

## SUPERIOR COURT

CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL

N°: 500-06-000276-051

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.

### **DUPONT DOW ELASTOMERS L.L.C. 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 Agreement with Polimeri Europa S.r.l., Polimeri Europa S.p.A., Polimeri Europa Americas Inc., Enichem S.p.A., Enichem Americas Inc. and Syndical S.p.A. (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.
- [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 Polychloroprene 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 February 16, 2004 and February 16, 2005, 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, Polychloroprene 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(32) of the Settlement Agreement is amended by deleting the definition set out therein and substituting the following definition:  
**"Released Claims** means any and all manner of claims, demands,

actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, liabilities of any nature whatsoever (including interest, costs, expenses, class administration expenses, penalties and Class Counsel Fees), known or unknown, suspected or unsuspected, in law, under statute or in equity, that Releasors, 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 any conduct anywhere, from the beginning of time to the date hereof, in respect of an alleged conspiracy or unlawful agreement or combination concerning the purchase, sale, pricing, discounting, marketing or distribution of Polychloroprene Products in Canada, or relating to any conduct alleged (or which could have been alleged) in the Proceedings including, without limitation, any such claims which have been asserted, would have been asserted, or could have been asserted, whether in Canada or elsewhere, in respect of an alleged conspiracy or unlawful agreement or combination concerning the purchase, sale, pricing, discounting, marketing, or distribution of Polychloroprene Products in Canada, but for greater certainty, and without limiting the scope or generality of the foregoing, does not include product liability or breach of contract claims unrelated to the subject matter of the Proceedings or Other Actions"; and

- (b) 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"; and
- (c) section 1(36) of the Settlement Agreement is amended by deleting the definition set out therein and by substituting the following definition: "**Settlement Amount** means Cdn\$58,835.00, plus an additional payment of U.S.\$6,000 to be paid to Ontario Counsel, in trust, by June 1, 2007".

[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 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 Order, including the Settlement Agreement, is binding upon each Settlement Class.
- [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 Order 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 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 Neal, Pallett & Townsend be appointed as Claims Administrator.
- [23] **ORDERS** that the Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.
- [24] **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.
- [25] **ORDERS** that the Settlement Amount shall be distributed by the Claims Administrator in accordance with the Distribution Protocol.
- [26] **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.
- [27] **ORDERS** that the Short and Long Notice of Certification and Settlement Approval to class members are hereby approved.
- [28] **ORDERS** that the Plan of Dissemination of the Short and Long Notice of Certification and Settlement Approval is hereby approved.
- [29] **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 Defendant's contribution shall be paid in accordance with the terms of the Settlement Agreement.
- [30] **THE WHOLE** without costs.

  
JEAN-PIERRE CHRÉTIEN, J.S.C.