

**ONTARIO
SUPERIOR COURT OF JUSTICE**

The Honourable Madam
Justice Rady

) Tuesday, the 11th day
)
) of March, 2008

BETWEEN:

CROSSLINK TECHNOLOGY, INC.

Plaintiff

- and -

BASF CANADA, BASF CORPORATION, BASF A.G., BAYER INC.,
BAYER A.G., BAYER MATERIAL SCIENCE LLC, BAYER CORPORATION,
DOW CHEMICAL COMPANY, DOW CHEMICAL CANADA INC.,
HUNTSMAN INTERNATIONAL LLC, LYONDELL CHEMICAL COMPANY,
RHODIA, RHODIA INC., and RHODIA CANADA 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 Bayer Inc., Bayer A.G., Bayer Material Science LLC (formerly Bayer Polymers LLC), and Bayer Corporation (the "Settling Defendants"), and approving the Settlement Agreement entered into with the Settling Defendants was heard on September 28, 2007 at the Court House, 80 Dundas Street, London, Ontario. Reasons for Judgment were released on November 30, 2007.

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, counsel for the Settling Defendants, and counsel for the Non-Settling Defendants:

1. **THIS COURT ORDERS AND DECLARES** that for the purposes of the Order the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that this action is certified as a class proceeding against the Settling Defendants for settlement purposes only.
3. **THIS COURT ORDERS** that the Settlement Class is defined as:

All persons in Canada who purchased Polyether Polyols Products during the Polyether Polyols Class Period, except the Excluded Persons and persons who are included in the Quebec action.
4. **THIS COURT ORDERS** that Crosslink Technology, Inc. is appointed as the representative plaintiff for the Settlement Class.
5. **THIS COURT ORDERS** that this action is certified as a class proceeding for settlement purposes only, on the basis on the following common issue:

Did the Settling Defendants agree with other Polyether Polyols manufacturers to fix, raise, maintain, or stabilize the prices of, or allocate markets and customers for, Polyether Polyols in Canada during the Polyether Polyols 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 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 the Order and is binding upon the representative plaintiff and upon all Settlement Class Members.

9. **THIS COURT ORDERS** that putative class members may Opt-Out of the Proceeding in accordance with the terms of the Settlement Agreement, up to and including the date which is 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 Class Counsel within 45 days following the date of the first publication of 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 is dismissed against the Releasees, without costs and with prejudice.
13. **THIS COURT ORDERS AND DECLARES** that the 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, 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 or take any proceeding relating in any way to the Released Claims against any Releasee or any other 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 of the Releasees, provided that nothing in the Order affects the rights of a Settlement Class Member to claim or continue to claim against any Non-Settling Defendant or person other than a Releasee 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 “Releasors” and “Released Claims” in the 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.

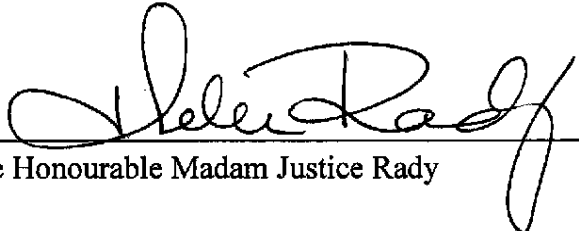
19. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought against a Releasee by any Non-Settling Defendant or any other person or party, or by a Releasee against a Non-Settling Defendant, are barred, prohibited and enjoined in accordance with the terms of the 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 if the Courts ultimately determine that there is a right of contribution and indemnity between the Defendants, the Plaintiff and the Settlement Class Members shall restrict their joint and several claims against the Non-Settling Defendants such that the Plaintiff and the Settlement Class Members 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 sales or conduct of the Non-Settling Defendants.
21. **THIS COURT ORDERS** that a Non-Settling Defendant may, on motion to this court determined as if the Settling Defendants remained parties to this action and on at least ten days notice to counsel for the Settling Defendants, obtain:
 - (a) Documentary discovery and an affidavit of documents in accordance with the *Rules of Civil Procedure* from each of the Settling Defendants;

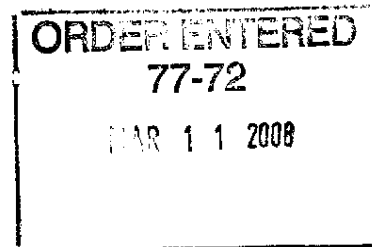
- (b) Oral discovery of a representative of each of the Settling Defendants, the transcript of which may be read in at trial;
 - (c) Leave to serve a request to admit on each Settling Defendant in respect of factual matters;
 - (d) The production of a representative of each of the Settling Defendants to testify at trial, with such witnesses to be subject to cross-examination by counsel for each of the Non-Settling Defendants. The Settling Defendants retain all rights to oppose the motion for production of representatives to testify at trial, including the right to make submissions on the Non-Settling Defendants' motion before the court seeking an order requiring the Settling Defendants to produce representatives to testify at trial.
22. **THIS COURT ORDERS** that the Settling Defendants may bring a motion on notice to the Plaintiffs and the Non-Settling Defendants for an order that any documents produced and any information provided by the Settling Defendants to the Non-Settling Defendants are confidential and proprietary and shall not be used other than for the purposes of this proceeding.
23. **THIS COURT ORDERS** that no examinations for discovery will be sought from the Settling Defendants unless and until this action has been certified and all appeals exhausted, or the time for appeal has passed without an appeal having been launched.
24. **THIS COURT ORDERS** that for purposes of enforcement of this Order this Court will retain an ongoing supervisory role and the Settling Defendants will attorn to the jurisdiction of this Court for these purposes.

25. **THIS COURT ORDERS** that a Non-Settling Defendant may effect service of the motion(s) referred to above on a Settling Defendant by service on counsel of record for the Settling Defendants in the Proceeding.
26. **THIS COURT ORDERS** that this action be dismissed against the Settling Defendants, without costs and with prejudice.
27. **THIS COURT ORDERS** that the Settlement Amount be held in trust by Ontario Class Counsel for the benefit of the Settlement Class, pending further order of the court, which shall be sought by the Plaintiff on a motion, brought on notice to the Settling Defendants and Non-Settling Defendants.
28. **THIS COURT ORDERS** that the Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.
29. **THIS COURT ORDERS** that the Notice of Certification and Settlement Approval to Settlement Class Members is hereby approved in the form attached hereto as Schedule "B".
30. **THIS COURT ORDERS** that the Plan of Dissemination of the Notice of Certification and Settlement Approval is hereby approved in the form attached hereto as Schedule "C".
31. **THIS COURT ORDERS** that approval of the Order and the Settlement Agreement be contingent upon the approval of the Quebec Court of the same Settlement Agreement and the Order shall be of no force and effect if such approval is not secured in Quebec.

32. **THIS COURT ORDERS** that no costs are payable by either side in respect of this motion.

Date: **MAR 11 2008**


The Honourable Madam Justice Rady



SCHEDULE “A”

**CANADIAN POLYETHER POLYOLS CLASS ACTIONS
NATIONAL SETTLEMENT AGREEMENT**

Made as of June 6, 2007

Between

CROSSLINK TECHNOLOGY INC. AND ANNE JOHNSON
(the "Plaintiffs")

and

**BAYER INC., BAYER AG, BAYER MATERIALSCIENCE LLC (FORMERLY KNOWN
AS BAYER POLYMERS LLC) AND BAYER CORPORATION**
(the "Settling Defendants")

**CANADIAN POLYETHER POLYOLS CLASS ACTIONS
NATIONAL SETTLEMENT AGREEMENT**

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**CANADIAN POLYETHER POLYOLS CLASS ACTIONS
NATIONAL SETTLEMENT AGREEMENT**

RECITALS

- A. WHEREAS, Proceedings have been commenced by the Plaintiffs in Ontario and Quebec, under each province's respective class proceedings legislation, which allege that the Settling Defendants participated in unlawful conspiracies to raise, fix, maintain, or stabilize the prices of Polyether Polyols in Canada and/or to allocate markets and customers for the sale of Polyether Polyols in Canada, contrary to Part VI of the *Competition Act*;
- B. WHEREAS, the Settling Defendants deny the allegations as alleged in the Proceedings and deny that any damages are payable for any breach of the *Competition Act* or otherwise, have not conceded or admitted any civil liability, and have defences to all of the claims 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 burden 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, and it is acknowledged that the Settling Defendants would not have entered into this Settlement Agreement were it not for the foregoing;
- E. WHEREAS, the Parties therefore wish to, and hereby do, fully and 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, for purposes of settlement only, in each of the Proceedings;

G. WHEREAS, the Settling Defendants expressly reserve their rights to contest certification of other related or unrelated proceedings and assert that the Proceedings herein would not be appropriately certified in the absence of the Settlement Agreement and, in particular, with respect to Indirect Purchasers (those not purchasing the products referred to herein directly from the Settling Defendants), and that this Settlement Agreement does not constitute in any way a precedent to support the certification of classes of this nature;

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

I. WHEREAS, the Settling Defendants represent that during the Period the Purchase Price of Polyether Polyols sold by them amounted to no more than approximately CAN \$250,000,000.

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 that the Parties will consent to the Courts' Orders dismissing the actions referred to herein 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 under the control of Ontario Counsel at a Canadian Schedule 1 bank in Ontario.
- (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) *Claims Administrator* means Neal Pallett & Townsend LLP, or such other entity as appointed by the Court.
- (4) *Claims Deadline* means ninety (90) days from the date of first publication of the notice of the Plan of Distribution.
- (5) *Class Counsel* means Ontario Counsel and Quebec Counsel.
- (6) *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 Quebec Counsel may have to the Fonds.
- (7) *Class Period* means January 1, 2002 to December 31, 2003.
- (8) *Common Issue* in each Proceeding means: Did the Settling Defendants agree with other Polyether Polyols manufacturers to fix, raise, maintain, or stabilize the prices of, or allocate markets and customers for, Polyether Polyols in Canada during the Polyether Polyols Class Period?
- (9) *Courts* means the Ontario Court and the Quebec Court.
- (10) *Defendants* means the individuals and entities named as defendants in the Proceedings as set out in Schedule A.
- (11) *Deposit Date* means the date which is twenty (20) business days following execution of this Settlement Agreement.
- (12) *Direct Purchaser* means a person or entity, other than a Distributor, who purchased Polyether Polyols in Canada during the Class Period directly from a Defendant or from a Distributor.
- (13) *Distributor* means a person or entity who purchased Polyether Polyols in Canada during the Class Period directly from a Defendant and resold the Polyether Polyols without further processing or including it in any other product.

- (14) *Document* is defined to be synonymous in meaning and equal in scope to the usage of this term in Rule 30.01 of the Ontario Rules of Civil Procedure, including, without limitation, electronic or computerized data compilations. A draft or non-identical copy is a separate document within the meaning of this term.
- (15) *Effective Date* means the date on which all of the final judgments or final approval orders approving this Settlement Agreement issued by the Courts have become Final Orders.
- (16) *Excluded Person* means each Releasee, Non-Settling Defendant, the directors, officers, and employees of each Releasee and Non-Settling Defendant, the subsidiaries and affiliates of each Releasee and Non-Settling Defendant, the parents of each Releasee and Non-Settling Defendant, the entities in which each Releasee or Non-Settling Defendant or any of their respective subsidiaries or affiliates have a controlling interest, and the legal representatives, heirs, successors, and assigns of each of the foregoing.
- (17) *Final Order* means a final judgment or final approval order 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, and the expiration of the time to appeal if an appeal lies or to seek permission to appeal such final judgment or final approval order without any appeal being taken, or if an appeal from the final judgment or final approval order is taken, the affirmance of such final judgment or final approval order in its entirety, without modification, by the court of last resort to which an appeal of such final judgment or final approval order may be taken.
- (18) *Fonds* means the Fonds d'aide aux recours collectifs in Quebec.
- (19) *Indirect Purchaser* means a person or entity, other than a Direct Purchaser or a Distributor, who purchased Polyether Polyols Products in Canada during the Class Period.
- (20) *Non-Settling Defendant* means a Defendant that is not a Settling Defendant or a Defendant that had previously settled claims in the Proceedings but has since terminated its settlement in accordance with its terms.
- (21) *Ontario Counsel* means Sliskinds LLP.

- (22) *Ontario Court* means the Ontario Superior Court of Justice.
- (23) *Opt-Out* means a person or entity who would have been a member of the Settlement Class except for his, her, or its timely and valid request for exclusion.
- (24) *Other Actions* means actions or proceedings, other than the Proceedings, relating to Released Claims commenced by a Settlement Class Member before the deadline for class members to opt out of the Settlement Class.
- (25) *Parties* means the Plaintiffs and the Settling Defendants.
- (26) *Plaintiffs* means the individuals and entities named as plaintiffs in the Proceedings that are set out in Schedule A.
- (27) *Polyether Polyols* means polyether polyols, monomeric or polymeric diphenylmethane diisocyanate, and/or toluene diisocyanate, whether sold separately or in a combined form with or without other chemicals added thereto. The "Polyether Polyols Products" shall include but not be limited to certain products sold under the general trade names identified on Schedule B hereto.
- (28) *Polyether Polyols Products* means Polyether Polyols and products that directly or indirectly contain or are derived from Polyether Polyols.
- (29) *Proceedings* means Ontario Court File No. 50305CP (London) and Quebec Court (District of Quebec) File No. 200-06-000069-065.
- (30) *Purchase Price* means the net amount, including rebates or any other form of discounts, paid directly to a Settling Defendant by a Direct Purchaser for Polyether Polyols purchased in Canada during the Class Period, excluding all other charges including, but not limited to, delivery or shipping charges and taxes.
- (31) *Quebec Counsel* means Siskind Desmeules s.e.n.c.r.l.
- (32) *Quebec Court* means the Superior Court of Quebec.
- (33) *Released Claims* means any and all manner of claims, demands, actions, suits, and causes of action, whether direct or indirect, class, individual, or otherwise in nature, whether

personal or subrogated, damages whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, penalties, and attorneys' fees that Releasors, or any one of them, whether directly, indirectly, representatively, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have against the Releasees, whether known or unknown, relating in any way to any conduct by the Releasees prior to the date of execution of this Agreement concerning the pricing, selling, discounting, marketing, manufacturing, and/or distributing of Polyether Polyols Products in Canada. The Released Claims include but are not limited to claims related to or arising out of the facts, occurrences, transactions or other matters alleged in the Proceedings and any claims which have been asserted or could have been asserted in Canada or elsewhere, as a result of the purchase of Polyether Polyols Products in Canada. However, nothing herein shall be construed to release any claims arising from any alleged product defect, breach of contract, or similar claim between the Parties relating to Polyether Polyols Products.

- (34) *Releasees* means, jointly and severally, individually and collectively, the Settling Defendants, and their respective past and present parents, subsidiaries, affiliates, officers, directors, employees, agents, attorneys, servants, representatives (and the parents', subsidiaries', and affiliates' past and present officers, directors, employees, agents, attorneys, servants, and representatives), and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing.
- (35) *Releasors* means, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members and their respective past and present parents, subsidiaries, affiliates, officers, directors, employees, agents, attorneys, servants, representatives (and parents' subsidiaries' and affiliates' past and present officers, directors, employees, agents, attorneys, servants and representatives) and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing.
- (36) *Settlement Agreement* means this agreement, including the recitals and schedules.
- (37) *Settlement Amount* means CAN \$2,500,000.
- (38) *Settlement Class* means the settlement classes defined in Schedule A.

- (39) *Settlement Class Member* means a member of a Settlement Class who does not timely and validly opt out of that Settlement Class in accordance with orders of the Courts.
- (40) *Settling Defendants* means Bayer Inc., Bayer AG, Bayer MaterialScience LLC (formerly known as Bayer Polymers LLC), and Bayer Corporation.

SECTION 2 - CONDITION PRECEDENT: COURT APPROVAL

This Settlement Agreement shall be null and void and of no force and effect unless the Ontario Court and the Quebec Court each approve this Settlement Agreement in the Proceedings commenced in their respective jurisdictions, and the orders so given have become Final Orders and the Effective Date has occurred.

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 file 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 only) and approving this Settlement Agreement no later than four months after the date on which this Settlement Agreement is executed by all Parties.
- (2) The orders referred to in paragraph 3.2(1) shall be in a form to be agreed upon by Class Counsel and counsel for the Settling Defendants and approved by the Courts and the orders shall mirror each other in substance and, where possible, form.
- (3) Except as required by the Courts, Class Counsel agree not to take any steps to prosecute the Proceedings as against the Settling Defendants on or after the date of execution of this Settlement Agreement and until the Effective Date of this Settlement Agreement, other than those steps provided for or required by this Settlement Agreement and those steps that are necessary to secure the Courts' approval of this Settlement Agreement.

3.3 Pre-Motion Confidentiality

Until the motions required by section 3.2 are filed, this Settlement Agreement and all of its terms shall be kept confidential and shall not be disclosed by either the Plaintiffs, the Settling Defendants, or their respective counsel, without the prior written consent of counsel for the Settling Defendants or Class Counsel, respectively, except as may be required for the purposes of financial and regulatory reporting or the preparation of financial records (including tax returns and financial statements) or regulatory filings or as otherwise required by law.

3.4 Sequence of Motions

The Plaintiffs in Quebec shall not proceed with a motion to approve this Settlement Agreement in the Proceeding commenced in Quebec unless and until the Ontario Court approves this Settlement Agreement in the Proceeding commenced in Ontario. The approval motion may be filed in Quebec before the Ontario Court has approved this Settlement Agreement, but Quebec Counsel agree to seek an adjournment of any approval hearing to permit the Ontario Court to first render its decision on the motion for approval brought before it.

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 amount set out in paragraph 4.1(1), for any reason, pursuant to or in furtherance of this Settlement Agreement.
- (3) The Settling Defendants shall pay the amount set out in paragraph 4.1(1) 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 monies from the Account, 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) Ontario Counsel shall bear all risks related to the investment of the Settlement Amount in the Account.
- (3) All funds held by Ontario Counsel shall be deemed and considered to be in *custodia legis* of the Courts and shall remain subject to the jurisdiction of the Courts until such time as such funds shall be distributed pursuant to the Settlement Agreement and/or further order of the Courts.
- (4) Ontario Counsel hereby indemnifies, defends, and holds harmless the Settling Defendants from and against any harm or injury suffered by reason of the use, misuse, erroneous disbursement, or other action taken or failure to act by Ontario Counsel with the Settlement Amount or funds in the Account not strictly in accordance with the provisions of this Settlement Agreement or any implementing order of the Courts.
- (5) Subject to paragraph 4.2(6), 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 Class. 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.
- (6) The Settling Defendants shall have no responsibility to make any tax 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 rescinded, in which case the interest earned on the applicable 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.

SECTION 5 - RELEASES AND DISMISSALS

5.1 Release of Releasees

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

5.2 Covenant Not To Sue

Notwithstanding section 5.1, 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.

5.3 Continuance of Proceedings

The provisions of this Settlement Agreement are without prejudice to the right of the Releasors to continue the Proceedings against the Non-Settling Defendants or unnamed co-conspirators other than the Releasees.

5.4 Dismissal of Releasees

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

5.5 Dismissal of Other Actions

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

SECTION 6 - OPTING-OUT AND RIGHT TO RESCIND AGREEMENT

6.1 Procedure

(1) The procedure for opting out of the Proceedings, 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.

(2) Class Counsel shall, by motion, on notice to the Settling Defendants, submit a notice and Plan of Distribution for approval by the Courts at the appropriate time. This notice shall require that on a date, at least fifteen (15) days prior to the Claims Deadline, members of the Settlement

Class that do not want to participate in the Settlement Class must submit a timely and valid request for exclusion from the Settlement Class ("Opt-Out Deadline").

6.2 Opt-Out Report

(1) Within thirty (30) days after the expiration of the Opt-Out Deadline, the Settling Defendants and Class Counsel shall be provided with a report from the Claims Administrator advising as to the names of any Opt-Outs, the reasons for their opting out, if known, the best estimate of the total Purchase Price paid by each Opt-Out for purchases from a Settling Defendant, and a copy of all information provided by that Opt-Out in the opting out process ("Opt-Out Report").

6.3 Settling Defendants' Right to Rescind

If the total Purchase Price paid for Polyether Polyols by persons who have opted out of this settlement in accordance with the terms of this Settlement Agreement exceeds CAN \$75,000,000, the Settling Defendants may, in their sole and unfettered discretion, elect to rescind this Settlement Agreement as it relates to the Proceedings in accordance with section 9.

SECTION 7- DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST

7.1 Distribution Plan

(1) The Settlement Amount shall be held by Ontario Counsel for the benefit of the Settlement Class Members and shall be transferred to the Claims Administrator for payment in accordance with a plan approved by the Courts (the "Plan of Distribution"). Class Counsel shall, by motion, on notice to the Settling Defendants, submit a notice and Plan of Distribution for approval by the Courts at the appropriate time.

7.2 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, use, or administration of monies in the Account including, but not limited to, the costs and expenses of such investment, distribution, use, and administration, Administration Expenses and Class Counsel Fees.

SECTION 8 – COOPERATION PROVISIONS

(1) The Settling Defendants' cooperation, as set forth below, shall be limited to the production of information, testimony, and/or Documents that are not protected from disclosure by the solicitor-client privilege, work product doctrine, joint defence privilege, or any other applicable privilege or doctrine. Moreover, nothing herein is intended (a) to prohibit any current or former officer, director, employee, or agent of Settling Defendants from asserting, where appropriate, any rights under the Charter of Rights and Freedoms or any Canadian statute, or any solicitor-client privilege held by him in his individual capacity; (b) to require the Settling Defendants to waive or breach any solicitor-client privilege that it has now or may in the future have with respect to information, testimony, or Documents; (c) to require the disclosure of information, testimony, and/or Documents reflecting the impressions or thought processes of the Settling Defendants' lawyers or other work product protected from disclosure by the work product doctrine or any other applicable privilege; or (d) to require the production or disclosure of any information, testimony, or Documents created by or for government authorities in connection with any investigation relating to Polyether Polyols.

(2) Within 30 days of the Effective Date, the Settling Defendants shall, to the extent not previously produced, promptly produce the following categories of non-privileged Documents in their possession, custody, or control: (i) transaction data in electronic format for all of the Settling Defendants' sales of Polyether Polyols in Canada from January 1, 1999 to December 31, 2004; (ii) all price announcements for Polyether Polyols in Canada from January 1, 1999 to December 31, 2004 ; and (iii) all Documents relating to or reflecting actual or potential communications between two or more Defendants regarding the prices at which or the customers to whom Polyether Polyols would be or had been sold in Canada from January 1, 1999 to December 31, 2004.

(3) If no Class has been certified in the Proceedings as of the Effective Date, the Settling Defendants shall provide the Plaintiffs with cooperation in connection with the Plaintiffs' efforts to obtain certification of a class against the Non-Settling Defendants, including providing affidavits from the Settling Defendants' personnel with knowledge relevant to class certification issues.

(4) Following the Effective Date, the Settling Defendants shall promptly provide full cooperation to Class Counsel with respect to discovery and gathering evidentiary materials relating to the Plaintiffs' claims in the Proceedings, as set forth herein:

(a) The Settling Defendants shall make reasonable efforts to (i) make available for conferences with Plaintiffs' counsel and/or experts in Canada, upon reasonable notice and at the Settling Defendants' expense, current and former directors, officers, and employees of the Settling Defendants, including any predecessor entities, who are believed to have knowledge regarding the Plaintiffs' claims as alleged in the Proceedings; (ii) provide information to the Plaintiffs regarding the Plaintiffs' claims as alleged in the Proceedings in personal interviews; (iii) take necessary steps to provide authentication of non-privileged Documents that the Plaintiffs intend to use at trial; (iv) produce to Plaintiffs, upon reasonable and specific requests, non-privileged Documents relevant to the Plaintiffs' claims as alleged in the Proceedings; (v) prepare statutory declarations and/or affidavits and/or provide testimony, upon reasonable notice and at the Settling Defendants' expense, by current and former directors, officers, and employees of the Settling Defendants at trial. As to former directors, officers, and employees, the Settling Defendants shall make every reasonable effort to have such individuals appear after the Effective Date for interviews, depositions, and trial testimony under the same conditions as for the current directors, officers, and employees of the Settling Defendants. Any persons made available under this Paragraph shall be made available at a mutually agreeable time and place.

(b) The Settling Defendants also agree to produce at trial, or through affidavits or statutory declarations, representatives qualified to establish for admission into evidence any of the Settling Defendants' non-privileged Documents produced or to be produced in the litigation, and evidence of the Settling Defendants' sales of Polyether Polyols from January 1, 1999 to December 31, 2004 and any other non-privileged Documents of the Settling Defendants, and, to the extent possible, any Documents produced by any of the Settling Defendants' alleged co-conspirators.

(c) The Settling Defendants also agree that their counsel will meet as often as is reasonable and necessary with Class Counsel after the Effective Date to identify non-privileged Documents and people relating to the violations of the Competition Act alleged in the Proceedings, and the potential culpability of the Non-Settling Defendants and unnamed co-conspirators.

(5) All information and materials provided by the Settling Defendants to Class Counsel regarding Polyether Polyols shall be used only in connection with the Proceedings and shall not be used directly or indirectly for any other purpose. No information provided to Class

Counsel pursuant to this Settlement Agreement may be disclosed to or shared with any other person or party (other than co-counsel or experts retained in the course of the Proceedings), including absent Class Members, Opt-Outs and counsel for Opt-Outs or absent Class Members, except as part of non-privileged Documents or testimony filed with the Court or produced at a hearing or trial of the Proceedings.

(6) The Settling Defendants' obligations to cooperate shall not be affected by the Release provisions of this Settlement Agreement. The Settling Defendants' obligations to cooperate shall cease as of the date that final judgment has been rendered in the Proceedings against all Defendants.

SECTION 9 – TERMINATION OR RESCISSION OF SETTLEMENT AGREEMENT

9.1 Manner of Rescission

If the Settling Defendants exercise their right to rescind this Settlement Agreement pursuant to section 6.3, then they shall give written notice of the rescission to Class Counsel no later than thirty (30) days after receipt of the Opt-Out Report.

9.2 Effect of Termination Pursuant to Section 2 Generally

Except as provided in sections 9.4 - 9.6, 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.

9.3 If Settlement Agreement is Terminated Pursuant to Section 2

(1) If this Settlement Agreement is terminated pursuant to section 2:

- (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 or 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.

9.4 If Settlement Agreement is Rescinded Pursuant to Section 6.3

(1) If the Settlement Agreement is rescinded by the Settling Defendants pursuant to section 6.3:

- (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 or approving this Settlement Agreement as it pertains to the Proceedings 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 rescinded by the Settling Defendants pursuant to section 6.3, 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 9.6);
- (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 which relates to the Proceedings, including interest, be returned to the Settling Defendants, subject to Section 9.5.

9.5 Allocation of Monies in the Account Following Termination or Rescission

If the Settlement Agreement is terminated pursuant to section 2 or the Settling Defendants exercise their right to rescind the Settlement Agreement pursuant to section 6.3, Ontario Counsel shall return to the Settling Defendants all monies in the Account including interest, but less the costs of notice expended in accordance with section 13.3, within twenty (20) business days of the Settling Defendants' notification of their decision to rescind the Settlement Agreement pursuant to section 9.1 or within twenty (20) business days of a Final Order not being granted by the Ontario Court or the Quebec Court. The Settling Defendants and Plaintiffs expressly reserve all

of their respective rights to the extent that this Settlement Agreement is terminated pursuant to section 2 or rescinded pursuant to section 6.3.

9.6 Survival of Provisions After Termination or Rescission

(1) If this Settlement Agreement is terminated for any reason, the provisions of sections 4.2, 9, 11.2, 13.2(5), 13.3, 13.4, 14.1, and 14.2, and the definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

(2) A modification or reversal on appeal of any amount of Class Counsel Fees awarded by the Courts or any Plan of Distribution of the Settlement Amount shall not be deemed a modification of all or part of the terms of the Settlement Agreement or the Final Orders.

(3) The Settling Defendants and Plaintiffs expressly reserve all of their respective rights to the extent that this Settlement Agreement does not become effective or if this Settlement Agreement is rescinded by the Settling Defendants.

SECTION 10 - BAR ORDER AND OTHER CLAIMS

10.1 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, 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, a Defendant that has previously settled claims in the Proceedings, 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) a Non-Settling Defendant may seek an order from a Court, by motion and on notice to counsel of record for the Settling Defendants, providing for discovery from some or all of the Settling Defendants as deemed appropriate by the Court (this provision shall under no circumstances be construed to constrain the Settling Defendants from asserting any defence or opposing such a discovery request); and

(c) a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 10.1(c) on a Settling Defendant by service on counsel of record for the Settling Defendants in the Proceedings.

(d) If the Courts ultimately determine that there is a right of contribution and indemnity between the Defendants, the Plaintiffs and the Settlement Class Members 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 sales or conduct of the Non-Settling Defendants;

(e) The Plaintiffs agree that they will not bring any motion of application for the determination of the issue of whether there is a right of contribution and indemnity between the Defendants until after the Final Order in this Proceeding.

10.2 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 persons other than the Releasees.

SECTION 11 - CERTIFICATION OR AUTHORIZATION FOR SETTLEMENT ONLY

11.1 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 class that they will assert are the Settlement Class. The Plaintiffs acknowledge that the Settling Defendants agree to the definition of the Common Issue for purposes of settlement only.

11.2 Certification or Authorization Without Prejudice

In the event this Settlement Agreement is not approved by the Ontario Court and the Quebec Court, or the Settlement Agreement is rescinded, the Parties agree that any prior

certification or authorization of an applicable 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 12 - 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 paragraph 12(3), Class Counsel Fees and Administration Expenses may be paid out of the Account after the Effective Date.

(3) Notwithstanding paragraph 12(2) and subject to paragraph 12(4), Class Counsel may pay the costs of the notices referred to in section 13 of this Settlement Agreement out of the Account, in an amount not to exceed CAN \$50,000 in total for all 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 13 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 Polyether Polyols during the Class Periods, but in no event shall the costs paid out of the Account exceed CAN \$50,000 in total for all notices.

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 Polyether Polyols in Canada from them during the Class Period.

(2) The information required by paragraph 13.2(1) shall be delivered to Class Counsel within thirty (30) business days of the execution of this Settlement Agreement by all Parties, or at least five (5) days in advance of publication of the notice of the approval hearings before the Courts, whichever date comes first.

(3) Ontario Counsel shall use the information provided under paragraph 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 for a product by each of its Direct Purchasers and Distributors in Canada during the Class Period. This information shall be provided to the Claims Administrator at least five (5) days in advance of publication of the notice of approval of this Settlement Agreement and shall be used to facilitate the claims administration process eventually established in accordance with section 7 of this Settlement Agreement.

(5) If this Settlement Agreement is terminated or rescinded, 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.

13.3 Notices Required

The proposed Settlement Class shall be given notice of (i) hearings at which the Courts will be asked to approve the Settlement Agreement; (ii) the certification or authorization of the Proceedings as class proceedings and the approval of this Settlement Agreement; and (iii) hearings at which the Courts will be asked to approve a Plan for Distribution of the Settlement Amount; or as otherwise ordered by the Courts.

13.4 Form and Distribution of Notices

The form of the notices referred to in section 13.3 and the manner of their publication and distribution shall be as agreed to by the Parties and approved by the Courts.

SECTION 14 - EFFECT OF SETTLEMENT

14.1 No Admission of Liability

The Parties expressly reserve all of their rights if this Settlement Agreement does not become effective or is rescinded by the Settling Defendants. Further, the Parties agree that,

whether or not this Settlement Agreement is finally approved or is rescinded, 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.

14.2 Agreement Not Evidence

The Parties agree that, whether or not it is finally approved or is rescinded, 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.

14.3 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 that 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) Paragraph 14.3(1) does not apply to the involvement of any person in the continued prosecution of the Proceedings against any Non-Settling Defendants or unnamed co-conspirators other than the Releasees.

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.

(3) Notwithstanding the above, the Ontario Court shall exercise jurisdiction with respect to implementation, administration, and enforcement of the terms of this Settlement Agreement, and the parties submit to the jurisdiction of the Ontario Court for purposes of implementing, administering, and enforcing the settlement provided for in this Settlement Agreement. Issues not specifically related to the claim of a Quebec Settlement Class Member shall be determined by the Ontario Court.

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", "the Settlement Agreement", "hereof", "hereunder", and similar expressions refer to this Settlement Agreement and not to any particular section or portion of this Settlement Agreement.

15.4 Ongoing Jurisdiction

(1) Each of the Courts shall retain exclusive jurisdiction over all matters relating to the implementation and enforcement of this Settlement Agreement as it relates to the 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 complementary 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 any and 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 inure to the benefit of, the Plaintiffs, Settlement Class Members, the Settling Defendants, the Releasees, and all of their respective 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 Releasees, 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 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 Settlement 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. Nevertheless, the Settling Defendants shall prepare a French translation of the Settlement Agreement (including Schedule A) at their own expense. The Parties agree that such translation is for convenience only. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall be considered.

15.12 Transaction

The present Agreement constitutes a transaction in accordance within the Civil Code of Quebec, including Article 2631 thereof, and the Parties are hereby renouncing 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 Schedule

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
Siskinds LLP
Barristers and Solicitors
680 Waterloo Street
London, ON N6A 3V8
Telephone: 519-672-2121
Facsimile: 519-672-6065
Email: charles.wright@siskinds.com

Simon Hébert
Siskinds Desmeules s.e.n.c.r.l.
Les promenades du Vieux-Quebec
43 rue Buade, bureau 320
Quebec City, QC G1R 4A2
Telephone: 418-694-2009
Facsimile: 418-694-0281
Email: simon.hebert@siskindsdesmeules.com

For Settling Defendants:

Susan E. Paul
Fraser Milner Casgrain ^{LLP}
1 First Canadian Place
100 King Street West
Toronto, ON M5X 1B2
Telephone: 416-863-4511
Facsimile: 416-863-4592
Email: susan.paul@fmc-law.com

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

**CROSSLINK TECHNOLOGY INC., AND ANNE
JOHNSON**

By: 
Name: Siskinds LLP
Title: Ontario Counsel

By: _____
Name: Siskinds, Desmeules
Title: Quebec Counsel

**BAYER INC., BAYER AG, BAYER
MATERIALSCIENCE LLC (FORMERLY
KNOWN AS BAYER POLYMERS LLC), and
BAYER CORPORATION**

By: _____
Name: Fraser Milner Casgrain LLP
Title: Canadian Counsel

**CROSSLINK TECHNOLOGY INC., AND ANNE
JOHNSON**

By: _____

Name: Siskinds LLP
Title: Ontario Counsel

By: _____

Name: Siskinds, Desmeules
Title: Quebec Counsel

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BAYER CORPORATION**

By: _____

Name: Fraser Milner Casgrain LLP
Title: Canadian Counsel

**CROSSLINK TECHNOLOGY INC., AND ANNE
JOHNSON**

By: _____

Name: Siskinds LLP
Title: Ontario Counsel

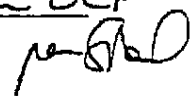
By: _____

Name: Siskinds, Desmeules
Title: Quebec Counsel

**BAYER INC., BAYER AG, BAYER
MATERIALSCIENCE LLC (FORMERLY
KNOWN AS BAYER POLYMERS LLC), and
BAYER CORPORATION**

By: _____

Fraser Milner Casgrain LLP
Name: Fraser Milner Casgrain LLP
Title: Canadian Counsel



SCHEDULE A - PROCEEDINGS

Product	Proceeding	Defendants	Settlement Class
Polyether Polyols	Ontario Superior Court of Justice, Court File No. 30305CP	Bayer Inc., Bayer A.G., Bayer Material Science LLC, Bayer Corporation, BASF Canada, BASF Corporation, BASF A.G., Dow Chemical Company, Dow Chemical Canada Inc., Huntsman International LLC, Lyondell Chemical Company, Rhodia, Rhodia Inc., Rhodia Canada Inc.	All persons in Canada who purchased Polyether Polyols Products during the Polyether Polyols Class Period, except the Excluded Persons and persons who are included in the Quebec action.
	Superior Court of Quebec (District of Quebec), File No. 200-06-000069-065	Bayer Inc., Bayer A.G., Bayer Corporation, Bayer Material Science LLC, BASF AG, BASF Corporation, BASF Canada, Dow Chemical Company, Dow Chemical Canada Inc., Huntsman International LLC, Lyondell Chemical Company.	All persons in Quebec who purchased Polyether Polyols Products in Quebec during the Polyether Polyols Class Period, except the Excluded Persons.

SCHEDULE B

ACCLAIM 3122
ACCLAIM 3309N
ACCLAIM 4000I
ACCLAIM INTERMEDIATE 3000I
ACCLAIM POLYOL 12200
ACCLAIM POLYOL 2200
ACCLAIM POLYOL 2200N
ACCLAIM POLYOL 2220N
ACCLAIM POLYOL 3167
ACCLAIM POLYOL 3200
ACCLAIM POLYOL 3201
ACCLAIM POLYOL 3205
ACCLAIM POLYOL 3300N
ACCLAIM POLYOL 4200
ACCLAIM POLYOL 4200N
ACCLAIM POLYOL 4220N
ACCLAIM POLYOL 6300
ACCLAIM POLYOL 6320N
ACCLAIM POLYOL 703
ACCLAIM POLYOL 8200
ACCLAIM PPG 1200N
ACCUFLEX POLYOL 1331
ACCUFLEX POLYOL 1337
ACTACLEAR 1600B CARRIER FLUID
ACTACLEAR 1700 CARRIER FLUID
ACTACLEAR 2400 CARRIER FLUID
ACTACLEAR CARRIER FLUID ND17A
ACTACLEAR ND17 CARRIER FLUID
ACTACLEAR ND21A CARRIER FLUID
ACTACLEAR ND9A CARRIER FLUID
ADDITIVE 9425
ADDITIVE 9438
ADDITIVE 9453
ADDITIVE 9460
ADDITIVE 9461
ADDITIVE 9463
ARCOL FLEX POLYOL
ARCOL FR POLYMER POLYOL
ARCOL POLYOL 11-34
ARCOL POLYOL 1110
ARCOL POLYOL 16-52
ARCOL POLYOL 24-32
ARCOL POLYOL 2580
ARCOL POLYOL 31-28
ARCOL POLYOL 3291
ARCOL POLYOL 34-28
ARCOL POLYOL 34-45
ARCOL POLYOL CR POLYMER MIXTUR
ARCOL POLYOL E-351
ARCOL POLYOL E-351X

ARCOL POLYOL E-381
ARCOL POLYOL E-434
ARCOL POLYOL E-448
ARCOL POLYOL E-519
ARCOL POLYOL E-644
ARCOL POLYOL E-648
ARCOL POLYOL E-737
ARCOL POLYOL E-771
ARCOL POLYOL E-777
ARCOL POLYOL E-785
ARCOL POLYOL E-900
ARCOL POLYOL E-919
ARCOL POLYOL F-1080
ARCOL POLYOL F-1522
ARCOL POLYOL F-3000
ARCOL POLYOL F-3020
ARCOL POLYOL F-3022
ARCOL POLYOL F-3040
ARCOL POLYOL F-3222
ARCOL POLYOL F-3522
ARCOL POLYOL HS-100
ARCOL POLYOL HS-100SP
ARCOL POLYOL HS-92
ARCOL POLYOL HS-102
ARCOL POLYOL I-9000
ARCOL POLYOL LG-168
ARCOL POLYOL LG-56
ARCOL POLYOL LG-56-ONE
ARCOL POLYOL LG-650
ARCOL POLYOL LHT 240
ARCOL POLYOL LHT-112
ARCOL POLYOL LHT-240
ARCOL POLYOL LHT-28
ARCOL POLYOL LHT-42
ARCOL POLYOL P-4000K
ARCOL POLYOL POLYMER MIXTURE
ARCOL POLYOL PPG 2000
ARCOL POLYOL PPG 4000
ARCOL POLYOL PPG 425
ARCOL POLYOL PPG-1000
ARCOL POLYOL PPG-1025
ARCOL POLYOL PPG-2000
ARCOL POLYOL PPG-2000 KO
ARCOL POLYOL PPG-2000N
ARCOL POLYOL PPG-2009
ARCOL POLYOL PPG-2025
ARCOL POLYOL PPG-2025-ONE
ARCOL POLYOL PPG-3025
ARCOL POLYOL PPG-4000
ARCOL POLYOL PPG-4009
ARCOL POLYOL PPG-4025
ARCOL POLYOL PPG-425

ARCOL POLYOL PPG-5100
ARCOL POLYOL PPG-725
ARCOL POLYOL UHS-150
ARTLUX ISOCYANATE TO 1051
ASHLAND SP&A MDI LIGHT
ATLANTIS Q-1000 RESIN
BAYCOLL ND 1110
BAYCOLL NT 6030
BAYDUR 207 COMPONENT A
BAYDUR 207 COMPONENT B
BAYDUR 246 COMPONENT A
BAYDUR 246 COMPONENT B
BAYDUR 255 COMPONENT A
BAYDUR 255B COMPONENT B
BAYDUR 263 COMPONENT B
BAYDUR 275 IMR BLACK POLYOL
BAYDUR 275 IMR COMP A (ISOCYA)
BAYDUR 277 IMR BLACK POLYOL
BAYDUR 277 IMR ISO COMPONENT A
BAYDUR 385 COMPONENT A
BAYDUR 385 COMPONENT B
BAYDUR 410 IMR ISOCYANATE
BAYDUR 410 POLYOL COMP B
BAYDUR 420 IMR ISO COMPONENT A
BAYDUR 420 IMR POLYOL COMP B
BAYDUR 425 IMR ISO COMP A
BAYDUR 425 IMR POLYOL COMP B
BAYDUR 426 COMPONENT A
BAYDUR 426 IMR COMPONENT B
BAYDUR 486
BAYDUR 620 COMPONENT A
BAYDUR 620 COMPONENT B
BAYDUR 629 COMPONENT B
BAYDUR 635 BLACK COMPONENT B
BAYDUR 636 COMPONENT B
BAYDUR 637 COMPONENT A
BAYDUR 637 COMPONENT B
BAYDUR 641 COMPONENT A
BAYDUR 641 IBS COMPONENT B
BAYDUR 644 COMPONENT B
BAYDUR 645 COMPONENT A
BAYDUR 645 COMPONENT B
BAYDUR 646 COMPONENT A
BAYDUR 646 COMPONENT B
BAYDUR 647 COMPONENT A
BAYDUR 647 IMR COMPONENT A
BAYDUR 647 IMR COMPONENT B
BAYDUR 649 COMPONENT A
BAYDUR 649 COMPONENT B
BAYDUR 650 COMPONENT B
BAYDUR 653 COMPONENT A
BAYDUR 653 COMPONENT B

BAYDUR 659 COMPONENT A
BAYDUR 659 COMPONENT B
BAYDUR 660 COMPONENT A
BAYDUR 660 IBS COMPONENT A
BAYDUR 660 IBS COMPONENT B
BAYDUR 660 IMR BLACK COMPONENT D
BAYDUR 661-IBS COMPONENT A
BAYDUR 661-IBS COMPONENT B
BAYDUR 664 COMPONENT A
BAYDUR 664 COMPONENT AX
BAYDUR 664 COMPONENT B
BAYDUR 665 IBS 1010 CLEAR
BAYDUR 667 IBS BLACK
BAYDUR 671 IBS COMPONENT A
BAYDUR 671 IBS COMPONENT B
BAYDUR 726 IBS BLACK
BAYDUR 726 IBS COMPONENT A
BAYDUR 726 IBS COMPONENT B
BAYDUR 730 IBS COMPONENT A
BAYDUR 730 IBS COMPONENT B
BAYDUR 730 IBS IMR COMPONENT A
BAYDUR 730S IBS COMPONENT B
BAYDUR 742 IBS COMPONENT A
BAYDUR 742 IBS COMPONENT B
BAYDUR 743 COMPONENT B
BAYDUR 9000 COMPONENT A
BAYDUR 9000 COMPONENT B
BAYDUR GS 772 COMPONENT A
BAYDUR GS 772 COMPONENT B
BAYDUR ISO 60660X
BAYDUR POLY 60660X
BAYDUR SFR 243 IMR COMPONENT A
BAYDUR SFR 243 IMR COMPONENT B
BAYDUR SFR 243 IMR-D
BAYDUR STR/C 400 BB-LG COMP A
BAYDUR STR/C 400 BB-LG COMP B
BAYDUR STR/C 675 COMPONENT B
BAYDUR STR/C 675 GRAY
BAYDUR STR/C-1000 COMPONENT A
BAYDUR STR/C-1000 COMPONENT B
BAYDUR STR/F 651 COMPONENT A
BAYDUR STR/F 651 COMPONENT B
BAYDUR STR/F 678 COMPONENT B
BAYFILL 308 COMPONENT A
BAYFILL 308 COMPONENT B
BAYFILL 310 BLACK COMPONENT B
BAYFILL 310 COMPONENT A
BAYFILL 311 COMPONENT A
BAYFILL 311 COMPONENT B
BAYFILL 312 A - ISOCYANATE
BAYFILL 312 COMPONENT B
BAYFILL 313 COMPONENT B

BAYFILL 313 ISOCYANATE COMP A
BAYFILL 365 COMPONENT B
BAYFILL 369 COMPONENT A
BAYFILL 369 COMPONENT B
BAYFILL 374 ISO COMP A
BAYFILL 374 POLYOL COMPONENT B
BAYFILL 380 COMPONENT B
BAYFILL 381 COMPONENT A ISO
BAYFILL 381 COMPONENT B
BAYFILL 382 COMPONENT B
BAYFILL 382 ISOCYANATE
BAYFILL 383 COMPONENT B
BAYFILL 383 ISOCYANATE
BAYFILL 384 COMPONENT A
BAYFILL 384 COMPONENT B
BAYFILL 386 COMPONENT A
BAYFILL 386 COMPONENT B
BAYFILL 400 COMPONENT A
BAYFILL 400 COMPONENT B
BAYFILL 64IF80
BAYFILL EA 2002 ISOCYANATE
BAYFILL EA 2003 A ISOCYANATE
BAYFILL EA 2003 COMPONENT B
BAYFILL EA 4003 ISOCYANATE
BAYFILL EA 4007 COMPONENT A
BAYFILL EA 4007 COMPONENT B
BAYFILL EA 6003 BLACK POLYOL
BAYFILL EA 6004 COLORLESS POLY
BAYFILL EA 6005 COMPONENT B
BAYFILL EA 6005 ISOCYANATE
BAYFILL EA F-20 COMPONENT B
BAYFILL EA F20 COMPONENT A
BAYFILL EA-2002 BLACK POLYOL
BAYFILL EA-6003 ISOCYANATE
BAYFILL EA-6005 BLACK POLYOL
BAYFILL EA-F-45 COMPONENT B
BAYFILL EA6004A ISOCYANATE
BAYFILL VP.PU 64IF80
BAYFIT 110 COMPONENT C
BAYFIT 1406 ISOCYANATE
BAYFIT 510A ISOCYANATE
BAYFIT 550 COMPONENT A
BAYFIT 550 COMPONENT B
BAYFIT 554 COMPONENT A
BAYFIT 554 COMPONENT B
BAYFIT 554TC COMPONENT B
BAYFIT 555 COMPONENT A
BAYFIT 555 COMPONENT B
BAYFIT 562 COMPONENT A
BAYFIT 562 COMPONENT B
BAYFIT 566 (AAA) COMPONENT A
BAYFIT 566 COMPONENT A

BAYFIT 568 COMPONENT B
BAYFIT 568 (AAA) COMPONENT A
BAYFIT 568 COMPONENT B
BAYFIT 569 COMPONENT B
BAYFIT 573 (AAA) COMPONENT A
BAYFIT 573 COMPONENT A
BAYFIT 573 POLYOL COMPONENT B
BAYFIT 578 (AAA) COMPONENT A
BAYFIT 578 COMPONENT A
BAYFIT 578 COMPONENT B
BAYFIT 579 COMPONENT B
BAYFIT 582 (AAA) COMPONENT A
BAYFIT 582 COMPONENT B
BAYFIT SA 510 COMPONENT B
BAYFIT SA 511 COMPONENT A
BAYFIT SA 511 COMPONENT B
BAYFIT SA 530 COMPONENT A
BAYFIT SA 530 COMPONENT B
BAYFIT SR 590 COMPONENT B
BAYFIT 3619 X
BAYFLEX 110 50 BLK COMPONENT B
BAYFLEX 110-25 COMPONENT A
BAYFLEX 110-25 COMPONENT B
BAYFLEX 110-25 IMR COMPONENT B
BAYFLEX 110-35 COMPONENT B
BAYFLEX 110-35 IMR COMPONENT A
BAYFLEX 110-35 IMR COMPONENT B
BAYFLEX 110-50 COMPONENT A
BAYFLEX 110-50 COMPONENT B
BAYFLEX 110-50 IMR COMPONENT A
BAYFLEX 110-50 IMR COMPONENT B
BAYFLEX 110-50 IMR COMPONENT C
BAYFLEX 110-50 IMR D
BAYFLEX 110-7 COMPONENT A
BAYFLEX 110-80 BLACK
BAYFLEX 110-80 COMPONENT A
BAYFLEX 110-80 COMPONENT B
BAYFLEX 110-80 IMR BLK COMP B
BAYFLEX 110-80 IMR BLK COMPONENT B
BAYFLEX 110-80 IMR COMPONENT A
BAYFLEX 110-80 IMR COMPONENT B
BAYFLEX 120-50 COMPONENT A
BAYFLEX 120-50 COMPONENT B
BAYFLEX 180 COMPONENT A
BAYFLEX 180 COMPONENT B
BAYFLEX 180 IMR COMPONENT A
BAYFLEX 180-05S COMPONENT B
BAYFLEX 190 COMPONENT B
BAYFLEX 190 IMR COMPONENT A
BAYFLEX 190 IMR COMPONENT B
BAYFLEX 257 1010 COMPONENT B
BAYFLEX 903 COMPONENT A

BAYFLEX 903 COMPONENT B
BAYFLEX 904 COMPONENT A
BAYFLEX 904 COMPONENT B
BAYFLEX 905 COMPONENT A
BAYFLEX 905 COMPONENT B
BAYFLEX 9061010 COMPONENT B
BAYFLEX 908 COMPONENT A
BAYFLEX 908 COMPONENT B
BAYFLEX 952 COMPONENT A
BAYFLEX 952 COMPONENT B
BAYFLEX 953 1010 COMPONENT B
BAYFLEX 953 COMPONENT A
BAYFLEX 9531010X COMPONENT B
BAYFLEX 954 COMPONENT A
BAYFLEX 954 COMPONENT B
BAYFLEX 955 ISOCYANATE COMP A
BAYFLEX 955 POLYOL COMPONENT B
BAYFLEX 956 COMPONENT A
BAYFLEX 956 COMPONENT B
BAYFLEX 957 COMPONENT A
BAYFLEX 957 COMPONENT B
BAYFLEX 962 1010 COMPONENT B
BAYFLEX 962 COMPONENT A
BAYFLEX 963 COMPONENT B
BAYFLEX 964 COMPONENT A
BAYFLEX 964 COMPONENT B
BAYFLEX 965 COMPONENT A
BAYFLEX 965 COMPONENT B
BAYFLEX 970 COMPONENT A
BAYFLEX 970 COMPONENT B
BAYFLEX 976 COMPONENT A
BAYFLEX 976 COMPONENT B
BAYFLEX EXT 90702X
BAYFLEX ISO 90703X
BAYFLEX ISO 90990X
BAYFLEX ISO 90995X
BAYFLEX ISO 90998X
BAYFLEX MP 10,000 IMR COMP A
BAYFLEX MP 10,000 IMR COMP B
BAYFLEX MP 10,000 IMR COMPONENT A
BAYFLEX MP 10,000 IMR COMPONENT B
BAYFLEX MP-10000 COMPONENT A
BAYFLEX MP-10000 COMPONENT B
BAYFLEX MP-25000 COMPONENT B
BAYFLEX MP-5000 COMPONENT A
BAYFLEX MP-5000 COMPONENT B
BAYFLEX MP-5000-1010 COMPON B
BAYFLEX MP10000-IMR B
BAYFLEX MP5000-1010 B
BAYFLEX POLY 90702X
BAYFLEX POLY 90980X
BAYFLEX POLY 90990X

BAYFLEX POLY 90995X
BAYFLEX POLY 90998X
BAYFLEX U906 COMPONENT A
BAYFLEX U906 COMPONENT AA
BAYFLEX U906 COMPONENT B
BAYFLEX VP PU 30MX29
BAYFLEX WR 80 COMPONENT B
BAYFLEX WR-20 COMPONENT A
BAYFLEX WR-20 COMPONENT B
BAYFLEX XGT 101 COMPONENT B
BAYFLEX XGT 16 COMPONENT A
BAYFLEX XGT 16 COMPONENT B
BAYFLEX XGT 2 COMPONENT A
BAYFLEX XGT 2 COMPONENT B
BAYFLEX XGT 50 COMPONENT A
BAYFLEX XGT 50 COMPONENT B
BAYFLEX XGT-10 COMP B
BAYFLEX XGT-10 COMPONENT A
BAYFLEX XGT-10 COMPONENT B
BAYFLEX XGT-100 ISOCYANATE
BAYFLEX XGT-100 POLYOL
BAYFLEX XGT-140 ISO. COMP A
BAYFLEX XGT-140 ISO. COMPONENT A
BAYFLEX XGT-140 POLYOL COMP B
BAYFLEX XGT-140 POLYOL COMPONENT B
BAYFLEX XGT-15 COMPONENT B
BAYFLEX XGT-16 CLEAR COMP B
BAYFLEX XGT-80 COMPONENT A
BAYFLEX XGT-80 COMPONENT B
BAYNAT 0759 BX
BAYNAT 0759 BX ISO
BAYNAT 0759 BX ISOCYANATE
BAYNAT 200 ISO
BAYNAT 2501 POLY
BAYNAT 30 KG POLYOL
BAYNAT 401 COMPONENT A
BAYNAT 755 COMPONENT A
BAYNAT 755 COMPONENT A (ISO)
BAYNAT 755 COMPONENT C
BAYNAT 755 D
BAYNAT 755 ISOCYANATE
BAYNAT 755 POLYOL
BAYNAT 760 POLYOL
BAYNAT POLYOL HFA 003
BAYPREG F COMPONENT B
BAYTEC 150 COMPONENT B
BAYTEC 151 COMPONENT A
BAYTEC 152 ISOCYANATE
BAYTEC 155 POLYOL
BAYTEC 159 POLYOL
BAYTEC 171 COMPONENT B
BAYTEC 173 COMPONENT B

BAYTEC 174 COMPONENT B
BAYTEC 176 COMPONENT B
BAYTEC 177 COMPONENT B
BAYTEC 178 COMPONENT B
BAYTEC 179 COMPONENT B
BAYTEC 183 COMPONENT B
BAYTEC 185 COMPONENT A
BAYTEC 185 COMPONENT B
BAYTEC 352P
BAYTEC 505
BAYTEC BP 640 ISOCYANATE
BAYTEC BP 640 POLYOL
BAYTEC DL COMPONENT A
BAYTEC DL COMPONENT B
BAYTEC DL COMPONENT C
BAYTEC DL COMPONENT D
BAYTEC EDG 070D POLYOL
BAYTEC EDG 085A POLYOL
BAYTEC ENC 120 P
BAYTEC ENC 140 P
BAYTEC ENC 190P
BAYTEC ENC 30P
BAYTEC ENC 340P
BAYTEC ENC 390P
BAYTEC ENC 5502P
BAYTEC ENC 5003
BAYTEC ENC 5006
BAYTEC ENC 55P
BAYTEC ENC 88
BAYTEC ETH
BAYTEC GS 040A ISOCYANATE
BAYTEC GS 040A POLYOL
BAYTEC GS 070A ISO
BAYTEC GS 070A POLYOL
BAYTEC GS V85A ISO
BAYTEC GS-065A ISO
BAYTEC GS-065A POLYOL
BAYTEC ME 120
BAYTEC ME 230
BAYTEC MP 160 ISOCYANATE
BAYTEC MP 190
BAYTEC MP 210
BAYTEC MP 230
BAYTEC MS 041
BAYTEC MS 090
BAYTEC MS 242
BAYTEC RTC 092A POLYOL
BAYTEC RTC V85A COMPONENT B
BAYTEC RTC V85A POLYOL COMP A
BAYTEC RTC V85A POLYOL COMP B
BAYTEC RTC V85A POLYOL COMP C
BAYTEC RTC V85A POLYOL COMP D

BAYTEC RTC-V85A COMPONENT D
BAYTEC RTC-V85A POLYOL
BAYTEC RTM 081D ISO
BAYTEC RTM 081D POLYOL
BAYTEC SPR 062A POLYOL
BAYTEC SPR 066A POLYOL
BAYTEC SPR 066B POLYOL
BAYTEC SPR 075A POLYOL
BAYTEC SPR 075A COMPONENT B
BAYTEC SPR 085A COMPONENT A
BAYTEC SPR 085A COMPONENT B
BAYTEC SPR 085A-B
BAYTEC SPR 092A POLYOL
BAYTEC SPR 156 D
BAYTEC SPR-186A POLYOL
BAYTEC TP PU 0385
BAYTEC TP PU 30EL13
BAYTEC VP PU 30EL13
BAYTEC VP.PU 0385
BAYTEC WP 260
BAYTEC WE 180
BAYTEC Z3901 COMPONENT C
BAYTHERM 2004M COMPONENT B
BAYTHERM 847 COMPONENT A
BAYTHERM 847 COMPONENT B
BAYTHERM 858 COMPONENT A
BAYTHERM 858 COMPONENT B
BAYTHERM 859 COMPONENT A
BAYTHERM 859 COMPONENT B
BAYTHERM 861 COMPONENT A
BAYTHERM 861 COMPONENT B
BAYTHERM 865 COMPONENT A
BAYTHERM 865 COMPONENT B
BAYTHERM 866 COMPONENT A
BAYTHERM 866 COMPONENT B
BAYTHERM 868 COMPONENT A
BAYTHERM 868 COMPONENT B
BAYTHERM 869 COMPONENT B
BAYTHERM 869 COMPONENT A
BAYTHERM 870 COMPONENT A
BAYTHERM 870 COMPONENT B
BAYTHERM 871 COMPONENT B
BAYTHERM 900 COMPONENT A
BAYTHERM 900 COMPONENT B
BAYTHERM 914 COMPONENT B
BAYTHERM 914 ISOCYANATE COMP A
BAYTHERM 917 COMPONENT A
BAYTHERM 917 COMPONENT B
BAYTHERM 9200 COMPONENT A
BAYTHERM 9200 COMPONENT B
BAYTHERM 9201 COMP B
BAYTHERM 9201 COMPONENT A

BAYTHERM 9201 COMPONENT B
BAYTHERM 9202 COMP B
BAYTHERM 9202 COMPONENT B
BAYTHERM 9204 COMP B
BAYTHERM 9204 COMPONENT A
BAYTHERM 9204 COMPONENT B
BAYTHERM 9205 COMPONENT A
BAYTHERM 9205 COMPONENT B
BAYTHERM 925 COMPONENT A
BAYTHERM 925 COMPONENT B
BAYTHERM 926 COMPONENT B
BAYTHERM 927 COMPONENT B
BAYTHERM 928 COMPONENT A
BAYTHERM 928 COMPONENT B
BAYTHERM 929 COMPONENT A
BAYTHERM 929 COMPONENT B
BAYTHERM 930 COMPONENT B
BAYTHERM 932 COMPONENT A
BAYTHERM 932 COMPONENT B
BAYTHERM 939 COMPONENT A
BAYTHERM 939 COMPONENT B
BAYTHERM 940 COMPONENT B
BAYTHERM 945 COMPONENT A
BAYTHERM 945 COMPONENT B
BAYTHERM 946 COMPONENT A
BAYTHERM 946 COMPONENT B
BAYTHERM 947 COMPONENT A
BAYTHERM 947 COMPONENT B
BAYTHERM 951 COMPONENT A
BAYTHERM 951 COMPONENT B
BAYTUFT 751 COMPONENT A
BAYTUFT 752 COMPONENT A
BAYTUFT 753 COMPONENT A
BAYTUFT 755 COMPONENT A
BAYTUFT 757 COMPONENT A
BAYTUFT POLY 70753
BAYTUFT POLY 70753X
BAYTUFT POLY 71337X
BAYTUFT PW759SX POLY
BAYTUFT PW759X ISOCYANATE
CARADATE 80
CARADOL SC 52-05
CARADOL SC 58-20
CORE MAK 680 COMPONENT B
D9509-472 111 O-ring
DESMODUR 15
DESMODUR 1725
DESMODUR 44 S
DESMODUR 44V20 L
DESMODUR CD
DESMODUR E 743
DESMODUR E 744

DESMODUR T65
DESMODUR T80
DESMODUR TB 1
DESMODUR TP PU 70WF35
DESMODUR VK-18
DESMODUR VKS-18
DESMODUR VL
DESMODUR VP PU 1806
DESMODUR VP PU 3270
DESMODUR VP,PU 0118C SCH
DESMODUR WD-4120
DESMODUR XP 2508
DESMODUR XP 2534
DESMODUR XP 2585
DESMODUR XP 7152E
DESMODUR XP 7168
DESMODUR XP 7177E
DESMODUR XP-7143
DESMODUR XQ 703
DESMOPHEN 1600U
DESMOPHEN 1900 U
DESMOPHEN 1915U
DESMOPHEN 1920 D
DESMOPHEN 2001 KS
DESMOPHEN 550 U
DESMOPHEN L 400
DIPROPYLENE GLYCOL
E-LINE 1001
ELASTOGARD ARC
ELASTRA POLYOL 623
F 210-01 ISO (VERSION 2)
FLEXURE 1000XL
FMSC ISOCYANATE 840008
HCFC-141B
HYPERLITE III RESIN S-4238
HYPERLITE POLYOL E-824
HYPERLITE POLYOL E-824X
HYPERLITE POLYOL E-828
HYPERLITE POLYOL E-833
HYPERLITE POLYOL E-837
HYPERLITE POLYOL E-837 INACTIVE T001
HYPERLITE POLYOL E-839
HYPERLITE POLYOL E-840
HYPERLITE POLYOL E-840 INACTIVE T001
HYPERLITE POLYOL E-841
HYPERLITE POLYOL E-841 INACTIVE R001
HYPERLITE POLYOL E-841 INACTIVE T001
HYPERLITE POLYOL E-843
HYPERLITE POLYOL E-846
HYPERLITE POLYOL E-848
HYPERLITE POLYOL E-849
HYPERLITE POLYOL E-850

HYPERLITE POLYOL E-851
HYPERLITE POLYOL E-852
HYPERLITE POLYOL E-853
HYPERLITE POLYOL E-880
HYPERLITE POLYOL E-8846
HYPERLITE POLYOL E-960
HYPERLITE POLYOL E-971
HYPERLITE POLYOL 1629
HYPERLITE POLYOL 1674
HYPERLITE RESIN S-4233
HYPERLITE RESIN S-4234
HYPERLITE RESIN S-4235
HYPERLITE RESIN S-4236
ISOCYANATE 622238 (NB#)
ISOCYANATE 679172 (NB#)
ISOCYANATE 704290 (NB#)
ISOCYANATE 759714 (NB#)
ISOCYANATE NB # 484551
ISOCYANATE NB# 484551
ISOCYANATE TO 1051
ISOCYANATE Y
ISOCYANATE Z
LEGACY 9730
LEGACY 9740
LEGACY 9750
LOXOL G71S
MDA-50
MDA-85
MISTAFOAM H9708
MONDUR 000
MONDUR 1411
MONDUR 1417
MONDUR 1427
MONDUR 1428
MONDUR 1437
MONDUR 1441
MONDUR 1451
MONDUR 1453
MONDUR 1454
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MONDUR 1467
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MONDUR 1473
MONDUR 1479
MONDUR 1488
MONDUR 1490
MONDUR 1496
MONDUR 1500
MONDUR 1509
MONDUR 1514

MONDUR 1515
MONDUR 1518
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MONDUR 1533
MONDUR 1540
MONDUR 1535
MONDUR 216
MONDUR 230
MONDUR 425
MONDUR 437
MONDUR 445
MONDUR 448
MONDUR 489
MONDUR 489-N
MONDUR 501
MONDUR 531
MONDUR 539
MONDUR 541
MONDUR 541 LIGHT
MONDUR 569
MONDUR 577
MONDUR 582
MONDUR 597
MONDUR CD
MONDUR CDX
MONDUR CM FUSED
MONDUR M (FLAKED)
MONDUR M (FUSED)
MONDUR M (MOLTEN)
MONDUR M (MOLTEN-BULK)
MONDUR MA 2001
MONDUR MA 2101
MONDUR MA 2300
MONDUR MA 2301
MONDUR MA 2601
MONDUR MA 2602
MONDUR MA 2603
MONDUR MA 2901
MONDUR MA 2902
MONDUR MA 2903
MONDUR MA 2905
MONDUR ML
MONDUR MP (BULK)
MONDUR MP 095
MONDUR MP 250
MONDUR MP(FUSED)
MONDUR MR
MONDUR MR (CONVERSION/A)
MONDUR MR (CONVERSION/A)
MONDUR MR (LIGHT)
MONDUR MR LIGHT

MONDUR MR LT POLYTHANE 0
MONDUR MR P1
MONDUR MR-200
MONDUR MR-5
MONDUR MRP
MONDUR MRS
MONDUR MRS 2
MONDUR MRS 20
MONDUR MRS 4
MONDUR MRS 5
MONDUR MRS-2
MONDUR MRS-20
MONDUR MRS-4
MONDUR MRS-5
MONDUR MT-40
MONDUR MT-66
MONDUR PC
MONDUR PF
MONDUR PF LT
MONDUR T-422
MONDUR TD
MONDUR TD 80 GRADE A
MONDUR TD 80 GRADE B
MONDUR TD GRADE E
MONDUR TD-65
MONDUR TD-65 GRADE E
MONDUR TD-80 GRADE A
MONDUR TD-80 GRADE B
MONDUR TD-80 GRADE D
MONDUR TDS GRADE
MONDUR TDS GRADE E
MONDUR TDS GRADE II (UNADJUST)
MONDUR TDX
MONDUR XP 7113E
MONDUR XP 7164
MULTRANOL 3400
MULTRANOL 3600
MULTRANOL 3900
MULTRANOL 3901
MULTRANOL 3901X
MULTRANOL 4011
MULTRANOL 4012
MULTRANOL 4030
MULTRANOL 4034
MULTRANOL 4035
MULTRANOL 4050
MULTRANOL 4063
MULTRANOL 5168
MULTRANOL 6501
MULTRANOL 7057
MULTRANOL 7059
MULTRANOL 7100

MULTRANOL 7159
MULTRANOL 8105
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MULTRANOL 8226
MULTRANOL 8235
MULTRANOL 8236
MULTRANOL 8239
MULTRANOL 8502
MULTRANOL 8516
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MULTRANOL 8551
MULTRANOL 8563
MULTRANOL 8571
MULTRANOL 8574
MULTRANOL 8575
MULTRANOL 8578
MULTRANOL 8579
MULTRANOL 8587
MULTRANOL 8598 (POLYOL SYSTEM)
MULTRANOL 8600
MULTRANOL 8601
MULTRANOL 8602
MULTRANOL 8611
MULTRANOL 8624
MULTRANOL 8649
MULTRANOL 8659
MULTRANOL 8663
MULTRANOL 8666
MULTRANOL 8668

MULTRANOL 8669
MULTRANOL 8670
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MULTRANOL 8676
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MULTRANOL 8688
MULTRANOL 8692
MULTRANOL 8693
MULTRANOL 8699
MULTRANOL 8702
MULTRANOL 8705
MULTRANOL 8706
MULTRANOL 8719
MULTRANOL 8745
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MULTRANOL 9198X
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MULTRANOL 9199S
MULTRANOL 9207
MULTRANOL 9242
MULTRANOL 9243
MULTRANOL 9245
MULTRANOL 9260
MULTRANOL 9289
MULTRANOL 9291
MULTRANOL 9404
MULTRANOL 9458 (ADDITIVE)
MULTRANOL 9502
MULTRANOL 9566
MULTRANOL 9587
MULTRANOL 9642
MULTRANOL 9724
MULTRANOL 9789
MULTRANOL CHA 1000
MULTRANOL KLA 9143
MULTRANOL RHO 1000
MULTRANOL SPO
MULTRATHANE 000 (OSPCYANATE)
NB# 100301
NB# 1277620
NB # 1277773
NB# 1309130
NB# 1311227 (ISOCYANATE)
NB# 4001916
NB# 4016146
NB # 4016343
NB#4020293
NB# 4022282
NB # 4031415
NB# 4034968-B
NB# 4043736
NB # 4044295

NB# 535330-A
NB # 621624
NB# 626069
NB # 698676
NB # 704295
NB# 708556
NB# 708867
NB# 733286
NB # 827865
NB # 827865-P
NB # 827865-I
NB# 828606
NB # 829541
NB # 836513
NB# 855967
NB# 855970
NB# 877564
NB# 861026X
OTTO BOCK B110-10 IP-US ISO
OTTO BOCK B110-10 US BLACK
OTTO BOCK F 210-02 ISOCYANATE
OTTO BOCK F210-01 (RN 3539)
OTTO BOCK H 410-01 ISO
OTTO BOCK RN3542 F210-01 US
OTTO BOCK RN3542 F210-01 US EXP
OTTO BOCK RN7012 W700VUS
OTTO BOCK RN7090 W700US
OTTO BOCK RN8063 W800VUSF
OTTO BOCK W 600 V ISOCYANATE
OTTO BOCK W 600 V US IMP
OTTO BOCK W 700 V US LF
OTTO BOCK W 800 V ISOCYANATE
OTTO BOCK W 800 V US BLACK
OTTO BOCK W 800 V US F
OTTO BOCK W 800 V US M
OTTO BOCK W-600-V-US COLORLESS
OTTO BOCK W-700 V US BLACK
OTTO BOCK W-700 V US COLORLESS
OTTO BOCK W-700-V ISOCYANATE
OTTO BOCK W-800-V US COLORLESS
OTTO BOCK W-800-V-US-F
OTTO BOCK W700VUS COLORLESS
OTTO BOCK W700VUS-COLORLESS
OTTOBOCK F 210-02 COLORLESS
PEER 3000
POLYMERIC DIPHENYLMETHANE
POLYOL 1309315 B (NB#)
PRISM CM-200 COMPONENT A
PRISM CM-200 COMPONENT B
PROPYLENE GLY.-PGH
REDWING 30310
ROGERS POLYOL R# 990955

ROGERS POLYOL R# 892103
RX700B POLYOL
RX800A ISOCYANATE
RX800B POLYOL
SBU ISOCYANATE 0632
SEALED AIR 582
SEALED AIR GFLEX A
SEALED AIR INSTAFLEX A
SEALED AIR INSTAPAK
SEALED AIR MR LIGHT
SEALED AIR ULTRALITE A
SERIES 406-0406A PART A
SOFTCEL POLYOL U-1000
SOFTCEL VE-1000
STYLEX POLYOL 1202
ULTRACEL POLYOL 2000
ZUSATZMITTEL VP PU 1706

SCHEDULE "B"

**NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL IN THE
MATTER OF POLYETHER POLYOLS CLASS ACTION LITIGATION:**

**PLEASE READ THIS NOTICE CAREFULLY. IT MAY AFFECT YOUR
LEGAL RIGHTS.**

TO: All persons in Canada who purchased Polyether Polyols or Polyether Polyols Products in Canada between January 1, 2002 and December 31, 2003, except the Excluded Persons.

Polyether Polyols means polyether polyols, monomeric or polymeric diphenylmethane diisocyanate, and/or toluene diisocyanate, whether sold separately or in a combined form with or without other chemicals added thereto. Polyether Polyol Products are products that directly or indirectly contain or are derived from Polyether Polyols.

I. SETTLEMENTS HAVE BEEN APPROVED BY THE COURTS

Class proceedings lawsuits have been initiated in Ontario (Court File No. 50305CP) and Quebec (File No. 200-06-000069-065) in which it is alleged that the defendants conspired to fix prices for Polyether Polyols in Canada (collectively the "Proceedings").

A settlement has been reached with the defendants Bayer Inc., Bayer AG, Bayer MaterialScience LLC (formerly known as Bayer Polymers LLC) and Bayer Corporation (collectively the "Settling Defendants"). The Settling Defendants have agreed, in exchange for a full release of claims against them relating to the Proceedings, to pay **Cdn \$2,500,000.00** into a settlement fund (including interest, the "Settlement Fund") and provide cooperation. The Settlement Fund will be held in trust by Siskinds ^{LLP} for the benefit of class members pending further order of the Court as to the distribution of the Settlement Fund. The Settling Defendants do not admit liability. The settlement is a compromise of disputed claims. The litigation is continuing against all other Defendants.

The settlement has been approved by the Courts in Ontario and Quebec. For purposes of the settlement only, the Proceedings were certified as a class proceeding.

II. DISTRIBUTION OF THE SETTLEMENT FUNDS

The courts have not yet determined how the settlement funds should be paid out. Once a distribution protocol has been approved by the courts, further notice will be given. In Class Counsel's experience with actions similar to this, the majority of the monies are typically put in a fund used to provide direct compensation to class members who made purchases directly from the defendants. In recognition of the difficulties involved in directly compensating indirect purchasers, compensation for these types of class members are typically paid out by the claims administrator through a distribution to organizations which operate for the general benefit of indirect purchasers.

III. CLASS COUNSEL FEES

Class Counsel legal fees and disbursements must be approved by the Courts. Class Counsel will collectively be requesting legal fees of up to 25% of the Settlement Fund, plus disbursements and applicable taxes, all to be paid out of the Settlement Fund.

IV. OPTING OUT OF THE PROCEEDINGS

You will be bound by the terms of the settlement unless you “opt out” of the Proceedings. If you do not opt out, you will not be able to bring or maintain any other claim or legal proceeding alleging acts in violation of the *Competition Act*, such as price-fixing, or other claims relating to the alleged conduct in the market for Polyether Polyols. No further right to opt out of the Proceedings will be provided. If you opt out, you will not be able to participate in the settlement, and you will not be able to participate in any further settlements with, or judgments against, other defendants in the Proceedings.

If you would like to exclude yourself from the Proceedings, you can opt out by submitting a written request to be excluded to Class Counsel by mail. Your request must include the following information:

- (a) Name, address, and telephone number;
- (b) the dollar amount and the date of such Polyether Polyols purchases; and
- (c) the request to be excluded from the Proceedings.

Written requests to opt out must be sent by ● to:

POLYETHER POLYOLS CLASS ACTION LITIGATION

c/o Siskinds LLP
680 Waterloo Street
London, ON N6A 3V8

V. CLASS COUNSEL

The law firm of Siskinds^{LLP} represents class members in Ontario, and in provinces other than Quebec, as well as corporations of more than 50 employees in Quebec. Ontario Class Counsel can be reached toll free at 1-800-461-6166 ext. 7753 or by mail at 680 Waterloo Street, London, Ontario N6A 3V8 Attention: Charles Wright.

The law firm of Siskind Desmeules s.e.n.c.r.l. represents individuals and corporations of 50 or less employees who are class members in Quebec. Quebec Class Counsel can be reached at 418-694-2009 or by mail at Les promenades du Vieux-Quebec, 43 rue De Buade, bureau 320, Quebec City, QC G1R 4A2, Attention: Me Simon Hébert.

VI. QUESTIONS ABOUT THE SETTLEMENT

If you would like a copy of the settlement agreement or have questions, please call the appropriate Class Counsel. This notice contains only a summary of the settlement and class members are encouraged to review the entire settlement agreement. A copy of the settlement

agreement can be obtained free of charge at www.classaction.ca. A copy of the settlement agreements can also be mailed to you at a cost of \$10, which represents the cost of photocopying and mailing. INQUIRIES SHOULD NOT BE DIRECTED TO THE COURT.

VII. INTERPRETATION

This notice contains a summary of some of the terms of the settlement. If there is a conflict between the provisions of this notice and the settlement agreement, including the appendices of the settlement agreement, the terms of the settlement agreement shall prevail.

<p>THIS NOTICE HAS BEEN AUTHORIZED BY THE ONTARIO SUPERIOR COURT OF JUSTICE, AND THE SUPERIOR COURT OF QUEBEC</p>
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SCHEDULE "C"

PLAN OF DISSEMINATION

NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL IN THE MATTER OF POLYETHER POLYOLS CLASS ACTION LITIGATION

The Notice of Certification and Settlement Approval shall be distributed in the following manner:

1. published once in the following newspapers:
 - (a) Globe and Mail (National Edition);
 - (b) Le Journal de Montréal;
 - (c) Le Journal de Québec.
2. sent to the following organizations with a request to be distributed to their membership:
 - (a) Canadian Urethane Manufacturers;
 - (b) Canadian Flexible Foam Manufacturers Association;
 - (c) Ontario Furniture Manufacturers Association;
 - (d) Quebec Furniture Manufacturers Association;
 - (e) Furniture West Inc.;
 - (f) Automotive Parts Manufacturers Association;
 - (g) Canadian Appliance Manufacturers Association;
 - (h) Canadian Construction Association;
 - (i) Packaging Association of Canada; and
 - (j) Canadian Textiles Institute.
3. posted on Class Counsel's website at www.classaction.ca; and
4. sent by direct mail to each of the Settling Defendants' customers where possible.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at London

Proceeding under the *Class Proceedings Act, 1992*

**ORDER
Approval of Bayer
Settlement Agreement**

Siskinds LLP
Barristers & Solicitors
680 Waterloo Street
London, ON N6A 3V8

Charles M. Wright LSUC #: 36599Q
Tel: (519) 672-2121
Fax: (519) 672-6065

Solicitors for the Plaintiff