

**SUPERIOR COURT**

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

N°: 500-06-000252-045

DATE: May 28, 2007

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THE HONOURABLE: JEAN-PIERRE CHRÉTIEN, J.S.C.

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**OPTION CONSOMMATEURS**

*Petitioner*

-and-

**ANDRÉ-BERNARD GUÉVIN**

*Designated person*

vs.

**BAYER CORPORATION et al.**

*Respondents*

-and-

**BELLEAU LAPOINTE, S.E.N.C.R.L.**

*Petitioner – Class Counsel*

-and-

**FONDS D'AIDE AUX RECOURS COLLECTIFS**

*Mis-en-cause*

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**JUDGMENT**

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[1] This motion made by Petitioner seeks, inter alia, the approval of a settlement with Bayer Corporation, Bayer Inc., Bayer AG, Bayer MaterialScience LLC, Rhein Chemie GmbH and Rhein Chemie Corporation;

[2] On reading the materials filed, including the settlement (the "Settlement Agreement" attached as Schedule "B" to Exhibit R-1) entered into with Bayer Inc., Bayer AG, Bayer MaterialScience AG, Bayer MaterialScience LLC (formerly known as Bayer Polymers LLC), Bayer Corporation, Rhein Chemie Rheinau GmbH and Rhein Chemie Corporation (the "Settling Defendants") and on hearing the submissions of counsel for the Plaintiff and counsel for the Settling Defendants:

[3] **FOR THESE REASONS, THE COURT:**

[4] **GRANTS** the present Motion.

[5] **ORDERS AND DECLARES** that for the purposes of this Judgment the definitions set out in the Settlement Agreement apply to and are incorporated into this Judgment.

[6] **AUTHORIZES** the bringing of a class action for settlement purposes only.

[7] **GRANTS** the status of representative to Option Consommateurs, for the purpose of bringing the said class action for settlement purposes only for the benefit of the following Settlement Class:

All persons who purchased Polyester Polyols Products in Quebec during the Polyester Polyols Class Period, except Excluded Persons. A legal person established for a private interest, a partnership or an association is only a "person" for the purpose of this definition if at all times between October 7, 2003 and October 7, 2004 it had under its direction and control more than fifty (50) persons bound to it by contract of employment and it is dealing at arm's length with the petitioner.

[8] **IDENTIFIES** the following principal question of law and fact to be dealt with collectively as follows:

Did the Settling Defendants agree with other Polyester Polyols manufacturers to fix, raise, maintain or stabilize the prices of, or allocate markets and customer for, Polyester Polyols in Canada during the Polyester Polyols Class Period?

- [9] **DECLARES** that the Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class.
- [10] **ORDERS** that the Settlement Agreement is hereby approved pursuant to article 1025 of the *Code of Civil Procedure of Québec*. The settlement shall be implemented in accordance with its terms except that, with the consent of Class Counsel and the Settling Defendants:
- (a) section 1(46) of the Settlement Agreement is amended by deleting the definition set out therein and by substituting the following definition: "**Polyester Polyols** means aliphatic polyester polyols made from adipic acid".
- [11] **DECLARES** that the Settlement Agreement is incorporated by reference into and forms part of this Judgment and is binding upon the representative plaintiff, upon all Settlement Class Members and upon the Defendants.
- [12] **ORDERS** that putative class members may opt out of the Proceeding in accordance with the terms of the Settlement Agreement, up to and including the date which is forty-five (45) days from the date of the first publication of the Notice of Certification and Settlement Approval.
- [13] **ORDERS** that any potential Settlement Class Member who has opted out of this action by submitting a properly completed opt-out form to the Claims Administrator within 45 days following the Notice of Certification and Settlement Approval, is not bound by the Settlement Agreement and may no longer participate in any continuation or settlement of this action.
- [14] **ORDERS AND DECLARES** that each Settlement Class Member shall consent and shall be deemed to have consented to the dismissal of any Other Actions he, she or it has commenced against the Releasees, without costs and with prejudice.
- [15] **ORDERS AND DECLARES** that each Other Action commenced in Québec by any Settlement Class Member shall be and is hereby dismissed against the Releasees, without costs and with prejudice.
- [16] **ORDERS AND DECLARES** that this Judgment, including the Settlement Agreement, is binding upon each Settlement Class Member.
- [17] **ORDERS AND DECLARES** that each Releasor has released and shall be conclusively deemed to have fully, finally and forever released the Releasees from the Released Claims.

- [18] **ORDERS** that each Releasor shall not commence or continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand or take any proceeding relating in any way to the Released Claims against any Releasee or any other person or persons who will or could, in connection with any such action or proceeding, bring or commence or continue any claim, crossclaim, claim over or any claim for contribution, indemnity or any other relief against any of the Releasees, provided that nothing in this Judgment affects the rights of a Settlement Class Member to claim or continue to claim against any Non-Settling Defendant or person other than a Releasee in any of the Proceedings.
- [19] **ORDERS AND DECLARES** that the Releasees have released and shall be conclusively deemed to have fully, finally and forever released each other from any and all claims for contribution and indemnity that said Releasees, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to the Released Claims.
- [20] **ORDERS AND DECLARES** that the use of the terms "Releasors" and "Released Claims" in this Judgment does not constitute a release of claims by those Settlement Class Members who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.
- [21] **ORDERS AND DECLARES** that each Settlement Class Member who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to make any claim in any way nor to threaten, commence, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.
- [22] **ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought against a Releasee by any Non-Settling Defendant, a Defendant that has previously settled claims in this proceeding, or any other person or party, or by a Releasee against a Non-Settling Defendant, are barred, prohibited and enjoined in accordance with the terms of this Judgment.
- [23] **ORDERS** that Neal, Pallett & Townsend be appointed as Claims Administrator with the duties and responsibilities set out in the Settlement Agreement.
- [24] **ORDERS** that the Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.

- [25] **ORDERS** that 77.5% of the monies from the Settlement Agreement be apportioned to the Distributors and Manufacturers settlement fund and that the remaining 22.5% of the monies from the Settlement Agreement be apportioned to the Intermediaries and Consumers settlement fund.
- [26] **ORDERS** that, after payment of the Opt-Out Refunds in accordance with section 6.3 of the Settlement Agreement, the Settlement Amount shall be distributed by the Claims Administrator in accordance with the Distribution Protocol attached as Schedule "G" to Exhibit R-1.
- [27] **ORDERS** that Settlement Class Members shall submit a claim form to the Claims Administrator on or before the date which is ninety days from the date of the first publication of the Notice of Certification and Settlement Approval and any Settlement Class Member who fails to do so shall not share in any distribution made in accordance with the Distribution Protocol with respect to settlements already approved unless the Court orders otherwise.
- [28] **ORDERS** that the Short and Long Notices of Certification and Settlement Approval to class members are hereby approved in the forms attached as Schedules "M" and "N" to Exhibit R-1.
- [29] **ORDERS** that the Plan of Dissemination of the Short and Long Notices of Certification and Settlement Approval is hereby approved in the form attached as Schedule "O" to Exhibit R-1.
- [30] **ORDERS** that the costs of the Notice of Settlement Approval Hearing, published on March 16, 2007, be split proportionately, based on settlement values, between all settling defendants whose settlements were referenced in the Notice. The Settling Defendants' contribution shall be paid in accordance with the terms of the Settlement Agreement.
- [31] **ORDERS** that approval of this Judgment and the Settlement Agreement is contingent upon the approval of the Ontario Courts of the same Settlement Agreement and this Judgment shall be of no force and effect if such approval is not secured in Ontario.
- [32] **THE WHOLE** without costs.

  
JEAN-PIERRE CHRÉTIEN J.S.C.