

Court File No. 50305CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

The Honourable Madam

)

Friday, the 7th day

)

Justice Rady

)

of March, 2014

B E T W E E N :

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 that this action be certified pursuant to the *Class Proceedings Act, 1992*, SO 1992, c 6 was heard on December 17 & 18, 2012 at the Court House, 80 Dundas Street, London, Ontario.

WHEREAS an opportunity to opt-out was provided pursuant to Orders dated March 11, 2008 and July 24, 2012, and whereas the Orders provided that no further right to opt-out would be provided;

WHEREAS the action was dismissed against defendants, Bayer A.G., Bayer Material Science LLC, Bayer Corporation, BASF Canada, BASF Corporation, BASF SE (formerly BASF A.G.), Huntsman International LLP, and Lyondell Chemical Company by Orders dated March 11, 2008 and July 24, 2012;

WHEREAS the action was discontinued against Rhodia, Rhodia Inc., and Rhodia Canada Inc. by Order dated April 15, 2010;

ON READING the materials filed by the plaintiff and by the defendants Dow Chemical Company and Dow Chemical Canada Inc., and on hearing the submissions of counsel for those parties, and for Reasons released this day:

1. **THIS COURT ORDERS** that the within action is certified as a class proceeding pursuant to the *Class Proceedings Act, 1992*, SO 1992, c 6, s 5(1).

2. **THIS COURT ORDERS** that the Class 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")

3. **THIS COURT ORDERS** that the nature of the claim asserted on behalf of the Class is a claim for damages against the defendants, Dow Chemical Company and Dow Chemical Canada Inc., for unlawfully conspiring to fix, maintain and/or increase the price of Polyether Polyol Products.

4. **THIS COURT ORDERS** that the proceeding is certified on the basis of the following common issues:

- (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?
5. **THIS COURT ORDERS** that Crosslink Technology, Inc. is appointed as representative plaintiff for the Class.
6. **THIS COURT ORDERS** that the full and summary Notice of Certification are hereby approved substantially in the form attached hereto as Schedules “A” and “B” respectively.
7. **THE COURT ORDERS** that the full and summary Notice of Certification shall be given to the Class in the following manner, no sooner than thirty (30) days following the resolution of all appeal proceedings from this Order:

Full Notice of Certification

- (a) Sent by direct mail by Class Counsel to:
 - (i) the direct purchaser customers of BASF Canada, BASF Corporation, BASF A.G., Bayer Inc., Bayer A.G., Bayer Material Science LLC, Bayer Corporation, Huntsman International LLC, and Lyondell Chemical

Company who are members of the Class, to the extent such information has been provided to Class Counsel by those parties. The mailing shall occur within seven (7) days of the first publication of the Summary Notice of Certification.

- (ii) any person who has inquired with Class Counsel regarding the litigation and in respect of whom Class Counsel has address information.
- (iii) any person who requests it.

Where the recipient is located in Quebec, the notice shall be sent in English and French.

- (b) Sent by direct mail by Dow Chemical Company and Dow Chemical Canada Inc., using their reasonable best efforts, to their respective direct purchaser customers who purchased Polyether Polyol Products in Canada between January 1, 1999 and December 31, 2004. The mailing shall occur within seven (7) days of the first publication of the Summary Notice of Certification. Class Counsel shall provide the Defendants with at least seven (7) days' advance notice of the first publication of the Summary Notice of Certification. Where the recipient is located in Quebec, the notice shall be sent in English and French.
- (c) Posted in English and French by Class Counsel on Class Counsel's website.

Summary Notice of Certification

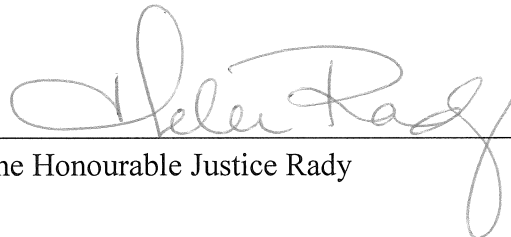
- (a) Published once in the following newspapers, in either English or French, as is appropriate for each newspaper, subject to each having reasonable publication deadlines and costs:
 - (i) The Globe and Mail, national edition
 - (ii) Montréal La Presse
 - (iii) Québec City Le Soleil
- (b) Sent to the following industry associations, in either English or French, as is appropriate for each association, requesting voluntary distribution to their membership:
 - (i) Canadian Urethane Manufacturers' Association
 - (ii) Canadian Flexible Foam Manufacturers Association
 - (iii) Canadian Home Furnishing Alliance
 - (iv) Quebec Furniture Manufacturers Association
 - (v) Automotive Parts Manufacturers Association

- (vi) Canadian Appliance Manufacturers Association
- (vii) Canadian Construction Association
- (viii) The Packaging Association
- (ix) Canadian Textile Industry Association

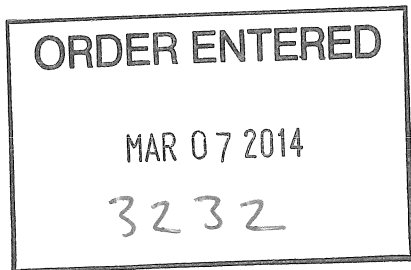
8. **THIS COURT ORDERS** that the costs of the Notice Program shall be paid 50% by the plaintiff and 50% by Dow Chemical Company and Dow Chemical Canada Inc.
9. **THIS COURT ORDERS** that paragraphs 1(b), 36, 38, 39, and 40 of the Statement of Claim are struck.
10. **THIS COURT ORDERS** that Dow Chemical Company and Dow Chemical Canada Inc. shall, within thirty (30) days of the final resolution of all appeal proceedings from this Order, pay to the plaintiff the costs of the certification motion as agreed upon by those parties, plus postjudgment interest calculated in accordance with section 129 of the *Courts of Justice Act*.

Date:

MAR 07 2014



The Honourable Justice Rady



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 with offices in Toronto, Montreal, Quebec City and head office located in London.

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.

Schedule "B"

If you purchased Polyether Polyol Products, you could be affected by a class action.

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

Certification of Class Action: A class action related to the alleged conspiracy to fix prices of Polyether Polyol Products was certified as a class proceeding. This means that the common issues relating to the existence, nature, scope and impact of the alleged conspiracy will be determined in a single proceeding on behalf of the Class.

The Class includes persons in Canada who purchased Polyether Polyol Products in Canada between 1999 and 2004. If you are a member of the Class, you should review the full legal notice, available online at www.classaction.ca.

Financial Consequences: If the common issues are determined in favour of the Class, Class members may be entitled to receive financial compensation from the defendants. No Class member, other than the representative plaintiff, will be liable for costs with respect to the determination of the common issues.

Class Counsel: 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 will be paid on a contingency basis - meaning that they will only be paid in the event of settlement or court award. Class Counsel's fees must be approved by the court.

Questions? Visit www.classaction.ca, email polyetherclassaction@siskinds.com or call 1-800-461-6166 ext. 2446.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at London

Proceeding under the *Class Proceedings Act, 1992*

**ORDER
Certification**

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