

**CANADIAN
POLYESTER POLYOLS CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

Made November 8, 2005

Between

R.G. GIBSON & SONS LTD. AND OPTION CONSOMMATEURS
(the "Plaintiffs")

and

**CHEMTURA CORPORATION (f/k/a CROMPTON CORPORATION), CROMPTON
CO./CIE., CROMPTON CANADA CORPORATION,
AND UNIROYAL CHEMICAL COMPANY INC.**
(the "Settling Defendants")

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**CANADIAN POLYESTER POLYOLS CLASS ACTION
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RECITALS

- A. WHEREAS the Proceedings have been commenced by the Plaintiffs in Ontario and Quebec which allege that the Settling Defendants participated in an unlawful conspiracy to raise, fix, maintain or stabilize the price of Polyester Polyols in Canada and/or to allocate markets and customers for the sale of Polyester Polyols in Canada, contrary to Part VI of the *Competition Act*;
- B. WHEREAS the Settling Defendants deny the allegations as alleged in the Proceedings;
- C. WHEREAS the Plaintiffs and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their 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;
- D. 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;
- E. 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;
- F. 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 or authorization of the Proceedings as class proceedings and have consented to a Settlement Class and a Common Issue in each of the Proceedings; and
- G. 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 an interest bearing trust account at a Canadian Schedule 1 bank in Ontario under the control of Ontario Counsel.
- (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.
- (5) *Class Period* means February 1, 1998 to December 31, 2002.
- (6) *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, Polyester Polyols in Canada during the Class Period?
- (7) *Consumer* means any individual who purchased Polyester Polyols Products during the Class Period for personal consumption or use.
- (8) *Courts* means the Ontario Court and the Quebec Court.
- (9) *Defendants* means the individuals and entities named as defendants in the Proceedings as set out in Schedule A.
- (10) *Deposit Date* means the date which is 10 business days after the execution of this Settlement Agreement by or on behalf of all Parties.

- (11) *Direct Purchaser* means a person, other than a Distributor, who purchased Polyester Polyols in Canada during the Class Period directly from a Defendant or from a Distributor.
- (12) *Distributor* means a person who purchased Polyester Polyols in Canada during the Class Period directly from a Defendant and only resold all of the purchased Polyester Polyols without either further processing it or including it in any other product.
- (13) *Effective Date* means the date when Final Orders have been received from all Courts approving this Settlement Agreement.
- (14) *Excluded Person* means each Defendant, the 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.
- (15) *Final Order* means a final judgment entered by a Court in respect of the certification or authorization 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, if an appeal lies, or once there has been a final disposition of all appeals.
- (16) *Fonds* means the Fonds d'aide aux recours collectifs in Quebec.
- (17) *Intermediate Purchaser* means a person, other than a Direct Purchaser, a Distributor or a Consumer, who purchased Polyester Polyols Products during the Class Period.
- (18) *Non-Settling Defendant* means a Defendant who is not a Settling Defendant or a Settling Defendant who terminates its Settlement Agreement in accordance with its terms.
- (19) *Ontario Counsel* means Siskind, Cromarty, Ivey & Dowler^{LLP}.
- (20) *Ontario Court* means the Ontario Superior Court of Justice.
- (21) *Opt-Out Refund* means 3.6% of the Purchase Price paid by a Direct Purchaser who timely opts out of this Settlement Agreement, for Polyester Polyols purchased from a Settling Defendant during the Class Period.
- (22) *Other Actions* means actions or proceedings, other than the Proceedings, relating to Released Claims commenced by a Settlement Class Member either before or after the Effective Date.
- (23) *Parties* means the Plaintiffs and the Settling Defendants.
- (24) *Plaintiffs* means the individuals and entities named as plaintiffs in the Proceedings as set out in Schedule A.

- (25) *Polyester Polyols* means aliphatic polyester polyols made from adipic acid.
- (26) *Polyester Polyols Products* means Polyester Polyols and products that directly or indirectly contain or are derived from Polyester Polyols.
- (27) *Proceedings* means Ontario Court File No. 46488CP (London) and Quebec Court (District of Montreal) File No. 500-06-000252-045.
- (28) *Purchase Price* means the net amount, including rebates or any other form of discounts, paid for Polyester Polyols purchased in Canada during the Class Period, excluding all other charges including, but not limited to, delivery or shipping charges and taxes.
- (29) *Quebec Class* means all persons in Quebec who purchased Polyester Polyols Products in Quebec during the Class Period, except Excluded Persons, as well as any legal person established for a private interest, partnership or association which, at all times between October 7, 2003 and October 7, 2004, had under its direction or control more than 50 persons bound to it by a contract of employment.
- (30) *Quebec Counsel* means Belleau Lapointe s.a.
- (31) *Quebec Court* means the Superior Court of Quebec.
- (32) *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 Class Counsel Fees, known or unknown, suspected or unsuspected, in law, under statute or in equity, that Releasers, 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 anywhere, from the beginning of time to the date hereof, in respect of the purchase, sale, pricing, discounting, marketing or distributing of Polyester Polyols Products in Canada, or relating to any conduct alleged (or which could have been alleged) in the Proceedings 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 Polyester Polyols Products in Canada but, for greater certainty, and without limiting the scope or generality of the foregoing, does not include product liability or breach of contract claims unrelated to the subject matter of the Proceedings or Other Actions.
- (33) *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.

(34) *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.

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

(36) *Settlement Amount* means CDN\$69,000 allocated as follows: \$5,000 toward Administrative Expenses, \$5,000 toward Class Counsel Fees, and \$59,000 toward other settlement benefits.

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

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

(39) *Settling Defendants* means Chemtura Corporation (f/k/a Crompton Corporation), Crompton Co./Cie., Crompton Canada Corporation, and Uniroyal Chemical Company Inc.

SECTION 2 – CONDITION PRECEDENT: ONTARIO COURT APPROVAL

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 Best Efforts

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) The Plaintiffs shall bring motions before the Courts for orders certifying or authorizing each of the Proceedings commenced in their respective jurisdictions as a class proceeding (for settlement purposes) and approving this Settlement Agreement no later than eight months after the date on which this Settlement Agreement is executed by all Parties. Until such motions are brought, 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.

(2) The orders referred to in section 3.2(1) shall be in the form attached hereto as Schedule B. Sections 4, 5, 9, 10, 21, 22, 23, 25 and 27 of the order attached at Schedule B need only be incorporated in the Orders referred to in Section 3.2(1) in substantially the form set out in that Schedule. For greater certainty, the Quebec order will be agreed upon by the Parties and shall mirror the form and substance of order attached hereto as Schedule B.

3.3 Sequence of Motions

The Plaintiff in Quebec shall not proceed with a motion to approve this Settlement Agreement in its proceeding unless and until the Ontario Court approves this Settlement Agreement. The approval motion may be filed in Quebec, but Quebec Counsel agrees to seek any adjournment of its approval hearing required to permit the Ontario Court to first render 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 12 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) The Settling Defendants agree to pay the Settlement Amount in accordance with this Settlement Agreement, in full satisfaction of all of the Released Claims against the Releasees.
- (2) The Settling Defendants shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement.
- (3) The Settling Defendants shall pay the Settlement Amount on or before the Deposit Date to Ontario Counsel for deposit into the Account.
- (4) Ontario Counsel shall maintain the Account as provided for in this Settlement Agreement and shall not pay out any of Settlement Amount, except in accordance with the provisions of this Settlement Agreement, without an order of the Courts made on notice to or on consent of the Parties.

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 on the Settlement Amount 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 Settlement Amount in 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 interest earned on the Settlement Amount in 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) By or before the Deposit Date, the Settling Defendants agree to meet with Class Counsel to provide an evidentiary proffer, which will include information within their control relating to

the allegations in the Proceedings including, without limitation, the dates, locations, subject matter, and participants in any meetings between competitors. The Settling Defendants will also provide other information within its control regarding the potential culpability of the named defendants and unnamed co-conspirators in the Proceedings and electronic transactional data for sales by the Settling Defendants of products involved in the claims alleged in the Proceedings during the Class Period. In connection with the production of such data, the Settling Defendants shall make available technical and computer personnel, at reasonable times, to assist Plaintiffs' counsel in understanding and using such data.

(2) If this Settlement Agreement is terminated, or is not approved by the Ontario Court, within five (5) days of such termination having occurred, Class Counsel shall, if requested by the Settling Defendants to do so, return to the Settling Defendants or destroy, and provide the Settling Defendants with a written certification by Class Counsel of such destruction, all documents or other materials provided by the Settling Defendants or containing information derived from such documents. Nothing contained in this sub-paragraph shall be construed to require Class Counsel to return any of their work product.

(3) Within ten (10) days of the Effective Date, the Settling Defendants shall identify and produce all relevant non-privileged documents within their control related to the allegations raised in the Proceedings, including but not limited to (i) documents regarding the potential culpability of the named defendants and unnamed co-conspirators in the Proceedings, and (ii) all documents provided to any grand jury, the United States Department of Justice, the European Commission, the Competition Bureau, or any other state, federal or international governmental or administrative agency, without geographic limitation, concerning the allegations raised in the Proceedings except documents created for the purpose of being so provided.

(4) Following the Effective Date, the Settling Defendants shall be available for conferences, and shall make available, upon reasonable notice, current directors, officers and employees of the Settling Defendants who are believed to have knowledge of the allegations raised in the Proceedings to provide information regarding the allegations raised in the Proceedings in personal interviews, assist in the preparation of affidavits, declarations, and/or provide testimony at trial. The refusal of any current director, officer, or employee to provide information in accordance with this paragraph because of a good faith belief that he/she has potential criminal exposure shall not constitute a violation of this Settlement Agreement by the Settling Defendants

or that individual. As to former directors, officers and employees, the Settling Defendants shall use reasonable efforts to have such individuals appear for interviews, and trial testimony under the same conditions as for the current officers, directors, and employees of the Settling Defendants. Any persons made available under this paragraph shall be made available at a mutually agreeable time and place within their country of domicile.

(5) The Settling Defendants agree to produce at trial and/or discovery or through acceptable affidavits or other testimony, representatives qualified to establish for admission into evidence the Settling Defendants' sales of Polyester Polyols during the Class Period and any other documents of the Settling Defendants to the extent permitted by the rules of evidence.

(6) The Settling Defendants shall not be required to produce or provide pursuant to section 4.3 any information or documents: (a) that they are prohibited by law from so producing or providing; or (b) that they obtained from any party in any action or proceeding who is not a Settling Defendant.

SECTION 5 — DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST

5.1 Distribution Plan

The Settlement Amount shall be held by Ontario Counsel for the benefit of the Settlement Class Members, including 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, on notice to the Settling Defendants, submit a plan for approval by the Courts at the appropriate time.

5.2 No Responsibility for Administration or Fees

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 – OPTING-OUT

6.1 Procedure

The procedure for opting out of this Settlement Agreement, including timing and notice requirements and the information required of the person seeking to opt-out, shall be agreed to by the Parties and approved by the Courts as part of the Final Orders.

6.2 Opt-Out Report

Within 30 days after the expiry of the time for opting out, the Settling Defendants and Class Counsel shall be provided with a report from the entity appointed as administrator of this settlement, or by Class Counsel if an administrator has not yet been appointed, advising as to the names of those persons, if any, who have opted out of this settlement, the reasons for the opt-out, if known, its best estimate of the total Purchase Price paid by each such person for purchases from a Settling Defendant and a copy of all information provided by that person in the opting-out process.

6.3 Opt-Out Refund

The Settling Defendants may, in their sole and unfettered discretion, claim an Opt-Out Refund by giving notice in writing to Class Counsel and the claims administrator if one has been appointed, no later than 21 days after receiving the report referred to in section 6(2). Class Counsel, or the claims administrator if one has been appointed at that time, shall pay to the Settling Defendants the Opt-Out Refund, together with any interest actually earned on such amount in the Account, forthwith upon receiving such notice. In no event shall the total Opt-Out Refund paid to the Settling Defendants exceed \$41,300.

SECTION 7 – RELEASES AND DISMISSALS

7.1 Release of Releasees

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

7.2 Release by Releasees

Upon the Effective Date, each Releasee forever and absolutely releases each of the other Releasees from any and all claims for contribution or indemnity with respect to the Released Claims.

7.3 Covenant Not To Sue

Notwithstanding section 7.1, 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.

7.4 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 the Non-Settling Defendants or unnamed co-conspirators.

7.5 Dismissal of Settling Proceedings

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

7.6 Dismissal of Other Actions

(1) Each Settlement Class Member shall be deemed to consent to the dismissal, without costs and with prejudice, of his, her or its Other Actions against the Releasees.

(2) All Other Actions commenced in Ontario or Quebec by any Settlement Class Member, relating to the Released Claims, shall be dismissed against the Releasees, without costs and with prejudice.

SECTION 8 – BAR ORDER AND OTHER CLAIMS

8.1 Bar Order

A bar order 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, Settled 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 and sales by the Non-Settling Defendants;
 - (c) a Non-Settling Defendant may seek 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 8.1(c) on a Settling Defendant by service on counsel of record for the Settling Defendants in the Proceedings.

8.2 Claims Against Other Entities 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 9 – EFFECT OF SETTLEMENT

9.1 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.

9.2 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.

9.3 No Further Litigation

(1) Except as provided in this section, no Class Counsel, nor anyone currently or hereafter employed by, associated with, or a partner with Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any person which relates to or arises from the Released Claims. Moreover, these persons may not divulge to anyone for any purpose any information obtained in the course of the Proceedings or the negotiation and preparation of this Settlement Agreement, except to the extent such information is otherwise publicly available or otherwise ordered by a court.

(2) Section 9.3(1) does not apply to the involvement of any person in the continued prosecution of the Proceedings against any Non-Settling Defendants.

SECTION 10 – CERTIFICATION OR AUTHORIZATION FOR SETTLEMENT ONLY

10.1 Settlement Class and Common Issue

(1) The Parties agree that the Proceedings shall be certified or authorized 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 or authorization 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.

10.2 Certification or Authorization 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 or authorization 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 11 – NOTICE TO SETTLEMENT CLASSES

11.1 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; and (ii) the certification or authorization of the Proceedings as class proceedings and the approval of this Settlement Agreement.

11.2 Form and Distribution of Notices

The form of the notices referred to in section 11.1 and the manner of their publication and distribution shall be as agreed to by the Parties and approved by the Courts.

SECTION 12 – TERMINATION OF SETTLEMENT AGREEMENT

12.1 Exercise of Termination Right

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 3.2(2).

12.2 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 the disposal of all appeals (if any) or the expiration of the time for taking such appeals from such Court's judgment failing to approve this Settlement Agreement.

12.3 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 herewith amended so as to delete all references and provisions relating to that jurisdiction. Notwithstanding this, the definition of Quebec Class as found in section 1(29) and Schedule A, and the definition of Settlement Class as found in section 1(37) and Schedule A shall not be deleted and shall remain unchanged. No Class Counsel Fees shall be payable from the Settlement Amount in any jurisdiction which declines to approve this Settlement Agreement.

12.4 Effect of Termination Generally

Except as provided in sections 12.5 - 12.7, 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.

12.5 If Settlement Agreement is Terminated

- (1) If this Settlement Agreement is terminated:
 - (a) no motion to certify or authorize 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 or authorizing 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.
- (2) If the Settlement Agreement is terminated, the Settling Defendants shall bring motions before each of the Courts which shall issue orders:
 - (a) declaring the Settlement Agreement to be null and void and of no force or effect (except for the provisions set out in section 12.7);
 - (b) setting aside any order certifying or authorizing 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.

12.6 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.

12.7 Survival of Provisions After Termination

If this Settlement Agreement is terminated for any reason, the provisions of sections 4.2, 4.3(2), 9.1, 9.2, 10.2, 12 and 13.2(5) and the definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect.

SECTION 13 – ADMINISTRATION AND IMPLEMENTATION

13.1 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.

13.2 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 Polyester Polyols in Canada from them during the Class Period.
- (2) The information required by section 13.2(1) shall be delivered to Class Counsel within 10 business days of the execution of this Settlement Agreement by all Parties.
- (3) Ontario Class Counsel shall use the information provided under section 13.2(2) to advise Direct Purchasers and Distributors of this Settlement Agreement and the date of the approval hearings before the Courts.
- (4) Each Settling Defendant will make reasonable best efforts to provide the Purchase Price paid by each of its Direct Purchaser and Distributor customers in Canada during the Class Period. This information shall be provided to the administrator or, if no administrator has been appointed by the Court, to Class Counsel, within 14 days of the Effective Date and shall be used to facilitate the claims administration process eventually established in accordance with section 5 of this Settlement Agreement.
- (5) If this Settlement Agreement is terminated, all information provided by the Settling Defendants pursuant to Section 13.2 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 14 – 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 14(3), Class Counsel Fees and Administration Expenses may be paid out of the Account after the Effective Date.
- (3) Notwithstanding section 14(2) and subject to section 14(4), Class Counsel may pay the costs of the notices referred to in section 11 of this Settlement Agreement out of the Account, but only up to a maximum of \$37,000.00 in total for both notices and only after those notices have been agreed to by the Parties and approved by the Courts.
- (4) In the event that the Plaintiffs reach a settlement with one or more of the Non-Settling Defendants and the notices referred to in section 11 apply to both this Settlement Agreement and such additional agreements reached by the Plaintiffs, the costs of the notices shall be shared by all Defendants to whom the notices apply, pro rata based on sales of Polyester Polyols during the Purchase Period, but in no event shall the costs paid out of the Account exceed \$37,000 in total for both notices.

SECTION 15 – MISCELLANEOUS

15.1 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 on notice to the Parties.

15.2 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.

15.3 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.

15.4 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) No Court shall make any order or give any direction in respect of any matter of shared jurisdiction unless that order or direction is conditional upon a complimentary order or direction being made or given by the other Court(s) with which it shares jurisdiction over that matter.

15.5 Governing Law

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

15.6 Entire Agreement

This Settlement Agreement constitutes the entire agreement among the Parties, 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.

15.7 Binding Effect

This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, 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 Releasors and each and every covenant and agreement made herein by the Settling Defendants shall be binding upon all of the Releasees.

15.8 Survival

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

15.9 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 signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

15.10 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. 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.

15.11 Language

The parties acknowledge that they have required and consented that this Agreement and all related documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais.

15.12 Transaction

The present Agreement constitutes a transaction in accordance with Articles 2631 and following of the *Civil Code of Quebec*, and the parties are hereby renouncing to any errors of fact, of law and/or of calculation.

15.13 Recitals

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

15.14 Schedules

The Schedule annexed hereto forms part of this Settlement Agreement.

15.15 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 (whether material, false, negligently made or otherwise) of any other Party with respect to the first Party's decision to execute this Settlement Agreement.

15.16 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.

15.17 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 Plaintiffs and for Class Counsel:

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

Maxime Nasr
Belleau Lapointe s.a.
306, Place d'Youville Suite B-10
Montréal, Québec
H2Y 2B6

Telephone: 519-672-2121
Facsimile: 519-672-6065
Email: charles.wright@siskinds.com

Telephone: 514.987.6672
Facsimile: 514.987.6886
Email: mnasr@belleaulapointe.com

For Settling Defendants:

David W. Kent
McMillan Binch Mendelsohn LLP
Barristers and Solicitors
BCE Place, Suite 4400
Bay Wellington Tower
181 Bay Street
Toronto ON M5J 2T3

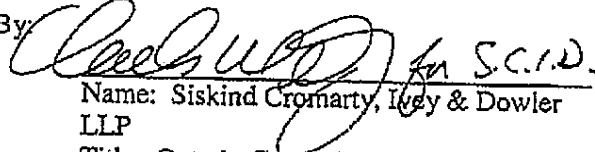
Telephone: 416-865-7143
Facsimile: 416-865-7048
Email: david.kent@mcmbm.com

John Ferguson
Senior Vice President Legal Affairs
Chemtura Corporation
199 Benson Road
Middlebury, CT 06749
U.S.A.

Telephone: 203-573-4335
Facsimile: 203 - 573-2686
Email: jtferguson@chemtura.ca

The Parties have executed this Settlement Agreement as of the date on the cover page.

**R.G. GIBSON & SONS and OPTION
CONSOUMMATEURS**

By: 
Name: Siskind Cromarty, Iddy & Dowler
LLP
Title: Ontario Counsel

By:

Name: Belleau Lapointe s.a.
Title: Quebec Counsel

**CHEMTURA CORPORATION (F/K/A/
CROMPTON CORPORATION),
CROMPTON CO./CIE., CROMPTON
CANADA CORPORATION, AND
UNIROYAL CHEMICAL COMPANY INC.**

By:

Name: McMillan Binch Mendelsohn LLP
(David W. Kent)
Title: Canadian Counsel

For Settling Defendants:

David W. Kent
McMillan Binch Mendelsohn LLP
Barristers and Solicitors
BCE Place, Suite 4400
Bay Wellington Tower
181 Bay Street
Toronto ON M5J 2T3

Telephone: 416-865-7143
Facsimile: 416-865-7048
Email: david.kent@mcmmbm.com

John Ferguson
Senior Vice President Legal Affairs
Chemtura Corporation
199 Benson Road
Middlebury, CT 06749
U.S.A.

Telephone: 203-573-4335
Facsimile: 203 - 573-2686
Email: jtferguson@chemtura.ca

The Parties have executed this Settlement Agreement as of the date on the cover page.

**R.G. GIBSON & SONS and OPTION
CONSOMMATEURS**

By:

Name: Siskind Cromarty, Ivey & Dowler
LLP
Title: Ontario Counsel

By:

Belleau Lapointe, s.a.
Name: Belleau Lapointe s.a.
Title: Quebec Counsel

**CHEMTURA CORPORATION (F/K/A/
CROMPTON CORPORATION),
CROMPTON CO./CIE., CROMPTON
CANADA CORPORATION, AND
UNIROYAL CHEMICAL COMPANY INC.**
By:

Name: McMillan Binch Mendelsohn LLP
(David W. Kent)
Title: Canadian Counsel

For Settling Defendants:

David W. Kent
McMillan Binch Mendelsohn LLP
Barristers and Solicitors
BCE Place, Suite 4400
Bay Wellington Tower
181 Bay Street
Toronto ON M5J 2T3

Telephone: 416-865-7143
Facsimile: 416-865-7048
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John Ferguson
Senior Vice President Legal Affairs
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199 Benson Road
Middlebury, CT 06749
U.S.A.

Telephone: 203-573-4335
Facsimile: 203 - 573-2686
Email: jtferguson@chemtura.ca

The Parties have executed this Settlement Agreement as of the date on the cover page.

**R.G. GIBSON & SONS and OPTION
CONSOMMATEURS**

By:

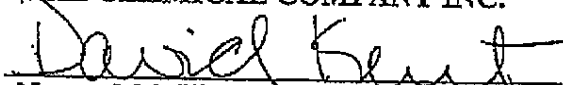
Name: Siskind Cromarty, Ivey & Dowler
LLP
Title: Ontario Counsel

By:

Name: Belleau Lapointe s.a.
Title: Quebec Counsel

**CHEMTURA CORPORATION (F/K/A/
CROMPTON CORPORATION),
CROMPTON CO./CIE., CROMPTON
CANADA CORPORATION, AND
UNIROYAL CHEMICAL COMPANY INC.**

By:


Name: McMillan Binch Mendelsohn LLP
(David W. Kent)
Title: Canadian Counsel

SCHEDULE A – PROCEEDINGS

Proceeding	Defendants	Settlement Class
<p>Ontario Superior Court of Justice Court File No.46488CP ("Ontario Action")</p>	<p>BASF Canada, BASF Corp., BASF A.G., Bayer Inc., Bayer A.G., Bayer Material Science LLC, formerly known as Bayer Polymers L.L.C., Bayer Corporation, Rhein Chemie GmbH, Rhein Chemie Corporation, Crompton Corporation, Crompton Co., Crompton Canada Corporation, Uniroyal Chemical Company, Inc, and TSE Industries, Inc</p>	<p>All persons in Canada who purchased Polyester Polyols Products in Canada during the Class Period, except the Excluded Persons and persons who are included in the Quebec Class.</p>
<p>Superior Court of Quebec (District of Montreal), File No. 500-06-000252-045 (the "Quebec Action")</p>	<p>Bayer Inc., Bayer A.G., Bayer Material Science LLC, formerly known as Bayer Polymers L.L.C., Bayer Corporation, Rhein Chemie GmbH, Rhein Chemie Corporation, Chemtura Corporation (f/k/a Crompton Corporation), Crompton Co./Cie.,</p>	<p>All persons in Quebec who purchased Polyester Polyols Products in Quebec during the Class Period, except Excluded Persons, as well as any legal person established for a private interest, partnership or association which, at all times between October 7, 2003 and October 7, 2004, had under its direction or control more than 50 persons bound to it by a contract of employment.</p>

SCHEDULE "B"

Court File No. 46488CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

The Honourable)
Justice Rady) _____, the _____ day
)
) of _____, 2005

BETWEEN:

R.G. GIBSON & SONS LTD.

Plaintiff

- and -

**BASF CANADA, BASF CORP., BASF A.G., BAYER INC.,
BAYER A.G., BAYER MATERIALSCIENCE LLC, formerly known as
BAYER POLYMERS L.L.C., BAYER CORPORATION,
RHEIN CHEMIE GmbH, RHEIN CHEMIE CORPORATION,
CROMPTON CORPORATION, CROMPTON CO., CROMPTON CANADA
CORPORATION, UNIROYAL CHEMICAL COMPANY, INC,
and TSE INDUSTRIES, INC.**

Defendants

Proceeding under the Class Proceedings Act, 1992

ORDER

THIS MOTION made by the Plaintiff for an Order certifying this action as a class proceeding for settlement purposes as it relates to Chemtura Corporation (f/k/a/ Crompton Corporation), Crompton Co./Cie., Crompton Canada Corporation, and Uniroyal Chemical Company Inc. (the "Settling Defendants") and approving the Settlement Agreement entered into

with the Settling Defendants was heard this day at the Court House, 80 Dundas Street, London, ON.

ON READING the materials filed, including the settlement agreement attached to this Order as Schedule "A" (the "Settlement Agreement"), and on hearing the submissions of counsel for the Plaintiff and counsel for the Settling Defendants:

1. **THIS COURT ORDERS AND DECLARES** that for the purposes of this Order the definitions set out in the Settlement Agreement apply to and are incorporated into this Order and, in addition, the following definitions also apply:

(a) **"Settlement Class Member"** means a member of the Settlement Class who does not validly opt out of the Settlement Class in accordance with orders of the Court.

2. **THIS COURT ORDERS** that this action be certified as a class proceeding for settlement purposes only.

3. **THIS COURT ORDERS** that the Settlement Class be defined as:

All persons in Canada who purchased Polyester Polyols Products in Canada during the Class Period, except the Excluded Persons and persons who are included in the Quebec Class.

4. **THIS COURT ORDERS** that R.G. Gibson & Sons Ltd. be appointed as the representative plaintiff for the Settlement Class.

5. **THIS COURT ORDERS** that this action be certified as a class proceeding for settlement purposes only, on the basis of the following common issue:

Did the Settling Defendants agree to fix, raise, maintain or stabilize the prices of, or allocate markets and customers for, Polyester Polyols in Canada during the Class Period?

6. **THIS COURT DECLARES** that the Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class.
7. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 29 of the *Class Proceedings Act, 1992* and shall be implemented in accordance with its terms.
8. **THIS COURT DECLARES** that the Settlement Agreement is incorporated by reference into and forms part of this Order and is binding upon the representative plaintiff, upon all Settlement Class Members and upon the Defendants.
9. **THIS COURT ORDERS** that the opt-out period run for a period of forty-five (45) days from the date of the first publication of the Notice of Certification and Settlement Approval.
10. **THIS COURT ORDERS** that any potential Settlement Class Member who has opted out of this action by submitting a properly completed opt-out form to Ontario Counsel within 45 days following the Notice of Certification and Settlement Approval, is not bound by the Settlement Agreement and may no longer participate in any continuation or settlement of this action.
11. **THIS COURT ORDERS AND DECLARES** that each Settlement Class Member shall consent and shall be deemed to have consented to the dismissal of any Other Actions he, she or it has commenced against the Releasees, without costs and with prejudice.

12. **THIS COURT ORDERS AND DECLARES** that each Other Action commenced in Ontario by any Settlement Class Member shall be and is hereby dismissed against the Releasees, without costs and with prejudice.
13. **THIS COURT ORDERS AND DECLARES** that this Order, including the Settlement Agreement, is binding upon each Settlement Class Member including those persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the Rules of Civil Procedure are dispensed with in respect of this action.
14. **THIS COURT ORDERS AND DECLARES** that each Releasor has released and shall be conclusively deemed to have fully, finally and forever released the Releasees from the Released Claims.
15. **THIS COURT ORDERS** that each Releasor shall not commence or continue any action or take any proceeding relating in any way to the Released Claims against any person or persons who will or could, in connection with any such action or proceeding, bring or commence or continue any claim, crossclaim, claim over or any claim for contribution, indemnity or any other relief against any one of the Releasees, provided that nothing in this Order affects the rights of a Settlement Class Member to claim or continue to claim against any Non-Settling Defendant or co-conspirator in any of the Proceedings.
16. **THIS COURT ORDERS AND DECLARES** that the Releasees have released and shall be conclusively deemed to have fully, finally and forever released each other from any and all claims for contribution and indemnity that said Releasees, 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 the Released Claims.

17. **THIS COURT ORDERS AND DECLARES** that the use of the terms “Releasers” and “Released Claims” in this Order does not constitute a release of claims by those Settlement Class Members who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.
18. **THIS COURT ORDERS AND DECLARES** that each Settlement Class Member who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to make any claim in any way nor to threaten, commence, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.
19. **THIS COURT ORDERS** that 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 against a Releasee by any Non-Settling Defendant or any other person or party, or by a Releasee against a Non-Settling Defendant or any other person or party, are barred, prohibited and enjoined in accordance with the terms of this Order (unless such claim is made in respect of a claim by a person who has validly opted out of the Settlement Class).
20. **THIS COURT ORDERS** that the Plaintiff shall restrict its joint and several claims against the Non-Settling Defendants such that the Plaintiff 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 and sales by the Non-Settling Defendants.

21. **THIS COURT DECLARES** that a Non-Settling Defendant may seek an order from the Court providing for discovery from some or all of the Settling Defendants as deemed appropriate by the Court.
22. **THIS COURT ORDERS** that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 22 above on a Settling Defendant by service on counsel of record for the Settling Defendants in the Proceedings.
23. **THE COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any Settlement Class Member has or may have against the Non-Settling Defendants or co-conspirators in the Proceedings.
24. **THIS COURT ORDERS AND ADJUDGES** that this action be and is hereby dismissed against the Settling Defendants without costs and with prejudice.
25. **THIS COURT ORDERS** that the Settlement Amount be held in trust for the benefit of the Settlement Class, pending further order of the Court, which shall be sought by the Plaintiff on a motion in the Proceedings brought on notice to the Settling Defendants.
26. **THIS COURT ORDERS AND DECLARES** that the Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreements.
27. **THIS COURT ORDERS** that the Plaintiff will bring a motion in the Proceedings, on notice to the Settling Defendants, for approval of a Notice of Certification and Settlement Approval and the plan for disseminating the Notice of Certification and Settlement Approval.

Date:

(Signature of judge, officer or registrar)