

**Ontario  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

A&M SOD SUPPLY LTD.

Plaintiff

- and -

AKZO NOBEL CHEMICALS B.V., AKZO NOBEL FUNCTIONAL CHEMICALS, LLC,  
ATOFINA CHEMICALS, INC., ELF ATOCHEM S.A.,  
ATOFINA S.A., ATOFINA CANADA INC.  
CLARIANT CORPORATION, CLARIANT AG, CLARIANT INTERNATIONAL AG,  
CLARIANT (CANADA) INC., HOECHST AG,  
HOECHST CELANESE CORP., and CNA HOLDINGS, INC.

Defendants

Proceeding under the Class Proceedings Act, 1992

CANADA  
PROVINCE DE QUÉBEC  
DISTRICT DE MONTRÉAL  
No. 200-06-000030-034

**COUR SUPÉRIEURE**  
(Recours collectif)

FERME LAITIÈRE LEBLOND & FILS INC.

Requérante

c.

AKZO NOBEL CHEMICALS B.V., AKZO NOBEL FUNCTIONAL CHEMICALS, LLC,  
ATOFINA CHEMICALS, INC., ELF ATOCHEM S.A.,  
ATOFINA S.A., ATOFINA CANADA INC.  
CLARIANT CORPORATION, CLARIANT AG, CLARIANT INTERNATIONAL AG,  
CLARIANT (CANADA) INC., HOECHST AG,  
HOECHST CELANESE CORP., and CNA HOLDINGS, INC.

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## SETTLEMENT AGREEMENT

The plaintiffs, A&M Sod Supply Ltd. and Ferme Laitière Leblond & Fils Inc. (the "Plaintiffs") in their capacity as class representatives, and Akzo Nobel Chemicals BV, Akzo Nobel Functional Chemicals, LLC, Atofina Chemicals, Inc., Elf Atochem S.A., Atofina S.A., Atofina Canada Inc., Clariant Corporation, Clariant AG, Clariant International AG, Clariant (Canada) Inc., Hoechst AG, Hoechst Celanese Corp., and CNA Holdings, Inc. (collectively, the "Settling Defendants") hereby enter into this agreement pursuant to the terms set out below (the "Settlement Agreement") subject to the approval of the Ontario Court and the Quebec Court.

**WHEREAS** A&M Sod Supply Ltd. commenced Action No. 40300 CP in London, Ontario on October 18, 2002, on its own behalf and on behalf of the proposed Ontario National Class Members which include all purchasers of MCAA and/or MCAA Products (as defined in paragraph 1 of this Settlement Agreement) in Canada or from Canada between September 1, 1995 and August 31, 1999, except for Ontario National Class Members who are members of the Quebec Class as referred to below;

**WHEREAS** Ferme Laitière Leblond & Fils Inc. commenced Action No. 200-06-000030-034 in Quebec on January 22, 2003, on its own behalf and on behalf of the proposed Quebec Class Members which include all members (a member as defined in the Quebec Code of Civil Procedure includes a natural person, a legal person established for a private interest, a partnership or an association that is part of a group on behalf of which such a person, a partnership or an association brings or intends to bring a class action) who, in Quebec, purchased MCAA and/or MCAA Products between September 1, 1995 and August 31, 1999, for their own use (excluding purchases for marketing, distribution or reselling purposes);

**WHEREAS** the Plaintiffs in the Ontario and Quebec class actions (the "Actions") alleged that the defendants were involved in a conspiracy to fix, raise, maintain or stabilize the prices of MCAA in or from Canada, and sought damages for their respective Class Members;

**WHEREAS** the Settling Defendants deny the allegations and claims made by the Plaintiffs and assert that they have a number of defences to the claims asserted by the Plaintiffs in the actions herein, and deny that damages are payable for any violation of the *Competition Act* or otherwise;

**WHEREAS** the Plaintiffs' counsel and counsel for the Settling Defendants have conducted extensive settlement negotiations, which resulted in this Settlement Agreement;

**WHEREAS** the Settling Defendants have made individual representations concerning their sales of MCAA in Canada between September 1, 1995 and August 31, 1999, and the total of those sales figures is approximately C\$4,400,000;

**WHEREAS**, based on the analyses of the facts and law applicable to the claims of the Plaintiffs, and having regard to the burdens and expense in conducting this litigation, including the risks and uncertainties associated with protracted trials and appeals, the Plaintiffs and the Plaintiffs' counsel have concluded that this Settlement Agreement provides substantial benefits to the Class Members and that it is fair, reasonable and in the best interests of the Class Members;

**WHEREAS** the Plaintiffs and Settling Defendants intend that this Settlement Agreement be binding on all purchasers of MCAA in or from Canada, and save and except for the Quebec Class, that certification of a national class shall be sought in the Ontario Court based on the substantial connections to Ontario which exist;

**WHEREAS** the Settling Defendants, despite denial of any liability and the existence of good and valid defences to the Actions, have similarly concluded that this Settlement Agreement is desirable in order to avoid the time, risk and expense of defending against repetitive and protracted litigation, and to resolve completely the pending and potential claims of the Class Members;

**WHEREAS** the Settling Defendants enter this Settlement Agreement on the basis that there will be a valid and binding national class for all purchasers of MCAA and/or MCAA Products in Canada and/or relating to Canadian sales of MCAA and that all claims

against the Settling Defendants by all possible claimants within Canada are included and will be satisfied by this Settlement Agreement, subject to those individual Plaintiffs who opt out in a timely manner in compliance with the procedures for so doing, and it is acknowledged that the Settling Defendants would not have entered into this Settlement Agreement if not for the foregoing;

**WHEREAS**, for the purpose only of this Settlement Agreement and contingent on approval by the Courts, as provided for in this Settlement Agreement, the Settling Defendants consent to the certification of the Actions as provided below, and the Settling Defendants expressly reserve their right to contest certification of other related or unrelated proceedings and assert that these proceedings would not be appropriately certified in the absence of the Settling Defendants' consent;

**NOW THEREFORE, IN CONSIDERATION OF THE COVENANTS, AGREEMENTS, AND RELEASES SET FORTH HEREIN AND FOR OTHER GOOD AND VALUABLE CONSIDERATION**, it is agreed by the Parties that this Settlement Agreement constitutes the full and final resolution of any and all claims or potential claims against the Settling Defendants relating in any way to the alleged conspiracy to fix, raise, maintain or stabilize the prices of MCAA in or from Canada or the alleged conspiracy with respect to the sale of MCAA in Canada to all direct and indirect purchasers of MCAA in Canada, in accordance with the terms of this Settlement Agreement.

## **DEFINITIONS**

1. The following words and phrases shall have the following meanings in this Settlement Agreement, including all of the appendices hereto:
  - (a) **"Actions"** shall mean Action No. 40300 CP commenced in the Superior Court of Justice of Ontario and Action No. 200-06-000030-034 commenced in the Quebec Superior Court.
  - (b) **"Approval Order"** shall mean the orders of the Ontario Court and the Quebec Court which certify the Actions as class actions and approve this Settlement Agreement.
  - (c) **"Claim Deadline"** shall mean the date by which Claim Forms set out in the Distribution Protocol must be submitted to the Claims Administrator to become eligible for benefits under the Settlement Agreement, which date shall be the date four months following the Effective Date, or such other date as the Ontario Court may order.

- (d) **“Claims Administrator”** shall mean Neal, Pallett & Townsend<sup>LLP</sup> or such other persons or entity appointed by the Ontario Court, as provided in this Settlement Agreement, and any employees of such person or entity.
- (e) **“Class”** shall mean collectively the Ontario National Class and Quebec Class.
- (f) **“Class Counsel”** shall mean Siskind, Cromarty, Ivey & Dowler LLP in Ontario; the law firm of Desmeules, Eizenga, Stickland, Wright S.E.N.C. in Quebec.
- (g) **“Class Members”** shall mean either members of the Ontario National Class or Quebec Class or shall mean members of those Classes collectively as the context requires.
- (h) **“Court”** shall mean any one or both of the Ontario or Quebec Courts, or collectively as the context requires.
- (i) **“Distribution Protocol”** shall mean the mechanisms for paying Settlement Benefits to Class Members as provided for in Appendix “A” of this Settlement Agreement.
- (j) **“Effective Date”** shall mean the earliest date by which all of the following have occurred: (1) this Settlement Agreement has been executed by all of the Parties hereto, (2) the Ontario and Quebec Approval Orders have been issued and entered, and (3) the time to appeal the Approval Orders, if appeals lie, has expired, and all appeals, if any, from such Approval Orders have been exhausted, or such other date as the Court may order on consent of the parties.
- (k) **“MCAA”** shall mean either monochloroacetic acid or sodium monochloracetate in any form. Monochloroacetic acid is also known as chloroacetic acid, chloracetic acid, and chloroethanoic acid.
- (l) **“MCAA Products”** shall mean any and all products containing or derived from, directly or indirectly, MCAA.
- (m) **“Non-Settling Defendant”** shall mean any defendant in the Actions who defaults on or terminates its participation in this Settlement Agreement or is not a party to this Settlement Agreement.
- (n) **“Ontario Court”** shall mean the Ontario Superior Court of Justice.
- (o) **“Ontario National Class”** shall mean all persons, other than the defendants, who, directly or indirectly, purchased MCAA or MCAA Products, in, from or while physically present in Canada, excluding Quebec Class members, between September 1, 1995 and August 31, 1999.

- (p) **“Opt Out Deadline”** shall be the date 75 days following the Effective Date or such other date as the Court may order on consent of the parties.
- (q) **“Parties”** shall mean collectively the Plaintiffs and the Settling Defendants.
- (r) **“Quebec Class”** shall include all members (a member as defined in the Quebec Code of Civil Procedure includes a natural person, a legal person established for a private interest, a partnership or an association that is part of a group on behalf of which such a person, a partnership or an association brings or intends to bring a class action) who purchased MCAA and/or MCAA Products in, from or while physically present in Quebec between September 1, 1995 and August 31, 1999, for their own use.
- (s) **“Quebec Court”** shall mean the (Cour Supérieure) Quebec Superior Court.
- (t) **“Released Parties”** refers jointly and severally to Akzo Nobel Chemicals BV, Akzo Nobel Functional Chemicals, LLC, Atofina Chemicals, Inc., Elf Atochem S.A., Atofina S.A., Atofina Canada Inc., Clariant Corporation, Clariant AG, Clariant International AG, Clariant (Canada) Inc., Hoechst AG, Hoechst Celanese Corp., and CNA Holdings, Inc. and their past, present and future officers, directors, employees, agents, stockholders, attorneys, representatives, parents, subsidiaries, affiliates, partners and insurers, including without limitation all other persons, partnerships or corporations with whom they have been or are now affiliated, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing. As used in this definition, “affiliates” means entities controlling, controlled by or under common control with a Settling Defendant. Without limiting the generality of the foregoing, an affiliate of the Akzo Nobel Settling Defendants includes Denak Co. Ltd.
- (u) **“Releasers”** refers to the Plaintiffs and the Class Members and to their respective past, present and future officers, directors, employees, agents, stockholders, attorneys, representatives, parents, subsidiaries, affiliates, partners and insurers and the predecessors, successors, heirs, executors, administrators and assignees of each of the foregoing.
- (v) **“Settlement Fund”** shall mean the sum set out in paragraph 2 of this Settlement Agreement plus all accrued interest on that amount in accordance with paragraph 2 of this Settlement Agreement.
- (w) **“Settling Defendants”** shall mean Akzo Nobel Chemicals BV, Akzo Nobel Functional Chemicals, LLC, Atofina Chemicals, Inc., Elf Atochem S.A., Atofina S.A., Atofina Canada Inc., Clariant Corporation, Clariant AG, Clariant International AG, Clariant (Canada) Inc., Hoechst AG, Hoechst Celanese Corp., and CNA Holdings, Inc.

**SETTLEMENT FUND**

2. The Settling Defendants will pay the total amount of \$490,000.00 Canadian, which amount is all inclusive of any and all legal costs, disbursements (including the costs of notice), expenses, and administration to settle the Actions. The Settling Defendants shall transfer to their respective Canadian counsel by December 22, 2003, their respective portions of the sum of \$490,000.00 Canadian. Such funds shall be held in interest-bearing accounts in trust for the Class Members, with interest accruing thereon for the benefit of the Class Members (the principal plus accrued interest being the Settlement Fund). Within ten (10) business days of the Effective Date, the Settlement Fund shall be transferred to the Claims Administrator appointed by the Court. Interest accrued shall form part of the consideration payable by the Settling Defendants.
  
3. The Class and Class Counsel shall be reimbursed and indemnified solely out of the Settlement Fund for all expenses including, but not limited to, the costs of notice and administration of this settlement to the Class. The Settling Defendants shall not be liable for any costs, fees, or expenses of the Class's respective legal counsel, expert advisors, agents or representatives. All such costs, fees and expenses as approved by the Court shall be paid out of the Settlement Fund.
  
4. Taxes, if any, arising with respect to the income earned by the Settlement Fund and expenses and costs incurred in connection with the operation and implementation of this paragraph shall be paid from the Settlement Fund. The Settling Defendants shall not have any liability or responsibility for any taxes or expenses and costs associated with the implementation of this Agreement or the filing of any tax returns or other documents with any provincial or federal taxing authority. Taxes, if any, and the expenses associated with the implementation of this Agreement shall be treated as, and considered to be, a cost of administration of the settlement and shall be paid out of the Settlement Fund without prior order from the Court, and any party appointed by the Court to administer the Settlement Fund shall be obliged to withhold from distribution to the Class any funds necessary to pay such amount.



5. All rights and obligations of each of the Settling Defendants pursuant to this Settlement Agreement are, and shall remain, several and not joint. No Settling Defendant shall have any liability for the default of any other Settling Defendant pursuant to this Settlement Agreement.
6. The Claims Administrator appointed by the Court shall be required to administer the Settlement Fund and process claims in accordance with this Settlement Agreement, including the provisions and procedures set forth in the Distribution Protocol provided for in Appendix "A".

#### **OPTING OUT**

7. Class Members shall have the right to exclude themselves from the Settlement Agreement ("opt out"). Class Members who elect to opt out of this Settlement Agreement shall file an opt out form in the form set out in the Distribution Protocol by registered or certified mail post marked by the Opt Out Deadline to the Claims Administrator or, for Quebec Class Members, to the clerk of the Quebec Superior Court for the District of Quebec. Class Members who opt out shall be excluded from the terms of the settlement and from any and all rights and obligations under this Settlement Agreement. Class Members who do not opt out in the manner prescribed shall be deemed to have elected to participate in this Settlement Agreement and thus shall be bound by this Settlement Agreement and all related Court orders, regardless of whether they participate in the dispute resolution process or receive any consideration. Where a Class Member is a member of more than one class, opting out of one class results in opting out of Actions and the entire settlement.
8. Quebec Class Members who have commenced other proceedings or commence other proceedings and fail to discontinue such other proceedings by the Opt Out Deadline shall be deemed to have opted out.
9. The Claims Administrator shall provide a list, including addresses and contact information, of all Class Members who have opted out to the Parties within 10 days of the Opt Out Deadline. If a Class Member who purchased MCAA or MCAA Products from the Settling Defendants opts out of this Settlement

Agreement in accordance with paragraph 7, the respective Settling Defendant from whom the Class Member purchased MCAA or MCAA Products shall be entitled to claim an Opt Out Reduction. The Settling Defendants shall have 45 days from receipt of the opt out list to claim an Opt Out Reduction and to provide the Claims Administrator, with a copy to Ontario Class Counsel, verification of their sales for which an Opt Out Reduction is claimed. The Opt Out Reduction will be calculated by the Claims Administrator pursuant to the Distribution Protocol provided for in Appendix "A" to this Settlement Agreement and shall be equal to the benefit which would have been payable to the Class Member, had the Class Member filed a timely claim form. Verification acceptable to the Claims Administrator shall be deemed to satisfy the eligibility requirements set out in section 2.1 of the Distribution Protocol. Upon expiration of the 45 day period outlined above, the Claims Administrator shall have 30 days to calculate all Opt Out Reductions and to notify the Settling Defendant(s) of the Opt Out Reductions to which they are entitled. Any disputes concerning the entitlement to, or calculation of, an Opt Out Reduction shall be resolved in accordance with section 3.4 of the Distribution Protocol. All Opt Out Reductions shall be paid by the Claims Administrator within 15 days of the resolution of all appeals taken in accordance with section 3.4 of the Distribution Protocol, or if no appeals are filed, within 15 days of the expiration of the appeal period set out in section 3.4 of the Distribution Protocol.

10. No claim shall be allowed and no payment shall be made to any Class Member in respect of sales made by any of the Settling Defendants to the Class Members which have been the subject of a compromise or settlement between the Class Member and any such Settling Defendant anywhere in the world.

#### **APPROVAL ORDER**

11. The Settlement Agreement shall be subject to and conditional upon the approval of the Courts, following a hearing pursuant to Section 29(2) of the Ontario Class Proceedings Act, 1992 and Article 1025 of the Code of Civil Procedure of the Province of Quebec.

12. The Parties shall take all steps necessary to ensure that the Approval Orders are sought in an expedited manner. The Plaintiff shall seek Approval Orders from the Courts in the form set out in Appendix "E" to this Settlement Agreement.
13. If the Approval Orders are not granted in the form agreed to by the parties on or before January 31, 2004, Akzo Nobel Chemicals BV and Akzo Nobel Functional Chemicals, LLC (collectively "Akzo") may elect to terminate their participation in this Settlement Agreement by giving written notice of the termination to Class Counsel and to counsel for the other Settling Defendants no later than February 28, 2004. If Akzo terminates its participation in the Settlement Agreement under this paragraph then the provisions of paragraph 16 (a) to (e) apply to Akzo.
14. In the event that Akzo terminates its participation in the Settlement Agreement under paragraph 13, each of the remaining Settling Defendants shall have the right to terminate its participation in the Settlement Agreement by providing written notice of the termination to Class Counsel and to counsel for the other Settling Defendants by no later than 30 days following receipt of notice of termination by Akzo. If any Settling Defendant terminates its participation in the Settlement Agreement under this paragraph then the provisions of subparagraphs 16(a) to (e) apply to that Settling Defendant.

#### **NOTICE OF CERTIFICATION AND COURT APPROVAL**

15. The Notice of Certification and Settlement Agreement Approval shall be disseminated in the form and pursuant to a protocol outlined in Appendices "B" and "C" or as ordered by the Courts. The Notice shall be published in the newspapers within 15 days of the Effective Date, and in the industry publications and by the other methods of dissemination at the earliest possible date following the Effective Date. The cost of providing Notice shall be paid out of the Settlement Fund.

#### **EFFECT OF NON-APPROVAL BY THE COURTS**

16. If the Settlement Agreement is not approved by the Courts in the form of the Approval Orders attached hereto as Appendix "E", then, at the written election of

the Settling Defendants and within ten days of the non-approval of Approval Orders:

- (a) the Settlement Agreement shall be null and void and shall have no force or effect, and no party to the Settlement Agreement shall be bound by any of its terms, except for the terms of this paragraph and paragraph 1;
- (b) the Settlement Agreement and all of its provisions and all negotiations, statements and proceedings relating to it shall be without prejudice to the rights of the Settling Defendants, the Class and Class Counsel, all of whom shall be restored to their respective positions existing immediately before the Settlement Agreement;
- (c) this Settlement Agreement, or any step taken to carry out this Settlement Agreement, or any document relating to it, or the certification of the Ontario National Class and/or the Quebec Class, or any approval of the Settlement Agreement by any Court is not, may not be construed as, does not constitute, and cannot be used as an admission by or against the Settling Defendants of the truth of any allegations of liability or of the jurisdiction of the Canadian Courts over the Settling Defendants or of the certifiability of the Actions herein as class actions or as a waiver of any applicable legal right or benefit other than as expressly stated in this Settlement Agreement. This Settlement Agreement may not be construed or used as an admission by or against the Plaintiffs or the Class Members or as a waiver of any applicable legal right or benefit of the Plaintiffs or the Class Members other than as expressly stated in this Settlement Agreement;
- (d) this Settlement Agreement or any document relating to, or action taken to carry out, this Settlement Agreement, or any document relating thereto shall not be offered or received in evidence in any action or proceeding in any court, administrative agency or other tribunal for any purpose whatsoever other than to enforce the provisions of the Settlement Agreement or to seek the approval of the Court of the Settlement Agreement as outlined herein; and
- (e) monies paid by the Settling Defendants (with accrued interest) shall be returned to the Settling Defendants within seven (7) business days. In the event of termination by one or more Settling Defendants pursuant to paragraph 13 or 14 above, monies (with accrued interest) paid by the terminating Settling Defendant will be returned to that Settling Defendant.

## **RELEASE**

17. In consideration of the payment by the Settling Defendants of the Settlement Fund, the Releasers and Released Parties hereby release and forever discharge the Released Parties in respect of any and all claims, demands, actions, suits and causes of action, whether class, individual, personal, subrogated or otherwise in nature, damages whenever incurred, liabilities of any nature

whatsoever (including interest, costs, expenses, class administration expenses, penalties, legal fees), known or unknown, suspected or unsuspected, asserted or unasserted, in law, under statute or in equity, that the Releasers, or any of them, whether directly or indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter may have, relating in any way to any conduct of the Released Parties up to and including the date hereof in respect of the manufacture, sale, marketing, purchase, distribution, pricing, or discounting of MCAA or MCAA Products including, without limitation, those based on any statute or any law of Canada or elsewhere providing any remedy or relief in respect of any claim or matter asserted or that could have been asserted in the Actions herein or in any other possible action, whether in Canada or elsewhere.

18. The Plaintiffs and the Class Members further agree not to hereafter make any claims, or take or continue any proceedings against any other person, partnership, corporation or other entity who might claim contribution or indemnity or any other relief of a monetary, declaratory or injunctive nature from any of the Settling Defendants or the Released Parties in connection with the claims released in this Settlement Agreement.

#### **DISMISSAL OF PROCEEDINGS**

19. Except as otherwise provided in this Settlement Agreement, the Actions shall be dismissed as against the Settling Defendants without costs and with prejudice.

#### **CLASS COUNSEL LEGAL FEES**

20. Following the issuing and entering of the Approval Orders or at the occasion thereof, Class Counsel shall bring motions before their respective Courts for payment of any legal fees or disbursements which the Courts may order to be paid out of the Settlement Fund.
21. Class Counsel, or anyone employed (now or in the future) by Class Counsel, may not directly or indirectly participate in or be involved in or in any way assist with respect to any action commenced by a Class Member who has opted out or with respect to any other action relating in any way to the claims asserted in the Actions.

22. Except as required by law or order of a court of competent jurisdiction or the terms of this Settlement Agreement, no Class Counsel, or anyone employed (now or in the future) by Class Counsel, shall disclose any information obtained in the course of the Actions or in the preparation thereof or related to the Actions, to anyone for any purpose.

#### **ENTIRE AGREEMENT**

23. This Settlement Agreement, together with the preambles and the attached Appendices, constitutes the entire agreement between the Parties pertaining to the subject matter hereof, and supersedes all prior understandings, representations, negotiations, discussions, and agreements, whether oral or written, which may have occurred prior hereto. There are no other warranties or representations between the Parties in connection with the subject matter of the Settlement Agreement except as specifically set forth therein and none have been relied upon by the Parties in entering into this Settlement Agreement.

#### **ONGOING AUTHORITY**

24. The Ontario and Quebec Courts will retain exclusive and continuing jurisdiction over the Actions and over all Parties named or described therein, including, but not limited to, all Class Members and the Settling Defendants. Further, the Ontario and Quebec Courts will retain exclusive jurisdiction over this Settlement Agreement to ensure that all payments and disbursements are properly made, and to interpret and enforce the terms, conditions and obligations of this Settlement Agreement. Notwithstanding the foregoing, parties will not seek any order which will affect the rights of Class Members other than those within the jurisdiction of such court unless like orders are being made by the Court or Courts with jurisdiction over such other Class Members that may be affected thereby. For the purposes of this Settlement Agreement, the Ontario Court shall have exclusive jurisdiction over the members of the Ontario National Class.

#### **APPLICABLE LAW**

25. Except for the Quebec Class to which the law of Quebec shall apply, the law of the Province of Ontario shall apply to this Settlement Agreement. This

Settlement Agreement constitutes a “transaction” within the meaning of Article 2631 of the Quebec Civil Code.

## **NOTICES**

26. All communications to be provided pursuant to or in connection with the Settlement Agreement shall be in writing and shall be delivered personally or sent by fax, registered mail or overnight delivery service, costs prepaid, to the Parties at the addresses set forth below, or to such other individuals and addresses as the Plaintiffs or the Settling Defendants may designate in writing from time to time.

**Siskind, Cromarty, Ivey & Dowler LLP**

Barristers & Solicitors  
680 Waterloo Street  
London, Ontario N6A 3V8  
Fax #: 519-672-6065  
Counsel for the Ontario National Class Members

**Desmeules, Eizenga, Strickland, Wright S.E.N.C.**

Avocats  
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Counsel for the Quebec Class Members

**Miller Thomson LLP**

Barristers & Solicitors  
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Counsel for the Defendants Akzo Nobel Chemicals BV and Akzo Nobel Functional Chemicals, LLC

**Blake, Cassels & Graydon LLP**

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199 Bay Street  
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Fax #: 416-863-2653  
Counsel for the Defendants Atofina S.A., Atofina Canada Inc., Atofina Chemicals, Inc., and Elf Atochem S.A.

**Stikeman Elliott LLP**

Barristers & Solicitors

5300 Commerce Court West

199 Bay Street

Toronto ON M5L 1B9

Fax #. (416) 947-0866

Counsel for the Defendants Aventis S.A., Hoechst AG, Hoechst Celanese Corp., and CNA Holdings, Inc.

**Baker & McKenzie**

Barristers & Solicitors

181 Bay Street, P.O. Box 874

Box 2100

Toronto, ON M5J 2T3

Fax #. 416-863-6275

Counsel for the Defendants Clariant (Canada) Inc., Clariant Corporation, Clariant AG, and Clariant International AG

**EXECUTION AND PROCESSING OF SETTLEMENT AGREEMENT**

27. The Parties and their respective counsel shall do all things as may be reasonably required expeditiously to give effect to this Settlement Agreement.
28. The Parties agree that this Settlement Agreement may be executed by their respective counsel.

**FRENCH LANGUAGE CLAUSE**

29. Les Parties ont convenu que la présente entente (ainsi que tous les avis devant être expédiés en vertu de celle-ci) soit rédigée en anglais.

**COUNTERPARTS**

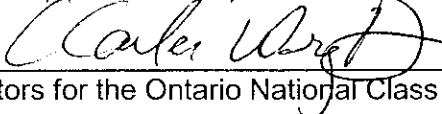
30. The Parties further agree that this Settlement Agreement may be executed in counterparts, each of which shall be deemed to be an original for all purposes and all executed counterparts taken together shall constitute the complete Settlement Agreement.

Date:

December 16/03

SISKIND, CROMARTY, IVEY & DOWLER<sup>LLP</sup>

Per:

  
Solicitors for the Ontario National Class Members



Date:

Dec 16/03

DESMEULES, EIZENGA, STRICKLAND, WRIGHT  
S.E.I.L.C.

Per: C. Hebert  
Solicitors for the Quebec Class Members

Date:

December 16/03

MILLER THOMSON LLP

Per: Andrew J. Roman  
Solicitors for the Defendants, Akzo Nobel  
Chemicals BV and Akzo Nobel Functional  
Chemicals, LLC

Date:

\_\_\_\_\_

BLAKE, CASSELS & GRAYDON LLP

Per: \_\_\_\_\_  
Solicitors for the Defendants, Atofina S.A., Atofina  
Canada Inc., Atofina Chemicals, Inc., and Elf  
Atochem S.A.

Date:

\_\_\_\_\_

STIKEMAN ELLIOTT LLP

Per: \_\_\_\_\_  
Solicitors for the Settling Defendants, Hoechst AG,  
Hoechst Celanese Corp., and CNA Holdings Inc.

Date:

\_\_\_\_\_

BAKER & MCKENZIE

Per: \_\_\_\_\_  
Solicitors for the Defendants, Clariant (Canada)  
Inc., Clariant Corporation, Clariant AG, and Clariant  
International AG

Date:

DESMEULES, EIZENGA, STRICKLAND, WRIGHT  
S E N C

\_\_\_\_\_

Per: \_\_\_\_\_

Solicitors for the Quebec Class Members

Date:

MILLER THOMSON LLP

\_\_\_\_\_

Per: \_\_\_\_\_

Solicitors for the Defendants, Akzo Nobel  
Chemicals BV and Akzo Nobel Functional  
Chemicals, LLC

Date:

BLAKE, CASSELS & GRAYDON <sup>LLP</sup>

Dec 16, 2003

Per: Blake Casse

Solicitors for the Defendants, Atofina S.A., Atofina  
Canada Inc., Atofina Chemicals, Inc., and Elf  
Atochem S.A.

Date:

STIKEMAN ELLIOTT LLP

Dec. 16, 2003

Per: Stikeman Elliott LLP

Solicitors for the Settling Defendants, Hoechst AG,  
Hoechst Celanese Corp., and CNA Holdings Inc.

Date:

BAKER & MCKENZIE

Dec 16, 2003

Per: Baker & McKenzie

Solicitors for the Defendants, Clariant (Canada)  
Inc., Clariant Corporation, Clariant AG, and Clariant  
International AG

## APPENDIX "A"

### DISTRIBUTION PROTOCOL

The procedures set forth herein are intended to govern the administration of the Settlement Funds paid in accordance with the Settlement Agreement. Capitalized terms not defined herein are defined in the Settlement Agreement. The procedures shall be implemented by the Claims Administrator, subject to the ongoing authority and supervision of the Ontario Court. This Distribution Protocol operates with respect to MCAA and MCAA Products as defined in the Settlement Agreement.

#### 1. QUALIFICATION CATEGORIES

- 1.1 Class Members shall qualify for benefits under this Settlement Agreement in one of two categories:

Direct Purchaser - Class Members who purchased MCAA from the defendants or a Canadian distributor between September 1, 1995 and August 31, 1999.

Consumers and Intermediaries - Class Members who are not Direct Purchasers and who purchased MCAA Products in, from or while physically in Canada between September 1, 1995 and August 31, 1999.

#### 2. SETTLEMENT FUND

##### 2.1. Eligibility

Subject to the approval of the Claims Administrator, a Direct Purchaser shall be eligible for direct compensation out of the Settlement Fund upon filing a properly completed Claim Form postmarked before the Claim Deadline (four (4) months from the Effective Date), and upon establishing: (a) that the Direct Purchaser purchased MCAA in Canada between September 1, 1995 and August 31, 1999; and (b) the dollar amount of the MCAA purchased.

To establish that a Direct Purchaser purchased MCAA and to establish the dollar value of the MCAA purchased, "Product Purchase Verification" in the following form shall be required:

- a. Proof of purchase confirming the Direct Purchaser purchased MCAA between September 1, 1995 and August 31, 1999; and confirming that compensation in respect of such purchases has not been previously made;
- b. Seller's sales record, if available, verifying the sale of MCAA to the Direct Purchaser between September 1, 1995 and August 31, 1999; and confirming that compensation in respect of such purchases has not been previously made; or

- c. If a Direct Purchaser is unable to provide any of the documentation as specified in paragraphs a or b above, or if providing that information is impractical, a Direct Purchaser may submit to the Claims Administrator such other objective verification as may be acceptable to the Claims Administrator. Such other objective verification must be accompanied by an Affidavit from the Direct Purchaser confirming the information provided and stating the steps taken by the Direct Purchaser to obtain the Product Purchase Verification outlined in subparagraph a and b above and the responses, if any, to those steps.

## **2.2 Entitlement to Direct Compensation**

Direct Purchasers who satisfy the eligibility requirements outlined in section 2.2 of this Distribution Protocol shall be entitled to compensation equal to \$0.15 per dollar spent on MCAA.

## **2.3 Disposition of Residue**

Recognizing that a portion of any MCAA overcharge may have been borne by Consumers and Intermediaries, and recognizing the difficulty of accurately identifying the amount of any overcharge actually borne by any given Consumer or Intermediary, and recognizing the related difficulties in directly compensating Consumers and Intermediaries, compensation for Consumers and Intermediaries will be paid out from the residue of the Settlement Fund that remains following the payment of Settlement Funds to Direct Purchasers, and the expiration of all appeals periods.

Advanced Foods and Materials Network (AFMNet) has been identified as the appropriate recipient of the residue of the Settlement Funds.

## **3. GENERAL CLAIMS PROCESSING GUIDELINES**

### **3.1 Efficiency**

The Claims Administrator shall process all claims in a cost-effective and timely manner.

### **3.2 Technical Deficiencies**

If during claims processing, the Claims Administrator finds that technical deficiencies exist in a Claimant's Claim Form or the Product Purchase Verification, the Claims Administrator shall notify the Claimant of the deficiencies via registered mail and shall allow the Claimant thirty (30) days from the date of mailing of such notice to correct the deficiencies. If the deficiencies are not corrected within the thirty (30) day period, the Claims Administrator shall reject the claim without prejudice to the right of the Claimant to resubmit the claim

provided the Claimant is able to meet the filing deadlines and other requirements set forth in this Distribution Protocol.

Technical deficiencies shall not include missing the deadline for filing the Claim Form. In no event shall the Claims Administrator accept Claim Forms postmarked after the Claim Deadline.

### **3.3 Notification and Payment of Claims**

The Claims Administrator shall notify, via registered mail, all Claimants as to the approval or rejection of their claims under this Protocol.

The Claims Administrator shall promptly make arrangements to pay approved claims as expeditiously as possible.

### **3.4 Appeal of Claims**

All Claimants shall be granted thirty (30) days from the date notice is received pursuant to paragraph 3.3 of this Protocol, to appeal the rejection of a claim. Such appeal will be on the basis of written submissions filed with the Ontario Court, supported only by the documentation originally provided to the Claims Administrator.

The judgment of the Ontario Court respecting any appeal from the Claims Administrator's decision is final and binding and shall not be subject to any further appeal or review whatsoever.

# Notice of Certification and Settlement Agreement Approval

## IN THE MATTER OF MCAA CLASS ACTION LITIGATION

PLEASE READ THIS NOTICE CAREFULLY. IT MAY AFFECT YOUR LEGAL RIGHTS.

**TO:** All persons or entities who purchased in or from Canada, Monochloroacetic Acid (MCAA) or products containing MCAA in any form and for any use, including products containing or derived from MCAA, between September 1, 1995 and August 31, 1999.

**1 Purpose of this Notice** 

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Class Proceeding lawsuits have been initiated in Ontario and Quebec in which it is alleged that the Defendants conspired to fix prices and allocate markets for MCAA in Canada.

A Settlement Agreement has been reached between the Plaintiffs (the parties who brought the lawsuit) and the defendants, Akzo Nobel Chemicals BV, Akzo Nobel Functional Chemicals, LLC, Atofina Chemicals, Inc., Elf Atochem S.A., Atofina S.A., Atofina Canada Inc., Clariant Corporation, Clariant AG, Clariant International AG, Clariant (Canada) Inc., Hoechst AG, Hoechst Celanese Corp., and CNA Holdings, Inc. (the "Settling Defendants"). The proceeding was certified and the Settlement Agreement approved by the Courts in Ontario on December X, 2003 and in Quebec on January X, 2004.

This Notice is to advise you of the Settlement Agreement and to inform you of your rights as a Class Member under the Agreement.

**2 Class Member Categories** 

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If you purchased MCAA in any form or products containing or derived from MCAA in, from or while physically present in Canada between September 1, 1995 and August 31, 1999 you are a Class Member. Class Members fall into the following categories:

1. Direct Purchasers - Class Members who purchased MCAA in any form from the Settling Defendants or a Canadian distributor between September 1, 1995 and August 31, 1999.
  2. Intermediaries and Consumers – Class Members who are not Direct Purchasers and who purchased products containing or derived from MCAA in, from or while physically present in Canada between September 1, 1995 and August 31, 1999.
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- 3 **Claim Program - Direct Purchasers** Direct Purchasers will be eligible to receive direct compensation under the Settlement Agreement. Eligible Direct Purchasers will receive \$0.15 per dollar spent on MCAA.
- Direct Purchasers must complete a Claim Form, and submit certain required supporting documentation outlined in the Claim Form. To be eligible for compensation, the Claim Form together with the required supporting documentation must be submitted to the Claims Administrator by XX, 2004. Claim Forms are available by telephoning the Claims Administrator at XX or at [www.classaction.ca](http://www.classaction.ca).
- 
- 4 **Compensation Plan – Consumers and Intermediaries** Recognizing that a portion of any MCAA overcharge may have been borne by Consumers and Intermediaries, and recognizing the difficulty of accurately identifying the amount of any overcharge actually borne by any given Consumer or Intermediary, and recognizing the related difficulties in directly compensating Consumers and Intermediaries, compensation for Consumers and Intermediaries will be paid out from the residue of the Settlement Fund that remains following the payment of Settlement Funds to Direct Purchasers, and following the expiration of all appeals periods. Advanced Foods and Materials Network (AFMNet) has been identified as an appropriate recipient of the residue of the Settlement Funds.
- 
- 5 **Release of claims and the effect on other proceedings** You will be bound by the terms of the Settlement Agreement, unless you “opt out”, a process that is described in the next section.
- This means that you will not be able to bring or maintain any other claim or legal proceeding against any of the Settling Defendants in connection with MCAA or products containing or derived from MCAA unless you “opt out”.
- 
- 6 **Opting out of the Settlement Agreement** If you would like to exclude yourself from the Settlement Agreement, you can opt out by obtaining an “Opt Out Form” (available from the Claims Administrator), and filing it with the Claims Administrator no later than XX.
- If you opt out you will not be eligible for any of the benefits of the Settlement Agreement.
- 
- 7 **Class Counsel** The law firm of *Siskind, Cromarty, Ivey & Dowler LLP* represents the Class in Ontario, along with all class members in provinces other than Quebec, and Quebec corporations. Ontario Class Counsel can be reached toll-free at 1-800-461-6166 ext. 455.
- The law firm of *Desmeules, Eizenga, Strickland, Wright S.E.N.C* represents the Quebec Class. Quebec Class Counsel can be reached at 418-694-2009.
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- 8 **Legal Fees** Class Counsel in all jurisdictions will seek legal fees from their respective courts in an amount not to exceed 25% of the settlement attributable to their jurisdiction, plus disbursements and taxes.
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- 9 **Questions About the Settlement Agreement** If you would like a copy of the Settlement Agreement or have questions, you can call the Claims Administrator’s Information Line at XX. A copy of the Settlement Agreement can be sent to you at a cost of \$20.00 per copy, which amount represents the cost of photocopying and mailing the Settlement Agreement. A copy of the Settlement Agreement will be posted on Class Counsel’s website, [www.classaction.ca](http://www.classaction.ca)
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**10 Interpretation**

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If there is a conflict between the provisions of this Notice and the Settlement Agreement and any of its appendices, the terms of the Settlement Agreement shall prevail.

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DISTRIBUTION OF THIS NOTICE HAS BEEN AUTHORIZED BY THE ONTARIO SUPERIOR COURT OF JUSTICE AND THE QUEBEC (COUR SUPERIEURE) SUPERIOR COURT.



## Appendix "C"

### METHOD OF DISSEMINATING THE NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL

The Notice of Certification and Settlement Approval shall be distributed in the following manner:

- a. published once in the following newspapers:
  - i. Globe and Mail (National Edition)
  - ii. La Presse
  
- b. published once in the following magazines:
  - i. Canadian Gardening
  - ii. Better Farming Magazine
  - iii. Canadian Chemical News
  
- c. sent to the following organizations for distribution to their membership:
  - i. Canadian Federation of Agriculture
  - ii. Canadian Cosmetics, Toiletry and Fragrance Association
  - iii. Canadian Chemical Producers Association
  - iv. Canadian Generic Pharmaceutical Association
  - v. Canadian Plastics Industry Association
  
- d. posted on Class Counsel's website at [www.classaction.ca](http://www.classaction.ca);
  
- e. to the extent possible, the Settling Defendants will provide contact information for their Canadian MCAA customers to the Claims Administrator, and the Claims Administrator will mail the Notice of Certification and Settlement Approval to such customers.

APPENDIX "D"

OPT OUT FORM  
MCAA LITIGATION SETTLEMENT

**This is NOT a Claim Form.  
It EXCLUDES you from the Settlement Class.  
Do NOT use this Form if you want to receive benefits under the Settlement.**

Name: \_\_\_\_\_  
Name of Class Member (full legal name)

\_\_\_\_\_   
Contact Person (If Class Member is a corporation)

Address: \_\_\_\_\_  
No./Apt. /Street City Province Postal Code

Telephone : \_\_\_\_\_  
Area code / phone no. (Ext. if applicable)

**Please provide the following additional information.**

- I. Identification of person signing this Claim (check one only):
- I am a Class Member, or an authorized employee, officer or director of the above-identified Class Member. I am signing this Form to opt-out of the settlement.
  - I am the trustee, receiver or other representative of the above-identified Class Member. I am signing this Form to opt-out the Class Member from the Settlement

(Attach copy of court order or other official document appointing you as representative and state your name, title, mailing address and telephone number).

**I understand that by opting out I will never be eligible to receive any compensation pursuant to the MCAA Litigation Settlement.**

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Signature (Class Member or Personal Representative)

To be effective as an election to opt-out of this Settlement, this Form must be completed, signed and sent by registered mail, postmarked no later than XXX, to the address listed below.

The consequences of returning this Opt Out Form are explained in paragraph 6 of the Notice of Certification and Settlement Agreement Approval. If you have questions about using or completing this Form, contact your lawyer or call 1-800-461-6166.

Please mail this Form to the CLAIMS ADMINISTRATOR at:

XXX

**APPENDIX "E"**

Court File No. 40300 CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR. ) THE DAY OF  
 )  
JUSTICE NORDHEIMER ) , 2003

**B E T W E E N**

A&M SOD SUPPLY LTD.

Plaintiff

-and-

AKZO NOBEL CHEMICALS B.V., AKZO NOBEL FUNCTIONAL CHEMICALS, LLC,  
ATOFINA CHEMICALS, INC., ELF ATOCHEM S.A.,  
ATOFINA S.A., ATOFINA CANADA INC.,  
CLARIANT CORPORATION, CLARIANT AG, CLARIANT INTERNATIONAL AG,  
CLARIANT (CANADA) INC., HOECHST AG,  
HOECHST CELANESE CORP., and CNA HOLDINGS, INC.

Defendants

Proceeding under the *Class Proceedings Act*, 1992

**ORDER**

THIS MOTION, made by the Plaintiff, A&M Sod Supply Ltd., for an Order that the within proceeding be certified as a class proceeding, and that the settlement of this action, be approved, and that Neal, Pallett & Townsend LLP be appointed as Claims Administrator, was heard this day.

ON READING the materials filed and on hearing submissions of counsel for the representative Plaintiff and counsel for the Settling Defendants:

1. **THIS COURT ORDERS** that the within proceeding be certified as a class proceeding pursuant to the *Class Proceedings Act*, 1992, S.O. 1992, c.6, ss. 2 and 5.
  
2. **THIS COURT ORDERS** that the class be defined as:

All persons or entities, other than the Defendants, who purchased in or from Canada or while physically present in Canada, Monochloroacetic Acid (MCAA) or products containing MCAA in any form and for any use, including products containing or derived from MCAA, excluding Quebec Class Members between September 1, 1995 and August 31, 1999.
  
3. **THIS COURT ORDERS** that A&M Sod Supply Ltd. be appointed as the representative Plaintiff for the class proceeding.
  
4. **THIS COURT ORDERS** that the within proceeding is certified on the basis of the following Common Issues:
  - a. Did the defendants or any of them engage in conduct which is contrary to s. 45 of the *Competition Act*?
  - b. What damages, if any, are payable pursuant to s. 36 of the *Competition Act*?
  
5. **THIS COURT DECLARES** that the Settlement Agreement with its attached Appendices, annexed hereto and marked as Schedule "A" to this Order (the "Settlement Agreement"), is fair, reasonable and in the best interests of the members of the class.

6. **THIS COURT ORDERS** that the Settlement Agreement is approved pursuant to s. 29 of the *Class Proceedings Act*, 1992.
  
7. **THIS COURT DECLARES** that the Settlement Agreement, in its entirety (including its preamble, appendices and definitions), forms part of this Order and is binding upon the representative Plaintiff, upon all members of the class who do not opt out of the class in accordance with the Notice, and upon the Settling Defendants.
  
8. **THIS COURT ORDERS** that that all claims for contribution, indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity or in any other capacity, inclusive of interest, costs, expenses, class administration expenses, penalties, legal fees and taxes, related to any and all claims, demands, actions, suits and causes of action, relating in any way to any conduct up to and including the date hereof of the Released Parties in respect of the manufacture, sale, marketing, purchase, distribution, pricing, or discounting of MCAA or MCAA Products, which were or could have been brought in the Actions, by any Non-Settling Defendant or any other person or party, against all or any of the Released Parties, 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 the Settlement).
  
9. **THIS COURT ORDERS** that the Plaintiffs and Class Members restrict the claims against any defendants who are Non-Settling Defendants such that the Plaintiffs and Class Members shall be entitled to claim and recover from each Non-Settling

Defendant, on a several basis, only those damages (if any) which are allocable to sales of MCAA or MCAA Products made by that Non-Settling Defendant.

10. **THIS COURT ORDERS** that the Non-Settling Defendants may seek an order from a Court providing for discovery from some or all of the Settling Defendants as deemed appropriate by the Court.
11. **THIS COURT ORDERS** that except as specifically provided for in the Settlement Agreement and this Order, the Settlement Agreement does not settle, compromise, release or limit the claim by settling Class Members against any person other than the Released Parties.
12. **THIS COURT ORDERS** that Neal, Pallett & Townsend LLP, be appointed as Claims Administrators in accordance with section X of the Settlement Agreement.
13. **THIS COURT ORDERS** that a Notice of Certification and Settlement Agreement Approval be published in accordance with section X of the Agreement and Appendices "X" and "X" to the Agreement.
14. **THIS COURT ORDERS** that this action be dismissed without costs.
15. **THIS COURT ORDERS** that this Order and approval of the Settlement Agreement is contingent upon the approval of the Quebec Court of the same Settlement Agreement and this Order shall be of no force and effect if such approval is not granted in Quebec.

Date:

\_\_\_\_\_  
*(Signature of judge, officer or registrar)*