

SUPERIOR COURT

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N°: 500-06-000252-045

DATE: May 28, 2007

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

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

JUDGMENT

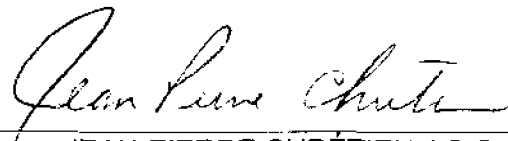
- [1] This motion made by Petitioner seeks *inter alia* the approval of a Settlement Agreement with Chemtura Corporation, Crompton Co/Cie, Crompton Canada Corporation and Uniroyal Chemical Company Inc. (the "Settling Defendants");

- [2] On reading the materials filed, including the settlement entered into with the Settling Defendants (the "Settlement Agreement"), 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 Order the definitions set out in the Settlement Agreement apply to and are incorporated into this Order, except where specifically amended in paragraph 7 herein and, in addition, the following definition also applies:
- (a) **"Settlement Class Member"** means a member of the Settlement Class who does not validly opt out of the Settlement Class in accordance with orders of the Court.
- [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 in Quebec who purchased Polyester Polyols Products in Quebec during the Class Period, except Excluded Persons, as well as any legal person established for a private interest, partnership or association which, at all times between October 7, 2003 and October 7, 2004, had under its direction or control more than 50 persons bound to it by a contract of employment.
- [8] **IDENTIFIES** the following principal question of law and fact to be dealt with collectively as follows:
- Did the Settling Defendants agree to fix, raise, maintain or stabilize the prices of, or allocate markets and customers for, Polyester Polyols in Canada during the 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 section 1025 of the *Code of Civil Procedure*. The settlement agreement shall be implemented in accordance with its terms except that, with the consent of Class Counsel and the Settling Defendants:

- (a) section 1(34) of the Settlement Agreement is amended by deleting the definition set out therein and by substituting the following definition:
"Releasors means, jointly and severally, the Plaintiff and the Settlement Class Members and their respective predecessors, successors, heirs, executors, administrators and assigns"
- [11] **DECLARES** that the Settlement Agreement is incorporated by reference into and forms part of this Order and is binding upon the representative plaintiff, upon all Settlement Class Members and upon the Defendants.
- [12] **ORDERS** that the opt-out period run for a period of 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 Order, 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 any action or take any proceeding relating in any way to the Released Claims against any 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 one of the Releasees, provided that nothing in this Order affects the rights of a Settlement Class Member to claim or continue to claim against any Non-Settling Defendant or co-conspirator 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 "Releasers" and "Released Claims" in this Order 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 or any other person or party, or by a Releasee against a Non-Settling Defendant or any other person or party, are barred, prohibited and enjoined in accordance with the terms of this Order (unless such claim is made in respect of a claim by a person who has validly opted out of the Settlement Class).
- [23] **ORDERS** that the Plaintiff shall restrict its joint and several claims against the Non-Settling Defendants such that the Plaintiff shall be entitled to claim and recover from the Non-Settling Defendants on a joint and several basis only those damages (including punitive damages) arising from and allocable to the conduct of and sales by the Non-Settling Defendants.
- [24] **DECLARES** that a Non-Settling Defendant may seek an order from the Court providing for discovery from some or all of the Settling Defendants as deemed appropriate by the Court.
- [25] **ORDERS** that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 21 above on a Settling Defendant by service on counsel of record for the Settling Defendants in the Proceedings.
- [26] **ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any Settlement Class Member has or may have against the Non-Settling Defendants or co-conspirators in the Proceedings.

- [27] **ORDER** that Neal, Pallett & Townsend be appointed as Claims Administrator.
- [28] **ORDERS** that the Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.
- [29] **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.
- [30] **ORDERS** that the Settlement Amount shall be distributed by the Claims Administrator in accordance with the Distribution Protocol.
- [31] **ORDER** 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.
- [32] **ORDERS** that the Short and Long Notice of Certification and Settlement Approval to class members are hereby approved.
- [33] **ORDERS** that the Plan of Dissemination of the Short and Long Notice of Certification and Settlement Approval is hereby approved.
- [34] **ORDERS** that 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 Defendant's contribution shall be paid in accordance with the terms of the Settlement Agreement.
- [35] **THE WHOLE** without costs.



JEAN-PIERRE CHRÉTIEN J.S.C.