

**NOTICE OF SETTLEMENT APPROVAL HEARING IN THE MATTERS OF:**

- **ETHYLENE PROPYLENE DIENE MONOMER (“EPDM”) CLASS ACTION**
- **POLYCHLOROPRENE (“CR”) CLASS ACTION**
- **POLYESTER POLYOLS CLASS ACTION**
- **RUBBER CHEMICALS CLASS ACTION**

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

**TO:** All persons in Canada who purchased EPDM or EPDM Products in Canada between January 1, 1997 and December 31, 2001. You are a member of a proposed Settlement Class in the EPDM proceeding described below.

**AND TO:** All persons in Canada who purchased CR or CR Products in Canada between January 1, 1999 to December 31, 2003. You are a member of a proposed Settlement Class in the CR proceeding described below.

**AND TO:** All persons in Canada who purchased Polyester Polyols or Polyester Polyol Product in Canada between February 1, 1998 to December 31, 2002. You are a member of a proposed Settlement Class in the Polyester Polyols proceeding described below.

**AND TO:** All persons who purchased Rubber Chemicals or Rubber Chemical Products in Canada between May 1, 1995 and December 31, 2001. You are a member of a Settlement Class in the Rubber Chemicals Proceedings described below.

**EPDM** is a synthetic rubber used in a variety of applications such as automotive weather-stripping and seals, radiator, garden and appliance hose, electrical insulation, roofing membrane and rubber mechanical goods. Some of the common trade names for **EPDM** include Buna, Royalene, Royaltherm, Keltan, Nordel, and Vistalon. **EPDM Products** are products that directly or indirectly contain or are derived from **EPDM**.

**CR** is a synthetic rubber used in a variety of applications. Some of the common trade names for **CR** include Neoprene, Baypren, Butaclor, Denka, and Skyprene. **CR Products** are products that directly or indirectly contain or are derived from **CR**.

**Polyester Polyols** are polyester polyols in whatever form they were sold (including polyurethane systems including polyester polyols but not polyether polyols). **Polyester Polyol Products** are products that directly or indirectly contain or are derived from **Polyester Polyols**.

**Rubber Chemicals** include accelerators (primary accelerators, secondary or ultra accelerators, activators and vulcanizing agents, including without limitation sulfenamides, sulfenimides, thiazoles, dithiocarbamates, thiurams, xanthates, sulfides, disulfides, aldehyde amines, guanidines and dithiophosphates); antioxidants and antiozonants (including without limitation paraphenylenediamines, para-phenylenediamine blends, quinolines, hydroquinones, hindered phenols and diphenylamines); and waxes, blowing agents, vulcanization retardants, pre-

vulcanization inhibitors, polymerization regulators, shortstops, peptizing agents, post vulcanization stabilizers, anti-reversion agents and treated cellulose reinforcement materials used in the processing and/or protection of rubber, but excluding Crystex and other insoluble sulphur products. **Rubber Chemicals Products** are products that directly or indirectly contain or are derived from Rubber Chemicals. **Rubber Chemicals** are commonly used in the production of various rubber products, including tires, automobile parts, surgical gloves and in other commercial, industrial and health applications.

A more detailed description of **EPDM, EPDM Products, CR, CR Products, Polyester Polyols, Polyester Polyol Products, Rubber Chemicals and Rubber Chemicals Products** can be found at [www.classaction.ca](http://www.classaction.ca). For complete definitions of what products are included, please refer to the settlement agreements, which can be obtained pursuant to section III below.

## **I. THE PROCEEDINGS AND SETTLEMENTS**

### **A. EPDM Proceedings and Settlement**

Class proceedings lawsuits have been initiated in Ontario (Court File No. 45604CP), British Columbia (Court File No. S050982) and Quebec (File No. 200-06-000052-053) in which it is alleged that the defendants conspired to fix the prices for **EPDM** in Canada (collectively referred to as the “**EPDM Proceedings**”).

Two separate settlements have been reached in the **EPDM Proceedings**, one with **Polimeri Europa S.r.l., Polimeri Europa S.p.A., Polimeri Europa Americas Inc., Enichem S.p.A., Enichem Americas Inc., and Syndial S.p.A. (the “Polimeri Defendants”)** and one with **Bayer Inc., Bayer A.G., Bayer Material Science A.G., Bayer Material Science LLC, and Bayer Corporation (the “Bayer Defendants”)**. The **Polimeri Defendants** have agreed, in exchange for a full release of claims against them to the **EPDM Proceedings**, to pay **Cdn \$176,505.00** into a settlement fund (including interest, the “**EPDM Settlement Fund**”) and the **Bayer Defendants** have agreed, in exchange for a full release of claims against them to the **EPDM Proceedings**, to pay **Cdn \$691,369.18** into the **EPDM Settlement Fund**. The **EPDM Settlement Fund** will be held in trust by Siskinds<sup>LLP</sup> for distribution to or for the benefit of **Manufacturers, Distributors, Intermediaries and Consumers** in accordance with the **Distribution Protocol** described in Section **F** below.

Additionally, the Plaintiffs’ in the **EPDM Proceedings** have reached a settlement with Exxon Mobil Chemical Company whereby the **EPDM Proceedings** will be discontinued as against it without prejudice as to the Plaintiffs which means, subject to any applicable limitation periods, the Plaintiffs may recommence proceedings against Exxon Mobil Chemical Company in the future.

Notice was previously published advising that settlements had been reached with Chemtura Corporation (f/k/a Crompton Corporation), Crompton Co/Cie., Crompton Canada Corporation, and Uniroyal Chemical Company Inc. (the “**Crompton EPDM Settlement**”) and DuPont Dow Elastomers L.L.C., E.I. du Pont de Nemours and Company, E.I. du Pont Canada Company, The Dow Chemical Company and Dow Chemical Inc. (the “**DDE EPDM Settlement**”). The **Crompton EPDM Settlement** and the **DDE EPDM Settlement** have been approved by the Courts.

You will be bound by the terms of the **EPDM Settlements** with the **Polimeri Defendants** and the **Bayer Defendants**, if approved, unless you “opt out” of the **EPDM Proceedings**. If you do not opt out of the **EPDM Proceedings**, 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 **EPDM**. No further right to opt out of the **EPDM Proceeding** will be provided in the future. The deadline and procedure for opting out will be available in a further notice published after the Settlement Agreements are approved.

If you opt out, or if you previously opted out of the **Crompton EPDM and DDE EPDM Settlements**, you will not be able to participate in the **EPDM Settlements** with the **Polimeri Defendants** and the **Bayer Defendants**, and you will not be able to participate in the **EPDM Proceedings** in the future, including further settlements with, or judgments against, other defendants.

## **B. CR Proceedings and Settlement**

Class proceedings lawsuits have been initiated in Ontario (Court File No. 46517CP) and Quebec (File No. 500-06-000276-051) in which it is alleged that the defendants conspired to fix prices for **CR** in Canada (collectively referred to as the “**CR Proceedings**”).

Two separate settlements have been reached in the **CR Proceedings**, one with the **Polimeri Defendants** and one with the **Bayer Defendants** in which the **Polimeri Defendants** have agreed, in exchange for a full release against them relating to the **CR Proceedings**, to pay **Cdn \$58,835.00** into a settlement fund (including interest, the “**CR Settlement Fund**”) and the **Bayer Defendants** have agreed, in exchange for a full release against them relating to the **CR Proceedings**, to pay **Cdn \$628,517.43** into the **CR Settlement Fund**. The **CR Settlement Fund** will be held in trust by Siskinds<sup>LLP</sup> for distribution to or for the benefit of **Manufacturers, Distributors, Intermediaries and Consumers** in accordance with the **Distribution Protocol** described in Section **F** below.

Notice was previously published advising that a settlement had been reached with DuPont Dow Elastomers L.L.C., E.I. du Pont de Nemours and Company, E.I. du Pont Canada Company, The Dow Chemical Company and Dow Chemical Inc. (the “**DDE CR Settlement**”), and that the **DDE CR Settlement** had been approved by the Courts.

You will be bound by the terms of the the **CR Settlements** with the **Polimeri Defendants** and the **Bayer Defendants**, if approved, unless you “opt out” of the **CR Proceedings**. If you do not opt out of the **CR Proceedings**, 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 **CR**. No further right to opt out of the **CR Proceedings** will be provided in the future. The deadline and procedure for opting out will be available in a further notice published after the Settlement Agreements are approved.

If you opt out, or if you previously opted out of the **DDE CR Settlement**, you will not be able to participate in the **CR Settlements** with the **Polimeri Defendants** and the **Bayer Defendants**.

### C. Polyester Polyols Proceedings and Settlement

Class proceedings lawsuits have been initiated in Ontario (Court File No. 46488CP) and Quebec (File No. 500-06-000252-045) in which it is alleged that the defendants conspired to fix prices for **Polyester Polyols** in Canada (collectively referred to as the “**Polyester Polyols Proceedings**”).

Two separate settlements have been reached in the **Polyester Polyols Proceedings**, one with the **Crompton Defendants** and one with the **Bayer Defendants**. The **Crompton Defendants** have agreed, in exchange for a full release of claims against them relating to the **Polyester Polyols Proceedings**, to pay **Cdn \$69,000.00** into a settlement fund (including interest, the “**Polyester Polyols Settlement Fund**”) and the **Bayer Defendants** have agreed, in exchange for a full release of claims against them relating to the **Polyester Polyols Proceedings**, to pay **Cdn \$140,389.42** into the **Polyester Polyols Settlement Fund**. The **Polyester Polyols Settlement Fund** will be held in trust by Siskinds<sup>LLP</sup> for distribution to or for the benefit of **Manufacturers, Distributors, Intermediaries and Consumers** in accordance with the **Distribution Protocol** described in Section **F** below.

You will be bound by the terms of the **Polyester Polyols Settlements** with the **Crompton Defendants** and the **Bayer Defendants**, if approved, unless you “opt out” of the **Polyester Polyols Proceedings**. If you do not opt out of the **Polyester Polyols Proceedings**, 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 **Polyester Polyols**. No further right to opt out of the **Polyester Polyols Proceedings** will be provided in the future. The deadline and procedure for opting out will be available in a further notice published after the Settlement Agreements are approved.

If you opt out you will not be able to participate in the **Polyester Polyols Settlements** with the **Crompton Defendants** and the **Bayer Defendants**.

### D. Rubber Chemicals Proceedings and Settlement

Class proceedings lawsuits have been initiated in Ontario (Court File No. 46460CP), British Columbia (Court File No. SO50984) and Quebec (File No. 500-06-000234-043) in which it is alleged that the defendants conspired to fix prices for **Rubber Chemicals** in Canada (collectively referred to as the “**Rubber Chemicals Proceedings**”).

Two separate settlements have been reached in the **Rubber Chemicals Proceedings**, one with **Flexsys NV, Flexsys America LP, and Flexsys Rubber Chemicals Ltd.** (the “**Flexsys Defendants**”) and one with the **Bayer Defendants**. The **Flexsys Defendants** have agreed, in exchange for a full release of the claims against them relating to the **Rubber Chemicals Proceedings**, to pay **Cdn \$2,317,494.00** into a settlement fund (including interest, the “**Rubber Chemicals Settlement Fund**”) and the **Bayer Defendants** have agreed, in exchange for a full release of the claims against them relating to the **Rubber Chemicals Proceedings**, to pay **Cdn \$412,447.97** into the **Rubber Chemicals Settlement Fund**. The **Rubber Chemicals Settlement Fund** will be held in trust by Siskinds<sup>LLP</sup> for distribution to or for the benefit of **Manufacturers, Distributors, Intermediaries and Consumers** in accordance with the **Distribution Protocol** described in Section **F** below.

Notice was previously published advising that a settlement had been reached with the **Crompton Defendants**, and that the **Crompton Rubber Chemicals Settlement** had been approved by the Courts.

The deadline to opt out of the **Rubber Chemicals Proceedings** has already passed. If you previously opted out of the **Rubber Chemicals Proceedings**, you will not be able to participate in the **Rubber Chemicals Settlements** with the **Flexsys Defendants** and the **Bayer Defendants**, and you will not be able to participate in any further settlements with, or judgments against, other defendants in the **Rubber Chemicals Proceedings**.

#### **E. Settlements not an Admission of Liability**

The Defendants in the Proceedings outlined in sections A – D above do not admit liability. The settlements are compromises of disputed claims. In the **EPDM and Rubber Chemicals Proceedings**, the litigation is continuing against some of the other defendants named in the respective Statements of Claim. A copy of each Statement of Claim and all other relevant documents, including any previous notices can be found on Class Counsels' website at **www.classaction.ca**. A copy of each Statement of Claim and all other relevant documents can also be obtained pursuant to section III below.

#### **F. Distribution Protocols (method of distributing the Settlement Funds)**

**Settlement Class Members** fall into the following categories:

<b><u>Distributors</u></b>	<b>Settlement Class Members</b> who purchased <b>EPDM</b> and/or <b>CR</b> and/or <b>Polyester Polyols</b> and/or <b>Rubber Chemicals</b> in raw form and who resold the <b>EPDM</b> and/or <b>CR</b> and/or <b>Polyester Polyols</b> and/or <b>Rubber Chemicals</b> in raw form to a further purchaser
<b><u>Manufacturers</u></b>	<b>Settlement Class Members</b> who purchased <b>EPDM</b> and/or <b>CR</b> and/or <b>Polyester Polyols</b> and/or <b>Rubber Chemicals</b> in raw form and used them to manufacture <b>EPDM Products</b> and/or <b>CR Products</b> and/or <b>Polyester Polyol Products</b> and/or <b>Rubber Chemicals Products</b>
<b><u>Intermediaries</u></b>	<b>Settlement Class Members</b> who are not <b>Distributors, Manufacturers or Consumers</b>
<b><u>Consumers</u></b>	<b>Settlement Class Members</b> who purchased <b>EPDM Products</b> and/or <b>CR Products</b> and/or <b>Polyester Polyol Products</b> and/or <b>Rubber Chemicals Products</b> for personal consumption or use

Under the terms of the Distribution Protocols, the **Settlement Funds** less (a) applicable **Class Counsel Fees**, disbursements and taxes, (b) proportionate costs of notice, (c) costs of administration, and (d) settlement monies allocated to Intermediaries and Consumers, shall be available to compensate **Distributors** and **Manufacturers**. Eligible **Manufacturers** will receive compensation from the respective **Settlement Funds** up to a maximum of \$0.06 per dollar spent on **EPDM**, \$0.08 per dollar spent on **CR**, \$0.06 per dollar spent on **Polyester Polyols** and \$0.06 per dollar spent on **Rubber Chemicals**. Eligible **Distributors** will receive

compensation from the respective **Settlement Funds** up to a maximum of \$0.006 per dollar spent on **EPDM**, \$0.008 per dollar spent on **CR**, \$0.006 per dollar spent on **Polyester Polyols**, and \$0.006 per dollar spent on **Rubber Chemicals**.

**Distributors** and **Manufacturers** must complete a **Claim Form** and submit certain required supporting documentation. More details with respect to making a claim will be available in a further notice published after the Settlement Agreements are approved.

Recognizing the difficulty of accurately identifying the amount of overcharge, if any, actually borne by any given **Intermediary** or **Consumer**, compensation for **Intermediaries** and **Consumers** will be paid out through a distribution to organizations which operate for the general benefit of **Intermediaries** and **Consumers** (including Auto 21; Canadian Roofing Contractor's Association; London Community Foundation (for the benefit of Community Foundations across Canada other than in Quebec); Habitat for Humanity; Automobile Protection Association; Centraide (for the benefit of Quebec consumers); Union Des Consommateurs; and Option Consommateurs).

#### **G. Motions to Approve Settlements, Distribution Protocols and Discontinuances and Right to Appear and Object**

Motions to approve the **EPDM** Settlements with the **Polimeri Defendants** and the **Bayer Defendants**, the **CR** Settlements with the **Polimeri Defendants** and the **Bayer Defendants**, the **Polyester Polyols** Settlements with the **Crompton Defendants** and the **Bayer Defendants**, the **Rubber Chemicals** Settlements with the **Flexsys Defendants** and the **Bayer Defendants** and corresponding **Distribution Protocols** and discontinuances will be heard by the Ontario Court in the City of London on [April 16, 2007](#), at 10:00 a.m., and the Superior Court of Quebec in the City of Montreal on [May 28, 2007](#) at [9:00 a.m.](#) in room [2.08](#). The motions to approve the **EPDM** Settlements with the **Polimeri Defendants** and the **Bayer Defendants**, the **Rubber Chemicals** Settlements with the **Flexsys Defendants** and the **Bayer Defendants** and corresponding **Distribution Protocols** and discontinuances will be heard in the British Columbia Supreme Court in the City of Vancouver on [April 30, 2007](#), at [10:00 a.m.](#)

**Settlement Class Members** who do not oppose the proposed settlements or distribution protocols need not appear at the hearings or take any other action at this time to indicate their desire to participate in the **EPDM** Settlements with the **Polimeri Defendants** and the **Bayer Defendants**, the **CR** Settlements with the **Polimeri Defendants** and the **Bayer Defendants**, the **Polyester Polyols** Settlements with the **Crompton Defendants** and the **Bayer Defendants** and/or the **Rubber Chemicals** Settlements with the **Flexsys Defendants** and the **Bayer Defendants**.

**Settlement Class Members** are entitled to appear and make submissions at the hearings with respect to the settlements and distribution protocols. If you wish to comment on or make an objection to the settlements or distribution protocols, a written submission must be delivered to the appropriate Class Counsel at the addresses listed below by [April 6, 2007](#). Class Counsel will forward all such submissions to the appropriate Court. All filed written submissions will be considered by the appropriate Court. If you do not file a written submission by [April 6, 2007](#), you will not be entitled to participate, through oral submissions or otherwise, in the settlement approval hearings. If the settlements and distribution protocols receive Court approval, further notices will be published to advise of such Court approval.

## II. CLASS COUNSEL

The law firm of Siskinds<sup>LLP</sup> represents class members in Ontario, and in provinces other than British Columbia and Quebec, as well as corporations of more than 50 employees in Quebec in the **EPDM and Rubber Chemicals Proceedings**. Siskinds<sup>LLP</sup> also represents class members in Ontario, and in provinces other than Quebec, as well as corporations of more than 50 employees in Quebec in the **CR and Polyester Polyols Proceedings**. 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 Poyner Baxter<sup>LLP</sup> represents class members in British Columbia in the **EPDM and Rubber Chemicals Proceedings**. British Columbia Class Counsel can be reached at 604-988-6321 or by mail at Lonsdale Quay Plaza, #408-145 Chadwick Court, North Vancouver, BC V7M 3K1, Attention: Patrick Poyner.

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 in the **EPDM Proceedings**. 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.

The law firm of Belleau Lapointe S.A. represents individuals and corporations of 50 or less employees who are class members in Quebec in the **CR and Polyester Polyols Proceedings**. Quebec Class Counsel can be reached at 514-987-6700 or by mail at 306 Place d'Youville, Suite B-10, Montreal, QC H2Y 2B6, Attention: Maxime Nasr.

The law firm of Unterberg, Labelle, & Lebeau represents individuals and corporations of 50 or less employees who are class members in Quebec in the **Rubber Chemicals Proceedings**. Quebec Class Counsel can be reached at 514-934-0841 or by mail at 1980 Rue Sherbrooke Ouest, Bureau 700, Montreal, QC H3H 1E8, Attention: Lise Labelle.

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 Funds**, plus disbursements and applicable taxes, all to be paid out of the **Settlement Funds**.

## III. QUESTIONS ABOUT THE SETTLEMENTS OR DISTRIBUTION PROTOCOLS

If you would like a copy of any of the settlement agreements or have questions, please call the appropriate Class Counsel. This notice contains only a summary of the settlements and class members are encouraged to review the entire settlement agreements. A copy of the settlement agreements can be obtained free of charge at [www.classaction.ca](http://www.classaction.ca) and, for the CR Proceedings and the Polyester Polyols Proceedings, at [www.recourscollectif.info](http://www.recourscollectif.info). 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.

## IV. INTERPRETATION

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

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**THIS NOTICE HAS BEEN AUTHORIZED BY THE ONTARIO SUPERIOR  
COURT OF JUSTICE, THE BRITISH COLUMBIA SUPREME COURT,  
AND THE SUPERIOR COURT OF QUEBEC**