

**CANADIAN EPDM, POLYCHLOROPRENE, POLYESTER POLYOLS,
AND RUBBER CHEMICALS CLASS ACTIONS
NATIONAL SETTLEMENT AGREEMENT**

Made as of February 28, 2007

Between

**STONE PARADISE INC., LUIGI DEL GUERICO O/A WESTOWN SHOE CLINIC,
R.G. GIBSON & SONS LTD., R.N. PARTON LTD., JEAN-CLAUDE FLUET,
OPTION CONSOMMATEURS, UNION DES CONSOMMATEURS,
M. FRANÇOIS HÉBERT**

(the "Plaintiffs")

and

**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")

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RECITALS

A. WHEREAS, Proceedings have been commenced by the Plaintiffs in Ontario, Quebec, and British Columbia, under each province's respective class proceedings legislation, which allege that the Settling Defendants participated in unlawful conspiracies to raise, fix, maintain, or stabilize the prices of EPDM, Polychloroprene, Polyester Polyols, and Rubber Chemicals in Canada and/or to allocate markets and customers for the sale of EPDM, Polychloroprene, Polyester Polyols, and Rubber Chemicals in Canada, contrary to Part VI of the *Competition Act*;

B. WHEREAS, the Settling Defendants deny the allegations as alleged in the Proceedings and deny that any damages are payable for any breach of the *Competition Act* or otherwise, have not conceded or admitted any civil liability, and have defences to all of the claims in the Proceedings;

C. WHEREAS, the Plaintiffs and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, and having regard to the burden and expense in prosecuting the Proceedings, including the risks and uncertainties associated with trials and appeals, the Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable, and in the best interests of the Plaintiffs and the classes they seek to represent;

D. WHEREAS, despite their belief that they are not liable in respect of the allegations as alleged in the Proceedings and have good defences thereto, the Settling Defendants are entering into this Settlement Agreement in order to achieve a final and nation-wide resolution of all claims asserted or which could have been asserted against them by the Plaintiffs, and to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, and it is acknowledged that the Settling Defendants would not have entered into this Settlement Agreement were it not for the foregoing;

E. WHEREAS, the Parties therefore wish to, and hereby do, fully and finally resolve on a national basis, without admission of liability, all of the Proceedings as against the Settling Defendants;

F. WHEREAS, for the purposes of settlement only and contingent on approvals by the Courts as provided for in this Settlement Agreement, the Parties have consented to certification or authorization of the Proceedings as class proceedings and have consented to a Settlement Class and a Common Issue, for purposes of settlement only, in each of the Proceedings;

G. WHEREAS, the Settling Defendants expressly reserve their rights to contest certification of other related or unrelated proceedings and assert that the actions herein would not be appropriately certified in the absence of the Settlement Agreement and, in particular, with respect to Indirect Purchasers (those not purchasing the products referred to herein directly from the Settling Defendants), and that this Settlement Agreement does not constitute in any way a precedent to support the certification of classes of this nature;

H. WHEREAS, the Plaintiffs assert that they are adequate class representatives for the Settlement Classes and will seek to be appointed representative plaintiffs in their respective Proceedings; and

I. WHEREAS, the EPDM Settling Defendants represent that during the EPDM Class Period, the Purchase Price of EPDM sold by them amounted to no more than approximately CAN \$22,650,000, the Polychloroprene Settling Defendants represent that during the Polychloroprene Class Period the Purchase Price of Polychloroprene sold by them amounted to no more than approximately CAN \$9,250,000, the Rubber Chemicals Settling Defendants represent that during the Rubber Chemicals Class Period the Purchase Price of Rubber Chemicals sold by them amounted to no more than approximately CAN \$5,650,000, and the Polyester Polyols Settling Defendants represent that during the Polyester Polyols Class Period the Purchase Price of Polyester Polyols sold by them amounted to no more than approximately CAN \$2,285,000.

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Proceedings be settled and that the Parties will consent to the Courts' Orders dismissing the actions referred to herein with prejudice as to the Settling Defendants only, without costs as to the Plaintiffs, the classes they seek to represent, or the Settling Defendants, subject to the approval of the Courts, on the following terms and conditions:

SECTION 1 - DEFINITIONS

For the purpose of this Settlement Agreement only, including the Recitals and Schedules hereto:

- (1) *Account* means an interest bearing trust account under the control of Ontario Counsel at a Canadian Schedule 1 bank in Ontario.
- (2) *Administration Expenses* means all fees, disbursements, expenses, costs, taxes, and any other amounts incurred or payable by the Plaintiffs, Class Counsel, or otherwise for the approval, implementation, and operation of this Settlement Agreement, including the costs of notices but excluding Class Counsel Fees.
- (3) *BC Counsel* means Poyner Baxter LLP.
- (4) *BC Court* means the Supreme Court of British Columbia.
- (5) *Claims Administrator* means Neal Pallett & Townsend LLP.
- (6) *Claims Deadline* means ninety (90) days from the date of first publication of the notice of the Plan of Distribution.
- (7) *Class Counsel* means Ontario Counsel, Quebec Counsel, and BC Counsel.
- (8) *Class Counsel Fees* means the fees, disbursements, costs, GST, and other applicable taxes or charges of Class Counsel, including any obligations for contributions that any Plaintiff, Settlement Class, or Quebec Counsel may have to the Fonds.
- (9) *Class Period* means, individually or collectively, the EPDM Class Period, the Polychloroprene Class Period, the Polyester Polyols Class Period and the Rubber Chemicals Class Period.
- (10) *Common Issue* means, individually or collectively, the EPDM Common Issue, the Polychloroprene Common Issue, the Polyester Polyols Common Issue and the Rubber Chemicals Common Issue agreed to by the Settling Defendants for purposes of settlement only.
- (11) *Courts* means the Ontario Court, the Quebec Court, and the BC Court.

- (12) ***Defendants*** means the individuals and entities named as defendants in the Proceedings as set out in Schedule A.
- (13) ***Deposit Date*** means the date which is twenty (20) business days following execution of this Settlement Agreement.
- (14) ***Direct Purchaser*** means a person or entity, other than a Distributor, who purchased EPDM, Polychloroprene, Polyester Polyols, and/or Rubber Chemicals in Canada during the Class Period applicable to each product directly from a Defendant or from a Distributor.
- (15) ***Distributor*** means a person or entity who purchased EPDM, Polychloroprene, Polyester Polyols, and/or Rubber Chemicals in Canada during the Class Period applicable to each product directly from a Defendant and only resold the EPDM, Polychloroprene, Polyester Polyols, and/or Rubber Chemicals without further processing or including it in any other product.
- (16) ***Document*** is defined to be synonymous in meaning and equal in scope to the usage of this term in Rule 30.01 of the Ontario Rules of Civil Procedure, including, without limitation, electronic or computerized data compilations. A draft or non-identical copy is a separate document within the meaning of this term.
- (17) ***Effective Date*** means the date on which all of the final judgments or final approval orders approving this Settlement Agreement issued by the Courts have become Final Orders.
- (18) ***EPDM*** includes ethylene propylene (diene) monomer, ethylene propylene rubber, and EPR, and means a synthetic elastomer produced from ethylene, propylene and, in most cases, diene.
- (19) ***EPDM Class Period*** means January 1, 1997 to December 31, 1998.
- (20) ***EPDM Common Issue*** in each EPDM Proceeding means: Did the Settling Defendants agree with other EPDM manufacturers to fix, raise, maintain, or stabilize the prices of, or allocate markets and customers for, EPDM in Canada during the EPDM Class Period?
- (21) ***EPDM Cooperation Period*** means January 1, 1995 to December 31, 2002.

- (22) ***EPDM Proceedings*** means Ontario Court File No. 45604CP (London), British Columbia Court File SO50982 (Vancouver Registry), and Quebec Court (District of Quebec) Action No. 200-06-000052-053.
- (23) ***EPDM Products*** means EPDM and products that directly or indirectly contain or are derived from EPDM.
- (24) ***EPDM Settling Defendants*** means Bayer Inc., Bayer AG, Bayer MaterialScience AG, Bayer MaterialScience LLC and Bayer Corporation.
- (25) ***Excluded Person*** means each Releasee, Non-Settling Defendant, the directors, officers, and employees of each Releasee and Non-Settling Defendant, the subsidiaries and affiliates of each Releasee and Non-Settling Defendant, the parents of each Releasee and Non-Settling Defendant, the entities in which each Releasee or Non-Settling Defendant or any of their respective subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors, and assigns of each of the foregoing.
- (26) ***Final Order*** means a final judgment or final approval order entered by a Court in respect of the certification or authorization of a Proceeding as a class proceeding and the approval of this Settlement Agreement, and, if an appeal lies, the expiration of the time to appeal or to seek permission to appeal such final judgment or final approval order without any appeal being taken, or if an appeal from the final judgment or final approval order is taken, the affirmance of such final judgment or final approval order in its entirety, without modification, by the court of last resort to which an appeal of such final judgment or final approval order may be taken.
- (27) ***Fonds*** means the Fonds d'aide aux recours collectifs in Quebec.
- (28) ***Indirect Purchaser*** means a person or entity, other than a Direct Purchaser or Distributor, who purchased EPDM Products, Polychloroprene Products, Polyester Polyols Products, and/or Rubber Chemicals Products in Canada during the Class Period applicable to each product.

- (29) *Non-Settling Defendant* means a Defendant that is not a Settling Defendant or a Defendant that had previously settled claims in the Proceedings but has since terminated its settlement in accordance with its terms.
- (30) *Ontario Counsel* means Siskinds LLP.
- (31) *Ontario Court* means the Ontario Superior Court of Justice.
- (32) *Opt-Out* means a person or entity who would have been a member of a Settlement Class except for his, her, or its timely and valid request for exclusion, or a person or entity who otherwise finally waives or releases its rights as a Settlement Class Member.
- (33) *Opt-Out Refund* means 1.94% of the Purchase Price paid by a Direct Purchaser that opts out of this Settlement Agreement for EPDM purchased from a Settling Defendant, 4.33% of the Purchase Price paid by a Direct Purchaser that opts out of this Settlement Agreement for Polychloroprene purchased from a Settling Defendant, 3.91% of the Purchase Price paid by a Direct Purchaser that opts out of this Settlement Agreement for Polyester Polyols purchased from a Settling Defendant and 3.70% of the Purchase Price paid by a Direct Purchaser that opts out of this Settlement Agreement for Rubber Chemicals purchased from a Settling Defendant.
- (34) *Other Actions* means actions or proceedings, other than the Proceedings, relating to Released Claims commenced by a Settlement Class Member before the deadline for class members to opt out of the Settlement Classes, and includes the Other Quebec Rubber Chemicals Action.
- (35) *Other Quebec Rubber Chemicals Action* means Quebec Court (District of St.-François) Action No. 450-06-000003-040.
- (36) *Out of Class Settlement* means a settlement reached in any jurisdiction in the world between any Direct Purchaser and the Settling Defendants that includes a settlement of claims arising from or relating to the sale of EPDM, Polychloroprene, Rubber Chemicals, or Polyester Polyols in Canada during the applicable Class Period in which a release of the Settling Defendants has been provided prior to the Effective Date and, without

limiting the generality of the foregoing, includes the settlements described in Schedule B hereto.

- (37) *Parties* means the Plaintiffs and the Settling Defendants.
- (38) *Plaintiffs* means the individuals and entities named as plaintiffs in the Proceedings that are set out in Schedule A.
- (39) *Polychloroprene* includes PCP, CR, chloroprene rubber and polychloroprene rubber, and means a type or family of synthetic elastomers produced by free radical initiated emulsion polymerization of chloroprene or emulsion co-polymerization of chloroprene and at least one other co-monomer, and, in some cases, other additives.
- (40) *Polychloroprene Class Period* means September 1, 1999 to April 30, 2002.
- (41) *Polychloroprene Common Issue* in each Polychloroprene Proceeding means: Did the Settling Defendants agree with other Polychloroprene manufacturers to fix, raise, maintain, or stabilize the prices of, or allocate markets and customers for, Polychloroprene in Canada during the Polychloroprene Class Period?
- (42) *Polychloroprene Cooperation Period* means August 1, 1999 to April 30, 2002.
- (43) *Polychloroprene Proceedings* means Ontario Court File No. 46517CP (London) and Quebec Court (Superior Court, District of Montreal) File No. 500-06-000276-051.
- (44) *Polychloroprene Products* means Polychloroprene and products that directly or indirectly contain or are derived from Polychloroprene.
- (45) *Polychloroprene Settling Defendants* means Bayer Inc., Bayer AG, Bayer MaterialScience AG, Bayer MaterialScience LLC and Bayer Corporation.
- (46) *Polyester Polyols* means polyester polyols in whatever form they were sold (including polyurethane systems containing polyester polyols but not polyether polyols).
- (47) *Polyester Polyols Class Period* means February 1, 1998 to December 31, 2002.

- (48) ***Polyester Polyols Common Issue*** in each Polyester Polyols Proceeding means: 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?
- (49) ***Polyester Polyols Cooperation Period*** means February 1, 1998 to December, 31 2002.
- (50) ***Polyester Polyols Proceedings*** means Ontario Court File No. 46488CP (London) and Quebec Court (District of Montreal) File No. 500-06-000252-045.
- (51) ***Polyester Polyols Products*** means Polyester Polyols and products that directly or indirectly contain or are derived from Polyester Polyols.
- (52) ***Polyester Polyols Settling Defendants*** means Bayer Inc., Bayer AG, Bayer MaterialScience LLC, Bayer Corporation, Rhein Chemie Rheineau GmbH and Rhein Chemie Corporation.
- (53) ***Proceedings*** means, individually or collectively, the EPDM Proceedings, the Polychloroprene Proceedings, the Polyester Polyols Proceedings, and the Rubber Chemicals Proceedings.
- (54) ***Purchase Price*** means the net amount, including rebates or any other form of discounts, paid directly to a Settling Defendant by a Direct Purchaser for EPDM, Polychloroprene, Polyester Polyols, and/or Rubber Chemicals purchased in Canada during the Class Period applicable to each product, excluding all other charges including, but not limited to, delivery or shipping charges and taxes.
- (55) ***Quebec Counsel*** means Unterberg, Labelle, Lebeau s.e.n.c. (in respect of the Rubber Chemicals Proceeding in Quebec), Belleau Lapointe S.A. (in respect of the Polyester Polyols Proceeding in Quebec and the Polychloroprene Proceeding in Quebec), and Siskind Desmeules s.e.n.c.r.l. (in respect of the EPDM Proceeding in Quebec).
- (56) ***Quebec Court*** means the Superior Court of Quebec.
- (57) ***Released Claims*** means any and all manner of claims, demands, actions, suits, and causes of action, whether direct or indirect, class, individual, or otherwise in nature, whether

personal or subrogated, damages whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, penalties, and attorneys' fees that Releasors, or any one of them, whether directly, indirectly, representatively, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have against the Releasees, whether known or unknown, relating in any way to any conduct by the Releasees prior to the date of execution of this Agreement concerning the pricing, selling, discounting, marketing, manufacturing, and/or distributing of EPDM Products, Polychloroprene Products, Polyester Polyols Products, and/or Rubber Chemicals Products in Canada. The Released Claims include but are not limited to claims related to or arising out of the facts, occurrences, transactions or other matters alleged in the Proceedings and any claims which have been asserted or could have been asserted in Canada or elsewhere, as a result of the purchase of EPDM Products, Polychloroprene Products, Polyester Polyols Products or Rubber Chemicals Products in Canada. However, nothing herein shall be construed to release any claims arising from any alleged product defect, breach of contract, or similar claim between the Parties relating to EPDM Products, Polychloroprene Products, Polyester Polyols Products or Rubber Chemicals Products.

- (58) *Releasees* means, jointly and severally, individually and collectively, the Settling Defendants, LANXESS AG, LANXESS Corporation, and LANXESS Deutschland 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.
- (59) *Releasors* means, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members and their respective past and present parents, subsidiaries, affiliates, officers, directors, employees, agents, attorneys, servants, representatives (and 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.

- (60) ***Rubber Chemicals*** means accelerators (primary accelerators, secondary, semi-ultra or ultra accelerators, retardants, vulcanizing activators and agents, including without limitation sulfenamides, sulfenimides, thiazoles, thiazole sulfenamides, dithiocarbamates, thiurams, xanthates, sulfides, disulfides, aldehyde amines, guanidines, thioureas, dithiophosphates, and cyclic ester of dithiocarbamic acid); antioxidants and antiozonants (including without limitation paraphenylenediamines, para-phenylenediamine blends, quinolines, hydroquinones, hindered phenols, diphenylamines, monofunctional and oligofunctional secondary aromatic amines, monofunctional and oligofunctional substituted phenols, and mecapto compounds); and waxes, blowing agents, vulcanization retardants, pre-vulcanization inhibitors, polymerization regulators, shortstops, peptizing agents, post-vulcanization stabilizers, anti-reversion agents, treated cellulose reinforcement materials, cross-linking and bonding agents, latex stabilizers, heat sensitizers, certain plasticizers and processing agents, fillers, sulfur silanes, and metal soaps used in the processing and/or protection of rubber.
- (61) ***Rubber Chemicals Class Period*** means July 1, 1995 to December 31, 2001.
- (62) ***Rubber Chemicals Common Issue*** in each Rubber Chemicals Proceeding means: Did the Settling Defendants agree with other Rubber Chemicals manufacturers to fix, raise, maintain, or stabilize the prices of, or allocate markets and customers for, Rubber Chemicals in Canada during the Rubber Chemicals Class Period?
- (63) ***Rubber Chemicals Cooperation Period*** means July 1, 1995 to December 31, 2001.
- (64) ***Rubber Chemicals Proceedings*** means Ontario Court File No. 46460CP (London), Quebec Court (District of Montreal) Action No. 500-06-000234-043, and British Columbia Court File No. S050984 (Vancouver Registry).
- (65) ***Rubber Chemicals Products*** means Rubber Chemicals and products that directly or indirectly contain or are derived from Rubber Chemicals.
- (66) ***Rubber Chemicals Settling Defendants*** means Bayer Inc., Bayer AG, Bayer MaterialScience AG, Bayer MaterialScience LLC and Bayer Corporation.
- (67) ***Settlement Agreement*** means this agreement, including the recitals and schedules.

- (68) ***Settlement Amount*** means CAN \$1,872,724 (CAN \$691,369.18 for the EPDM Proceedings, CAN \$628,517.43 for the Polychloroprene Proceedings, CAN \$140,389.42 for the Polyester Polyols Proceedings, and CAN \$412,447.97 for the Rubber Chemicals Proceedings).
- (69) ***Settlement Class*** means, in respect of each Proceeding, the settlement class defined in Schedule A.
- (70) ***Settlement Class Member*** means a member of a Settlement Class who does not timely and validly opt out of that Settlement Class in accordance with orders of the Courts or enter into an Out of Class Settlement.
- (71) ***Settlement Credits*** means 1.94% of the Purchase Price paid by a Direct Purchaser who has entered into an Out of Class Settlement for EPDM purchased from a Settling Defendant, 4.33% of the Purchase Price paid by a Direct Purchaser who has entered into an Out of Class Settlement for Polychloroprene purchased from a Settling Defendant, 3.91% of the Purchase Price paid by a Direct Purchaser who has entered into an Out of Class Settlement for Polyester Polyols purchased from a Settling Defendant, and 3.70% of the Purchase Price paid by a Direct Purchaser who has entered into an Out of Class Settlement for Rubber Chemicals purchased from a Settling Defendant.
- (72) ***Settling Defendants*** means the EPDM Settling Defendants, the Polychloroprene Settling Defendants, the Polyester Polyols Settling Defendants and the Rubber Chemicals Settling Defendants.

SECTION 2 - CONDITION PRECEDENT: COURT APPROVAL

This Settlement Agreement shall be null and void and of no force and effect unless the Ontario Court, the BC Court, and the Quebec Court each approve this Settlement Agreement in the Proceedings commenced in their respective jurisdictions, and the orders so given have become Final Orders and the Effective Date has occurred.

SECTION 3 - SETTLEMENT APPROVAL

3.1 Best Efforts

The Parties shall use their best efforts to effectuate this Settlement and to secure the prompt, complete, and final dismissal with prejudice of the Proceedings as against the Settling Defendants.

3.2 Motions for Approval

(1) The Plaintiffs shall file motions before the Courts for orders certifying or authorizing each of the Proceedings commenced in their respective jurisdictions as a class proceeding (for settlement purposes only) and approving this Settlement Agreement no later than four months after the date on which this Settlement Agreement is executed by all Parties.

(2) The orders referred to in paragraph 3.2(1) shall be in a form to be agreed upon by Class Counsel and counsel for the Settling Defendants and approved by the Courts and the orders shall mirror each other in substance and, where possible, form.

(3) Except as required by the Courts, Class Counsel agree not to take any steps to prosecute the Proceedings or any one of the Proceedings as against the Settling Defendants on or after the date of execution of this Settlement Agreement and until the Effective Date of this Settlement Agreement, other than those steps provided for or required by this Settlement Agreement and those steps that are necessary to secure the Courts' approval of this Settlement Agreement.

3.3 Pre-Motion Confidentiality

Until the motions required by section 3.2 are filed, this Settlement Agreement and all of its terms shall be kept confidential and shall not be disclosed by either the Plaintiffs, the Settling Defendants, or their respective counsel, without the prior written consent of counsel for the Settling Defendants or Class Counsel, respectively, except as may be required for the purposes of financial and regulatory reporting or the preparation of financial records (including tax returns and financial statements) or regulatory filings or as otherwise required by law.

3.4 Sequence of Motions

The Plaintiffs in Quebec and British Columbia shall not proceed with motions to approve this Settlement Agreement in the Proceedings commenced in their respective jurisdictions unless and until the Ontario Court approves this Settlement Agreement in all of the Proceedings

commenced in Ontario. The approval motions may be filed in Quebec and British Columbia before the Ontario Court has approved this Settlement Agreement, but Quebec Counsel and BC Counsel agree to seek an adjournment of any approval hearing to permit the Ontario Court to first render its decision on the motion for approval brought before it.

SECTION 4 - SETTLEMENT BENEFITS

4.1 Payment of Settlement Amount

(1) The Settling Defendants agree to pay the Settlement Amount less the Settlement Credits in accordance with this Settlement Agreement, in full satisfaction of all of the Released Claims against the Releasees.

(2) The Settling Defendants shall have no obligation to pay any amount in addition to the amount set out in paragraph 4.1(1), for any reason, pursuant to or in furtherance of this Settlement Agreement.

(3) The Settling Defendants shall pay the amount set out in paragraph 4.1(1) on or before the Deposit Date to Ontario Counsel for deposit into the Account.

(4) Ontario Counsel shall maintain the Account as provided for in this Settlement Agreement and shall not pay out any monies from the Account, except in accordance with the provisions of this Settlement Agreement, without an order of the Courts made on notice to or on consent of the Parties.

(5) At least five (5) business days prior to the Deposit Date, the Settling Defendants will provide Class Counsel with written confirmation confirming: (i) the fact of the settlement with each Direct Purchaser for which the Settling Defendants are seeking a Settlement Credit; (ii) the fact that the settlement includes all purchases of EPDM, Polychloroprene, Polyester Polyols, and/or Rubber Chemicals from the Settling Defendants by the Direct Purchaser in Canada during the applicable Class Period; and (iii) the fact that the Settling Defendants have been provided a full and final release of all claims relating to those purchases in Canada from the Settling Defendants and their affiliates.

(6) If the Settling Defendants enter into any Out of Class Settlements after the Deposit Date but prior to the Effective Date, the Claims Administrator shall pay to the Settling Defendants the

amount of such further applicable Settlement Credits from the Settlement Amount together with any interest actually earned on such amount in the Account.

4.2 Taxes and Interest

(1) All interest earned on the Settlement Amount shall become and remain part of the Account.

(2) Ontario Counsel shall bear all risks related to the investment of the Settlement Amount in the Account.

(3) All funds held by Ontario Counsel shall be deemed and considered to be in *custodia legis* of the Courts, and shall remain subject to the jurisdiction of the Courts until such time as such funds shall be distributed pursuant to the Settlement Agreement and/or further order of the Courts.

(4) Ontario Counsel hereby indemnifies, defends, and holds harmless the Settling Defendants from and against any harm or injury suffered by reason of the use, misuse, erroneous disbursement, or other action taken or failure to act by Ontario Counsel with the Settlement Amount or funds in the Account not strictly in accordance with the provisions of this Settlement Agreement or any implementing order of the Courts.

(5) Subject to paragraph 4.2(6), all taxes payable on any interest which accrues on the Settlement Amount in the Account or otherwise in relation to the Settlement Amount shall be the responsibility of the Settlement Class. Ontario Counsel shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Account.

(6) The Settling Defendants shall have no responsibility to make any tax filings relating to the Account and will have no responsibility to pay tax on any income earned by the Settlement Amount or pay any taxes on the monies in the Account, unless this Settlement Agreement is not approved, in which case the interest earned on the applicable Settlement Amount in the Account shall be returned to the Settling Defendants who, in such case, shall be responsible for the payment of all taxes on such interest.

SECTION 5 - RELEASES AND DISMISSALS

5.1 Release of Releasees

Upon the Effective Date, the Releasors forever and absolutely release, acquit, and discharge the Releasees from the Released Claims. Notwithstanding the above, a person or entity who would have been a member of a Settlement Class except for his, her or its opting out of a Proceeding in a timely and valid manner is not a "Releasor" with respect to that Proceeding only.

5.2 Covenant Not To Sue

Notwithstanding section 5.1, for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasors do not release the Releasees, but instead covenant and undertake not to make any claim in any way or to threaten, commence, or continue any proceeding in any jurisdiction against the Releasees in respect of, or in relation to, the Released Claims.

5.3 Continuance of Proceedings

The provisions of this Settlement Agreement are without prejudice to the right of the Releasors to continue the Proceedings against the Non-Settling Defendants or unnamed co-conspirators.

5.4 Dismissal of Releasees

The Proceedings shall be dismissed with prejudice as against the Releasees, without costs.

5.5 Dismissal of Other Actions

Each Settlement Class Member shall be deemed to consent to the dismissal, without costs and with prejudice, of his, her, or its Other Actions, including the Other Quebec Rubber Chemicals Action, against the Releasees.

SECTION 6 - OPTING-OUT

6.1 Procedure

(1) The procedure for opting out of this Settlement Agreement including timing and notice requirements and the information required of the person seeking to opt out, shall be agreed to by

the Parties and approved by the Courts as part of the Final Orders. Class Members must opt out of each Proceeding separately.

(2) Class Counsel shall, by motion, on notice to the Settling Defendants, submit a notice and Plan of Distribution for approval by the Courts at the appropriate time. This notice shall require that on a date, at least fifteen (15) days prior to the Claims Deadline, members of the Settlement Classes that do not want to participate in the Settlement Classes must submit a timely and valid request for exclusion from the Settlement Classes ("Opt-Out Deadline").

6.2 Opt-Out Report

(1) Within thirty (30) days after the expiration of the Opt-Out Deadline, the Settling Defendants and Class Counsel shall be provided with a report from the Claims Administrator advising as to the names of any Opt-Outs, the reasons for their opting out, if known, the best estimate of the total Purchase Price paid by each Opt-Out for purchases from a Settling Defendant, and a copy of all information provided by that Opt-Out in the opting out process ("Opt-Out Report").

(2) Within ten (10) business days of the day that the Claims Administrator provides the Settling Defendants with the Opt-Out Report, the Settling Defendants and Class Counsel shall agree on the Opt-Out Refund. In the event of a dispute about the Opt-Out Refund calculation, the Parties shall refer the issue to binding arbitration as is provided for in section 6.5.

6.3 Opt-Out Refund

The Claims Administrator shall pay to the Settling Defendants the Opt-Out Refund, together with any interest actually earned on such amount in the Account, within ten (10) days of the Settling Defendants' and Class Counsel's agreement as to the amount of the Opt-Out Refund, as provided for in paragraph 6.2(2), or, in the event of a dispute, within ten (10) days of resolution of the dispute. Provided, however, that the Opt-Out Refund must be paid to the Settling Defendants before any payments are made to the Settlement Class Members from the Settlement Fund. In no event shall the total Opt-Out Refund paid to the Settling Defendants exceed CAN \$1,218,179.20 excluding interest.

6.4 Disagreement between Parties Relating to Opt-Out and Out of Class Settlement Calculations

Any dispute relating to the total Purchase Price paid for any product by a person who has opted out of this Settlement Agreement or any dispute relating to a Settlement Credit claimed by the Settling Defendants shall be referred to binding arbitration governed by the provisions of the Ontario *Arbitration Act, 1991*, S.O. 1991, c. 17.

SECTION 7 – DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST

7.1 Distribution Plan

(1) The Settlement Amount shall be held by Ontario Counsel for the benefit of the Settlement Class Members and shall be transferred by Ontario Counsel to the Claims Administrator for payment in accordance with a plan approved by the Courts (the "Plan of Distribution"). Class Counsel shall, by motion, on notice to the Settling Defendants, submit a notice and Plan of Distribution for approval by the Courts at the appropriate time.

7.2 No Responsibility for Administration or Fees

In no event shall any of the Settling Defendants have any responsibility, financial obligations, or liability whatsoever with respect to the investment, distribution, use, or administration of monies in the Account including, but not limited to, the costs and expenses of such investment, distribution, use, and administration, Administration Expenses and Class Counsel Fees.

SECTION 8 – COOPERATION PROVISIONS

(1) The Settling Defendants' cooperation, as set forth below, shall be limited to the production of information, testimony, and/or Documents that are not protected from disclosure by the solicitor-client privilege, work product doctrine, joint defense privilege, or any other applicable privilege or doctrine. Moreover, nothing herein is intended (a) to prohibit any current or former officer, director, employee, or agent of Settling Defendants from asserting, where appropriate, any rights under the Charter of Rights and Freedoms or any Canadian statute, or any solicitor-client privilege held by him in his individual capacity; (b) to require the Settling Defendants to waive or breach any solicitor-client privilege that it has now or may in the future have with respect to information, testimony, or Documents; (c) to require the disclosure of information, testimony, and/or Documents reflecting the impressions or thought processes of the

Settling Defendants' lawyers or other work product protected from disclosure by the work product doctrine or any other applicable privilege; or (d) to require the production or disclosure of any information, testimony, or Documents created by or for government authorities in connection with any investigation(s) relating to EPDM, Polychloroprene, Polyester Polyols and/or Rubber Chemicals.

(2) Within 30 days of the Effective Date, and to the extent not previously produced, the Settling Defendants shall produce transaction data in electronic format as follows: the Polychloroprene Settling Defendants will produce transaction data for sales to persons or entities in Canada of Polychloroprene during the Polychloroprene Class Period, the Polyester Polyols Settling Defendants will produce transaction data for sales to persons or entities in Canada of Polyester Polyols during the Polyester Polyols Class Period, the Rubber Chemicals Settling Defendants will produce transaction data for sales to persons or entities in Canada of Rubber Chemicals during the Rubber Chemicals Class Period and the EPDM Settling Defendants will produce transaction data for sales to persons or entities in Canada of EPDM from January 1, 1997 to December 31, 2001, inclusive.

(3) Within 30 days of the Effective Date, the Settling Defendants shall, to the extent not previously produced, promptly produce the following categories of non-privileged Documents in their possession, custody, or control: (i) all price announcements for Rubber Chemicals, EPDM, Polychloroprene and Polyester Polyols in Canada during the respective Cooperation Periods; and (ii) all Documents relating to or reflecting actual or potential communications between two or more Defendants regarding the prices at which or the customers to whom Rubber Chemicals, EPDM, Polychloroprene and Polyester Polyols would be or had been sold in Canada during the respective Cooperation Periods.

(4) Following the Effective Date, the Settling Defendants shall promptly provide full cooperation to Class Counsel with respect to discovery and gathering evidentiary materials relating to the Plaintiffs' claims in the Proceedings, as set forth herein:

(a) The Settling Defendants shall make reasonable efforts to (i) make available for conferences with Plaintiffs' counsel and/or experts in Canada, upon reasonable notice and at the Settling Defendants' expense, current and former directors, officers, and employees of the Settling Defendants, including any predecessor entities, who are believed to have knowledge

regarding the Plaintiffs' claims as alleged in the Proceedings; (ii) provide information to the Plaintiffs regarding the Plaintiffs' claims as alleged in the Proceedings in personal interviews; (iii) take necessary steps to provide authentication of non-privileged Documents that the Plaintiffs intend to use at trial; (iv) produce to Plaintiffs, upon reasonable and specific requests, non-privileged Documents relevant to the Plaintiffs' claims as alleged in the Proceedings; and (v) prepare statutory declarations and/or affidavits and/or provide testimony, upon reasonable notice and at the Settling Defendants' expense, by current and former directors, officers, and employees of the Settling Defendants at deposition and/or at trial. As to former directors, officers, and employees, the Settling Defendants shall make every reasonable effort to have such individuals appear after the Effective Date for interviews, depositions, and trial testimony under the same conditions as for the current directors, officers, and employees of the Settling Defendants. Any persons made available under this Paragraph shall be made available at a mutually agreeable time and place.

(b) The Settling Defendants also agree to produce at trial, or through affidavits or statutory declarations, representatives qualified to establish for admission into evidence any of the Settling Defendants' non-privileged Documents produced or to be produced in the litigation, including the sales information set out in Section 8(3) above, and any other non-privileged Documents of the Settling Defendants, and, to the extent possible, any Documents produced by any of the Settling Defendants' alleged co-conspirators.

(c) The Settling Defendants also agree that their counsel will meet as often as is reasonable and necessary with Class Counsel after the Effective Date to identify non-privileged Documents and people relating to the violations of the Competition Act alleged in the Proceedings, and the potential culpability of the Non-Settling Defendants and unnamed co-conspirators.

(5) If Final Approval is not obtained from each Court, the Plaintiffs shall, if requested by the Settling Defendants to do so, return to the Settling Defendants or destroy, and provide the Settling Defendants with a written certification by Class Counsel of such destruction, all Documents or other materials provided to the Plaintiffs by the Settling Defendants in the

Proceedings solely pursuant to this paragraph. Nothing contained in this subparagraph shall be construed to require the Plaintiffs or their counsel to return any of their work product.

(6) All information and materials provided by the Settling Defendants to Class Counsel regarding Rubber Chemicals, EPDM, Polychloroprene and Polyester Polyols shall be used only in connection with the Proceedings and shall not be used directly or indirectly for any other purpose. No information provided to Class Counsel pursuant to this Settlement Agreement may be disclosed to or shared with any other person or party (other than co-counsel or experts retained in the course of the Proceedings), including absent Settlement Class Members, Opt-Outs, parties entering into Out of Class Settlements and counsel for Opt-Outs or parties entering into Out of Class Settlements or absent Class Members, except as part of non-privileged Documents or testimony filed with the Court or produced at a hearing or trial of the Proceedings.

(7) The Settling Defendants' obligations to cooperate shall not be affected by the Release provisions of this Settlement Agreement. The Settling Defendants' obligations to cooperate shall cease as of the date that final judgment has been rendered in the Proceedings against all Defendants.

SECTION 9 – TERMINATION OF SETTLEMENT AGREEMENT

9.1 Effect of Termination Pursuant to Section 2 Generally

Except as provided in sections 9.3 - 9.4, if this Settlement Agreement is terminated, it shall have no further force and effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

9.2 If Settlement Agreement is Terminated Pursuant to Section 2

(1) If this Settlement Agreement is terminated pursuant to section 2:

- (a) no motion to certify or authorize any of the Proceedings as a class action on the basis of this Settlement Agreement or to approve this Settlement Agreement shall proceed; and
- (b) any order certifying or authorizing a Proceeding as a class action on the basis of the Settlement Agreement or approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and anyone shall be estopped from asserting otherwise.

9.3 Allocation of Monies in the Account Following Termination

If the Settlement Agreement is terminated pursuant to section 2, Ontario Counsel shall return to the Settling Defendants all monies in the Account, including interest, within twenty (20) business days of a Final Order not being granted by the Ontario Court, the Quebec Court, or the BC Court. The Settling Defendants and Plaintiffs expressly reserve all of their respective rights to the extent that this Settlement Agreement is terminated pursuant to section 2.

9.4 Survival of Provisions After Termination

(1) If this Settlement Agreement is terminated for any reason, the provisions of sections 4.2, 8(5), 9, 11.2, 13.2(5), 13.3, 13.4, 14.1, and 14.2 , and the definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

(2) A modification or reversal on appeal of any amount of Class Counsel Fees awarded by the Courts or any Plan of Distribution of the Settlement Amount shall not be deemed a modification of all or part of the terms of the Settlement Agreement or the Final Orders.

(3) The Settling Defendants and Plaintiffs expressly reserve all of their respective rights to the extent that this Settlement Agreement does not become effective.

SECTION 10 - BAR ORDER AND OTHER CLAIMS

10.1 Bar Order

A bar order shall be granted by each of the Courts providing for the following:

- (a) all claims for contribution, indemnity, or other claims, 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 in the Proceedings, by any Non-Settling Defendant, a Defendant that has previously settled claims in the Proceedings, or any other person or party, against a Releasee, are barred, prohibited, and enjoined in accordance with the terms of this section (unless such claim is made in respect of a claim by a person who has validly opted out of a Settlement Class);

- (b) the Plaintiffs shall restrict their joint and several claims against the Non-Settling Defendants such that the Plaintiffs 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;
- (c) a Non-Settling Defendant may seek an order from a Court, by motion and on notice to counsel of record for the Settling Defendants, providing for discovery from some or all of the Settling Defendants as deemed appropriate by the Court (this provision shall under no circumstances be construed to constrain the Settling Defendants from asserting any defence or opposing such a discovery request); and
- (d) a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 10.1(c) on a Settling Defendant by service on counsel of record for the Settling Defendants in the Proceedings.

10.2 Claims Against Other Entities Reserved

Except as provided herein, this Settlement Agreement does not settle, compromise, release, or limit in any way whatsoever any claim by Settlement Class Members against any persons other than the Releasees.

SECTION 11 - CERTIFICATION OR AUTHORIZATION FOR SETTLEMENT ONLY

11.1 Settlement Class and Common Issue

- (1) The Parties agree that the Proceedings shall be certified or authorized as class proceedings solely for purposes of settlement of the Proceedings and the approval of this Settlement Agreement by the Courts.
- (2) The Plaintiffs agree that, in the motions for certification or authorization of the Proceedings as class proceedings and for the approval of this Settlement Agreement, the only common issue that they will seek to define is the Common Issue and the only classes that they will assert are the Settlement Classes. The Plaintiffs acknowledge that the Settling Defendants agree to the definition of the Common Issue for purposes of settlement only.

11.2 Certification or Authorization Without Prejudice

In the event this Settlement Agreement is not approved by the Ontario Court, the BC Court, and the Quebec Court the Parties agree that any prior certification or authorization of an applicable Proceeding as a class proceeding, including the definition of the Settlement Class and the statement of the Common Issue, shall be without prejudice to any position that any of the Parties may later take on any issue in the Proceedings or any other litigation.

SECTION 12 - CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES

(1) Class Counsel may seek the Courts' approval to pay Class Counsel Fees and Administration Expenses from the monies in the Account.

(2) Subject to paragraph 12(3), Class Counsel Fees and Administration Expenses may be paid out of the Account after the Effective Date.

(3) Notwithstanding paragraph 12(2) and subject to paragraph 12(4), Class Counsel may pay the costs of the notices referred to in section 13 of this Settlement Agreement out of the Account, in an amount not to exceed CAN \$50,000 in total for all notices and only after those notices have been agreed to by the Parties and approved by the Courts.

(4) In the event that the Plaintiffs reach a settlement with one or more of the Non-Settling Defendants and the notices referred to in section 13 apply to both this Settlement Agreement and such additional agreements reached by the Plaintiffs, the costs of the notices shall be shared by all Defendants to whom the notices apply, pro rata based on sales of EPDM, Polychloroprene, Polyester Polyols, and/or Rubber Chemicals during the Class Periods, but in no event shall the costs paid out of the Account exceed CAN \$50,000 in total for all notices.

SECTION 13 - ADMINISTRATION AND IMPLEMENTATION

13.1 Mechanics of Administration

Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement shall be determined by the Courts on motions brought by Class Counsel.

13.2 Information and Assistance

(1) The Settling Defendants will make reasonable efforts to compile a list of the names and addresses of Direct Purchasers and Distributors in Canada who purchased EPDM,

Polychloroprene, Polyester Polyols, and/or Rubber Chemicals in Canada from them during the respective Class Periods.

(2) The information required by paragraph 13.2(1) shall be delivered to Class Counsel within thirty (30) business days of the execution of this Settlement Agreement by all Parties, or at least five (5) days in advance of publication of the notice of the approval hearings before the Courts, whichever date comes first.

(3) Ontario Counsel shall use the information provided under paragraph 13.2(2) to advise Direct Purchasers and Distributors of this Settlement Agreement and the date of the approval hearings before the Courts.

(4) Each Settling Defendant will make reasonable best efforts to provide the Purchase Price paid for a product by each of its Direct Purchasers and Distributors in Canada during the applicable Class Period. This information shall be provided to the Claims Administrator at least five (5) days in advance of publication of the notice of approval of this Settlement Agreement and shall be used to facilitate the claims administration process eventually established in accordance with section 7 of this Settlement Agreement.

(5) If this Settlement Agreement is terminated, all information provided by the Settling Defendants pursuant to section 13.2 shall be returned to them forthwith, and no record of the information so provided shall be retained by Class Counsel in any form whatsoever.

13.3 Notices Required

The proposed Settlement Classes shall be given notice of (i) hearings at which the Courts will be asked to approve the Settlement Agreement; (ii) the certification or authorization of the Proceedings as class proceedings and the approval of this Settlement Agreement; and (iii) hearings at which the Courts will be asked to approve Plans for Distribution of the Settlement Amount or as otherwise ordered by the Courts..

13.4 Form and Distribution of Notices

The form of the notices referred to in section 13.3 and the manner of their publication and distribution shall be as agreed to by the Parties and approved by the Courts.

SECTION 14 - EFFECT OF SETTLEMENT

14.1 No Admission of Liability

The Parties expressly reserve all of their rights if this Settlement Agreement does not become effective. Further, the Parties agree that, whether or not this Settlement Agreement is finally approved, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions, and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any statute or law, or of any wrongdoing or liability by any Settling Defendant, or of the truth of any of the claims or allegations contained in the Proceedings or any other pleading filed by the Plaintiffs.

14.2 Agreement Not Evidence

The Parties agree that, whether or not it is finally approved, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions, and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence, or received in evidence in any pending or future civil, criminal, or administrative action or proceeding, except in a proceeding to enforce this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law.

14.3 No Further Litigation

(1) Except as provided in this section, no Class Counsel, nor anyone currently or hereafter employed by, associated with, or a partner with Class Counsel, may directly or indirectly participate or be involved in, or in any way assist with respect to, any claim made or action commenced by any person that relates to or arises from the Released Claims. Moreover, these persons may not divulge to anyone, for any purpose, any information obtained in the course of the Proceedings or the negotiation and preparation of this Settlement Agreement, except to the extent such information is otherwise publicly available or otherwise ordered by a court.

(2) Paragraph 14.3(1) does not apply to the involvement of any person in the continued prosecution of the Proceedings against any Non-Settling Defendants.

SECTION 15 – MISCELLANEOUS

15.1 Motions for Directions

- (1) Any Class Counsel or Settling Defendant may apply to the Courts for directions in respect of the implementation and administration of this Settlement Agreement.
- (2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

15.2 Releasees Have No Liability for Administration

The Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.

15.3 Headings, etc.

In this Settlement Agreement:

- (a) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
- (b) the terms "this Settlement Agreement", "the Settlement Agreement", "hereof", "hereunder", and similar expressions refer to this Settlement Agreement and not to any particular section or portion of this Settlement Agreement.

15.4 Ongoing Jurisdiction

- (1) Each of the Courts shall retain exclusive jurisdiction over all matters relating to the implementation and enforcement of this Settlement Agreement as it relates to each Proceeding.
- (2) No Court shall make any order or give any direction in respect of any matter of shared jurisdiction unless that order or direction is conditional upon a complementary order or direction being made or given by the other Court(s) with which it shares jurisdiction over that matter.

15.5 Governing Law

This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.

15.6 Entire Agreement

This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes any and all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle, and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions, or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein. This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto, and any such modification or amendment must be approved by the Courts with jurisdiction over the matter to which the amendment relates.

15.7 Binding Effect

This Settlement Agreement shall be binding upon, and inure to the benefit of, the Plaintiffs, Settlement Class Members, the Settling Defendants, the Releasees, and all of their respective successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiffs shall be binding upon all Releasors, and each and every covenant and agreement made herein by the Settling Defendants shall be binding upon all of the Releasees.

15.8 Survival

The representations and warranties contained in this Settlement Agreement shall survive its execution and implementation.

15.9 Counterparts

This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

15.10 Negotiated Agreement

This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained or not contained in previous

drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

15.11 Language

The Parties acknowledge that they have consented that this Settlement Agreement and all related documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais. Nevertheless, the Settling Defendants shall prepare a French translation of the Settlement Agreement (including Schedule A) at their own expense. The Parties agree that such translation is for convenience only. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall be considered.

15.12 Transaction

The present Agreement constitutes a transaction in accordance within the Civil Code of Quebec, including Article 2631 thereof, and the Parties are hereby renouncing any errors of fact, of law, and/or of calculation.

15.13 Recitals

The recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

15.14 Schedules

The Schedules annexed hereto form part of this Settlement Agreement.

15.15 Acknowledgements

Each of the Parties hereby affirms and acknowledges that:

- (a) he, she, or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her, or the Party's representative by his, her, or its counsel;
- (c) he, she, or the Party's representative fully understands each term of the Settlement Agreement and its effect; and

- (d) no Party has relied upon any statement, representation, or inducement (whether material, false, negligently made, or otherwise) of any other Party with respect to the first Party's decision to execute this Settlement Agreement.

15.16 Authorized Signatures

Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement.

15.17 Notice

Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication, or document shall be provided by email, facsimile, or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For Plaintiffs and for Class Counsel:

Charles M. Wright
Siskinds^{LLP}
Barristers and Solicitors
680 Waterloo Street
London, ON N6A 3V8
Telephone: 519-672-2121
Facsimile: 519-672-6065
Email: charles.wright@siskinds.com

Patrick Poyner
Poyner Baxter^{LLP}
Lonsdale Quay Plaza
#408-145 Chadwick Court
North Vancouver, BC V7M 3K1
Telephone: 604-988-6321
Facsimile: 604-988-3632
Email: ppoyner@poynerbaxter.com
Solicitors for the EPDM BC Class and the
Rubber Chemicals BC Class

François Lebeau
Unterberg, Labelle, Lebeau s.e.n.c.
1980 Sherbrooke St. West
Suite 700
Montreal, QC H3H 1E8
Telephone: 514-934-0841
Facsimile: 514-937-6547
Email: contact@ullnet.com
Solicitors for the Rubber Chemicals Quebec
Class

Simon Hébert
Siskinds Desmeules s.e.n.c.r.l.
Les promenades du Vieux-Quebec
43 rue Buade, bureau 320
Quebec City, QC G1R 4A2
Telephone: 418-694-2009
Facsimile: 418-694-0281
Email: simon.hebert@siskindsdesmeules.com
Solicitors for the EPDM Quebec Class

Maxime Nasr

**Belleau Lapointe S.A.
306 Place d'Youville
Suite B-10
Montreal, QC H2Y 2B6**

Telephone: 514-987-6700

Facsimile: 514-987-6886

Email: mnasr@belleaulapointe.com

Solicitors for the Polychloroprene Quebec
Class and the Polyester Polyols Quebec Class

For Settling Defendants:

Susan E. Paul

**Fraser Milner Casgrain ^{LLP}
1 First Canadian Place
100 King Street West
Toronto, ON M5X 1B2**

Telephone: 416-863-4511

Facsimile: 416-863-4592

Email: susan.paul@fmc-law.com

The Parties have executed this Settlement Agreement as of the date on the cover page.

**STONE PARADISE INC., LUIGI DEL
GUERICO O/A WESTOWN SHOE CLINIC,
R.G. GIBSON & SONS LTD., R.N. PARTON
LTD., JEAN-CLAUDE FLUET, OPTION
CONSOMMATEURS, UNION DES
CONSOMMATEURS, M. FRANÇOIS HÉBERT**

By:



Name: Siskinds^{LLP}

Title: Ontario Counsel

By:



Name: Poyner Baxter LLP
Title: British Columbia Counsel for the
EPDM BC Class and the Rubber Chemicals
BC Class

By:

Name: Unterberg, Labelle, Lebeau s.e.n.c.
Title: Quebec Counsel for the Rubber
Chemicals Quebec Class

By:

Name: Belleau Lapointe S.A.
Title: Quebec Counsel for the
Polychloroprene Quebec Class and the
Polyester Polyols Quebec Class

By:

Name: Siskinds, Desmeules
Title: Quebec Counsel for the EPDM Quebec
Class

**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**

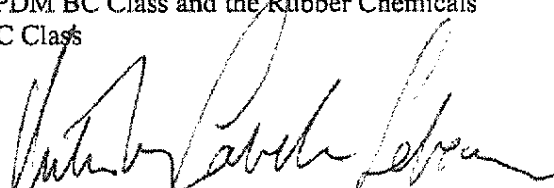
By:

Name: Fraser Milner Casgrain LLP
Title: Canadian Counsel

By:

Name: Poyner Baxter LLP
Title: British Columbia Counsel for the
EPDM BC Class and the Rubber Chemicals
BC Class

By:



Name: Unterberg, Labelle, Lebeau s.e.n.c.
Title: Quebec Counsel for the Rubber
Chemicals Quebec Class

By:

Name: Belleau Lapointe S.A.
Title: Quebec Counsel for the
Polychloroprene Quebec Class and the
Polyester Polyols Quebec Class

By:

Name: Siskinds, Desmeules
Title: Quebec Counsel for the EPDM Quebec
Class

**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**

By:

Name: Fraser Milner Casgrain LLP
Title: Canadian Counsel

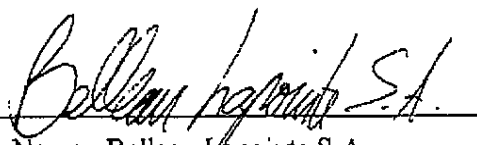
By:

Name: Poyner Baxter LLP
Title: British Columbia Counsel for the
EPDM BC Class and the Rubber Chemicals
BC Class

By:

Name: Unterberg, Labelle, Lebeau s.e.n.c.
Title: Quebec Counsel for the Rubber
Chemicals Quebec Class

By:


Name: Belleau Lapointe S.A.
Title: Quebec Counsel for the
Polychloroprene Quebec Class and the
Polyester Polyols Quebec Class

By:

Name: Siskinds, Desmeules
Title: Quebec Counsel for the EPDM Quebec
Class

**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**

By:

Name: Fraser Milner Casgrain LLP
Title: Canadian Counsel

By: _____

Name: Poyner Baxter LLP
Title: British Columbia Counsel for the
EPDM BC Class and the Rubber Chemicals
BC Class

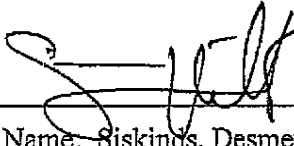
By: _____

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Class

**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**

By: _____

Name: Fraser Milner Casgrain LLP
Title: Canadian Counsel

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Name: Foyner Baxter LLP
 Title: British Columbia Counsel for the
 EPDM BC Class and the Rubber Chemicals
 BC Class

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 Chemicals Quebec Class

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 CORPORATION**

By:

Fraser Milner Casgrain LLP

 Name: Fraser Milner Casgrain LLP
 Title: Canadian Counsel

SCHEDULE A - PROCEEDINGS

| Product | Proceeding | Defendants | Settlement Class |
|----------------|--|--|---|
| EPDM | Ontario Superior Court of Justice Court File No. 45604CP | Bayer Inc., Bayer AG, Bayer Material Science AG, Bayer Material Science LLC, Bayer Corporation, Crompton Corporation, Crompton Co., Crompton Canada Corporation, Uniroyal Chemical Company Inc., Dow Chemical Company, Dow Chemical Canada Inc., DuPont Dow Elastomers LLC, E.I. DuPont de Nemours and Company, E.I. DuPont Canada Company, DSM Elastomers Europe B.V., DSM Copolymer Inc., Exxon Mobil Chemical Company, Polimeri Europa S.r.l., Polimeri Europa S.p.A., Polimeri Europa Americas Inc., Enichem S.p.A., Enichem Americas Inc., Syndial S.p.A. | All persons in Canada who purchased EPDM Products in Canada during the EPDM Class Period, except the Excluded Persons and persons who are included in the British Columbia action and in the Quebec action. |

| Product | Proceeding | Defendants | Settlement Class |
|----------------|---|--|--|
| | Supreme Court of British Columbia, Vancouver Registry, Court File No. 5050982 | Bayer Inc., Bayer A.G., Bayer Material Science A.G., Bayer Material Science LLC, Bayer Corporation, Crompton Corporation, Crompton Co./Cie, Crompton Canada Corporation, Uniroyal Chemical Company Inc., Dow Chemical Company, Dow Chemical Canada Inc., DuPont Dow Elastomers LLC, E.I. DuPont de Nemours and Company, E.I. DuPont Canada Company, DSM Copolymer Inc., DSM Elastomers Europe B.V., Exxon Mobil Chemical Company, Polimeri Europa S.r.l., Polimeri Europa S.p.A., Polimeri Europa Americas Inc., Enichem S.p.A., Enichem Americas Inc., Syndial S.p.A. | All persons in British Columbia who purchased EPDM Products in British Columbia during the EPDM Class Period, except the Excluded Persons. |

| Product | Proceeding | Defendants | Settlement Class |
|------------------------|--|--|---|
| | <p>Superior Court of Quebec (District of Quebec), File No. 200-06-000052-053</p> | <p>Bayer Inc., Bayer A.G., Bayer Material Science A.G., Bayer Material Science LLC, Bayer Corporation, Crompton Corporation, Crompton Co., Crompton Canada Corporation, Uniroyal Chemical Company Inc., Dow Chemical Company, Dow Chemical Canada Inc., DuPont Dow Elastomers LLC, E.I. DuPont de Nemours and Company, E.I. DuPont Canada Company, DSM Elastomers Europe B.V., DSM Elastomers America, Exxon Mobil Chemical Company.</p> | <p>All persons who purchased EPDM Products in Quebec during the EPDM 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 February 27, 2004 and February 27, 2005 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.</p> |
| <p>Polychloroprene</p> | <p>Ontario Superior Court of Justice Court File No. 46517CP</p> | <p>Bayer Inc., Bayer AG, Bayer Material Science AG, Bayer Material Science LLC (formerly Bayer Polymers LLC), Bayer Corporation, Dow Chemical Company, Dow Chemical Canada Inc., DuPont Dow Elastomers L.L.C., E.I. DuPont De Nemours and Company, E.I. DuPont Canada Company, Polimeri Europa S.r.l., Polimeri Europa Americas, Inc., Enichem S.p.A., Enichem Americas, Inc.</p> | <p>All persons in Canada who purchased Polychloroprene Products in Canada during the Polychloroprene Class Period, except the Excluded Persons and persons who are included in the Quebec action.</p> |

| Product | Proceeding | Defendants | Settlement Class |
|--------------------------|--|--|---|
| | <p>Superior Court of Quebec (District of Montreal), File No. 500-06-000276-051</p> | <p>Bayer Inc., Bayer A.G., Bayer Material Science A.G., Bayer Material Science LLC, Bayer Corporation, Dow Chemical Company, Dow Chemical Canada Inc., DuPont Dow Elastomers L.L.C., E.I. DuPont De Nemours and Company, E.I. DuPont Canada Company, Polimeri Europa S.r.l., Polimeri Americas, Inc., Syndial S.p.A.</p> | <p>All persons who purchased Polychloroprene Products in Quebec during the Polychloroprene 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 July 8, 2004 and July 8, 2005 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.</p> |
| <p>Polyester Polyols</p> | <p>Ontario Superior Court of Justice Court File No.46488CP</p> | <p>Bayer Inc., Bayer A.G., Bayer Material Science LLC, formerly known as Bayer Polymers L.L.C., Bayer Corporation, Rhein Chemie GmbH, Rhein Chemie Corporation, Crompton Corporation, Crompton Co., Crompton Canada Corporation, Uniroyal Chemical Company, Inc.</p> | <p>All persons in Canada who purchased Polyester Polyols Products in Canada during the Polyester Polyols Class Period, except the Excluded Persons and persons who are included in the Quebec action.</p> |

| Product | Proceeding | Defendants | Settlement Class |
|-------------------------|--|--|---|
| | <p>Superior Court of Quebec (District of Montreal), File No. 500-06-000252-045</p> | <p>Bayer Inc., Bayer A.G., Bayer Material Science LLC, Bayer Corporation, Rhein Chemie Rheinau GmbH, Rhein Chemie Corporation, Chemtura Corporation, Crompton Co./Cie.</p> | <p>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.</p> |
| <p>Rubber Chemicals</p> | <p>Ontario Superior Court of Justice, Court File No. 46460CP</p> | <p>Bayer Inc., Bayer A.G., Bayer Material Science A.G., Bayer Material Science LLC (formerly Bayer Polymers LLC), Bayer Corporation, Crompton Corporation, Crompton Canada Corporation, Crompton Co./Cie. (formerly Uniroyal Chemical Co./Cie.), Uniroyal Chemical Company, Inc., Flexsys NV, Flexsys America LP, Flexsys Rubber Chemicals Ltd., Duslo AS.</p> | <p>All persons who purchased Rubber Chemicals Products in Canada during the Rubber Chemicals Class Period, except the Excluded Persons and persons who are included in the Quebec action and in the British Columbia action.</p> |

| Product | Proceeding | Defendants | Settlement Class |
|---------|--|--|---|
| | <p>Superior Court of Quebec (District of Montreal), File No. 500-06-000234-043</p> | <p>Bayer A.G., Crompton Corporation, Flexsys NV, Duslo AS.</p> | <p>All persons who purchased Rubber Chemicals Products in Quebec during the Rubber Chemicals 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 May 30, 2003 and May 30, 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.</p> |
| | <p>British Columbia Supreme Court File No. SO50984</p> | <p>Bayer Inc., Bayer A.G., Bayer Material Science A.G., Bayer Material Science LLC (formerly known as Bayer Polymers LLC), Bayer Corporation, Crompton Corporation, Crompton Co./Cie. (formerly Uniroyal Chemical Co./Cie.), Crompton Canada Corporation, Uniroyal Chemical Company Inc., Flexsys NV, Flexsys America LP, Flexsys Rubber Chemicals Ltd., Duslo AS.</p> | <p>All persons in British Columbia who purchased Rubber Chemicals Products in British Columbia during the Rubber Chemicals Class Period, except the Excluded Persons.</p> |

SCHEDULE B

OUT OF CLASS SETTLEMENTS AS OF DECEMBER 11, 2006

| Releasing Party or Parties to the Settlement | Product(s) covered by the Settlement |
|--|--|
| <p>"Goodyear Releasing Party" refers jointly and severally, individually and collectively to Goodyear Tire & Rubber Company, and its 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. For purposes of the definition of "Releasing Party" only, "Affiliates" refers to entities controlled by Goodyear and/or in which Goodyear has more than a fifty percent (50%) interest. "Affiliates" does not include Sumitomo Rubber Industries, Ltd. ("SRI") and its Japanese affiliates. The definition of "Releasing Party" also does not include Goodyear-SRI Global Purchasing Company's negotiation for the purchase of any Products by SRI.</p> | <p>Rubber Chemicals, EPDM, Polychloroprene</p> |
| <p>"RBX Releasing Party" refers jointly and severally and individually and collectively to RBX Industries, Inc., RBX Corporation, Rubatex Corporation, OleTex Inc., WalTex Corporation, Groendyk Manufacturing Co., Inc., Universal Polymer & Rubber, Inc., Universal Rubber Co., Midwest Custom Mixing Corporation, and Hoover-Hanes Rubber Custom Mixing Corporation, and the past and present officers, directors, employees, agents, attorneys, servants, representatives, parents, subsidiaries, divisions, affiliates and partners and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing.</p> | <p>Rubber Chemicals, EPDM, Polychloroprene</p> |
| <p>"Michelin Releasing Parties" refers individually and collectively to (i) Michelin North America, Inc. and Continental Tire North America, Inc. and Cooper Tire & Rubber Company and all companies directly or indirectly controlled by them, and the past and present officers, directors, employees, agents, attorneys, servants and representatives of each of the foregoing; (ii) Michelin North America, Inc.'s, Continental Tire North America, Inc.'s, Cooper Tire & Rubber Company's ultimate parent companies, all companies directly or indirectly controlled by them, and the past and present officers, directors, employees, agents, attorneys, servants and representatives of each of the foregoing; and (iii)</p> | <p>Rubber Chemicals, EPDM, Polychloroprene</p> |

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| <p>the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing under (i) and (ii).</p> | |
| <p>"PolyOne Releasing Party" refers jointly and severally, individually and collectively to PolyOne Corporation, and its 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.</p> | <p>Rubber Chemicals, EPDM, Polychloroprene</p> |
| <p>"Parker Hannifin Releasing Party" refers jointly and severally, individually and collectively to Parker Hannifin Corporation, and its 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.</p> | <p>Rubber Chemicals, EPDM, Polychloroprene</p> |
| <p>"Caterpillar Releasing Party" refers jointly and severally, individually and collectively to Caterpillar Inc., and its 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.</p> | <p>Rubber Chemicals, Polychloroprene</p> |
| <p>"Carlisle Releasing Party" refers jointly and severally, individually and collectively to Carlisle Companies Incorporated, and its 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.</p> | <p>Rubber Chemicals, EPDM, Polychloroprene</p> |
| <p>"Bridgestone Releasing Parties" refers jointly and severally, individually</p> | <p>Rubber Chemicals,</p> |

| | |
|--|----------------------------------|
| <p>and collectively to Bridgestone Americas Holding, Inc., Yokohama Tire Corporation, Bandag, Incorporated, Pirelli North America, Inc., The Lubrizol Corporation, and Milliken & Company, 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.</p> | <p>EPDM, Polychloroprene</p> |
|--|----------------------------------|