-driving or advertising program) any above ground mobile storm shelter of any type in violation of the claims of the '001 Patent or the '921 Patent or any above ground mobile storm shelter of any type that is substantially or confusingly similar in the appearance, design, presentation, size, shape, text, graphics, combination of text and graphics, placement, order, functionality, and/or technique to Plaintiff’s above ground mobile storm shelters or assist or encourage anyone else in doing the same.

11. Each party in this action will bear its own costs and legal fees incurred in connection with this action.
12. This Court shall have continuing jurisdiction with regard to the terms of this Final Judgment and Agreed Permanent Injunction.
13. This Court retains jurisdiction over Defendants to enforce any and all aspects of this Final Judgment and Agreed Permanent Injunction and the Compromise Settlement Agreement executed among the parties.
14. The Court **ORDERS** execution to issue for this judgment.
15. Any relief not expressly granted herein is **DENIED**.
16. This is a **FINAL JUDGMENT** with respect to all claims and parties.

SO ORDERED

Signed December 2nd, 2013



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UNITED STATES DISTRICT JUDGE