

NOTICE OF CERTIFICATION OF POLYETHER POLYOL PRODUCTS PRICE-FIXING CLASS ACTION

If you purchased Polyether Polyol Products in Canada between January 1, 1999 and December 31, 2004, your legal rights might be affected. You should read this notice carefully.

CERTIFICATION OF CLASS ACTION

On March 7, 2014, the action was certified as a class proceeding by order of the Ontario Superior Court of Justice. This means that the common issues set out below will be determined in a single proceeding on behalf of members of the Class (defined below) subject to further order of the court. The Order appointed Crosslink Technology Inc. as representative plaintiff for the Class.

WHAT THE CLASS ACTION IS ABOUT

The representative plaintiff, on behalf of itself and the Class of persons described below, are claiming damages from the defendants for unlawfully conspiring to fix, maintain, and/or increase the price of Polyether Polyol Products. Polyether Polyol Products means polyether polyols, together with polyether polyol systems, monomeric or polymeric diphenylmethane diisocyanate (“MDI”) and toluene diisocyanate (“TDI”).

The defendants are: 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.

Settlements were reached in the litigation with the BASF, Bayer, Huntsman and Lyondell defendants. The settlements represent resolution of disputed claims against each of the settled defendants. The settled defendants do not admit any wrongdoing or liability. The related settlement funds (less court approved fees and expenses) are being held in trust for the benefit of the Class.

The action was discontinued against the Rhodia defendants.

The action is continuing against the Dow defendants.

The court has not taken any position as to the likelihood of recovery on the part of the representative plaintiff or other members of the Class, or as to the truth or merits of the claims or defences asserted by either side. The allegations made by the representative plaintiff have not been proven in court.

THE CLASS

By court order, the Class of persons affected by this lawsuit is defined as:

All persons in Canada (excluding defendants and their respective parents, employees, subsidiaries, affiliates, officers and directors) who purchased Polyether Polyol Products between January 1, 1999 and December 31, 2004.

** Polyether Polyol Products means polyether polyols, together with polyether polyol systems, monomeric or polymeric diphenylmethane diisocyanate (“MDI”) and toluene Diisocyanate (“TDI”).

THE COMMON ISSUES

The proceeding was certified on behalf of the Class in respect of the following common issues. This means that these issues will be determined as part of the common issues trial on behalf of the Class:

- (a) Did the defendants, or any of them, engage in conducts that amounts to civil conspiracy?
 - (i) Did the defendants unlawfully conspire with each other to limit or lessen, unduly, the production of Polyether Polyol Products, or to enhance unreasonably the price of Polyether Polyol Products?
 - (ii) Was the defendants’ unlawful conduct directed towards the plaintiff and other class members?
 - (iii) Did the defendants know, or ought to have known, in the circumstances that injury to the plaintiff and other class members would likely result?
- (b) Did the defendants, or any of them, engage in conduct contrary to section 45 of the *Competition Act*?
- (c) Did the plaintiff and other class members suffer loss or damage as a result of any of the conduct referred to in issues (a) and (b)?
- (d) Over what period of time did the conspiracy take place?
- (e) Over what period of time did the conspiracy affect the price of Polyether Polyol Products?
- (f) Did the defendants take affirmative and/or fraudulent steps to conceal the conspiracy?
- (g) Can damages be measured on an aggregate, class-wide basis and if so, what are the aggregate damages?
- (h) Was the conduct of the defendants, or any of them, such that they ought to pay global exemplary or punitive damages to the plaintiff and other class members?
- (i) Should the full costs of investigation in connection with this matter, including the cost of the proceeding or part thereof, be fixed or assessed on a global basis pursuant to section 36 of the *Competition Act* and if so, in what amount?

FINANCIAL CONSEQUENCES

The class proceeding will determine the common issues described above. If the common issues are determined in favour of the Class, class members may be entitled to receive financial compensation from the defendants. In that event, participation of individual class members will likely be required to determine individual claims.

In the interim, you should retain copies of all documents and evidence that might be relevant to the determination of your individual claim.

No class member, other than the representative plaintiff, will be liable for costs with respect to the determination of the common issues.

CLASS COUNSEL

The law firm of Siskinds LLP is counsel for the Class. Siskinds LLP is a full-service law firm based in London and with an office in Toronto and affiliate offices in Montreal and Quebec City.

Class Counsel have entered into an agreement with the representative plaintiff with respect to legal fees and disbursements. The agreement provides that Counsel will only be paid in the event of success in the case (i.e., a settlement or court award). The agreement provides that the Class will pay to Counsel a percentage contingency fee plus disbursements and taxes. Counsel's fees and disbursements must be approved by the court. The agreement also provides that any costs awarded to the representative plaintiff will be retained by Class Counsel to offset litigation expenses.

ADDITIONAL INFORMATION

The certification order and other information about the proceedings are available at www.classaction.ca.

For further information, please contact Siskinds LLP at polyetherclassaction@siskinds.com or 1-800-461-6166 ext. 2446.