

DISTRIBUTION PROTOCOL
IN THE MATTER OF THE POLYETHER POLYOL PRODUCTS
CLASS ACTION SETTLEMENTS

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GENERAL PRINCIPLES

1. The procedures set forth herein are intended to govern the administration of the settlement agreements entered into with the following Defendants:
 - (a) Bayer Inc., Bayer AG, Bayer Material Science LLC (formerly known as Bayer Polymers LLC) and Bayer Corporation, dated June 6, 2007;
 - (b) Lyondell Chemical Company, dated November 22, 2011;
 - (c) Huntsman International LLC, dated April 11, 2012;
 - (d) BASF Corporation, dated April 12, 2012;
 - (e) BASF Canada Inc., dated April 12, 2012; and
 - (f) Dow Chemical Company and Dow Chemical Canada Inc., dated November 17, 2017 (collectively, the “Settlement Agreements”).
2. The administration shall:
 - (a) implement and conform to the Settlement Agreements, orders of the Ontario Court, and this Distribution Protocol;
 - (b) include the establishment and maintenance of the Settlement Website;
 - (c) employ secure, paperless, web-based systems with electronic registration and record keeping wherever possible;
 - (d) rely on sales information provided by the Defendants wherever possible; and
 - (e) be bilingual in all respects.

3. Settlement Class Members seeking compensation must disclose and give credit for any compensation received through other proceedings or private out-of-class settlements in relation to Polyether Polyol Products, unless by such proceedings or private out-of-class settlements the Settlement Class Member's claim was released in its entirety, in which case the Settlement Class Member shall be deemed ineligible for any further compensation.

DEFINITIONS

4. The definitions set out in the Settlement Agreements apply to and are incorporated herein. Where a term is defined in both the Settlement Agreements and in this Distribution Protocol, the definition in this Distribution Protocol shall govern.
5. For the purpose of this Distribution Protocol, the following definitions apply:
 - (a) ***Aggregate Purchases*** means the aggregate amount paid by a Settlement Class Member for Polyether Polyol Products, less any taxes, delivery or shipping charges, rebates, or other form of discounts.
 - (b) ***Claim*** means the paper or electronic form that a Settlement Class Member must complete and submit before the Claims Filing Deadline in order to be considered for settlement benefits under this Distribution Protocol.
 - (c) ***Claims Administrator*** means the firm appointed by the Ontario Court to administer the Settlement Amounts in accordance with the provisions of the Settlement Agreements and the Distribution Protocol, and any employees of such firm.

- (d) ***Claims Filing Deadline*** means the date by which Claims (and any required supporting documentation) must be postmarked or electronically submitted in order for Settlement Class Members to be considered for settlement benefits under this Distribution Protocol, which date shall be four (4) months after the first publication of the notice advising Settlement Class Members of the claims process.
- (e) ***Class Period*** means from January 1, 1999 and December 31, 2004.
- (f) ***Decision Notice*** shall have the meaning attributed to it in paragraph 38.
- (g) ***Net Settlement Amount*** means the aggregate of the Settlement Amounts recovered pursuant to the Settlement Agreements, plus any costs awards and accrued interest, less:
 - (i) Class Counsel Fees as approved by the Ontario Court or Quebec Court;
 - (ii) Administration Expenses;
 - (iii) taxes accruable with respect to the income earned on the settlement funds prior to distribution (including interest and penalties); and
 - (iv) any other deductions approved by the Ontario Court.
- (h) ***Notional Entitlement*** means the total value assigned to Settlement Class Member's purchases of Polyether Polyol Products by the Claims Administrator, in accordance with paragraphs 6 to 13 below.
- (i) ***Online Claim Portal*** means a web-based portal created and maintained by the Claims Administrator in accordance with paragraphs 23 to 25 below.

- (j) ***Polyether Polyol Products*** means:
 - (i) polyether polyols, monomeric or polymeric diphenylmethane diisocyanate (“MDI”) and toluene Diisocyanate (“TDI”) purchased in Canada during the Class Period; and
 - (ii) polyether polyol systems purchased from the Defendants in Canada during the Class Period.
- (k) ***Settlement Agreements*** has the meaning attributed to it in paragraph 1.
- (l) ***Settlement Class Members*** means all persons who purchased Polyether Polyol Products. The following persons are excluded:
 - (i) each Defendant, Rhodia, Rhodia Inc., and Rhodia Canada Inc., and their respective parents, employees, subsidiaries, affiliates, officers and directors; and
 - (ii) persons who validly opted-out of the Proceedings.
- (m) ***Settlement Website*** means the website maintained by or on behalf of the Claims Administrator for the purposes of providing Settlement Class Members with information on the Settlement Agreements, the Distribution Protocol, and the claims process, and access to the Online Claim Portal.

DISTRIBUTION OF NET SETTLEMENT FUNDS

Calculation of Payments

6. The Net Settlement Amount will be distributed to qualifying Settlement Class Members *pro rata* (proportionally) based on the value of the qualifying Settlement Class Member’s

Notional Entitlement as against the value of all qualifying Settlement Class Members' Notional Entitlement.

7. For the purposes of the *pro rata* distribution, a Settlement Class Member's Notional Entitlement will be calculated based on:
 - (a) the value of the Aggregate Purchases (see paragraph 8);
 - (b) the categorization of the Settlement Class Member (see paragraphs 9 to 11);
 - (c) the type of Polyether Polyol Products purchased (see paragraph 12); and
 - (d) the date of purchase (see paragraph 13).

(a) The value of the Aggregate Purchases

8. The Claims Administrator will calculate the value of the Settlement Class Member's Aggregate Purchases based on the information disclosed in the Defendants' sales information and/or information provided by the Settlement Class Member as part of the claims process.

(b) The categorization of the Settlement Class Member

9. Settlement Class Members will be categorized into the following purchaser groups based on their position in the distribution chain:
 - (a) **Direct Purchaser** means a Settlement Class Member who purchased Polyether Polyol Products from a manufacturer for either (i) its own use and not for commercial resale; or (ii) inclusion in a product for commercial resale;

- (b) ***Distributor*** means a Settlement Class Member who purchased Polyether Polyol Products and resold the Polyether Polyol Products without further processing and without including them in any product; and
- (c) ***Indirect Purchaser*** means a Settlement Class Member who purchased Polyether Polyol Products from a Distributor.

10. Settlement Class Members may fall into more than one category.

11. For the purposes of calculating a Settlement Class Member's Notional Entitlement, the following values will be applied to account for the capacity in which the Polyether Polyol Products were purchased:

- (a) Aggregate Purchases made in the capacity of a Direct Purchaser will be valued at 100%;
- (b) Aggregate Purchases made in the capacity of a Distributor will be valued at 25%; and
- (a) Aggregate Purchases made in the capacity of an Indirect Purchaser will be valued at 75%.

(c) The type of Polyether Polyol Products

12. For the purposes of calculating a Settlement Class Member's Notional Entitlement, the following values will be applied to account for the type of Polyether Polyol Product:

- (a) Aggregate Purchases attributable to purchases of MDI, TDI and/or polyether polyols will be valued at 100%; and

- (b) Aggregate Purchases attributable to purchases of polyether polyol systems will be valued at 50%.

(d) The date of purchase

13. For the purposes of calculating a Settlement Class Member's Notional Entitlement, the following values will be applied to account for the date the Polyether Polyol Products were purchased:

- (a) Aggregate Purchases made between January 1, 2002 and December 31, 2003 will be valued at 100%; and
- (b) Aggregate Purchases made between January 1, 1999 to December 31, 2001 and January 1, 2004 to December 31, 2004 will be valued at 30%.

Sample Calculations

14. If a Distributor purchased \$1,000,000 of MDI and TDI in 2001, its Notional Entitlement would be calculated as follows.

$\$1,000,000$ (representing the Aggregate Purchases of MDI and TDI) \times 0.25 (representing the categorization of the purchaser as a Distributor) \times 1.0 (representing the type of Polyether Polyol Product purchased) \times 0.3 (representing the timing of the purchase)
= \$75,000

15. If an Indirect Purchaser purchased \$2,000,000 worth of polyether polyol systems in 2002 and \$5,000,000 worth of polyether polyols in 2004, its Notional Entitlement would be calculated as follows.

$\$2,000,000$ (representing the Aggregate Purchases of polyether polyol systems) \times 0.75 (representing the categorization of the purchaser as an Indirect Purchaser) \times 0.5 (representing the type of

Polyether Polyol Product purchased) x 1.0 (representing the timing of the purchase) = \$750,000

plus

\$5,000,000 (representing the Aggregate Purchases of polyether polyols) x 0.75 (representing the categorization of the purchaser as an Indirect Purchaser) x 1.0 (representing the type of Polyether Polyol Product purchased) x 0.3 (representing the timing of the purchase) = \$ 1,125,000

Distribution

16. All eligible Settlement Class Members will receive a minimum payment of \$20. The \$20 valuation target is not an estimate of any damages suffered. It is a minimum administrative threshold designed to maintain a feasible economic and administrative platform for the settlement distribution.
17. In consultation with Class Counsel, the Claims Administrator can seek directions from the Ontario Court with respect to the distribution of the Net Settlement Amount to ensure a fair and cost effective distribution of the Net Settlement Amount.

THE CLAIMS PROCESS

The Claim

All Settlement Class Members

18. All Settlement Class Members will be required to provide the following information:
 - (a) name and contact information;
 - (b) purchase information in accordance with paragraphs 19 to 20 or 21, as applicable;
 - (c) disclosure about whether the Settlement Class Member or any entity related to the Settlement Class Member has received compensation through other proceedings

or private out-of-class settlements and/or provided a release in respect of any of Polyether Polyol Products, and provide details of the compensation received and the claims released;

- (d) authorization to the Claims Administrator to contact the Settlement Class Member or its representative, as the Claims Administrator deems appropriate for more information and/or to audit the Claim;
- (e) a declaration that the information submitted in the Claim is true and correct; and
- (f) if the Claim is submitted by a third-party on behalf of a Settlement Class Member (including a parent company claiming on behalf of a subsidiary or affiliate), the third-party must provide a signed statement from that Settlement Class Member at the time the Claim is filed authorizing the third-party to file the Claim on its behalf.

Settlement Class Members relying on Defendant sales data

19. Where the Defendants have provided sales information in respect of the Settlement Class Member, the required fields in the Online Claim Portal will be pre-populated with the information provided by the Defendants. The following categories of information shall be provided separately:

- (a) for the period between January 1, 2002 and December 31, 2003:
 - (i) the value of Aggregate Purchases attributable to polyether polyol systems;
 - (ii) the value of Aggregate Purchases attributable to MDI, TDI or Polyols;
- (b) for the remainder of the Class Period:

- (i) the value of Aggregate Purchases attributable to polyether polyol systems;
and
 - (ii) the value of Aggregate Purchases attributable to MDI, TDI or Polyols.
- 20. The Settlement Class Member will be given the opportunity to agree with the purchase information provided by the Defendants. Where the Settlement Class Member agrees with the purchase information provided by the Defendants, no further purchase information is required from the Settlement Class Member. However, the Settlement Class Member must identify which purchases it made in the capacity of a Direct Purchaser or a Distributor.

Settlement Class Members claiming for purchases not substantiated by Defendant sales data

- 21. Where the Defendants have not provided sales information in respect of a Settlement Class Member and/or the Settlement Class Member is claiming for purchases of Polyether Polyol Products in addition to those substantiated by the Defendants' data, the Settlement Class Member must provide a declaration attesting to the information described in paragraph 19(a) and (b) above. The Settlement Class Member must also identify which purchases it made in the capacity of a Direct Purchaser, Distributor or Indirect Purchaser.
- 22. Where a Settlement Class Member has purchase records for at least two years during the Class Period, or sales information from the Defendant Bayer, the Settlement Class Member can use such records to extrapolate its purchases of Polyether Polyol Products for the remainder of the Class Period.

The Online Claim Portal

23. The Claims Administrator shall create an Online Claim Portal that Settlement Class Members can access in order to file a Claim and shall provide the necessary administration support to enable Settlement Class Members to do so.
24. The Online Claim Portal shall contain fields that require the Settlement Class Member to provide all applicable information required as part of the Claim, in accordance with paragraphs 18 to 22.
25. The Claims Administrator shall develop procedures for tracking and recording in an electronic format the following information, as it is entered into the Online Claim Portal or provided by Settlement Class Members who file hardcopy Claims in accordance with paragraph 28 below:
 - (a) names, addresses, and purchase data of the Settlement Class Members;
 - (b) supporting documents provided by Settlement Class Members as part of the audit process; and
 - (c) any other information that might be useful in the claims administration process.

The Claims Filing Process

26. Where a Settlement Class Member has been identified by the Defendants, the Claims Administrator shall provide to the Settlement Class Member, in writing, by e-mail or regular mail, his, her or its personal user name and password to permit that Settlement Class Member access to the Online Claim Portal.

27. Settlement Class Members will be encouraged to complete and submit a Claim electronically using the Online Claim Portal. Subject to paragraphs 28 and 36, or further order of the Ontario Court, Claims must be submitted on the Online Claim Portal on or before the Claim Filing Deadline.
28. If a Settlement Class Member does not have internet access or is otherwise unable to submit a Claim using the Online Claim Portal, the Settlement Class Member can register over the telephone with the Claims Administrator and the Claims Administrator shall send the Settlement Class Member a hardcopy claim form by mail. Subject to paragraph 36 or further order of the Ontario Court, the completed and executed hardcopy Claim must be submitted to the Claims Administrator postmarked no later than the Claims Filing Deadline.

Assistance in Filing a Claim

29. Settlement Class Members can contact the Claims Administrator or Class Counsel, at no charge, with questions about how to complete a Claim.
30. Settlement Class Members may utilize third-party claims services, a lawyer of their own choosing, or similar services to file Claims. If a Settlement Class Member chooses to use a third-party claims service, a lawyer of their own choosing, or similar services, the Settlement Class Members will be responsible for any and all expenses incurred in doing so.

Audits

31. Where the Settlement Class Member purchased Polyether Polyol Products directly from a Defendant and the Defendant provided sales information in respect of that Settlement

Class Member, the Defendant's sales information shall be *prima facie* proof of the Settlement Class Member's Polyether Polyol Product purchases and those purchases shall not be subject to an audit.

32. Where the Settlement Class Member was not identified by Defendants and/or is claiming for additional purchasers, the Claims Administrator shall audit:

- (i) a random selection of at least 10% of Claims; and
- (ii) Claims representing the top 15% of Claims (measured by Notional Entitlement).

33. The Claims Administrator shall notify the Settlement Class Member, by email or by regular mail, that the Settlement Class Member's Claim is the subject of an audit and the requirement to provide documentary proof:

- (a) Proof of purchase might include invoices, receipts, delivery or packing slips, purchase records, historical accounting records, credit card statements, bank statements, cancelled cheques, wire transfer confirmations, or comparable verification that is acceptable to the Claims Administrator.
- (b) where a Settlement Class Member has extrapolated its purchase records in accordance with paragraph 22 above, the Settlement Class Member must provide a declaration explaining the basis for and calculation of the extrapolation of purchases.

34. At its sole discretion, the Claims Administrator can elect to audit any Claim and can reject a Claim, in whole or in part, where, in the Claims Administrator's view, the

Settlement Class Member has submitted insufficient or false information or has otherwise engaged in fraudulent conduct.

Deficiencies

35. If, during claims processing, the Claims Administrator finds that deficiencies exist in a Claim or other required information, the Claims Administrator shall notify the Settlement Class Member, by email or regular mail, of the deficiencies. The Claims Administrator shall allow the Settlement Class Member thirty (30) days from the date of such notice to correct the deficiencies. If the deficiencies are not corrected within the thirty (30) day period, the Claims Administrator may reject the Claim. The Online Claim Portal shall be designed so as to minimize the possibility of deficient claims.

Adjustments to Claims Process and Extension of the Claims Filing Deadline

36. By agreement between the Claims Administrator and Class Counsel, the Claims Filing Deadline may be extended and the Claims Administrator may adjust the claims process. Class Counsel and the Claims Administrator shall agree to extend the Claims Filing Deadline and/or adjust the claims process if, in their opinions, doing so will not adversely affect the fair and efficient administration of the Net Settlement Amount and it is in the best interests of the Settlement Class Members to do so.

Claims Administrator's Decision

37. In respect of each Settlement Class Member who has filed a Claim in accordance with this Distribution Protocol, the Claims Administrator shall:
- (a) decide whether the Settlement Class Member is eligible to receive settlement benefits payable out of the Net Settlement Amount in accordance with the

Settlement Agreements, orders of the Ontario Court and this Distribution Protocol; and

- (b) make a determination of the value of the Settlement Class Member's Notional Entitlement in respect of which the Settlement Class Member is entitled to settlement benefits in accordance with the Settlement Agreements, orders of the Ontario Court and this Distribution Protocol.

- 38. The Claims Administrator shall send to the Settlement Class Member, by email or regular mail, a decision as to the approval or rejection of the Claim and the determination of the Notional Entitlement (the "Decision Notice"). Where the Claims Administrator has rejected all or part of the Claim of the Settlement Class Member (or recategorized any purchases), the Claims Administrator shall include in the Decision Notice its grounds for rejecting or recategorizing all or part of the Claim.
- 39. The Claims Administrator's decision will be binding upon the Settlement Class Member, subject to the Settlement Class Member's right to appeal, as outlined in paragraphs 40 to 47 below.

Appeal of the Claims Administrator's Decision

- 40. The right to appeal is limited to circumstances where the dispute as to the value of the Notional Entitlement is greater than \$100,000.
- 41. Appeals must be submitted within thirty (30) days from the date of the Decision Notice.
- 42. The following grounds shall not be grounds for appeal:

- (a) the refusal of the Claims Administrator to accept a Claim postmarked or electronically submitted after the Claims Filing Deadline;
 - (b) the refusal of the Claims Administrator to accept a Claim where the Settlement Class Member has not cooperated with the Claims Administrator in respect of any audit conducted by the Claims Administrator in respect of that Settlement Class Member's Claim; or
 - (c) the refusal of the Claims Administrator to accept a Claim where the Settlement Class Member did not declare that the information submitted in the Claim is true and correct.
43. Appeals will be determined by the Ontario Court or a third party designated by the Ontario Court.
44. Appeals will be on the basis of written submissions, supported by the documentation provided by the Settlement Class Member as part of the claims process. Settlement Class Members are not permitted to provide any new documentation as part of the appeal. Any new documentation provided as part of the appeal will not be provided to the Ontario Court or its designee for consideration.
45. The Claims Administrator must provide to the Ontario Court a copy of the documentation provided by the Settlement Class Member as a part of the claims process, the Decision Notice, and any other information that might be reasonably useful in the determination of the appeal, and make written submissions to the Ontario Court or its designee as is reasonably necessary.

46. Notwithstanding the foregoing, the Ontario Court or its designee, acting in its sole discretion, can request oral submissions (to be provided via teleconference or videoconference, as requested by the Ontario Court or its designee) from the Settlement Class Member and/or Claims Administrator.
47. The decision on the appeal is final and binding and shall not be subject to any further appeal or review whatsoever.

Payment of Claims

48. As soon as practicable after the claims evaluations and any appeals are completed, the Claims Administrator shall:
 - (a) report to Class Counsel the particulars of the proposed distribution to each eligible Settlement Class Member; and
 - (b) make arrangements to pay approved Claims by cheque.
49. To the extent that the full Net Settlement Amount is not paid out due to uncashed cheques, residual interest or otherwise, such monies shall be paid to Pro Bono Canada if the amount is equal or less than \$10,000. For distribution of any amount above \$10,000, further direction of the Ontario Court shall be sought.
50. The payment to Pro Bono Canada shall be less any amounts payable to the Fonds d'aide aux actions collectives, pursuant to section 42 of the *Act respecting the Fonds d'aide aux actions collectives*, CQLR c. F-3.2.0.1.1 and calculated in accordance with Article 1. (1°) of the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*, R.S.Q. c. F-3.2.0.1.1, r. 2. For the purposes of calculating the amount

payable to the Fonds d'aide aux actions collectives, 23.6%¹ of the payment to Pro Bono Canada will be notionally allocated to Quebec.

THE CLAIMS ADMINISTRATOR'S DUTIES AND RESPONSIBILITIES

Supervisory Powers of the Ontario Court

51. The Claims Administrator shall administer the Settlement Agreements and this Distribution Protocol under the ongoing authority and supervision of the Ontario Court.

Investment of Settlement Amounts

52. The Settlement Amounts shall be held in guaranteed investment vehicle, liquid money market account or equivalent security with a rating equivalent to or better than that of a Canadian Schedule I bank (a bank listed in Schedule I of the *Bank Act*, SC 1991, c 46) held at a Canadian financial institution.

Communication, Languages and Translation

53. Where a Claim is filed by a third-party claims agent or lawyer on behalf of a Settlement Class Member, unless the Settlement Class Member requests otherwise, all communications shall be made to the third-party claims agent or lawyer.
54. The Claims Administrator shall establish a toll-free number for calls from Canada.
55. The Claims Administrator shall dedicate sufficient personnel to respond to Settlement Class Members' inquiries in English or French, as the Settlement Class Member elects.

¹ 23.6% represents that portion of the Canadian population that resides in Quebec based on information from Statistics Canada's website.

56. All written communications from the Claims Administrator to a Settlement Class Member shall be transmitted via email if an email address has been provided, or if an email address has not been provided, by regular mail.

Undeliverable Mail

57. The Claims Administrator shall have no responsibility for locating Settlement Class Members for any mailing returned to the Claims Administrator as undeliverable.
58. The Claims Administrator shall have the discretion, but is not required, to reissue payments to Settlement Class Member returned as undeliverable under such policies and procedures as the Claims Administrator deems appropriate. Any costs associated with locating current address information for the Settlement Class Member shall be deducted from that Settlement Class Member's settlement benefits.
59. Where a Settlement Class Member who is entitled to payment of greater than \$20 requests a cheque be reissued, \$15 shall be deducted from that Settlement Class Member's settlement benefits representing the costs of reissuing payment. Subject to the sole discretion of the Claims Administrator, payments for \$20 will not be reissued.

Fraudulent Claims

60. The Claims Administrator shall develop and implement processes to detect possible fraudulent conduct, including monitoring claims for unusual activity and multiple claims being filed from the same address.

Taxes

61. The Claims Administrator shall take all reasonable steps to minimize the imposition of taxes upon the Net Settlement Amount and shall pay any taxes imposed on such monies out of the Net Settlement Amount.

Reporting

62. The Claims Administrator shall provide regular reports to Class Counsel regarding the administration.
63. The Claims Administrator shall provide any reports requested by the Ontario Court.

Preservation and Disposition of Claim Submissions

64. The Claims Administrator shall preserve, in hard copy or electronic form, as the Claims Administrator deems appropriate, the submissions relating to a Claim, until two (2) years after all settlement monies or court awards have been paid out to Settlement Class Members, and at such time shall destroy the submissions by shredding, deleting, or such other means as will render the materials permanently illegible.

Assistance to the Claims Administrator

65. The Claims Administrator shall have the discretion to enter into such contracts and obtain financial, accounting, and other expert assistance as are reasonably necessary in the implementation of the Settlement Agreements and this Distribution Protocol, provided that related expenses are paid out of the Claims Administrator's fees or approved by the Ontario Court in advance.

Confidentiality

66. All information received from the Defendants or the Settlement Class Members is collected, used, and retained by the Claims Administrator pursuant to the *Personal Information Protection and Electronic Documents Act*, SC 2000 c 5 for the purposes of administering the Settlement Agreements, including evaluating the Settlement Class Member's eligibility status under the Settlement Agreements. The information provided by the Settlement Class Member is strictly private and confidential and will not be

disclosed without the express written consent of the Settlement Class Member, except in accordance with the Settlement Agreements, orders of the Ontario Court and/or this Distribution Protocol.