

SUPERIOR COURT

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N° 500-06-000276-051

DATE: December 19, 2005

THE HONOURABLE: PIERRE TESSIER, J.S.C.

OPTION CONSOMMATEURS

Petitioner

-and-

ANDRÉ-BERNARD GUÉVIN

Designated person

vs.

DUPONT DOW ELASTOMERS L.L.C. et al.

Respondents

-and-

BELLEAU LAPOINTE, S.A.

Petitioner – 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 DuPont Dow Elastomers L.L.C., E.I. du Pont De Nemours and Company, E.I. DuPont Canada Company, The Dow Chemical Company, Dow Chemical Canada Inc. (the "Settling Defendants"), as well as the approval of Class Counsel fees;

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- [2] On reading the materials filed, including the settlement entered into with the Settling Defendants (the "Settlement Agreement") attached to this Judgment as Schedule "A", 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] **DECLARES** that no purported Class Member was prejudiced by the publication of the Notice of the present hearing in the Journal de Montréal on November 17th, 2005 instead of November 15th, 2005 as it was ordered in this Court's Judgment dated November 9th, 2005;
- [6] **ALLOWS** the publication of the Notice of the present hearing in the Journal de Montréal on November 17th, 2005;
- [7] **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, 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;
- [8] **AUTHORIZES** the bringing of a class action with respect to the Settling Defendants for settlement purposes only as follows: a civil liability claim;
- [9] **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 Polychloroprene or Polychloroprene Products in Quebec during the Purchase Period, except the Excluded Persons.
- [10] **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, Polychloroprene in Canada during the Purchase Period?
- [11] **DECLARES** that the Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class;

- [12] **ORDERS** that the Settlement Agreement is hereby approved pursuant to section 1025 of the *Code of Civil Procedure* and shall be implemented in accordance with its terms;
- [13] **DECLARES** that the Settlement Agreement is incorporated by reference into and form part of this Judgment and is binding upon the representative plaintiff, upon all Settlement Class Members and upon the Defendants;
- [14] **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 Authorization and Settlement Approval;
- [15] **ORDERS** that any potential Settlement Class Member who has opted out of this action by submitting a properly completed opt-out form to Ontario Counsel within forty-five (45) days following the Notice of Authorization and Settlement Approval, is not bound by the Settlement Agreement and may no longer participate in any continuation or settlement of this action;
- [16] **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;
- [17] **ORDERS AND DECLARES** that each other action commenced in Quebec by any Settlement Class Member shall be and is hereby dismissed against the Releasees, without costs;
- [18] **ORDERS AND DECLARES** that this Judgment, including the Settlement Agreement, is binding upon each Settlement Class Member including those persons who are minors or mentally incapable;
- [19] **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;
- [20] **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;

- [21] **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;
- [22] **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;
- [23] **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;
- [24] **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 Judgment (unless such claim is made in respect of a claim by a person who has validly opted out of the Settlement Class);
- [25] **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;
- [26] **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;
- [27] **ORDERS** that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 26 above on a Settling Defendant by service on counsel of record for the Settling Defendants in the Proceedings;
- [28] **ORDERS** that, except as provided herein, this Judgment does not affect any claims or causes of action that any Settlement Class Member has or may have against the Non-Settling Defendants or person other than a Releasee in the Proceedings;

- [29] **ORDERS AND ADJUDGES** that this action be and is hereby dismissed against the Settling Defendants without costs;
- [30] **ORDERS** that the Settlement Amount be held in trust by Ontario Class Counsel for the benefit of the Settlement Class, pending further order of the Court, which shall be sought by the Plaintiff on a motion in the Proceedings brought on notice to the Settling Defendants;
- [31] **ORDERS AND DECLARES** that the Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement;
- [32] **ORDERS** that the form of the proposed Notice of authorization and settlement approval to class members attached hereto as Schedule "B" is approved;
- [33] **ORDERS** that the Notice of authorization and settlement approval be published as soon as practicable in the Journal de Montréal and in the Journal de Québec;
- [34] **ACKNOWLEDGES** that the Fonds d'aide aux recours collectifs provided no financial help in the present;
- [35] **APPROVES AND SETS** Belleau Lapointe, s.a.'s legal fees at \$33,976.44, plus applicable taxes;
- [36] **APPROVES AND SETS** Belleau Lapointe, s.a.'s disbursements at \$2,008.41, plus applicable taxes;
- [37] **ORDERS** that Belleau Lapointe, s.a.'s legal fees, disbursements, and applicable taxes be paid from the Settlement Amount;
- [38] **THE WHOLE** without costs.



PIERRE TESSIER, J.S.C.