

CANADIAN POLYCHLOROPRENE
NATIONAL SETTLEMENT AGREEMENT

Made as of September , 2005

Between

LUIGI DEL GUERCIO o/a WESTOWN SHOE CLINIC , and

OPTION CONSOMMATEURS

(the "Plaintiffs")

and

DUPONT DOW ELASTOMERS L.L.C., E.I. DU PONT DE NEMOURS AND
COMPANY, E.I. DUPONT CANADA COMPANY, THE DOW CHEMICAL
COMPANY and DOW CHEMICAL CANADA INC.

(the "Settling Defendants")

**CANADIAN POLYCHLOROPRENE
NATIONAL SETTLEMENT AGREEMENT**

RECITALS

- A. WHEREAS the Proceedings have been commenced by the Plaintiffs in Ontario and Quebec under each province's respective class proceedings legislation that allege the Settling Defendants participated in an unlawful conspiracy to raise, fix, maintain or stabilize the price of Polychloroprene in Canada and/or to allocate markets and customers for the sale of Polychloroprene in Canada, contrary to Part VI of the *Competition Act*;
- B. WHEREAS the Settling Defendants deny liability for any of the allegations alleged in the Proceedings (defined below);
- C. WHEREAS certain of the Settling Defendants have entered into a class settlement in the United States in an action alleging similar conduct in the United States and captioned *Alco Industries, Inc. v. DuPont Dow Elastomers LLC*, Case No. 1-04-CV-0058; pursuant to that settlement, certain Canadian residents who purchased Polychloroprene are entitled to participate in that settlement and have been notified by mail and/or publication of that entitlement;
- D. WHEREAS the Plaintiffs and Class Counsel (defined below) have reviewed and fully understand the terms of this Settlement Agreement and, based on the analyses of the facts and law applicable to the Plaintiffs' claims, and having regard to the burdens and expense in prosecuting the Proceedings, including the risks and uncertainties associated with trials and appeals, the Plaintiffs and Class Counsel have

concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the classes they seek to represent;

E. WHEREAS despite their belief that they are not liable in respect of the allegations as alleged in the Proceedings and have good defences thereto, the Settling Defendants are entering into this Settlement Agreement in order to achieve a final and nation-wide resolution of all claims asserted or which could have been asserted against them by the Plaintiffs, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

F. WHEREAS the Parties therefore wish to, and hereby do, finally resolve on a national basis, without admission of liability, all of the Proceedings as against the Settling Defendants;

G. WHEREAS for the purposes of settlement only and contingent on approvals by the Courts as provided for in this Settlement Agreement, the Parties have consented to certification of the Proceedings as class proceedings and have consented to a Settlement Class (defined below) and a Common Issue (defined below) in each of the Proceedings; and

H. WHEREAS the Plaintiffs assert that they are adequate class representatives for the Settlement Classes and will seek to be appointed representative plaintiffs in their respective Proceedings.

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Proceedings be settled and dismissed on the merits with prejudice as to the Settling

Defendants only, without costs as to the Plaintiffs, the classes they seek to represent or the Settling Defendants, subject to the approval of the Courts, on the following terms and conditions:

SECTION 1 – DEFINITIONS

For the purpose of this Settlement Agreement only, including the Recitals and Schedules hereto:

- (1) **Account** means the interest bearing trust account at a Canadian Schedule 1 bank in Ontario under the control of Ontario Counsel and into which the Settlement Amount is deposited.
- (2) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices but excluding Class Counsel Fees.
- (3) **Class Counsel** means Ontario Counsel and Quebec Counsel.
- (4) **Class Counsel Fees** means the fees, disbursements, costs, GST and other applicable taxes or charges of Class Counsel, including any obligations for contributions that any Plaintiff, Settlement Class or Class Counsel may have to the Fonds for any advances made to them in any Proceeding.
- (5) **Common Issue** in each Proceeding means: Did the Settling Defendants agree to fix, raise, maintain or stabilize the prices of, or allocate markets and customers for, Polychloroprene in Canada during the Purchase Period?
- (6) **Consumer** means any individual who purchased Polychloroprene or Polychloroprene Products during the Purchase Period for personal consumption or use.
- (7) **Courts** means the Ontario Court and the Quebec Court.

- (8) **Defendants** means the individuals and entities named as defendants in the Proceedings as set out in Schedule A.
- (9) **Deposit Date** means the date which is 10 business days after the execution of this Settlement Agreement by or on behalf of all Parties.
- (10) **Direct Purchaser** means a person, other than a Distributor, who purchased Polychloroprene in Canada during the Purchase Period directly from a Defendant or from a Distributor.
- (11) **Distributor** means a person who purchased Polychloroprene in Canada during the Purchase Period directly from a Defendant and resold all of the purchased Polychloroprene without either further processing it or including it in any other product.
- (12) **Effective Date** means the date when Final Orders have been received from all Courts approving this Settlement Agreement and any time periods within which the Settling Defendants may terminate this Settlement Agreement have expired with no termination having occurred.
- (13) **Excluded Person** means each Defendant, the employees, directors and officers of each Defendant, the subsidiaries or affiliates of each Defendant, the entities in which each Defendant or any of that Defendant's subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of any Excluded Person.
- (14) **Final Order** means a final judgment entered by a Court in respect of the certification of a Proceeding as a class proceeding and the approval of this Settlement Agreement once the time to appeal such judgment has expired without any appeal being taken, or if an appeal lies, once there has been a final disposition of all appeals.

- (15) **Fonds** means the Fonds d'aide aux recours collectifs in Quebec.
- (16) **Intermediate Purchaser** means a person, other than a Direct Purchaser, a Distributor or a Consumer, who purchased Polychloroprene or Polychloroprene Products during the Purchase Period.
- (17) **Non-Settling Defendant** means a Defendant in the Proceedings who is not a Settling Defendant.
- (18) **Ontario Counsel** means Siskind, Cromarty, Ivey & Dowler LLP.
- (19) **Ontario Court** means the Ontario Superior Court of Justice.
- (20) **Parties** means the Plaintiffs and the Settling Defendants.
- (21) **Plaintiffs** means, in respect of each Proceeding, the individuals and entities named as plaintiffs in the Proceedings as set out in Schedule A.
- (22) **Polychloroprene** also known as "chloroprene rubber," "polychloroprene rubber," "PCP" or "neoprene," means a type or family of synthetic elastomers produced by free radical initiated emulsion polymerization of chloroprene or emulsion co-polymerization of chloroprene and at least one other co-monomer, and optionally, other additives.
- (23) **Polychloroprene Products** means products that directly or indirectly contain or are derived from Polychloroprene.
- (24) **Proceedings** means Ontario Court File No. 46517CP (London), and Quebec Court (Superior Court, District of Montreal) File No. 500-06-000276-051.
- (25) **Purchase Period** means January 1, 1999 to December 31, 2003.
- (26) **Quebec Counsel** means Belleau Lapointe, S.A..
- (27) **Quebec Court** means the Superior Court of Quebec.

(28) **Released Claims** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses, penalties and lawyers' fees, known or unknown, suspected or unsuspected, in law, under statute or in equity, that Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct from the beginning of time to the date hereof in respect of the purchase, sale, pricing, discounting, marketing or distributing of Polychloroprene or Polychloroprene Products in Canada, or relating to any conduct alleged (or which could have been alleged) in the Proceedings or any other actions, including, without limitation, any such claims which have been asserted, would have been asserted or could have been asserted, whether in Canada or elsewhere, as a result of the purchase of Polychloroprene or Polychloroprene Products in Canada.

(29) **Releasees** means, jointly and severally, the Settling Defendants and all of their respective present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives; and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.

(30) **Releasors** means, jointly and severally, the Plaintiffs and the Settlement Class Members and their respective present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other persons, partnerships

or corporations with whom any of the former have been, or are now, affiliated, and their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives; and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.

(31) **Settlement Agreement** means this agreement, including the recitals and schedules.

(32) **Settlement Amount** means Five Hundred Sixty-Six Thousand Two Hundred Seventy Four Canadian Dollars (Canadian \$566,274).

(33) **Settlement Class** means, in respect of each Proceeding, the settlement class defined in Schedule A.

(34) **Settlement Class Member** means a member of a Settlement Class who does not validly opt out of that Settlement Class in accordance with future Orders of the Courts.

(35) **Settling Defendants** means DuPont Dow Elastomers L.L.C. ("DDE"), E.I. du Pont de Nemours and Company, E.I. du Pont Canada Company, The Dow Chemical Company and Dow Chemical Canada Inc.

SECTION 2 – CONDITION PRECEDENT: ONTARIO COURT APPROVAL

Except as provided in section 11, this Settlement Agreement shall be null and void and of no force and effect unless the Ontario Court approves this Settlement Agreement in the Proceeding commenced in Ontario and the order so given becomes a Final Order.

SECTION 3 – SETTLEMENT APPROVAL

3.1 Cooperation

The Parties shall use their best efforts to effectuate this Settlement and to secure the prompt, complete and final dismissal with prejudice of the Proceedings as against the Settling Defendants.

3.2 Motions for Approval

(1) As soon as practicable after execution of this Settlement Agreement and no later than October 5, 2005 the Plaintiffs shall bring motions before the Courts for orders approving notices of approval hearings in their respective jurisdictions. Until these motions are heard and the notices approved, this Settlement Agreement and all of its terms shall be kept confidential and shall not be disclosed by the Plaintiffs or Class Counsel without the prior written consent of counsel to the Settling Defendants. As soon as practicable after publication of the notices of approval hearings the Plaintiffs shall bring motions before the Courts for orders certifying the Proceedings and approving this Settlement Agreement in their respective jurisdictions.

(2) The orders referred to in section 3.2(1) above shall be in a form agreed to by the Parties.

(3) This Settlement Agreement shall only become final on the Effective Date. However, as of the execution of this Settlement Agreement by all the Parties, the Parties will be bound by its terms and the Settlement Agreement will not be terminated or rescinded except as provided for herein.

3.3 Sequence of Motions

The Plaintiff in Quebec shall not proceed with motions to approve this Settlement Agreement in the Proceeding commenced in the Quebec Court unless and until the Ontario Court approves this Settlement Agreement. The approval motion may be filed in Quebec, as set forth in Section 3.2(1), but Quebec Counsel agrees to seek an

adjournment of its approval hearing until after the Ontario Court renders its decision on the motion for approval brought before it.

3.4 Effect of Non-Approval

Notwithstanding any other term of this Settlement Agreement, the Settling Defendants may, in their sole and unfettered discretion, elect to terminate this Settlement Agreement in accordance with section 11 if the Quebec Court fails to approve this Settlement Agreement or any part thereof.

SECTION 4 – SETTLEMENT BENEFITS

4.1 Payment of Settlement Amount

- (1) In full satisfaction of all of the Released Claims against the Releasees, DDE agrees to pay the Settlement Amount consistent with the terms herein.
- (2) DDE shall pay the Settlement Amount to Ontario Counsel for deposit into the Account on or before the Deposit Date.
- (3) Ontario Counsel shall maintain the Account as provided for in this Settlement Agreement and shall not pay out any of the monies in the Account, except in accordance with the provisions of this Settlement Agreement, without an order of the Ontario Court made on notice to or on consent of the Parties. Settling Defendants shall have no responsibility or liability for payments made from the Account by Ontario Counsel inconsistent with the terms of this Settlement Agreement.

4.2 Taxes and Interest

- (1) All interest earned on the Settlement Amount shall become and remain part of the Account.
- (2) Subject to section 4.2(3), all taxes payable on any interest which accrues in the Account or otherwise in relation to the Settlement Amount shall be the responsibility of the Settlement Classes. Ontario Counsel shall be solely responsible to fulfill all tax

reporting and payment requirements arising from the Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Account.

(3) The Settling Defendants shall have no responsibility to make any filings relating to the Account and will have no responsibility to pay tax on any income earned by the Settlement Amount or pay any taxes on the monies in the Account, unless this Settlement Agreement is not approved or is terminated, in which case the Account balance, including interest on the Account, shall be returned to the Settling Defendants who, in such case, shall be responsible for the payment of all taxes on such interest.

4.3 Cooperation

(1) DDE agrees to provide the Plaintiffs reasonable cooperation in the Proceedings.

(2) In the absence of an order from the Ontario Court or the consent of DDE, no documents and information provided, or otherwise communicated to Plaintiffs as part of cooperation or otherwise under this Agreement shall be provided to, or the contents thereof discussed with, any other persons.

SECTION 5 — DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST

(1) The monies in the Account shall be held by Ontario Counsel for the benefit of the Settlement Class Members, including, but not limited to, Direct Purchasers, Distributors, Intermediate Purchasers and Consumers and, after the Effective Date, shall be paid in accordance with a plan approved by the Courts. Class Counsel shall, by motion, submit a plan of distribution for approval by the Courts at the appropriate time.

(2) In no event shall any of the Settling Defendants have any responsibility, financial obligations or liability whatsoever with respect to the investment, distribution or administration of monies in the Account including, but not limited to, in respect of Administration Expenses and Class Counsel Fees.

SECTION 6 – RELEASES AND DISMISSALS

6.1 Release of Releasees

Upon the Effective Date, the Releasors forever and absolutely release the Releasees from the Released Claims.

6.2 Covenant Not To Sue

Notwithstanding section 6.1, for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasors do not release the Releasees but instead covenant and undertake not to make any claim in any way or to threaten, commence, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

6.3 No Further Claims

The Releasors shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasees or any other person who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any matter related thereto, except for the continuation of the Proceedings against any Non-Settling Defendants.

6.4 Dismissal of Releasees

The Proceedings shall be dismissed as against the Releasees, without costs and with prejudice.

6.5 Dismissal of Other Actions

All other actions commenced by any Settlement Class Member in Canada relating to the Released Claims shall be dismissed against the Releasees, without costs and with prejudice.

SECTION 7 – BAR ORDER AND OTHER CLAIMS

7.1 Bar Order

A bar order, to which the Parties shall consent, shall be granted by each of the Courts providing for the following:

- (a) all claims for contribution, indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceedings, by any Non-Settling Defendant or any other person or party, against a Releasee, are barred, prohibited and enjoined in accordance with the terms of this section (unless such claim is made in respect of a claim by a person who has validly opted out of a Settlement Class);
- (b) the Plaintiffs shall restrict their joint and several claims against the Non-Settling Defendants such that the Plaintiffs shall be entitled to claim and recover from the Non-Settling Defendants on a joint and several basis only those damages (including punitive damages) arising from and allocable to the conduct of the Non-Settling Defendants;

(c) a Non-Settling Defendant may seek by motion an order from a Court providing for discovery from some or all of the Settling Defendants as deemed appropriate by the Court; and

(d) a Non-Settling Defendant may effect service of the motion(s) referred to in section 7.1(c) on a Settling Defendant by service on counsel of record for the Settling Defendants in the Proceedings.

7.2 Claims Against Other Persons Reserved

Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by Settlement Class Members against any person other than the Releasees.

SECTION 8 – EFFECT OF SETTLEMENT

8.1 No Admission of Liability

The Parties expressly reserve all of their rights if this Settlement Agreement does not become effective or is terminated by the Settling Defendants. Further, the Parties agree that, whether or not this Settlement Agreement is finally approved or is terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by any Settling Defendant, or of the truth of any of the claims or allegations contained in the Proceedings or any other pleading filed by the Plaintiffs.

8.2 Agreement Not Evidence

The Parties agree that, whether or not it is finally approved or is terminated, this Settlement Agreement and anything contained herein, and any and all negotiations,

documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to enforce this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law.

SECTION 9 – CERTIFICATION FOR SETTLEMENT ONLY

9.1 Settlement Class and Common Issue

(1) The Parties agree that the Proceedings shall be certified as class proceedings solely for purposes of settlement of the Proceedings and the approval of this Settlement Agreement by the Courts.

(2) The Plaintiffs agree that, in the motions for certification of the Proceedings as class proceedings and for the approval of this Settlement Agreement, the only common issue that they will seek to define is the Common Issue and the only classes that they will assert are the Settlement Classes.

9.2 Certification Without Prejudice

In the event this Settlement Agreement is not approved or is terminated in accordance with its terms, the Parties agree that any prior certification of a Proceeding as a class proceeding, including the definition of the Settlement Class and the statement of the Common Issue, shall be without prejudice to any position that any of the Parties may later take on any issue in the Proceedings or any other litigation.

SECTION 10 – NOTICE TO SETTLEMENT CLASSES

10.1 Notices Required

The proposed Settlement Classes shall be given notice of (i) hearings at which the Courts will be asked to approve the Settlement Agreement, (ii) the certification of

the Proceedings as class proceedings and the approval of this Settlement Agreement and (iii) the termination of the Settlement Agreement if it is terminated after the notice provided for in (ii) has been published and distributed.

10.2 Form and Distribution of Notices

The form of the notices referred to in section 10.1 and the manner of their publication and distribution shall be as agreed to by the Parties and as approved by the Courts.

SECTION 11 – TERMINATION OF SETTLEMENT AGREEMENT

11.1 Exercise of Termination Right

(1) Any right of the Settling Defendants to terminate this Settlement Agreement shall be exercised, and any determination of whether any order complies with section 3 shall be made, only with the consent of all Settling Defendants or their successors.

(2) No Releasee shall make or advance any claim of any kind against any Settling Defendant in connection with or arising out of:

- (a) any decision it makes or fails to make to exercise or not to exercise a right to terminate this Settlement Agreement; or
- (b) any determination it makes or fails to make as to whether any order is or is not in compliance or is deemed in compliance with section 3.

11.2 Manner of Termination

If the Quebec Court fails to approve this Settlement Agreement, and if the Settling Defendants elect to exercise their right to terminate this Settlement Agreement, then the Settling Defendants shall give written notice of termination to the Class Counsel no later than 21 days after such Court's judgment failing to approve this

Settlement Agreement and the disposal of all appeals (if any) therefrom or the expiration of the time for taking such appeals.

11.3 Consequences of a Decision not to Terminate following a Refusal to Approve the Settlement Agreement

If the Settling Defendants do not exercise their election to terminate this Settlement Agreement following the Quebec Court's failure to approve the Settlement Agreement, then, each definition, section and schedule shall be deemed to be amended so as to delete all references and provisions relating to Quebec, the Quebec Court and members of the Settlement Class from Quebec. No Class Counsel Fees shall be payable from the Settlement Amount in any jurisdiction which declines to approve this Settlement Agreement. The Plaintiff in Quebec does not by virtue of this provision or this Settlement Agreement as a whole consent to the Ontario Court assuming jurisdiction over Quebec class members.

11.4 Effect of Termination Generally

(1) Except as provided in sections 11.5 - 11.7, if this Settlement Agreement is terminated, it shall have no further force and effect, shall not be binding on the Parties and shall not be used as evidence or otherwise in any litigation.

(2) If this Settlement Agreement is terminated:

(a) no motion to certify any of the Proceedings as a class action on the basis of this Settlement Agreement or to approve this Settlement Agreement shall proceed; and

(b) any order certifying a Proceeding as a class action on the basis of the Settlement Agreement and approving this Settlement Agreement shall be set aside and declared null and void and of no

force or effect, and anyone shall be estopped from asserting otherwise.

11.5 Actions to be Taken if Settlement Agreement Terminated

(1) If the Settlement Agreement is terminated, the Settling Defendants shall bring and Plaintiffs shall stipulate to (unless disputing pursuant to Section 11.5(2)) motions before each of the Courts which shall issue orders in accordance with section 11.4:

- (a) declaring the Settlement Agreement to be null and void and of no force or effect (except for the provisions set out in section 11.7);
- (b) setting aside any order certifying a Proceeding as a class action on the basis of the Settlement Agreement; and
- (c) directing that the balance in the Account, including interest, be returned to the Settling Defendants.

(2) If there is any dispute about whether the Settling Defendants have given a valid notice of termination in accordance with the provisions of this Settlement Agreement, then the Courts shall determine that dispute on motion brought by a Party.

11.6 Allocation of Monies in the Account Following Termination

If the Settlement Agreement is terminated, Ontario Counsel shall return to the Settling Defendants all monies in the Account, including interest.

11.7 Survival of Provisions After Termination

If this Settlement Agreement is terminated for any reason, the provisions of sections 4.2(3), 8.1, 8.2, 9.2, 10.1, 11 and 12.2(4) and the definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect.

SECTION 12 – ADMINISTRATION AND IMPLEMENTATION

12.1 Mechanics of Administration

Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement shall be determined by the Courts on motions brought by Class Counsel.

12.2 Information and Assistance

- (1) The Settling Defendants will make reasonable efforts to compile a list of the names and addresses of Direct Purchasers and Distributors in Canada who purchased Polychloroprene in Canada from them during the Purchase Period.
- (2) The information required by section 12.2(1) shall be delivered to Ontario Counsel within 15 business days of the execution of this Settlement Agreement by all Parties.
- (3) Ontario Class Counsel shall use the information provided under section 12.2(2) to advise the persons identified pursuant to 12.2(1) of this Settlement Agreement, the date of the approval hearings before the Courts, and the mechanics of the implementation and administration of this Settlement Agreement.
- (4) If this Settlement Agreement is terminated, all information provided by the Settling Defendants pursuant to this Settlement Agreement shall be returned to them forthwith and no record of the information so provided shall be retained by Class Counsel in any form whatsoever.

SECTION 13 – CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES

- (1) Class Counsel may seek the Courts' approval to pay Class Counsel Fees and Administration Expenses from the monies in the Account.
- (2) Subject to section 13(4), Class Counsel Fees and Administration Expenses may be paid out of the Account after the Effective Date.

(3) Subject to section 13(4), Class Counsel shall bring motions for approval and payment of Class Counsel Fees and Administration Expenses out of the Account, which motions shall be made returnable at the same time as the motions for approval of this Settlement Agreement.

(4) Notwithstanding section 13(2) and (3) and subject to section 13(5), Class Counsel may pay the costs of the first two notices referred to in section 10.1 of this Settlement Agreement out of the Account, but only up to a maximum of \$37,000 and only after those notices have been agreed to by the Parties and approved by the Courts.

(5) In the event that the Plaintiffs reach a settlement with one or more of the Non-Settling Defendants and the first two notices referred to in section 10.1 apply to both this Settlement Agreement and such additional agreements reached by the Plaintiffs, the costs of the first two notices shall be paid from the Account and the account(s) established with regard to other Defendants to whom the notices apply, pro rata based on sales of Polychloroprene during the Purchase Period, but in no event shall the costs paid out of the Account exceed \$37,000.

SECTION 14 – MISCELLANEOUS

14.1 Motions for Directions

(1) Any Class Counsel or Settling Defendant may apply to the Courts for directions in respect of the implementation and administration of this Settlement Agreement.

(2) All motions contemplated by this Settlement Agreement shall be served on each of the Parties.

14.2 Releasees Have No Liability for Administration

The Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.

14.3 Headings, etc.

In this Settlement Agreement:

- (a) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
- (b) the terms “this Settlement Agreement”, “hereof”, “hereunder” and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement.

14.4 Ongoing Jurisdiction

- (1) Each of the Courts shall retain exclusive jurisdiction over each Proceeding commenced in its jurisdiction, the parties thereto and the Class Counsel Fees in those Proceedings.
- (2) Each Court shall not make any order or give any direction in respect of any matter of shared joint jurisdiction unless that order or direction is conditional upon a complementary order or direction being made or given by the other Court(s) with which it shares jurisdiction over that matter.

14.5 Governing Law

This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.

14.6 Entire Agreement

This Settlement Agreement constitutes the entire agreement between the Plaintiffs and the Settling Defendants, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements,

agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein. This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto and any such modification or amendment must be approved by the Courts with jurisdiction over the matter to which the amendment relates.

14.7 Binding Effect

This Settlement Agreement shall be binding upon, and inure to the benefit of, the Plaintiffs, Releasers, the Settling Defendants, the Releasees and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiffs shall be binding upon all Releasers and each and every covenant and agreement made herein by the Settling Defendants shall be binding upon all of the Releasees.

14.8 Survival

The representations and warranties contained in this Settlement Agreement shall survive its execution and implementation.

14.9 Counterparts

This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or .PDF signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

14.10 Negotiated Agreement

This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised

by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. No Party shall be deemed the drafter of this Settlement Agreement. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

14.11 Recitals

The recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

14.12 Schedules

The Schedule annexed hereto forms part of this Settlement Agreement.

14.13 Acknowledgements

Each of the Parties hereby affirms and acknowledges that:

- (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
- (c) he, she or the Party's representative fully understands each term of the Settlement Agreement and its effect; and

(d) no Party has relied upon any statement, representation or inducement of any other Party, beyond the terms set forth herein, in executing this Settlement Agreement.

14.14 Authorized Signatures

Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement.

14.15 Notice

Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication or document shall be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For Settling Plaintiffs and for Class Counsel:

**Charles M. Wright
Siskind, Cromarty, Ivey & Dowler LLP
Barristers and Solicitors
680 Waterloo Street
London, ON N6A 3V8**

Telephone: 519-672-2121
Facsimile: 519-672-6065
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**Daniel Belleau
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Montreal, Quebec
H2Y 2B6**

Telephone: 514-987-6700
Facsimile: 514-987-6886
Email: dbelleau@belleaulapointe.com

For Settling Defendants:

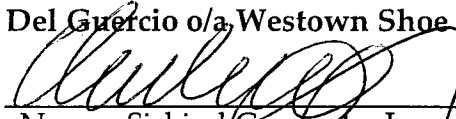
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Luigi Del Guercio o/a Westown Shoe Clinic

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By:

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**DUPONT DOW ELASTOMERS L.L.C., E.I.
DU PONT DE NEMOURS AND COMPANY,
E.I. DUPONT CANADA COMPANY, THE
DOW CHEMICAL COMPANY and
DOW CHEMICAL CANADA INC.**

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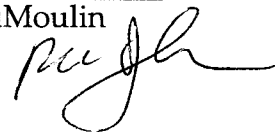
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SCHEDULE A – PROCEEDINGS

Proceeding/Plaintiff	Defendants	Settlement Class
<p>Ontario Superior Court of Justice Court File No. 46517CP</p> <p>Luigi del Guercio o/a Westown Shoe Clinic</p>	<p>Bayer Inc., Bayer A.G., Bayer Material Science A.G., Bayer Material Science LLC (Formerly Bayer Polymers LLC), Bayer Corporation The Dow Chemical Company, Dow Chemical Canada Inc., Dupont Dow Elastomers LLC, E.I. du Pont de Nemours and Company, E.I. du Pont Canada Company, Polimeri Europa S.R.L., Polimeri Europa Americas, Inc., Enichem S.p.A., Enichem Americas, Inc.</p>	<p>All persons in Canada who purchased Polychloroprene or Polychloroprene Products in Canada during the Purchase Period, except the Excluded Persons and persons who are included in the Quebec Action.</p>
<p>Superior Court of Quebec (District of Montreal), File No. 500-06-000276-051 (“Quebec Action”)</p> <p>Option Consummateurs (Plaintiff)</p> <p>and</p> <p>André-Bernard Guévin (Designated Person)</p>	<p>Bayer Inc., Bayer A.G., Bayer Material Science A.G., Bayer Material Science LLC, Bayer Corporation The Dow Chemical Company, Dow Chemical Canada Inc., Dupont Dow Elastomers LLC, E.I. du Pont de Nemours and Company, E.I. du Pont Canada Company, Polimeri Europa S.R.L., Polimeri Americas, Inc., Syndial SPA</p>	<p>All persons in Quebec who purchased Polychloroprene or Polychloroprene Products in Quebec during the Purchase Period except the Excluded Persons.</p>