

## **Settlement Agreement**

### **Purpose of the Document**

The purpose of this document is to set out the terms of a class-wide settlement of the claims asserted against Hoechst Celanese Corporation ("Celanese") in the actions entitled Austad, et al. v. Shell Oil Company, et al., No. C994680 (Supreme Court of British Columbia, Vancouver Registry, Canada), Aitken, et al. v. Shell Oil Company, et al., No. 990317943 (Court of Queen's Bench of Alberta, Judicial District of Edmonton, Canada), Couture, et al. v. Shell Oil Company, et al., No. 200-06-000001-985 (Quebec Superior Court, Canada), Furlan v. Shell Oil Company, et al., No. C967239 (British Columbia Supreme Court, Vancouver Registry, Canada), Gariepy, et al. v. Shell Oil Company, et al., No. 30781/99 (Ontario Court General Division, Canada) ("Gariepy"), and Tranter v. Shell Oil Company, et al., No. 46565/97 (Ontario Court General Division, Canada) (the "Actions").

Celanese successfully resisted the attempted certification of the Actions as class proceedings, but given that there are still a number of class actions and individual claims pending against Celanese, and unknown potential claims, the parties propose this settlement to reach a final resolution of the claims.

This document does not constitute an admission by Celanese of liability or damages. To the contrary, Celanese denies that polybutylene plumbing and polybutylene hot water heating systems are defective, that Celanese has any legal responsibility for any alleged defects, and that plaintiffs or any class member are entitled to recover any damages from Celanese.

### **Terms of the Proposed Settlement**

1. In this agreement, "class member" means all persons and entities who own or who previously owned any improvements to real property or structures in Canada in which there is or was during the time of such ownership, polybutylene plumbing with acetal insert fittings and/or a polybutylene heating system with acetal insert fittings.
2. Celanese agrees to pay:
  - (a) \$200 to any class member who filed and was paid on a claim in the settlement of the Actions by E.I. DuPont de Nemours & Co. ("DuPont"), provided the class members have verifiable documentation that they had a valid claim under the DuPont settlement;<sup>1</sup> and
  - (b) \$400 to any class member who did not file a claim under the DuPont settlement, provided the class members have verifiable proof that they had polybutylene plumbing containing acetal insert fittings which was replumbed.

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<sup>1</sup> All dollar amounts set forth in this document are expressed in Canadian dollars.

3. The proposed settlement shall be administered by Total Class Solutions, Inc. ("TCS") of Plano, Texas, provided TCS demonstrates to class counsel that it has the ability to administer claims arising in Canada and submitted in French. Celanese will pay the costs of administration.
4. In order to be entitled to compensation under the proposed settlement, class members must submit a claim no later than three (3) months after notice of settlement approval is disseminated to the class. No claim will be paid under this proposed settlement until the three (3) month period has expired.
5. Celanese's total commitment to fund payments under Section 1 of this document will be no more than \$1,000,000. If following the expiration of the claim period (see Section 4 of this document), the total claims under this proposed settlement are equal to or less than \$1,000,000, class members will be paid in full as set forth in Section 1 of this document. If, however, following expiration of the claim period, the total claims exceed \$1,000,000, class members will be paid on a pro rata basis.
6. If following the expiration of the claim period (see Section 4 of this document) and allocation of the settlement amounts provided in Section 1 of this document, any portion of the \$1,000,000 settlement amount remains unspent, the unspent amount shall belong exclusively to Celanese subject only to the provisions of the following sentence of this Section. However, to the extent Celanese provides relief under Section 1 of this document in an amount less than \$500,000, Celanese shall pay to class counsel the difference between \$500,000 and the amount Celanese has paid, which sum shall be distributed to the benefit of class members in a manner proposed by class counsel and approved by the court.
7. Upon final approval of the proposed settlement, each class member shall have 30 days from the date of notice to opt out of the settlement by sending the prescribed opt-out form to class counsel in the prescribed manner. Each class member who does not opt out will be deemed to have released and forever discharged Celanese from any and all liability related to polybutylene plumbing and polybutylene heating systems.
8. The order of the court approving the proposed settlement will provide, among other things, that:
  - (a) the Garipey action is certified with a national class for settlement purposes only;
  - (b) all the Actions are to be dismissed against Celanese;
  - (c) class members who do not opt out are barred from initiating any actions in any courts or from asserting claims in any existing actions against Celanese relating to polybutylene plumbing systems and polybutylene heating systems; and

- (d) class members who do not opt out release and forever discharge Celanese from any and all claims related to polybutylene plumbing systems and polybutylene heating systems installed prior to January 1, 1997.
9. Celanese agrees to waive the costs orders in its favour in the amount of \$100,000. In addition, Celanese agrees to pay class counsel's costs (including attorneys' fees, disbursements, and applicable taxes) of \$150,000 within 60 days following the expiration of the claim period set forth in Section 4 of this document.
  10. Celanese's agreement to certification of a class is solely for the purpose of settlement and shall not constitute an admission that a class can be certified for the purpose of trial in the Actions or any other proceeding. To the contrary, Celanese contends that certification of a class proceeding for the purpose of trial is inappropriate and barred by the decisions of the Ontario Superior Court and the Ontario Divisional Court. Celanese expressly retains the right to oppose certification of a trial class in the Actions or any other proceeding if this proposed agreement is not approved or implemented for any reason.
  11. If the court approves the proposed settlement, its will be conditional upon the Ontario Divisional Court modifying its decision on the certification motion in the Gariepy action to permit certification for settlement purposes only.
  12. Before the hearing to approve this proposed settlement, class counsel shall issue a press release and post on its website notice to class members of, and the opportunity to be heard and/or object to, the proposed settlement, all in a form agreed to by the parties. If the proposed settlement is approved, notice of same will be disseminated to class members by nationwide notice, with notice of the settlement and the right to opt out of the settlement to be published in national print media, including the The Globe and Mail, L'actualité, and print and online trade publications as agreed. Celanese's notice costs shall be no more than \$150,000.
  13. In the event that the proposed settlement is not approved (in whole or in part), no party will be bound by any portion of the proposed settlement set forth in this document.
  14. If the total number of class members who elect to opt out of the settlement is, in Celanese's sole opinion, excessive, Celanese shall have the independent right to withdraw from the settlement by giving written notice to class counsel no later than one (1) month after the expiration of the claim period set forth in Section 4 of this document.

IN WITNESS WHEREOF, the parties by their counsel have hereunto set their hands  
this 14 day of May, 2010.



Siskinds LLP

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Action



Cassels Brock & Blackwell LLP

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Corporation