

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

IN RE: URETHANE ANTITRUST
LITIGATION

)
) MDL 1616
) Civil No. 04-md-01616-JWL
)

This Document Relates To:
The Polyether Polyol Cases

**NOTICE OF PROPOSED PLAN OF ALLOCATION
AND PETITION FOR ATTORNEYS' FEES AND COSTS
WITH RESPECT TO BAYER SETTLEMENT**

TO: ALL PERSONS AND ENTITIES WHO PURCHASED POLYETHER POLYOLS, MONOMERIC OR POLYMERIC DIPHENYLMETHANE DIISOCYANATE ("MDI"), AND/OR TOLUENE DIISOCYANATE ("TDI"), WHETHER SOLD SEPARATELY OR IN A COMBINED FORM WITH OR WITHOUT OTHER CHEMICALS ADDED THERETO, AT ANY TIME DURING THE PERIOD FROM JANUARY 1, 1999 THROUGH DECEMBER 31, 2004 IN OR FOR DELIVERY IN THE UNITED STATES AND ITS TERRITORIES FROM ANY OF THE FOLLOWING:

BAYER AG, BAYER CORPORATION, BAYER MATERIALSCIENCE AG, BAYER MATERIALSCIENCE LLC, BASF AG, BASF CORPORATION, THE DOW CHEMICAL COMPANY, HUNTSMAN INTERNATIONAL LLC AND LYONDELL CHEMICAL COMPANY.

THIS NOTICE EXPLAINS YOUR RIGHTS. PLEASE READ IT CAREFULLY.

I. WHAT'S THIS ABOUT?

On August 30, 2006, the United States District Court for the District of Kansas approved a \$55.3 million class-action settlement with Bayer in the above-captioned case. Interest has accrued over the intervening time, bringing the current balance of the Bayer settlement fund to approximately \$58.9 million. If you did not request exclusion from the Bayer settlement, you are a member of the Bayer Settlement Class and are entitled to share in the settlement fund.

This Notice describes the proposed Plan of Allocation of the Bayer settlement fund and Class Counsel's petition for payment of attorneys' fees and reimbursement for litigation expenses they have advanced. It also informs you of your rights to object to or submit other comments on the proposed plan of allocation and/or the petition for attorneys' fees and expenses.

ACCORDINGLY, NOTICE IS HEREBY GIVEN, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the District of Kansas, that a Fairness Hearing will be held on July 20, 2009, at 9:30 a.m. before the Honorable John W. Lungstrum, United States District Judge, in Courtroom 427, United States Courthouse, 500 State Avenue, Kansas City, Kansas 66101, for the purpose of (1) considering Class Plaintiffs' proposed Plan of Allocation and (2) considering Class Counsel's petition for an award of attorneys' fees and reimbursement of costs and expenses.

YOU DO NOT HAVE TO DO ANYTHING AT THIS TIME TO SHARE IN THE BAYER SETTLEMENT FUND. IF THE COURT APPROVES THE PLAN OF ALLOCATION YOU WILL BE ADVISED HOW TO SUBMIT A CLAIM FORM TO SHARE IN THE SETTLEMENT FUND.

II. BACKGROUND OF THE CLASS ACTION AND BAYER SETTLEMENT

Class Plaintiffs, Seegott Holdings, Inc., Industrial Polymers, Inc., and Quabaug Corporation have filed a class action lawsuit against Defendants Bayer AG, Bayer Corporation, Bayer MaterialScience AG, Bayer MaterialScience LLC (collectively, "Bayer"), BASF AG, BASF Corporation (collectively, "BASF"), The Dow Chemical Company ("Dow"), Huntsman International LLC ("Huntsman"), and Lyondell Chemical Company ("Lyondell"). Class Plaintiffs allege that the Defendants unlawfully agreed to fix, raise, maintain or stabilize the prices of and/or allocate the markets for polyether polyols, MDI, TDI and polyether polyol systems (the "Products") sold in the United States and its territories or for

delivery in the United States or its territories during the period January 1, 1999 through December 31, 2004 in violation of the federal antitrust laws, namely, Section 1 of the Sherman Act, 15 U.S.C. § 1. Class Plaintiffs claim that, as a result of these alleged violations of the antitrust laws, they and other members of the Settlement Class paid more for the Products than they would have paid absent such wrongful conduct.

In 2006, Class Plaintiffs reached a \$55.3 million settlement of the claims against Bayer. Class Plaintiffs mailed individual notice of the settlement to all known Class members and published a summary notice in *Chemical Week*. On August 30, 2006, the United States District Court for the District of Kansas granted final approval to the settlement. If you are a qualified Settlement Class member who did not opt out, your claims against Bayer have been released in exchange for the settlement payment. Class Plaintiffs continue to pursue claims against BASF, Dow and Huntsman. The class claims against Lyondell are currently on hold by reason of Lyondell's bankruptcy.

THE COURT HAS NOT RULED ON ANY OF THE CLAIMS OR DEFENSES OF THE REMAINING PARTIES. THIS NOTICE IS NOT TO BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION BY THE COURT AS TO THE MERITS OF ANY OF THE CLAIMS OR DEFENSES ASSERTED BY CLASS PLAINTIFFS OR DEFENDANTS.

III. THE PROPOSED PLAN OF ALLOCATION

At the Fairness Hearing, Class Counsel will ask the Court to approve the proposed Plan of Allocation. If it is approved, the Net Settlement Fund (after payment of such fees and expenses as are awarded by the Court) will be distributed to Class members who submit their Proof of Claim in accordance with Section IV below and have qualified claims. The Court may approve or reject, in full or in part, any individual claim of a Class member based on equitable grounds.

The Net Settlement Fund will be distributed on a *pro rata* basis among those Class members who timely and properly file a Proof of Claim in proportion to the total dollar amount of their purchases of Products directly from Defendants during the Class Period. Purchases must have been made directly from one or more Defendants during the Class Period to qualify.

IV. SUBMISSION OF CLAIM FORMS

If the Court approves the proposed Plan of Allocation, the Claims Administrator will send a Proof of Claim form to all settlement class members that did not timely exclude themselves from the Class. Based on purchase data provided by Defendants from their sales records, each claimant's claim form will set forth the claimant's total purchase amounts (net of freight charges, discounts, etc.), separately by Defendant-supplier, during the Class Period. The Claims Administrator will compile this data and calculate each Class member's total purchases in an effort to save the Class members the cost and burden of retrieving and compiling their own records (or hiring a third party to do so). If you believe your pre-printed purchase data is inaccurate, you may provide your own purchase data as long as it is supported by proof of your purchases, such as direct invoices, purchase orders, cancelled checks, etc. The claim form will advise you of the deadline for filing claims and other procedural details.

The foregoing is only a summary of the Plan of Allocation. For the details please see the Motion for Approval of the Plan of Allocation and its supporting papers all of which are available on request from Class Counsel and will be posted to the Urethane Settlement website, www.polyetherpolyolsettlement.com.

Class Counsel believe the proposed Plan is a fair, reasonable and adequate method for allocating the Settlement Fund, and they have asked the Court to enter an Order approving the Plan and authorizing its implementation.

V. THE PETITION FOR AWARD OF ATTORNEYS' FEES AND COSTS

The Court has appointed Class Counsel to represent you and other Class members. The fees for Class Counsel's services will be paid from the Settlement Fund and you will not be otherwise charged for these lawyers. To date Class Counsel have not received any payment for their services in conducting this litigation on behalf of the Class and they have not been reimbursed for their out-of-pocket expenses. Class Counsel have petitioned the Court for payment of attorneys' fees not to exceed one-third of the Bayer settlement fund and for reimbursement of expenses incurred through December 31, 2008 in their prosecution of this litigation in an amount not to exceed \$2.2 million. The Settlement Agreement with Bayer expressly authorizes payments of attorneys' fees and costs from the Settlement Fund. The Petition for Award of Attorneys' Fees and Reimbursement of Litigation Expenses is available on request from Class Counsel and will be posted to the Urethane Settlement website, www.polyetherpolyolsettlement.com.

VI. THE FAIRNESS HEARING

The Court has scheduled a hearing to be held at 9:30 a.m. on July 20, 2009 at the United States Courthouse, 500 State Avenue, Kansas City, Kansas 66101, to consider whether to approve the proposed Plan of Allocation and the petition for attorneys' fees and costs. Although you may attend this hearing in person or through your own attorney, you are not required to do so.

If you have not elected to exclude yourself from the Settlement Class and wish to comment in support of, or object to, the proposed Plan of Allocation or the petition for attorneys' fees and costs, you must file your comments or objections in writing with the Clerk, United States District Court for the District of Kansas, 500 State Avenue, Kansas City, Kansas 66101, postmarked no later than June 12, 2009, with copies served upon the Counsel identified below:

Richard A. Koffman, Esq.
Cohen, Milstein, Sellers & Toll, P.L.L.C.
West Tower, Suite 500
1100 New York Avenue, NW
Washington, D.C. 20005-3964
Attorney for Plaintiffs

Phillip A. Proger, Esq.
Jones Day
51 Louisiana Avenue, NW
Washington, DC 20001-1113
Attorney for Bayer

Gerard A. Dever, Esq.
Fine Kaplan and Black R.P.C.
1835 Market Street, Suite 2800
Philadelphia, PA 19103
Attorney for Plaintiffs

If you file a timely written objection you may appear and be heard at the hearing, either yourself or by retaining an attorney at your own expense to appear on your behalf. The time and date of the hearing may be continued from time to time. Notice of any such continuance shall be set forth on the Court's docket.

VII. ADDITIONAL INFORMATION

THE ABOVE IS ONLY A SUMMARY OF THE PROPOSED PLAN OF ALLOCATION AND THE PETITION FOR ATTORNEYS' FEES AND COSTS.

Additional information concerning this lawsuit may be obtained at the Urethane Settlement website, www.polyetherpolyolsettlement.com. For more detailed information concerning this lawsuit and the matters addressed in this Notice, reference is made to the pleadings, the Settlement Agreement, the Orders entered by the Court and other papers filed in this Class Action, which may be inspected at the Office of the Clerk of the United States District Court for the District of Kansas, 500 State Avenue, Suite 259, Kansas City, Kansas 66101, during regular business hours.

ALL INQUIRIES CONCERNING THIS NOTICE SHOULD BE DIRECTED TO CLASS PLAINTIFFS' COUNSEL OR THE CLAIMS ADMINISTRATOR AT THE ADDRESSES SET FORTH BELOW:

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215-567-6565

Urethane Antitrust Litigation
Polyether Polyol Cases
c/o Complete Claim Solutions, LLC
P.O. Box 24628
West Palm Beach, FL 33416
877-741-1226

INQUIRIES SHOULD NOT BE DIRECTED TO BAYER, THE COURT OR THE CLERK'S OFFICE.

DATED APRIL 22, 2009

*BY ORDER OF THE COURT
JOHN W. LUNGSTRUM, CHIEF JUDGE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS*

URETHANE ANTITRUST LITIGATION
POLYETHER POLYOL CASES
C/O COMPLETE CLAIM SOLUTIONS, LLC
P.O. BOX 24628
WEST PALM BEACH, FL 33416

IMPORTANT COURT DOCUMENTS