

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

IN RE: URETHANE ANTITRUST)
LITIGATION)

This Document Relates To:)
The Polyether Polyol Cases)

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

**ORDER AUTHORIZING NOTICE TO THE CLASS
AND ESTABLISHING PROCEDURES FOR CONSIDERATION OF
CLASS PLAINTIFFS' PROPOSED PLAN OF ALLOCATION
AND CLASS COUNSEL'S PETITION FOR FEES AND COSTS**

This matter comes before the court on Class Plaintiffs' Motion To Distribute The Bayer Settlement Fund To Members Of The Class (Doc. # 901). The deadline for responses to the motion has passed, and no response has been filed; the motion is therefore deemed unopposed. Based on the motion, its supporting memorandum and exhibits, and the entire record in this matter, and with good cause appearing, IT IS HEREBY ORDERED that the Motion is GRANTED. It is FURTHER ORDERED that:

1. Within twenty-one (21) days of the date of this Order, Class Plaintiffs shall file their proposed Plan of Allocation, together with its supporting memorandum and materials, and Class Counsel's Petition for Award of Attorneys' Fees and Reimbursement of Litigation Expenses, together with its supporting memorandum and materials.

2. Pursuant to the Settlement Agreement ¶ 2, Complete Claims Solutions, LLC shall serve as Claims Administrator.

3. The Court approves as to form and content, and for distribution to the Class Members who have not excluded themselves from the settlement Class, the proposed Notice attached hereto

as Exhibit 1. **Within twenty-one (21) days of the date of this Order**, the Claims Administrator shall send the Notice, substantially in the form attached hereto as Exhibit 1 via first class U.S. mail, postage prepaid, to all Class Members at their last known address as reflected in the records of the Defendants, as updated during prior notice programs in this litigation and based on the National Change of Address database or other similar databases prior to mailing. Class Counsel shall cause a copy of the Class Notice to be published on the Urethanes Settlement Website, www.polyetherpolyolsettlement.com.

4. The Court finds that the manner of giving notice fully satisfies the requirements of Fed. R. Civ. P. 23 and due process, constitutes the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.

5. Class Counsel shall file or cause to be filed, **no later than twenty-one (21) days after the mailing deadline**, proof of mailing of the Notice and proof of posting of the Notice to the Urethanes Settlement Website.

6. Pursuant to the Settlement Agreement ¶ 36, the Court grants Class Counsel authority to direct the Escrow Agent to pay out of the settlement fund the reasonable expenses incurred in providing notice pursuant to paragraph 3 of this Order.

7. Each Class Member shall have the right to object to the Plan of Allocation and/or Class Counsel's Petition for Award of Attorneys' Fees and Reimbursement of Litigation Expenses by filing written objections with the Court, **not later than thirty (30) days from the date of the mailing of the Class Notice**, copies of which shall be served on Class Counsel. Failure to timely file and serve written objections will preclude a Class Member from objecting at the Fairness Hearing.

8. Any Class Member who has filed written objections and wishes to be heard at the Fairness Hearing may appear at the Hearing *pro se* or through counsel of such member's own choosing and at such member's own expense.

9. Class Plaintiffs may file responses to any objections **within twenty-one (21) days of the deadline for filing objections.**

10. On **July 20, 2009, at 9:30 a.m.**, the Court will hold a Fairness Hearing to consider the motion for approval of the Plan of Allocation, Class Counsel's Petition for Award of Attorneys' Fees and Reimbursement of Litigation Expenses, and other such matters as the Court may deem appropriate.

11. The Court may, for good cause, adjourn the Fairness Hearing or extend any of the deadlines set forth in this Order without further notice to Class Members.

IT IS SO ORDERED.

ENTERED THIS 22nd day of April, 2009, in Kansas City, Kansas.

s/ John W. Lungstrum
Honorable John W. Lungstrum
United States District Judge

EXHIBIT 1

**TO ORDER AUTHORIZING NOTICE TO THE CLASS
AND ESTABLISHING PROCEDURES FOR CONSIDERATION OF
CLASS PLAINTIFFS' PROPOSED PLAN OF ALLOCATION
AND CLASS COUNSEL'S PETITION FOR FEES AND COSTS**

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 _____, 2009, at _____ a.m./p.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 _____ on _____, 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 _____, 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 SETTLEMENT ADMINISTRATOR AT THE ADDRESSES SET FORTH BELOW:

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Urethane Antitrust Litigation
Polyether Polyol Cases
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P.O. Box 24628
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877-741-1226

Gerard A. Dever, Esq.
Fine Kaplan and Black R.P.C.
1835 Market Street, Suite 2800
Philadelphia, PA 19103
215-567-6565

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

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