

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

**IN RE: URETHANE ANTITRUST  
LITIGATION**

**No. 04-MD-1616-JWL**

**This Order Relates to All Cases**

---

**PRACTICE AND PROCEDURE ORDER NO. 3**

It is hereby **ORDERED** as follows:

**Consolidation of Cases**

1. All of the civil actions previously consolidated for pretrial purposes which are the subject of the Consolidated Class Action Complaint (Doc. 39) filed on November 19, 2004, shall hereinafter be referred to collectively in this multidistrict litigation as the **“Polyester Polyol”** cases.

2. The cases newly transferred from the MDL panel include: (1) *Seegott Holdings, Inc. v. Bayer AG*, Case No. 05-2265-JWL; (2) *Alco Industries, Inc. v. Bayer AG*, Case No. 05-2266-JWL; and (3) *RBX Industries, Inc. v. Dow Chemical Co.*, Case No. 05-2310-JWL. These three cases and a fourth case recently filed in this court, *Industrial Polymers, Inc. v. Bayer AG*, Case No. 05-1271-JWL, are hereby consolidated for pretrial purposes and shall be referred to collectively in this multidistrict litigation as the **“Polyether Polyol”** cases. This consolidation, however, does not constitute a determination that the actions should be consolidated for trial, nor does it have the effect of making any entity a party to any action in

which he, she, or it has not been named, served, or added in accordance with the Federal Rules of Civil Procedure.

3. The Polyester Polyol cases and the Polyether Polyol cases are not consolidated for pretrial purposes.

4. The Clerk of the Court will continue to maintain the master docket case file *In re: Urethane Antitrust Litig.*, Case No. 04-MD-1616-JWL. The cases to which a particular pleading is intended to apply shall be indicated by appropriate words in the caption, as follows: **“This Document Relates to All Cases,” “This Document Relates to Case No. [State Individual Case Number],” “This Document Relates to the Polyester Polyol Cases,”** or **“This Document Relates to the Polyether Polyol Cases.”**

#### **Application of Prior Practice & Procedure Orders**

5. This court’s prior Practice & Procedure Order Upon Transfer (Doc. 2) and Practice and Procedure Order No. 2 (Doc. 36) shall apply to all cases except to the extent that those orders are obsolete and except as set forth in the next paragraph.

6. The organization of counsel set forth in Practice and Procedure Order No. 2 (Doc. 36) filed on October 22, 2004, shall hereinafter apply in this multidistrict litigation to the Polyester Polyol cases.

#### **Organization of Counsel in the Polyether Polyol Cases**

7. The court creates the following organization of counsel in the Polyether Polyol cases for the purpose of assuring the effective, efficient, expeditious, and economical conduct of the litigation.

8. The law firm of Shook, Hardy & Bacon, L.L.P. is appointed as liaison counsel for the Polyether Polyol defendants. The Polyether Polyol defendants' liaison counsel is authorized to: (a) receive orders, notices, correspondence, and telephone calls from the court and the clerk of the court on the Polyether Polyol defendants' behalf, (b) prepare and transmit copies of such orders and notices on the Polyether Polyol defendants' behalf, and (c) receive orders and notices from the Judicial Panel on Multidistrict Litigation, and shall: (d) maintain complete files with copies of all documents served upon them and make such files available to all of the Polyether Polyol defendants' counsel.

9. The law firm of Morris, Laing, Evans, Brock & Kennedy, Chartered is appointed as liaison counsel for the Polyether Polyol plaintiffs. In accordance with the separate Order Regarding Service (Doc. 35) filed on October 22, 2004, the Polyether Polyol plaintiffs' liaison counsel is designated as the counsel for the Polyether Polyol plaintiffs upon whom all notices, orders, pleadings, motions, discovery, and memoranda shall be served. The Polyether Polyol plaintiffs' liaison counsel is authorized to: (a) receive orders, notices, correspondence, and telephone calls from the court and the clerk of the court on behalf of the Polyether Polyol plaintiffs, (b) prepare and transmit copies of such orders and notices on behalf of the Polyether Polyol plaintiffs, and (c) receive orders and notices from the Judicial Panel on Multidistrict Litigation, and shall: (d) maintain complete files with copies of all documents served upon

them and make such files available to all of the Polyether Polyol plaintiffs' counsel, and (e) maintain and make available to all counsel and the court an up-to-date service list.

10. The law firms of Fine, Kaplan & Black, R.P.C. and Cohen, Milstein, Hausfield & Toll, P.L.L.C. are appointed as co-lead counsel for the Polyether Polyol plaintiffs. The Polyether Polyol plaintiffs' co-lead counsel shall have the following duties during all phases of this litigation:

a. to organize and supervise the efforts of the Polyether Polyol plaintiffs' counsel in a manner to ensure that the pretrial and trial preparation for the Polyether Polyol plaintiffs is conducted effectively, efficiently, expeditiously, and economically;

b. to delegate work responsibilities and monitor the activities of the Polyether Polyol plaintiffs' counsel to assure that schedules are met and unnecessary expenditures of time and expense are avoided;

c. to speak on behalf of the Polyether Polyol plaintiffs at all court conferences and hearings;

d. to initiate and conduct discussions and negotiations with counsel for the Polyether Polyol defendants on all matters, including settlement;

e. to determine the position of the Polyether Polyol plaintiffs on all matters arising during the litigation (after such consultation with other co-counsel as appropriate) and present such position orally and/or in writing to the court and opposing parties;

f. to consult with and employ experts, as necessary, for the Polyether Polyol plaintiffs;

g. to coordinate the initiation of and conduct discovery on behalf of the Polyether Polyol plaintiffs consistent with the requirements of the Federal Rules of Civil Procedure, including the preparation of interrogatories and requests for production of documents, the organization and review of documents produced by the defendants and non-parties, and the examination of witnesses via deposition;

h. to receive and initiate communications with the court and the clerk of court, including receiving orders, notices, correspondence and telephone calls;

i. to be the primary contact for all communications between the Polyether Polyol plaintiffs and the Polyether Polyol defendants;

j. to perform such other duties as are necessary in connection with the prosecution of this litigation;

k. to coordinate the preparation and presentation of all of the Polyether Polyol plaintiffs' claims and coordinate all proceedings;

l. to encourage full cooperation and efficiency among all of the Polyether Polyol plaintiffs' counsel; and

m. to assess the Polyether Polyol plaintiffs' counsel for the costs of the litigation.

11. All of the Polyether Polyol plaintiffs' counsel shall keep contemporaneous records of their time and expenses devoted to this matter. Those records shall reflect the date the legal service was rendered or expenses incurred, the nature of the service or expense, and number of hours consumed by the service or the amount of the expense. These records for the

preceding month shall be submitted in summary form by the end of each month to Fine, Kaplan & Black, R.P.C. No Polyether Polyol plaintiffs' counsel shall incur an expense to be reimbursed from the Polyether Polyol plaintiffs' assessment fund in excess of \$2,000 without first obtaining the consent from one of the Polyether Polyol plaintiffs' co-lead counsel. Failure to comply with this rule may render the expenses non-reimbursable, at the discretion of co-lead counsel.

12. Any discussions of a settlement that would affect any claims brought in this litigation, other than claims of an individual plaintiff or class member, must be conducted by the Polyether Polyol plaintiffs' co-lead counsel. Any proposed settlement that resolves, in whole or in part, the claims brought in this action shall first be subject to review and approval by the court in this litigation.

#### **Coordination of Discovery**

13. The court hereby orders counsel to confer and attempt to agree upon the manner and extent to which discovery should be coordinated among the Polyester Polyol cases and the Polyether Polyol cases so as to achieve any benefits of efficiency that can be gained from coordinating these cases for pretrial purposes. The court is not, however, at this time ordering the manner and extent to which the parties must coordinate discovery between the Polyester Polyol cases and Polyether Polyol cases.

#### **Filing and Service of Papers and Court Orders**

14. Service of pleadings and other papers to be filed with the court by any party as well as service of all court orders shall, subject to further order of this court, be made according to the Order Regarding Service (Doc. 35) filed on October 22, 2004. Liaison and lead counsel for the Polyester Polyol cases shall be responsible for service upon all parties in the Polyester Polyol cases as stated in the Order Regarding Service, and liaison and lead counsel for the Polyether Polyol cases shall be responsible for service upon all parties in the Polyether Polyol cases as stated in the Order Regarding Service.

**Related Actions**

15. The Polyether Polyol plaintiffs' liaison counsel shall promptly serve a copy of this order by overnight delivery service, facsimile, or other electronic means on counsel for plaintiffs in each related action that has not been consolidated in this proceeding to the extent that the Polyether Polyol plaintiffs' liaison counsel is aware of any such action(s).

**IT IS SO ORDERED** this 31st day of August, 2005.

s/ John W. Lungstrum  
John W. Lungstrum  
United States District Judge