

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

**IN RE: URETHANE ANTITRUST
LITIGATION**

No. 04-MD-1616-JWL

**This Document Relates To:
The Polyester Polyol Cases**

**NOTICE OF CLASS ACTION
SETTLEMENT WITH BAYER
AND FAIRNESS HEARING**

TO: ALL PERSONS AND ENTITIES IN THE UNITED STATES WHO DIRECTLY PURCHASED POLYESTER POLYOLS IN WHATEVER FORM THEY WERE SOLD (INCLUDING POLYURETHANE SYSTEMS CONTAINING POLYESTER POLYOLS BUT NOT POLYETHER POLYOLS) ("POLYESTER POLYOL PRODUCTS")* AT ANY TIME DURING THE PERIOD FROM JANUARY 1, 1998, THROUGH DECEMBER 31, 2004 FROM ANY OF THE FOLLOWING DEFENDANTS:

BAYER AG, BAYER CORPORATION, BAYER MATERIALSCIENCE AG, BAYER MATERIALSCIENCE LLC (f/k/a BAYER POLYMERS LLC), CROMPTON CORPORATION (n/k/a CHEMTURA CORPORATION), RHEIN CHEMIE CORPORATION, RHEIN CHEMIE RHEINAU GmbH, AND UNIROYAL CHEMICAL COMPANY, INC.

AN \$18 MILLION SETTLEMENT WITH BAYER HAS BEEN PROPOSED IN THIS CLASS ACTION LITIGATION THAT MAY AFFECT YOUR RIGHTS. IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS, YOU WILL BE ENTITLED TO SHARE IN THE SETTLEMENT FUND.

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY.

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 dated June 8, 2006, that the court has certified a settlement class (the "Settlement Class") and that a fairness

* You previously may have seen a similar notice with respect to a different settlement involving Bayer. That settlement pertains to related proceedings involving similar allegations, but the two sets of proceedings involve different products (this set of cases involves polyester polyol products whereas the other set of cases involves polyether polyols, MDI, and/or TDI) and different groups of defendants. The two settlements themselves are separate and distinct.

hearing will be held on October 16, 2006, at 10:30 a.m. before the Honorable John W. Lungstrum, United States District Judge, in Courtroom No. 427, United States Courthouse, located at 500 State Avenue, Kansas City, Kansas 66101, to finally determine whether a proposed settlement in the above-captioned litigation as to Defendants Bayer AG, Bayer Corporation, Bayer MaterialScience AG and Bayer MaterialScience LLC (f/k/a Bayer Polymers LLC) (collectively "Bayer") is fair, reasonable, and adequate to the Settlement Class.

I. THE SETTLEMENT CLASS

The Settlement Class includes all persons and entities in the United States who directly purchased polyester polyols in whatever form they were sold (including polyurethane systems containing polyester polyols but not polyether polyols) ("Polyester Polyol Products") from any Defendant at any time from January 1, 1998, through December 31, 2004 ("the Class Period"). Excluded from the Settlement Class are all governmental entities, any Defendants, their employees, and their respective parents, subsidiaries and affiliates. Also excluded are those persons and entities who timely and validly request exclusion from the Settlement Class pursuant to the terms of this Notice. A complete list of the trade names under which Bayer sold the Polyester Polyol Products is attached hereto as Attachment A.

IF YOU ARE A MEMBER OF THE SETTLEMENT CLASS, YOU NEED NOT TAKE ANY ACTION AT THIS TIME. YOUR RIGHTS AS A CLASS MEMBER WILL BE REPRESENTED BY THE CLASS PLAINTIFFS AND CLASS COUNSEL, AND YOU WILL BE ENTITLED, AT A LATER POINT IN TIME, TO SUBMIT A CLAIM FORM TO SHARE IN THE SETTLEMENT FUND. BY REMAINING IN THE SETTLEMENT CLASS, YOU WILL BE LEGALLY BOUND BY THE SETTLEMENT, AND THUS WILL NOT BE ABLE TO SUE OR CONTINUE TO SUE BAYER OVER THE LEGAL CLAIMS IN THIS CASE.

II. BACKGROUND OF THE CLASS ACTION

Plaintiffs Skypark Manufacturing LLC (f/k/a Burtin Urethane Corporation), Maine Industrial Tires Limited, Urethane Product Industries, Inc., and Kryptane Systems, LLC, have

filed suit against Defendants Bayer AG, Bayer Corporation, Bayer MaterialScience AG, Bayer MaterialScience LLC (f/k/a Bayer Polymers LLC) (collectively, "Bayer"), Crompton Corporation (n/k/a Chemtura Corporation), Rhein Chemie Corporation, Rhein Chemie Rheinau GmbH, and Uniroyal Chemical Company, Inc. Plaintiffs allege that the Defendants unlawfully agreed to fix, raise, maintain or stabilize the prices of and/or allocate the markets for the Polyester Polyol Products sold in the United States during the period January 1, 1998, through December 31, 2004, in violation of the federal antitrust laws, namely, Section 1 of the Sherman Act, 15 U.S.C. § 1. 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 Polyester Polyol Products than they would have paid absent such wrongful conduct. On May 24, 2005, Bayer pled guilty to charges of participating in a criminal conspiracy to fix prices of aliphatic polyester polyols made with adipic acid between 1998 and 2002. Bayer paid a criminal fine of \$33 million. Bayer disputes any liability for the conspiracy prior to or after this period and regarding any other products. Plaintiffs have now reached a negotiated settlement of the claims against Bayer. Plaintiffs will continue to pursue their claims against the remaining Defendants. The Settlement Agreement is subject to final approval by the court following a Fairness Hearing.

On June 13, 2006, the court certified the Settlement Class, approved appointment of the Plaintiffs and Class Counsel to represent the interests of the Settlement Class, preliminarily approved the Settlement Agreement, and ordered that this Notice be provided to the members of the Class.

THE COURT HAS NOT RULED ON ANY OF THE CLAIMS OR DEFENSES OF THE 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 PLAINTIFFS OR DEFENDANTS.

III. WORK BY CLASS COUNSEL LEADING TO THE SETTLEMENT

Class Counsel has vigorously litigated this lawsuit to date, received and analyzed tens of thousands of documents produced by Defendants in this litigation, taken depositions of Defendants, retained experts, and filed a motion for class certification, which is pending. The Defendants have taken the depositions of the Plaintiffs and Plaintiffs' expert.

Based upon their extensive work in prosecuting the case to this point against the Defendants, their evaluation of the claims of the members of the Settlement Class and defenses that might be asserted, and the expense and length of continued proceedings to prosecute the action through trial and appeal, Class Counsel believe that the Bayer settlement is fair, reasonable and adequate and in the best interests of the Settlement Class. Class Counsel will be requesting the court to enter an order finally approving the settlement after the Fairness Hearing on October 16, 2006.

IV. THE PROPOSED SETTLEMENT

The following description of the proposed Bayer settlement is only a summary. The Settlement Agreement is on file with the court and can be obtained from Class Counsel (listed below) or at www.completeclaimssolutions.com/polyesterpolyol.

1. The Settlement Agreement

Subject to the terms of the Settlement Agreement, Bayer has made a cash payment of \$18 million into escrow (the "Settlement Fund"), which is accruing interest for the benefit of the Settlement Class. The Settlement Fund represents approximately 8.5% of Bayer's sales of the Polyester Polyol Products during the Class Period. Bayer also has agreed to provide cooperation to Plaintiffs in the ongoing litigation against the remaining Defendants by providing access to additional non-privileged documents and to interviews with certain current and former officers, directors and employees. Pursuant to the Settlement Agreement, disbursements may be made

from the Settlement Fund to pay, on an interim basis, any reasonable notice and administration costs and tax expenses.

2. Release of Claims

(a) Release of Claims against Bayer

If the court approves the Settlement Agreement after the Fairness Hearing, and that approval is not challenged or is affirmed on appeal, the Settlement Agreement will become final (the “Effective Date”). On the Effective Date, each member of the Class that did not timely and validly exclude itself from the Settlement Class (the “Releasors”) shall have completely released and forever discharged Bayer, Rhein Chemie Corporation, and Rhein Chemie Rheinau GmbH, and their respective past and present parents, subsidiaries, affiliates, officers, directors, employees, agents, attorneys, servants, representatives (and the parents', subsidiaries', and affiliates' past and present officers, directors, employees, agents, attorneys, servants, and representatives), and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing (the “Releasees”) from any and all claims, demands, actions, suits, and causes of action, whether class, individual, or otherwise in nature, damages whenever incurred, liabilities of any nature whatsoever, including, without limitation, costs, expenses, penalties and attorneys’ fees, that such Releasor, ever had, now has or hereafter can, shall or may have against the Releasees, relating in any way to any conduct by the Releasees prior to the Effective Date of the Settlement Agreement concerning the pricing, selling, discounting, marketing, manufacturing and/or distributing of the Polyester Polyol Products in the United States or for delivery in the United States (“Released Claims”). The Released Claims include claims related to or arising out of the facts, occurrences, transactions, or other matters alleged in the Consolidated Complaint during the Class Period. However, this release shall not affect the rights of any Settlement Class Member (i) to pursue claims relative to any product defect, breach of contract, or similar claim

against Bayer relating to the Polyester Polyol Products; or (ii) to participate in or benefit from any relief or other recovery as part of a settlement or judgment on behalf of a class of indirect purchasers of the Polyester Polyol Products. Releasors shall not, after the Effective Date, seek to recover against any of the Releasees for any of the Released Claims.

The release and dismissal of the claims of the Settlement Class against Bayer will have no effect upon any claims Settlement Class Members may have against Defendants other than Bayer. This litigation is proceeding against the other Defendants.

(b) Release of Claims by Bayer

On the Effective Date, the Releasors shall be completely released, acquitted and discharged from any and all claims, demands, actions, suits and causes of action, damages whenever incurred, liabilities of any nature whatsoever, including costs, expenses, penalties, and attorneys' fees that Releasees ever had, whether known or unknown, relating in any way to the institution, prosecution, or assertion of the litigation or the Released Claims.

3. Attorneys' Fees and Expenses

The court has appointed Class Counsel to represent you and other class members. You will not be charged for these lawyers. Class Counsel have not received any payment for their services in conducting this litigation on behalf of the Plaintiffs and the members of the Settlement Class, and they have not been reimbursed for their out-of-pocket expenses. If the court approves the Settlement, Class Counsel will petition for payment of attorneys' fees not to exceed 30% of the settlement proceeds, plus reimbursement of out-of-pocket expenses not to exceed \$1,500,000. If the court approves their petition, their fees and expenses will be paid from the Settlement Fund.

V. THE RIGHTS OF SETTLEMENT CLASS MEMBERS

If you are a member of the settlement class, you have the following options:

(A) If you want to remain in the Settlement Class, you do not need to do anything at this

time. Any member of the Settlement Class that has not requested to be excluded may object to the Settlement Agreement by following the procedures described below. If you want to participate in the Settlement, at a later date, you will need to file a claim form. If your claim is timely and valid, and if the court approves the Settlement, you will share in the proceeds of the Settlement Fund and you also will be bound by the Releases described above. This means that, unless you exclude yourself, you will give up any right to sue Bayer for the Released Claims.

(B) If you do not want to receive a payment from this Settlement, but you want to keep the right to sue or continue to sue Bayer, on your own, regarding the Released Claims, then you must take steps to exclude yourself from the Settlement Class. If you ask to be excluded, you will not receive any money from the Settlement Fund, you will not be legally bound by any judgment or decision in this litigation, and you cannot object to the Settlement. You must follow the procedure described below to exclude yourself from the Settlement Class.

(C) You also can choose to do nothing at all. If you choose this option, you will not receive any money from the Settlement Fund. However, you will be bound by any judgment entered by the court, and you will not be able to start or continue with a lawsuit against Bayer regarding the Released Claims.

Whether or not you remain a member of the Settlement Class, you have the right to retain individual counsel at your own expense and enter an individual appearance in the litigation.

VI. SUBMISSION OF CLAIM FORMS AND DISTRIBUTION OF SETTLEMENT FUND

You should retain all documents that substantiate the purchases of the Polyester Polyol Products that you made during the Class Period from each of the Defendants. At a later time, Class Counsel will ask the court to approve a proposed Plan of Distribution and Allocation of the Settlement Fund.

If you change your address, or if this Notice was not mailed to your correct address, you should immediately provide your correct address to *Urethane Antitrust Litigation – Polyester Polyol Cases*, c/o Complete Claim Solutions, Inc., P.O. Box 24707, West Palm Beach, Florida 33416. If Class Counsel does not have your correct address, you may not receive the Claim Form or other important documents in this litigation.

VII. REQUESTS FOR EXCLUSION

If you timely submit a request for exclusion from the Settlement Class, the court will exclude you from the Class. You may exclude yourself from the Settlement Class by sending a written request for exclusion, by first class mail postmarked on or before August 15, 2006, to the following address:

Urethane Antitrust Litigation
Polyester Polyol Cases
c/o Complete Claim Solutions, LLC
P.O. Box 24707
West Palm Beach, FL 33416

The request for exclusion must be in writing and clearly state the name, address and telephone number of the person or entity who wishes to be excluded from the Settlement Class, as well as all trade names or business names and addresses used by such person or entity, must state that the person or entity wishes to be excluded, and must be signed by the person or entity seeking exclusion.

VIII. FAIRNESS HEARING

At the Fairness Hearing, the court will consider whether the Settlement Agreement should be finally approved as fair, adequate, and reasonable to the Settlement Class and whether the claims of the Settlement Class against Bayer should be dismissed with prejudice. You do not need to appear at that hearing. However, any Settlement Class member that has submitted written objections to the Settlement shall have the right to appear and be heard at the Fairness

Hearing. Any Settlement Class member may enter an appearance through counsel of such member's own choosing and at such member's own expense, or may appear on their own.

Any member of the Settlement Class that has not requested to be excluded from the Settlement Class may object to the Settlement Agreement, but any such objections must be filed in writing with the Clerk, United States District Court for the District of Kansas, 500 State Avenue, Kansas City, Kansas 66101, not later than August 29, 2006, with copies served upon the counsel identified below:

Class Counsel for Plaintiffs

Counsel for Bayer

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Lockridge Grindal Nauen PLLP
Suite 2200
100 Washington Avenue South
Minneapolis, MN 55401

Phillip A. Proger
Jones Day
51 Louisiana Avenue, NW
Washington, DC 20001-1113

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.

IX. ADDITIONAL INFORMATION

**THE ABOVE IS ONLY A SUMMARY OF THE SETTLEMENT
AGREEMENT AND RELATED MATTERS**

To obtain a copy of the April 25, 2006, Settlement Agreement with Bayer, contact Class Counsel. For more detailed information concerning the matters involved in the litigation, a dedicated website has been created: www.completeclaimssolutions.com/polyesterpolyol. Reference also is made to the pleadings, the Settlement Agreement, the orders entered by the court and the other papers filed in the litigation, 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 AND THE SETTLEMENT
AGREEMENT SHOULD BE DIRECTED TO CLASS COUNSEL, OR THE
SETTLEMENT ADMINISTRATOR AT THE ADDRESSES SET FORTH BELOW:**

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Settlement Administrator

Urethane Antitrust Litigation
Polyester Polyol Cases
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PolyesterInfo@
CompleteClaimSolutions.com
(800) 589-1254

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

BY ORDER OF THE COURT DATED JUNE 13, 2006

*JOHN W. LUNGSTRUM, CHIEF JUDGE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS*