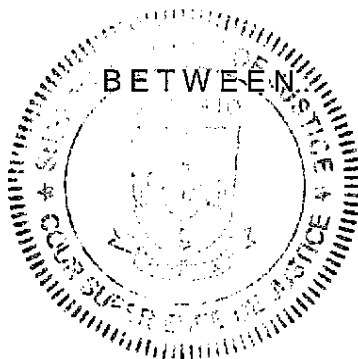


**ONTARIO  
SUPERIOR COURT OF JUSTICE**



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, AND  
LYONDELL CHEMICAL COMPANY, RHODIA, RHODIA INC., and  
RHODIA CANADA INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**STATEMENT OF CLAIM**

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$1000.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

Date *May 5/06*

Issued by *Bay*  
Local Registrar

Address of court office London Court House  
Civil, Landlord/Tenant Section  
Group Floor, Unit "A"  
80 Dundas Street  
London, ON N6A 6A3

- TO: Bayer Inc.**  
77 Belfield Road  
Etobicoke, ON  
M9W 1G6
- AND TO: Bayer A.G.**  
Postfach D-51368  
Leverkusen, Germany
- AND TO: Bayer Material Science LLC**  
100 Bayer Road, Building 4  
Pittsburgh, PA  
15205-9741 USA
- AND TO: Bayer Corporation**  
100 Bayer Road, Building 4  
Pittsburgh, PA  
15205-9741 USA
- AND TO: Dow Chemical Company**  
2030 Dow Center  
Midland, Michigan  
48674 USA
- AND TO: Dow Chemical Canada Inc.**  
1425 Vidal Street South  
P.O. Box 3030  
Sarnia, Ontario  
N7T 8C6

**TO: BASF CANADA**  
345 Carlingview Drive  
Toronto, ON M9W 6N9  
Canada

**AND TO: BASF CORPORATION**  
3000 Continental Drive North  
Mount Olive, NJ 07838-1234  
U.S.A.

**AND TO: BASF A.G.**  
Carl-Bosch-Strabe 38  
67056 Ludwigshafen, Germany

**AND TO: HUNTSMAN INTERNATIONAL LLC**  
500 Huntsman Way  
Salt Lake City, Utah 84108  
USA

**AND TO: LYONDELL CHEMICAL COMPANY**  
1221 McKinney St.  
Houston, TX 77010  
USA

**AND TO: RHODIA**  
Coeur Defense – Tour A – 37eme etage  
110, esplanade Charles de Gaulle  
92931 Paris La Defense Cdx  
France

**AND TO: RHODIA INC.**  
CN 7500  
8 Cedar Brook Drive  
Cranbury, NJ 08512  
USA

**AND TO: RHODIA CANADA INC.**  
3265 Wolfedale Rd.  
Mississauga, ON L5C 1V8

**CLAIM**

1. The plaintiff claims on behalf of itself and other persons in Canada who are similarly situated:
  - (a) general damages for conspiracy in the amount of \$100,000,000.00;
  - (b) general damages for intentional interference with economic relations in the amount of \$100,000,000.00;
  - (c) general damages for conduct that is contrary to Part VI of the *Competition Act*, R.S.C. 1985, Chap. C-34 in the amount of \$100,000,000.00;
  - (d) punitive and exemplary damages in the amount of \$10,000,000.00;
  - (e) costs of investigation pursuant to Part VI of the *Competition Act*, R.S.C. 1985, Chap. C-34 s. 36;
  - (f) pre-judgement interest at the rate of 10% compounded annually or as otherwise ordered by the Honourable Court;
  - (g) costs of this action on a solicitor and client basis; and
  - (h) such further and other relief as this Honourable Court awards.

**The Plaintiff**

2. The plaintiff, Crosslink Technology Inc. is a corporation registered in Ontario, with its registered head office in Mississauga, Ontario. At all relevant times, the plaintiff was engaged in the business of selling formulated epoxies, urethanes and customer cast electrical parts. The plaintiff purchased Polyether Polyol Products during the relevant time period.

### **The Defendants**

3. Bayer Inc. is a Federal corporation with its head office in Etobicoke, Ontario ("Bayer Canada"). Bayer Canada is a subsidiary of Bayer A.G. At all relevant times, Bayer Canada manufactured, marketed, sold and/or distributed Polyether Polyol Products in Canada.
4. Bayer Material Science LLC, formerly known as Bayer Polymers L.L.C. ("Bayer Material Science") is a U.S. corporation registered in Delaware, and is a subsidiary of Bayer A.G. Its principal place of business is in Pittsburgh, Pennsylvania. At all relevant times, Bayer Polymers manufactured, marketed, sold and/or distributed Polyether Polyol Products in Canada directly or indirectly through an agent, affiliate or subsidiary.
5. Bayer Corporation ("Bayer America") is a U.S. corporation with its principal place of business in Pittsburgh, Pennsylvania. It is a subsidiary of Bayer A.G. At all relevant times, Bayer America manufactured, marketed, sold and/or distributed Polyether Polyol Products in Canada directly or indirectly through an agent, affiliate or subsidiary.
6. Bayer A.G. is a German corporation with its principal place of business in Germany ("Bayer Germany"). It is the parent company of Bayer Material Science, Bayer Canada, and Bayer America. At all relevant times, Bayer Germany manufactured, marketed, sold and/or distributed Polyether Polyol Products in Canada directly or indirectly through an agent, affiliate or subsidiary.
7. Lyondell Chemical Company ("Lyondell") is a U.S. corporation, registered in Delaware, with its principal place of business in Houston, Texas. At all relevant times, Lyondell manufactured, marketed, sold and/or distributed Polyether Polyol Products in Canada directly or indirectly through an agent, affiliate or subsidiary. In 2000, Bayer Germany acquired Lyondell's Polyether Polyol Products business.

8. The business of each of Bayer Canada, Bayer Germany, Bayer America, Bayer Material Science, and Lyondell (collectively "Bayer") is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, marketing, sale and/or distribution of Polyether Polyol Products in Canada and for the purposes of the conspiracy described hereinafter.
9. Dow Chemical Company ("Dow Chemical") is a Delaware corporation with its principal place of business in Midland, Michigan. Dow Chemical also has a place of business in Gales Ferry, Connecticut. At all relevant times, Dow Chemical manufactured, marketed, sold and/or distributed Polyether Polyol Products in Canada directly or indirectly through an agent, affiliate or subsidiary.
10. Dow Chemical Canada Inc. ("Dow Canada") is a wholly owned subsidiary of Dow Chemical. Dow Canada is a Canadian corporation that conducts business from offices in Sarnia, Ontario and elsewhere. At all relevant times, Dow Canada manufactured, marketed, sold and/or distributed Polyether Polyol Products in Canada directly or indirectly through an agent, affiliate or subsidiary.
11. The business of each of Dow Chemical and Dow Canada (collectively "Dow") is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, marketing, sale and/or distribution of Polyether Polyol Products in Canada and for the purposes of the conspiracy described hereinafter.
12. BASF Canada is a Federal corporation with its head office in Toronto, Ontario. BASF Canada is a wholly owned subsidiary of BASF Corporation. At all relevant times, BASF Canada manufactured, marketed, sold and/or distributed Polyether Polyol Products in Canada.

13. BASF Corporation is a U.S. corporation duly registered in Delaware ("BASF America"). Its principal place of business is in Mount Olive, New Jersey. BASF America, is the North American affiliate of BASF A.G. At all relevant times, BASF America manufactured, marketed, sold and/or distributed Polyether Polyol Products in Canada directly or indirectly through an agent, affiliate or subsidiary.
14. BASF A.G. is a German corporation ("BASF Germany"). It conducts business in Canada both in its own right and through its wholly owned subsidiary and/or affiliates. At all relevant times, BASF Germany manufactured, marketed, sold and/or distributed Polyether Polyol Products in Canada directly or indirectly through an agent, affiliate or subsidiary.
15. The business of each of BASF Canada, BASF America, and BASF Germany is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, marketing, sale and/or distribution of Polyether Polyol Products in Canada and for the purposes of the conspiracy described hereinafter.
16. Huntsman International LLC ("Huntsman") is a U.S. corporation, registered in Delaware, with its principal place of business in Salt Lake City, Utah. During the relevant period, Huntsman manufactured, marketed, sold and/or distributed Polyether Polyol Products in Canada directly or indirectly through an agent, affiliate or subsidiary.
17. Lyondell Chemical Company is a U.S. corporation with its headquarters in Houston, Texas. Lyondell operates on five continents. During the relevant period, Lyondell manufactured, marketed, sold and/or distributed Polyether Polyol Products in Canada directly or indirectly through an agent, affiliate, or subsidiary.

18. Rhodia is a European corporation with its headquarters in France. During the relevant period, Rhodia manufactured, marketed, sold and/or distributed Polyether Polyol Products in Canada directly or indirectly through an agent, affiliate, or subsidiary.
19. Rhodia Inc. is a U.S. corporation with its headquarters in New Jersey. It conducts business in Canada both in its own right and through its wholly owned subsidiary and/or affiliates. During the relevant period, Rhodia manufactured, marketed, sold and/or distributed Polyether Polyol Products in Canada directly or indirectly through an agent, affiliate or subsidiary.
20. Rhodia Canada Inc., is a Federal corporation with its head office in Mississauga, Ontario and a manufacturing facility in Sarnia, ON. Rhodia Canada Inc. is a wholly owned subsidiary of Rhodia. At all relevant times, Rhodia Canada Inc., manufactured, marketed, sold and/or distributed Polyether Polyol Products in Canada.
21. The business of each of Rhodia, Rhodia Inc., and Rhodia Canada Inc. is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, marketing, sale and/or distribution of Polyether Polyol Products in Canada and for the purposes of the conspiracy described hereinafter.
22. The acts alleged in this complaint to have been done by each defendant were authorized, ordered and done by its officers, directors, agents, employees or representatives while engaged in the management, direction, control or transaction of its business affairs.
23. Various persons and/or firms, not named as defendants herein, may have participated as co-conspirators in the violation alleged herein and may have performed acts and made statements in furtherance thereof.



### **Factual Background**

24. Polyether polyols, together with polyether polyol systems, monomeric or polymeric diphenylmethane diisocyanate ("MDI") and toluene diisocyanate ("TDI") are collectively referred to in this claim as Polyether Polyol Products.
25. Polyether polyols are intermediate chemicals used in the manufacture of rigid and flexible foams, among other applications. Polyether polyols are combined with isocyanates to produce polyurethane polymers. Polyether polyols constitute approximately 90% of the world's polyol use.
26. MDI is a type of isocyanate. It is used in combination with polyether polyol in the manufacture of rigid insulation foam and structural foam, among other applications.
27. TDI is a type of isocyanate. It is used in combination with polyether polyol in the manufacture of flexible foams.
28. A polyether system is a package comprised of an "A" side, predominately a polyether polyol, and a "B" side, an isocyanate that, when mixed together react to form a polyurethane polymer.
29. The named defendants supply a substantial majority of the total volume of Polyether Polyol Products sold in Canada.

### **The Conspiracy**

30. The defendants were involved in an unlawful conspiracy as detailed herein.
31. At various times from at least January 1, 1999 to December 31, 2004, senior executives and employees of each of the defendants engaged in telephone conversations and meetings with each other.

32. As a result of these conversations and meetings, the defendants entered into a conspiracy in which they unlawfully agreed to the price at which each defendant would sell Polyether Polyol Products to its customers and to the volume that each company would supply to its customers.
  
33. In furtherance of the conspiracy, during the relevant time, the following acts were done by the defendants, and their senior executives, employees and agents:
  - (a) Representatives of the defendants met secretly to discuss prices and volumes of sales of Polyether Polyol Products;
  - (b) The defendants implemented coordinated price increases;
  - (c) They agreed to, and did, allocate the volumes of sales, customers, and markets for Polyether Polyol Products among themselves;
  - (d) They agreed to refrain from bidding or to submit intentionally high, complementary and non-competitive bids for particular Polyether Polyol Products supply contracts;
  - (e) They exchanged information regarding the prices and volumes of sales of Polyether Polyol Products for the purpose of monitoring and enforcing adherence to the agreed-upon prices, volumes of sales and markets;
  - (f) They instructed members of the conspiracy not to divulge the existence of the conspiracy;
  - (g) They took active steps to conceal the unlawful conspiracy from their customers, the authorities, and the public; and
  - (h) They disciplined any corporation that failed to comply with the conspiracy.

34. The defendants were motivated to conspire and their predominant purpose and intention was:
- (a) To harm the plaintiff and members of the public by requiring them to pay artificially high prices for Polyether Polyol Products and/or products containing or derived from Polyether Polyol Products and
  - (b) To unlawfully increase their profits on the sale of Polyether Polyol Products.
35. The acts particularized in paragraphs 31 to 33 were unlawful acts directed towards purchasers of Polyether Polyol Products or products containing Polyether Polyol Products, including the plaintiff, which unlawful acts the defendants knew in the circumstances would likely cause injury to those purchasers and plaintiffs and the defendants are liable for the tort of civil conspiracy.
36. Alternatively, the acts particularized in paragraphs 31 to 33 were unlawful acts undertaken by the defendants with the intent to injure purchasers of Polyether Polyol Products or purchasers of products containing Polyether Polyol Products, including the plaintiff, and the defendants are liable for the tort of intentional interference with economic interests.
37. The acts particularized in paragraphs 31 to 33 were also in breach of Part VI of the *Competition Act* and render the defendants liable to pay damages pursuant to s. 36 of the *Competition Act*.

### **Criminal Investigations**

38. In its Interim Report issued on March 31, 2006, BASF confirmed that in February, 2006 it was served with a subpoena from the U.S. Department of Justice in relation to the manufacture and sale of polyether polyols, MDI and TDI.

39. In its 2005 Annual Report, Lyondell confirmed that on February 16, 2006 it was served with a subpoena from the U.S. Department of Justice in relation to the manufacture and sale of polyether polyols, MDI and TDI.
40. In its 2005 Annual Report, Bayer confirmed that it had been served with a subpoena from the U.S. Department of Justice seeking information relating to the manufacture and sale of polyether polyols and other precursors for urethane end-use products. Additionally, Bayer disclosed that it had reached an agreement in principle to settle all class action cases relating to claims from direct purchasers of polyether polyols, MDI or TDI (and related systems).

#### **Damages**

41. The plaintiff suffered the following damages:
  - (a) The price of Polyether Polyol Products purchased by the plaintiff has been fixed, raised, maintained and stabilized at artificially high and non-competitive levels;
  - (b) Competition in the sale of Polyether Polyol Products has been restrained.
42. During the period covered by this claim, the plaintiff purchased Polyether Polyol Products manufactured by the defendants. By reason of the alleged violations of the *Competition Act* and the common law, the plaintiff paid more for Polyether Polyol Products and/or products containing Polyether Polyol Products than it would have paid in the absence of the illegal conspiracy and, as a result, it has been injured in its business and property and has suffered damages in an amount presently undetermined.
43. The plaintiff's damages and those of other persons who are similarly situated are capable of being quantified on an aggregate basis as the difference between the prices actually obtained by the defendants and the prices which would have been obtained in the absence of the unlawful agreements.

44. The defendants' conduct was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, wilful, in contumelious disregard of the plaintiffs' rights and the rights of others who are similarly situated, and as such renders the defendants liable to pay aggravated, exemplary and punitive damages.
45. The plaintiff's damages have been suffered in the Province of Ontario.
46. The plaintiff pleads and relies on the *Competition Act*, R.S. 1985, c. 19 (2nd Supp), s.36 & Part VI.
47. The plaintiff pleads and relies on clauses 17 (g), (h), (o) and (p) of the *Rules of Civil Procedure*, allowing for service ex juris of the foreign defendants. Specifically, this originating process may be served without court order outside Ontario in that the claim is:
  - (a) in respect of a tort committed in Ontario (rule 17.02(g));
  - (b) in respect of damages sustained in Ontario arising from a tort or breach of contract wherever committed (rule 17.02(h));
  - (c) against a person outside Ontario who is a necessary and proper party to this proceeding properly brought against another person served in Ontario (rule 17.02(o)); and
  - (d) against a person carrying on business in Ontario (rule 17.02(p)).
48. The plaintiff pleads and relies on the *Class Proceedings Act, 1992*.
49. The plaintiff states that it is representative of persons in Canada who purchased Polyether Polyol Products or products containing Polyether Polyol Products during the relevant time period.

50. The plaintiff proposes that this action be tried at London, Ontario.

Date:

*May 5/06*

Siskind, Cromarty, Ivey & Dowler LLP  
680 Waterloo Street  
London, Ontario N6A 3V8

Charles M. Wright LSUC #36559Q  
Andrea L. DeKay LSUC#43818M  
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Fax: (519) 672-6065

Crosslink Technology Inc.  
Plaintiff

BASF Canada et al.  
Defendants

Court File No:

SD305CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at London

Proceeding under the *Class Proceedings Act, 1999*

**STATEMENT OF CLAIM**

**Siskind, Cromarty, Ivey & Dowler<sup>LLP</sup>  
680 Waterloo Street  
London, ON N6A 3V8**

Charles M. Wright LSUC# 36599Q  
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Solicitors for the Plaintiff