

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE: URETHANE ANTITRUST
LITIGATION

No. 04-MD-1616-JWL

This Document Relates To:
The Polyether Polyol Cases

NOTICE INFORMING YOU OF A MOTION TO RESERVE FUNDS
FOR PAYMENT OF POTENTIAL LITIGATION EXPENSES, AND
FOR AN AWARD OF ADDITIONAL LITIGATION EXPENSES

**If you purchased polyether polyols, MDI, TDI,
MDI-TDI blends, or polyether polyol systems
between 1999 and 2004, a Motion filed with the
Court may affect your rights.**

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY.

I. WHAT'S THIS ABOUT?

This Notice is being sent to let you know about a recent development that concerns earlier settlements reached in the above-captioned lawsuit. Specifically, Class Counsel have filed a Motion asking the Court to (1) reserve \$3,600,000 of the settlement funds in escrow to pay additional litigation expenses that may arise in the future, and (2) award reimbursement from settlement funds of \$3,081,726.22 in litigation expenses incurred by Class Counsel. It also informs you of your rights to object to or submit other comments on the Motion.

ACCORDINGLY, NOTICE IS HEREBY GIVEN, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the District of Kansas, that a Hearing will be held on October 1, 2013, at 1:00 p.m. before the Honorable John W. Lungstrum, United States District Judge, in Courtroom 427, United States Courthouse, 500 State Avenue, Kansas City, Kansas 66101, for the purpose of considering *Class Plaintiffs' Motion For An Order Authorizing The Retention Of A Portion Of The BASF/Huntsman Settlement Fund To Pay Appeal Bond Premiums, If Necessary, And For Reimbursement Of Additional Litigation Fund Expenses.*

II. BACKGROUND OF THE CLASS ACTION

1. Filing of the Class Action and Settlements

In November 2004, Representative Plaintiffs Seegott Holdings, Inc., Industrial Polymers, Inc. and Quabaug Corporation filed suit against Defendants Bayer AG, Bayer Corporation, Bayer MaterialScience AG, and Bayer MaterialScience LLC (collectively, the "Bayer Defendants"), BASF SE and BASF Corporation (collectively, the "BASF Defendants"), The Dow Chemical Company ("Dow"), Huntsman International LLC ("Huntsman"), and Lyondell Chemical Company ("Lyondell"). Plaintiffs had alleged in their Complaint that Defendants unlawfully agreed to fix, raise, maintain or stabilize the prices of Polyether Polyol Products (as defined below) sold in the United States and its territories during the period from January 1, 1999 through December 31, 2004 in violation of the federal antitrust laws. **POLYETHER POLYOL PRODUCTS are defined to mean:** (1) propylene oxide-based polyether polyols; (2) monomeric or polymeric diphenylmethane diisocyanates (MMDI or PMDI – collectively, "MDI"); (3) toluene diisocyanates ("TDI"); (4) MDI-TDI blends; or (5) propylene oxide-based polyether polyol systems (except those that also contain polyester polyols). Plaintiffs allege that, as a result of such violations of the antitrust laws, they and other members of the Class paid more for Polyether Polyol Products than they would have paid absent such wrongful conduct.

Plaintiffs and the Class reached negotiated settlements of the claims against the Bayer Defendants, the BASF Defendants, Huntsman and Lyondell. These settlements, which together totaled more than \$139 million, have been approved by the Court and are now final. Notice was previously provided about those settlements.

All proceeds from the settlement with the Bayer Defendants have been distributed. Distribution of the proceeds from the settlements with the BASF Defendants and Huntsman began in 2012, when the first of two settlement checks were

distributed to eligible Class members. It is anticipated that eligible Class members will receive a second settlement check from the proceeds of the Huntsman and BASF settlements sometime after the Hearing described in this Notice.

2. The Jury Verdict and Judgment Against Dow

After the settlements were achieved, the Representative Plaintiffs continued to prosecute the case against the last non-settling defendant, Dow. During several months of trial preparations and in the course of the 4-week jury trial, Class Counsel advanced more than \$3 million in litigation costs to pay for expert witnesses and other trial expenses.

Class Plaintiffs tried their antitrust claims against Dow to a jury, the Honorable John W. Lungstrum presiding, in January and February, 2013. At the conclusion of the trial, the jury rendered a verdict in favor of Class Plaintiffs in the amount of \$400,049,039. On May 15, 2013, the Court entered its Memorandum and Order denying Dow's post-trial motions and modifying the time period of the Class to conform to the evidence developed during discovery and presented at trial. Notice was recently provided about the modification of the Class time period. The Court also has entered Final Judgment against Dow and in favor of the plaintiff Class in the amount of \$1,060,847,117.00 for purchases between November 24, 2000 and December 31, 2003.

Dow is pursuing an appeal of the jury verdict and judgment rendered against it. The net proceeds of the Final Judgment (if any) will not be distributed to members of the Class until after Dow's appeal is concluded and the verdict and Final Judgment are upheld on appeal.

3. Dow's Motion to Stay Execution of the Judgment During Its Appeal

The next phase of the case involves an expected appeal from Dow. Class Counsel's best estimate is that all appeals should be resolved within three years or less. While the appeal is pending, Class Counsel believe it is in the best interest of the Class to protect the Final Judgment in favor of the Class by requiring Dow to post what is known as a *supersedeas* bond, which operates like an insurance policy for the Class. Essentially, if Dow becomes financially unable to pay some or all of the Final Judgment while the appeal is pending, the *supersedeas* bond proceeds will remain available to pay the Class promptly at the conclusion of all appeals.

While a *supersedeas* bond operates to protect the Class against the risk of Dow being unable to pay the judgment, it also has a cost. To obtain a *supersedeas* bond, Dow must pay what is known as a "bond premium" while its appeal is pending. Dow estimates the cost of the bond premium to be approximately \$4.5-\$5 million per year for a \$1.2 billion *supersedeas* bond. Alternatively, Dow estimates the cost at approximately \$1.2 million per year for a \$400 million *supersedeas* bond.

The issue for the Class is that, if Dow wins on the merits of its appeal, the cost of the *supersedeas* bond might be considered a "taxable" cost by the Court, in which case Plaintiffs potentially could be required to reimburse Dow for the cost of the bond premiums. As described above, that "taxable" amount could be as much as approximately \$15 million for a \$1.2 billion bond or, alternatively, approximately \$3.6 million for a \$400 million bond.

Dow initially asked the Court for permission to pursue its appeal without posting any bond. That procedure, if adopted, would avoid the risk that bond premiums might be taxed against Plaintiffs. However, it also would leave the Final Judgment unprotected against the possibility that Dow becomes financially unable to pay some or all of the Final Judgment while the appeal is pending.

Class Plaintiffs and Dow have reached a compromise that will (a) provide substantial security for Class members in the event Plaintiffs win on appeal and Dow becomes unable to pay the judgment, while (b) reducing the bond premium costs that potentially could be taxed against the Plaintiffs in the event Dow wins on appeal. Specifically, Class Plaintiffs have agreed with Dow, subject to Court approval, that Dow will post a *supersedeas* bond in the amount of \$400 million, at a cost of approximately \$1.2 million per year. Dow will pay the premiums for the bond during the pendency of the appeal, but will reserve the right to seek recovery of those premiums as taxable costs if it ultimately wins on appeal. Also, during the pendency of the appeal, Class Plaintiffs may seek to require Dow to post a larger bond if its long term credit rating falls below investment grade by Moody's or Standard & Poor's. Class Counsel believe this compromise is in the best interest of the Class.

III. PURPOSE OF NOTICE

The purpose of this Notice is to advise you that Class Counsel have filed a Motion with the Court requesting that \$3.6 million be reserved from the Huntsman and BASF settlement funds to pay any taxable costs of a bond that may be awarded to Dow if it wins on appeal. In the event such taxable costs are not awarded to Dow, Class Counsel propose that the reserved funds either be distributed to the Class or, subject to Court approval, made available to pay any additional litigation expenses that may arise. In addition, Class Counsel's Motion seeks reimbursement of \$3,081,726.22 in litigation expenses from the proceeds of the Huntsman and BASF settlements. These expenses include costs for expert witnesses and other trial expenses. Previously, the Court has approved reimbursement of litigation expenses from prior settlements.

IV. THE HEARING ON CLASS COUNSEL'S MOTION AND YOUR RIGHT TO OBJECT

On October 1, 2013, at 1:00 p.m., the District Court will hold a Hearing at which it will consider *Class Plaintiffs' Motion For An Order Authorizing The Retention Of A Portion Of The BASF/Huntsman Settlement Fund To Pay Appeal Bond Premiums, If Necessary, And For Reimbursement Of Additional Litigation Fund Expenses* (the "Motion"). You do not need to appear at that hearing. Any member of the Class may object to the Motion, and any such objections must be in writing and filed with the Clerk, United States District Court for the District of Kansas, 500 State Avenue, Kansas City, Kansas 66101, no later than September 16, 2013, with copies served upon counsel identified below:

Richard A. Koffman, Esq. Cohen Milstein Sellers & Toll PLLC 1100 New York Avenue, NW Suite 500 West Washington, D.C. 20005-3964 (202) 408-4600 rkoffman@cohenmilstein.com Attorney for Plaintiffs	Gerard A. Dever, Esq. Fine, Kaplan and Black, RPC One South Broad Street 23 rd Floor Philadelphia, PA 19107 (215) 567-6565 gdever@finekaplan.com Attorney for Plaintiffs	Brian R. Markley, Esq. Stinson Morrison Hecker LLP 1201 Walnut, Suite 2200 Kansas City, MO 64106 (816) 842-8600 bmarkley@stinson.com Attorney for Dow
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If you have filed a timely objection to the Motion, you also may appear at the Hearing regarding the Motion, but you do not have to appear. If you choose to do so, you can appear either by yourself or by retaining an attorney at your own expense to appear on your behalf. The time and date of the Hearing may be continued from time to time. Notice of any such continuance shall be set forth on the Court's docket.

V. ADDITIONAL INFORMATION

This Notice gives only a summary of the lawsuit and Class Counsel's Motion. A copy of the Motion and many other case-related documents are available at www.polyetherpolyollitigation.com and www.polyetherpolyolsettlement.com. Any important updates concerning Dow's appeal of the jury verdict and Final Judgment will be posted to one or both of these websites. Any questions or inquiries regarding this Notice or this class action should be directed to Class Counsel or the Class Administrator at the below addresses:

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PLEASE DO NOT DIRECT INQUIRIES TO DOW, THE COURT OR THE CLERK'S OFFICE.

BY ORDER OF THE COURT DATED AUGUST 8, 2013

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