

**CLASS PLAINTIFFS' PLAN OF ALLOCATION AND
DISTRIBUTION OF THE DOW SETTLEMENT FUND**

Pursuant to the Settlement Agreement between The Dow Chemical Company (“Dow”) and Plaintiffs, executed on February 25, 2016, Dow has paid \$835,000,000.00 into an escrow account established for the benefit of the Class as the “Dow Settlement Fund.” Class Plaintiffs present herein a Plan of Allocation and Distribution of the Dow Settlement Fund (“Plan”).

Under this Plan, Class Plaintiffs will distribute shares of the Dow Settlement Fund to Class members who submit eligible claims in proportion to the dollar amount of their estimated customer-specific damages, as determined by Plaintiffs’ expert on damages, for the period November 24, 2000 through December 31, 2003. The following procedures, which are similar to those approved for administration of earlier settlements,¹ shall apply:

1. Generation, Distribution and Submission of Personalized Claim Forms

Subject to this Court’s approval, the Settlement Administrator will prepare and mail proof of claim forms, substantially in the form attached as Appendix A to this Plan, to all Class members. The mailing list was derived from the Defendants’ transactional databases and has been updated in the course of administering earlier notice programs in this matter and distributing the Bayer, Huntsman and BASF Settlement Funds. It was recently updated again based on the National Change of Address database.

The Claim Form will explain that those who purchased Polyether Polyol Products (defined in the form) directly from a Defendant (defined in the form) between November 24, 2000 and December 31, 2003 in the United States and its territories may qualify to receive a distribution from the Dow Settlement Fund. It also will explain that Defendants, their

¹ See Dkt. Nos. 994 (Order Approving Class Plaintiffs’ Plan of Allocation of the Bayer Settlement Fund) & 2209 (Order Approving Class Plaintiffs’ Plan of Allocation and Distribution of the Huntsman and BASF Settlement Funds).

employees, and their respective parents, subsidiaries and affiliates; all who timely elected to exclude themselves from the Class; and all governmental entities are ineligible for a distribution from the Dow Settlement Fund. *See* Appx. A, Part 5, Instruction 3.

The Settlement Administrator will generate a personalized Claim Form for each Class member. It will identify the Class member's "Direct Purchase Amounts," which are the Class member's total net direct purchases of Polyether Polyol Products (net of freight charges, returns, discounts, credits, rebates, or other price adjustments) between November 24, 2000 and December 31, 2003 in dollars, from each of BASF, Bayer, Dow, Huntsman and Lyondell. *See* Appx. A, Part 1. The personalized Claim Form will report Direct Purchase Amounts by product category, *i.e.*, MDI, TDI, polyols and systems, as derived from sales data provided by the defendants. The Claim Form also will identify the Class member's overcharge percentage for each product category, as determined by Plaintiffs' expert on damages. *See* Part 3, *infra* (explaining overcharge percentage calculation). As with previous settlements, Claim Forms will be generated for all Class members, including those for whom Defendants' sales data indicate no Direct Purchase Amounts.

Utilizing the pre-printed Claim Form will save most Class members substantial time and effort they might otherwise have to devote to tracking down, compiling and submitting documentation in support of their claim.² Class members will not be permitted to contest their customer-specific overcharge percentages. *See* Appx. A, Part 5, Instruction 7. However, if Class members believe the pre-printed Direct Purchase Amounts are inaccurate, they may provide their

² The Claim Form will explain that Class members will not be able to rely on submissions from earlier settlements to establish their Direct Purchase Amounts for the Dow Settlement. This is because the November 24, 2000-December 31, 2003 time period for qualifying purchases is shorter than the time period applicable to the earlier settlements and, unlike the earlier settlements, claimed purchases must be designated by product category. *See* Appx. A, Part 5, Instruction 6.

own purchase data as long as it is supported by adequate proof such as direct invoices, purchase orders, or cancelled checks. *See* Appx. A, Part 5, Instruction 6. Class members are directed to the settlement website (www.PolyetherPolyolSettlement.com) for a list of trade names for eligible Polyether Polyol Products. *See id.* at Instruction 4.

To make a claim and receive a distribution, a Class member must return a properly completed Claim Form to the Settlement Administrator postmarked no later than forty-five (45) days from the date the Claim Forms were mailed. The deadline will appear in three places on the Claim Form. *See id.* at top of page 1, Part 1 below table, & Part 5, Instruction 1.

2. Processing and Review of Claims

The Settlement Administrator will review and process all submitted Claim Forms, under the supervision and guidance of Class Counsel. In processing and reviewing the claims, the Settlement Administrator will use reasonable efforts within a reasonable time to contact and provide additional notice to Class members who have not submitted a claim by the claims deadline. In determining whether to accept or reject a late claim, Class Counsel will consider whether acceptance of the claim would significantly delay the distribution to the Class.

If the Settlement Administrator reasonably determines that it needs further information or documentation to properly process a claim, the Settlement Administrator will notify the claimant in writing. The notification will explain how the claimant can cure the deficiency and provide a reasonable deadline (generally twenty-five (25) days from the mailing date of the deficiency notification) for submitting a curing response to the Settlement Administrator. If a claimant fails to correct the deficiency within the time specified, the claim may be rejected in whole or in part.

The Settlement Administrator will classify “Eligible Claims” as: (i) claims recommended for approval as filed; (ii) claims recommended for approval but with modification; or (iii) late

claims recommended for acceptance because they would have been Eligible Claims if filed on time and their acceptance will not substantially delay claims administration. The Settlement Administrator will classify as “Ineligible Claims” those claims that it recommends for rejection and will identify the basis for such rejection. Class Counsel will review the list of Eligible and Ineligible Claims and may accept, reject, or modify the Settlement Administrator’s decisions.

3. Calculation of Claimants’ Estimated Awards

Claimants will be paid from the Dow Settlement Fund net of any fees and costs or reserves approved by the Court (“Net Settlement Fund”). These deductions could include awards of attorneys’ fees, incentive awards and litigation expenses; reasonable fees and costs associated with claims administration; tax payments and tax preparation fees associated with the escrow account holding the Dow Settlement Fund (“Escrow Account”) or a Distribution Account; and any other reserves or payments that the Court orders to be withheld from distribution.

Once Class Counsel determine which claims are Eligible (as submitted or as modified) and each claimant’s Direct Purchase Amounts, the Claims Administrator will calculate each claimant’s share of the Net Settlement Fund, which will be its Estimated Award.

Plaintiffs’ expert on damages, Dr. McClave, will calculate each claimant’s damages for the period November 24, 2000 through December 31, 2003 using customer-specific damage estimates, bounded by the Interquartile Range (“IQR”) for each modeled product overcharge applicable to that customer. The IQR is a widely accepted statistical tool which measures the distance between the 25th and 75th percentile, and is used, in effect, to provide a reasonable and statistically reliable lower and upper bound for a given customer’s percentage overcharge estimate. Distributing the Net Settlement Fund based on customer-specific damage estimates

bounded by the IQR will compensate claimants based on their estimated damages while eliminating outlier estimates and excessive variability among claimants.

For each Eligible Claim, the Settlement Administrator will multiply the Direct Purchase Amounts by the claimant's overcharge percentage (bounded by the IQR) to calculate a Recognized Loss. The Settlement Administrator will perform this calculation for each product category purchased by the claimant.³ The sum of those Recognized Losses will be the claimant's Total Recognized Loss. Each claimant's share of the Net Settlement Fund will be in proportion to the aggregate amount of all claimants' Total Recognized Losses, calculated as a fraction, the numerator being the claimant's Total Recognized Loss, and the denominator being the sum of all claimants' Total Recognized Losses:

$$\% \text{ share of the Net Settlement Fund} = \frac{\text{Claimant's Total Recognized Loss}}{\text{Sum of all Claimants' Total Recognized Losses}}$$

The Settlement Administrator will multiply the resulting fraction for each claimant by the dollar amount to be distributed from the Net Settlement Fund to obtain the dollar value of each claimant's Estimated Award.

4. Submission of a Recommended Schedule of Distribution

Upon completion of this claims-review process, Class Counsel will ask the Court to schedule the Distribution Hearing described below. After the Distribution Hearing has been scheduled, the Settlement Administrator will send written notice to all claimants whose claims were reduced or deemed ineligible. The notice will state the reason(s) for claim reduction or rejection; identify the information and data the Settlement Administrator deems to be appropriate

³ If a Class member receives a Claim Form indicating no Direct Purchase Amounts for a product category, but submits adequate proof of Direct Purchase Amounts, the applicable average overcharge percentage will be applied to determine the claimant's Recognized Loss for that product category.

for purposes of calculating the claimant's award, including the claimant's Direct Purchase Amounts; explain the claimant's right to appeal the determination to the Court and the process for making such an appeal; and the time, date and location of the Distribution Hearing.

The Settlement Administrator will mail these Distribution Hearing notices at least twenty-one (21) days before the date of the Distribution Hearing. Any objection by a claimant must be submitted to the Court, with copies sent to the Settlement Administrator and Class Counsel, at least ten (10) days before the Distribution Hearing date. Class Counsel may file responses no later than five (5) days before the Distribution Hearing.

Shortly after being notified of the Distribution Hearing date, Class Counsel will file a proposed allocation in the form of a Recommended Schedule of Distribution and supporting affidavit for the Court's final review and approval. The affidavit will explain the tasks performed and methodologies employed by the Settlement Administrator in processing the claims and administering the Dow Settlement Fund, outline the anticipated procedures necessary to distribute payments to Eligible Claimants, and provide an estimate of costs to complete the distribution.

The Recommended Schedule of Distribution will list for each Eligible Claim the claimant's Total Recognized Loss, its share of the Net Settlement Fund, and its Estimated Award. The Estimated Awards will be the best available approximations, and not "final" amounts to be paid, because additional interest earnings, Court-ordered modifications to the Schedule, and other factors could affect the actual amounts to be paid. The Recommended Schedule of Distribution also will list the claims recommended for reduction or rejection, if any, and the reason for modification or rejection. To preserve their privacy, claimants will be identified only by claim number in the Recommended Schedule of Distribution.

5. The Distribution Hearing

At a date and time determined by the Court, the Court will consider the Recommended Schedule of Distribution, together with any objections to individual claim determinations. Any objection by a claimant must be submitted to the Court, with copies sent to the Settlement Administrator and Class Counsel, at least ten (10) days before the Distribution Hearing date. Class Counsel may file responses no later than five (5) days before the Distribution Hearing. At or following the hearing, the Court will enter a Final Allocation Order consistent with the Court's determinations.

6. Payment to Claimants

Once the appeal period has run on the Court's Final Allocation Order approving or modifying the claim determinations reflected on the Recommended Schedule of Distribution, or after any appeals are concluded, the Escrow Agent for the Dow Settlement Fund will transfer the Net Settlement Fund into a Distribution Account. The Settlement Administrator will issue a check from the Distribution Account payable to each claimant in an amount corresponding to its share of the funds to be distributed, as approved by the Court. The Settlement Administrator will use reasonable efforts to locate any claimants whose checks are returned as undeliverable.

All checks issued by the Settlement Administrator will bear an expiration date. The Settlement Administrator will use reasonable efforts to encourage claimants to negotiate checks before they expire and may reissue checks to claimants whose checks have expired. The Settlement Administrator will void expired checks that are not negotiated within a commercially reasonable period of time. The monies represented by voided checks that are not reissued shall revert to the Distribution Account.

7. Disposition of Unclaimed and Reserved Funds

At the expiration of the claims administration period, as determined by Class Counsel and the Settlement Administrator, Class Counsel shall file a motion (a) stating the cost of settlement administration to date, the amount of unclaimed and reserved monies in the Distribution Account, and the dollar value of monies reserved or otherwise remaining in the Dow Escrow Account; and (b) recommending a disposition of those sums. The motion will be posted on the settlement website, www.PolyetherPolyolSettlement.com. The Court then will set a deadline for any responses or comments from interested parties.

If the Court approves additional distributions of unclaimed, reserved, or other remaining monies to eligible claimants, it is anticipated that the shares calculated by the Settlement Administrator for the initial distribution of the Net Settlement Fund will apply to all subsequent distributions as well. In that event, claimants will not be required to submit additional claim forms to receive subsequent distributions, but they will need to inform the Settlement Administrator in writing of any change of address or change of name.

Plaintiffs do not anticipate providing individual, advance notice of the motion for disposition of unclaimed funds or any subsequent distributions to claimants.

8. Payment of Settlement Administration Invoices

The Settlement Administrator will submit monthly invoices to Class Counsel detailing the work performed and the expenses incurred in the prior month by the Settlement Administrator and any vendor supporting the Settlement Administrator in the course of administering the Dow Settlement Fund. Class Counsel will review such invoices, seek clarification or modification as needed, and submit invoices for reasonable and necessary fees

and expenses to the Escrow Agent with a written request that the invoices be paid from the Dow Escrow Account.

9. Status Updates

The Settlement Administrator and Class Counsel shall report to the Court from time to time to advise the Court of their progress in discharging their responsibilities under this Plan, on such occasions and at such intervals as the Settlement Administrator and Class Counsel may deem appropriate or as the Court may direct.

APPENDIX A

To Class Plaintiffs' Plan of Allocation and
Distribution Of The Dow Settlement Fund:

Proposed Proof of Claim Form

UTH



If mailed, must be postmarked no later than _____, 2016

Urethane Antitrust Litigation
 c/o GCG
 P.O. Box 10223
 Dublin, Ohio 43017-5723
 1-877-741-1226

questions@polyetherpolyolsettlement.com



<<name_addr_1>>
 <<name_addr_2>>
 <<name_addr_3>>
 <<name_addr_4>>
 <<name_addr_5>>
 <<City>>, <<State>> <<zip_5>>-<<zip_4>>

Claim Number:
 Reference Number:
 Control Number:



IN RE: URETHANE ANTITRUST LITIGATION

United States District Court for the District of Kansas MDL No. 1616 – Civil No. 2:04-md-1616-JWL

PROOF OF CLAIM FORM — SETTLEMENT WITH THE DOW CHEMICAL CO.

PART 1: CLAIMANT PURCHASE DATA

The Direct Purchase Amounts set forth below were obtained directly from Defendants’ sales records and summarize your net total payments for qualifying Polyether Polyol Products during the period November 24, 2000 through December 31, 2003.

POLYETHER POLYOL PRODUCT	DIRECT PURCHASE AMOUNT	CUSTOMER-SPECIFIC OVERCHARGE PERCENTAGE
POLYOLS		
MDI		
TDI		
SYSTEMS		

Submission Deadline: [month] ___, 2016

If you accept the Direct Purchase Amounts above, you do not need to attach any additional information to submit a claim. Complete the Certification and Claimant Identification information on the next page of this form and your share of the net Settlement Fund will be calculated based on these amounts.

If you disagree with the Direct Purchase Amounts above, please complete Part 4 and complete the Certification and Claimant Identification information on the next page of this form. You MUST attach documentation in support of any correction.

The Customer-Specific Overcharge Percentage was calculated by Plaintiffs’ expert. You may not contest this figure.



PART 2: CERTIFICATION

I certify that I am an owner, officer, or director of the Class Member submitting this Proof of Claim and that I have the authority to submit this claim on its behalf. I also certify that the Class Member/Claimant is the proper recipient of the funds sought. I further declare under the laws of the United States of America that all Corrections to Direct Purchase Amounts that I provided in Part 4 of this Proof of Claim are true and correct.

Name (please print)

Capacity or Title

Company

Signature

Date

PART 3: CLAIMANT IDENTIFICATION

(Please type or neatly print all information – use blue or black ink)

Federal Employer Tax ID Number (FEIN)

Contact Person Last Name

Contact Person First Name

Daytime phone number

____ - ____ - _____

Email Address

If necessary, use the following box to correct your name and address information that appears on page 1.

Business Name

Address Line 1

Address Line 2 (If Applicable)

City

State

Zip Code



PART 4: CLAIMANT'S CORRECTED PURCHASE DATA

(To be completed **ONLY** if you disagree with, and do not wish to accept, the totals presented in Part 1)

If you disagree with the pre-printed information contained in Part 1, please enter the corrected purchase amounts in the table below and complete the Certification and Claimant Identification information on page 2 of this form. You only need to complete this Part if you disagree with, and do not wish to accept, the amounts presented in Part 1. **You MUST attach documentation in support of any corrected amounts.** Further instructions are provided in Part 5.

Polyether Polyol Product	Corrections to Direct Purchase Amount
POLYOLS	
MDI	
TDI	
SYSTEMS	

PART 5: INSTRUCTIONS

- To receive your share of the Dow Settlement Fund, you must complete and sign the Proof of Claim and return it to the Settlement Administrator, postmarked on or before _____, 2016, to the following address: Urethane Antitrust Litigation, c/o GCG, P.O. Box 10223, Dublin, Ohio 43017-5723.
- This Proof of Claim, even if prepared by a third party, must be completed and signed by the Class Member.** You must submit the Proof of Claim Form to obtain your share of the Dow Settlement Fund even if you submitted a claim in connection with the earlier settlements with Bayer, BASF and/or Huntsman. If you have any questions concerning the Proof of Claim, or if you change your address, please contact the Settlement Administrator at the above address.
- You are only entitled to a distribution if you are a Class member and purchased Polyether Polyol Products (Products) directly from a Defendant (defined below) at any time from November 24, 2000 through December 31, 2003 (the Claims Period) in the United States and its territories. Excluded from the Class are Defendants, their employees, and their respective parents, subsidiaries and affiliates; all who timely elected to exclude themselves from the Class; and all governmental entities. **Polyether Polyol Products are:** propylene oxide-based polyether polyols; monomeric or polymeric diphenylmethane diisocyanates (MMDI or PMDI – collectively, MDI); toluene diisocyanates (TDI); MDI-TDI blends; and propylene oxide-based polyether polyol systems (except those that also contain polyester polyols). **Defendants are:** Bayer AG, Bayer Corporation, Bayer MaterialScience LLC (f/k/a Bayer Polymers, LLC), BASF SE (f/k/a BASF AG), BASF Corporation, The Dow Chemical Company, Huntsman International LLC and Lyondell Chemical Company.
- As stated in the Plan of Allocation, the Net Dow Settlement Fund will be distributed in proportion to the dollar amount of Claimant's estimated customer-specific damages, as determined by Plaintiffs' expert, for the period November 24, 2000 through December 31, 2003. The customer-specific damage amounts were estimated from each Claimant's purchases of the relevant Products from all of the Defendants during the Claims Period. A list of the trade names of the eligible Products is available online at www.PolyetherPolyolSettlement.com.
- The Direct Purchase Amounts set forth in the chart on page 1 of this form were taken from Defendants' sales records and summarize your net payments for relevant Products during the Claims Period. **If you accept the Direct Purchase Amounts pre-printed on page 1, you can submit a claim without collecting any documentation from your files.** The stated amounts may differ from the purchase amounts that appeared on your claim forms for earlier settlements because the Claims Period for the Dow settlement (November 24, 2000 through December 31, 2003) is different than the Claims Period for earlier settlements.
- If you believe that any of the pre-printed Direct Purchase Amounts on page 1 are incorrect, you may provide corrected purchase information in the space provided in Part 4 ("Corrections"). You **must** provide proof to support the corrected amount and identify the Defendant-supplier, product name and type, date of purchase, and net purchase amounts (in U.S. dollars). Electronic transaction summaries or similar records are preferred. You must have purchased directly from one of the Defendants and not through an intermediary such as a wholesaler or distributor. Provide net purchase amounts: total purchases net of freight charges, discounts, returns, rebates, chargebacks, and other debits, credits, or price



adjustments. If you received multiple Proof of Claim forms, please provide supporting documentation and specify the Claim Number for each corrected form. Each form contains a discrete Claim Number in the address block on the first page. You should include that Claim Number in all correspondence and submissions to the Settlement Administrator. You may only submit Corrections to the total purchases for a particular Product category. Corrections must reflect a good-faith belief as to the accuracy of the purchase information; blank or "\$0" claim forms and/or placeholder claim forms will not be accepted. You may not rely on submissions made in connection with earlier settlements because: (i) the Claims Period is different for this settlement; and (ii) you must designate the amounts purchased by Product category (e.g., polyols, MDI, TDI and/or systems).

7. The Customer-Specific Overcharge Percentage was calculated by Plaintiffs' expert. You may not contest this figure.

8. If you appeared in Defendants' records under other names or at different locations, you and related entities and locations may receive multiple but non-duplicative Proof of Claim Forms, each with a unique Reference Number. In those circumstances, you are encouraged to combine all of your claims into one Proof of Claim. To do so, you must mail all the Proof of Claim forms to the Settlement Administrator with a written request specifying which Claim Numbers to combine and designating one of them as the master claim. The Claim Number is on page 1, near the address.

9. The Settlement Administrator is authorized to request from persons or entities submitting proofs of claim any documentation necessary to verify all information appearing in the Proof of Claim and to prevent claim duplication. Failure to provide requested information may constitute grounds for rejection of the Claim.

10. The completed Proof of Claim and the information it contains will be treated as confidential and will be used solely for purposes of administering the settlement.

11. If you would like further information or have any questions, you may go to www.PolyetherPolyolSettlement.com. You may also contact the Settlement Administrator at 1-877-741-1226 or at questions@polyetherpolyolsettlement.com. You may also contact Don Perelman or Jerry Dever of Fine Kaplan and Black at 215-567-6565. Please do not contact the Court or the Judge.

12. By signing above and/or submitting a Proof of Claim, you are submitting to the jurisdiction of the United States District Court for the District of Kansas with respect to the claim you are making as a Class Member.

13. If you are a Class Member, whether or not you submit a Proof of Claim form, you already have released the specific claims against Dow and its affiliates as described in Paragraph 26 of the Settlement Agreement.