IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE: URETHANE ANTITRUST LITIGATION	)	**MDL 1616** **Civil No. 04-md-01616-JWL**
This Document Relates To: **The Polyether Polyol Cases**	)	

CLASS PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT WITH HUNTSMAN INTERNATIONAL LLC

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I. INTRODUCTION

Class representatives Plaintiffs Seegott Holdings Inc., Quabaug Corporation and Industrial Polymers, Inc. (collectively, "Class Plaintiffs") submit this Memorandum in support of their Motion seeking preliminary approval of a class settlement ("Settlement") with Defendant Huntsman International LLC ("Huntsman") and authorization to disseminate notice to Class members. A copy of the Settlement Agreement, dated May 27, 2011 ("SA"), is attached hereto as Exhibit A. *See* Fed. R. Civ. P. 23(e)(3).

This Settlement represents an excellent result for the Class. It provides for a cash payment of $33 million, payable in three equal annual installments, representing approximately 1.4% of Huntsman's sales to Class members during the Class Period. The $33 million settlement payment provides a significant and certain cash benefit to the Class while the litigation continues against the two most culpable defendants, BASF and Dow.[1] The Settlement does not affect the remaining Defendants' joint and several liability for the alleged conspiracy, as Huntsman's sales to Class members remain in the case as a basis for damages recoverable from the remaining Defendants.

This Settlement is the product of extensive arm's-length, good faith negotiations. Experienced counsel for Class Plaintiffs and for Huntsman participated in numerous face-to-face settlement meetings and conference calls. Because the parties' settlement discussions were informed by a nearly complete merits discovery record, the parties had virtually all relevant facts

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1/ The remaining Defendants are BASF Corporation, BASF SE (collectively, "BASF"), and The Dow Chemical Company ("Dow"). Class Plaintiffs also have reached a settlement with Lyondell Chemical Company ("Lyondell"), which today is being presented for preliminary approval in a separate filing. Lyondell has not participated in this litigation since early 2009 due to the automatic stay triggered by its Chapter 11 bankruptcy filing.

disclosed during discovery at their disposal in making settlement assessments and in crafting and finalizing the settlement.

Based on the foregoing, Class Plaintiffs' counsel, who have litigated this case for over six years and are highly experienced in litigating price-fixing cases, believe that the Settlement is fair and reasonable and represents an excellent result for the Class.

Class Plaintiffs respectfully submit that the Settlement satisfies the standards for preliminary approval under Rule 23 of the Federal Rules of Civil Procedure—namely, it is sufficiently fair and reasonable to warrant class-wide notice. Accordingly, Class Plaintiffs respectfully request that their motion for preliminary approval be granted, and notice of the proposed settlement be disseminated to the Class.

II. BACKGROUND

A. Relevant Procedural History

Plaintiffs filed their initial complaints in 2004 alleging that Defendants Huntsman, Bayer, BASF, Dow and Lyondell violated the Sherman Antitrust Act, 15 U.S.C. § 1, *et seq.*, by conspiring to fix, raise, maintain or stabilize the prices and to allocate customers and markets of Polyether Polyol Products[2] sold in the United States. First Am. Consol. Compl. ¶¶ 1-2.

Class Plaintiffs reached a settlement with Bayer, which this Court approved on August 30, 2006. *See* Dkt. No. 425. Under that settlement, Bayer paid Plaintiffs $55.3 million—which represented approximately 1% of Bayer's sales of the relevant products during the class period—and agreed to provide Class Plaintiffs with access to documents and witnesses without expensive and protracted discovery.

Nearly two years later, and following a period of class certification discovery, the Court

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2/ "Polyether Polyol Products" are defined below in Section III.B.

certified a litigation class on July 29, 2008. *See* Dkt. No. 708. For the next two years, from September 2008 through December 2010, the parties engaged in merits discovery, exchanging and reviewing millions of pages of documents, responding to dozens of interrogatories, filing various discovery-related papers with the Court, and deposing more than 100 witnesses domestically and overseas. Other than a few outstanding items, merits discovery is now closed. *See* Scheduling Order No. 7, Dkt. No. 1952. The parties recently embarked on expert discovery and the case is set for trial in September 2012. *See id.*

B. Class Plaintiffs' Case Against Huntsman

After many years of extensive fact discovery and numerous settlement meetings with Huntsman over a three-year period, Class Plaintiffs are well positioned to make an informed judgment on the strengths and weaknesses of their case and on the merits of this Settlement. Class Plaintiffs believe the settlement is appropriate for several reasons.

First, the monetary relief provided in the Settlement is significant. Thirty-three million dollars is a large sum of money, representing approximately 1.4% of Huntsman's relevant sales. Whether viewed in absolute terms or as a percentage of sales, the size of the settlement fund is impressive.

Second, a settlement of 1.4% of sales is fair and adequate in light of the evidence against Huntsman. Although Class Plaintiffs have amassed significant direct and circumstantial evidence of a price-fixing conspiracy that implicates all Defendants, in Class Counsel's judgment the quantity and quality of evidence against Huntsman is not as compelling as it is against BASF and Dow.[3] Class Plaintiffs therefore believe that obtaining a $33 million

[3] *See, e.g.*, Class Pls.' Third Supp. Joint Obj. and Resp. to Defs.' First Set of Merits Interrogatories to Pls., at pp. 4-26 (summarizing Class Plaintiffs' conspiracy evidence) (Ex. B hereto, filed under seal).

settlement now from Huntsman, and thereby being able to focus their efforts on preparation for trial of their stronger claims against the non-settling Defendants, is in the best interests of the Class.

III. THE SETTLEMENT AGREEMENT

The Settlement provides a substantial monetary payment to the Class and contains other important provisions that will benefit the Class in their continuing litigation against the remaining Defendants. The Settlement's key terms are discussed below.

A. The Settlement Fund

Huntsman will pay a total of $33 million in cash to the Class. SA at ¶ 27. Within 10 business days after the Court's preliminary approval of the Settlement, Huntsman will pay into escrow an initial $11 million. *Id.* Huntsman will pay another $11 million into escrow no later than one year after the first payment, and a final $11 million into escrow no later than two years after the first payment. *Id.*

B. Assistance with Authentication and Data Requests

Huntsman also agrees to cooperate with Class Plaintiffs in authenticating documents and data and to respond informally to Class Plaintiffs' reasonable transaction data-related requests going forward. SA ¶ 39. Specifically, Huntsman promises: (i) to provide Class Plaintiffs with assistance in authenticating documents and data through the testimony of qualified representatives, either at deposition or trial or through declarations or affidavits; (ii) to respond informally to any reasonable requests that Class Plaintiffs make about Huntsman transactions in class Products as well as the costs of producing, marketing and selling those Products previously produced by Huntsman; and (iii) to produce, in response to reasonable requests of Class Counsel, such data not previously produced relating to Huntsman transactions in class products or the

costs of producing, marketing or selling those products as Huntsman can make available to Class Counsel without undue effort or expense. SA ¶ 39(a)-(b).

C. The Parties and the Settlement Products

The Settlement is binding on Huntsman,[4] Class Plaintiffs,[5] and the Class, which includes all persons and entities who have not timely excluded themselves from the certified litigation class and who have purchased: (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) (hereinafter "Polyether Polyol Products"), directly from defendants at any time from January 1, 1999 through December 31, 2004 (the "Class Period"). SA ¶ 15. Excluded from the Class are Defendants, their respective parents, employees, subsidiaries and affiliates, and all government entities. *Id*. ¶ 3. This Class definition encompasses the same litigation Class that the Court certified. *See* Dkt. No. 708, Mem. and Order (July 29, 2008), at 8.

D. Released Claims

The Agreement releases only Huntsman (and its current and former officers, directors, employees, agents, parents, and subsidiaries) from all claims relating in any way to any conduct prior to the Agreement's effective date relating to the pricing, selling, discounting, marketing, manufacturing, or distributing of the Products in the United States. SA ¶ 26. Importantly,

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4/ "Huntsman" means Huntsman International LLC, and its respective past and present parents, subsidiaries, affiliates, officers, directors, employees, agents, attorneys, servants, and 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. SA ¶ 1.

5/ "Plaintiffs" (or "Class Representatives") are defined in the Settlement Agreement as "Seegott Holdings Inc., Quabaug Corporation and Industrial Polymers, Inc." SA ¶ 8.

however, the Agreement provides that Huntsman's sales shall remain in the continuing litigation against the non-settling Defendants, who remain jointly and severally liable for all damages caused by the conspiracy, less only the amounts paid by settling Defendants. *Id*.

IV. ARGUMENT

A. The Standards Governing Preliminary Approval Are Easily Satisfied

Under Rule 23(e), once a class is certified, any settlement requires the Court's approval. The first step, which this motion seeks, is preliminary approval. At this stage, "the Court makes a preliminary evaluation of the fairness of the proposed settlement and determines whether it has any reason to not notify the class members of the proposed settlement or to not hold a fairness hearing." *In re Motor Fuel Temperature Sales Practices Litig.*, 258 F.R.D. 671, 675 (D. Kan. 2009); *accord Lucas v. Kmart Corp.*, 234 F.R.D. 688, 693 (D. Colo. 2006). If the Court grants preliminary approval, it directs notice to the class members and sets a final approval hearing, the second step in the process. *DeJulius v. New England Health Care Employees Pension Fund*, 429 F.3d 935, 939 (10th Cir. 2005); *Motor Fuel Temp.*, 258 F.R.D. at 675; *American Med. Ass'n v. United Healthcare Corp.*, No. 00-cv-2800, 2009 WL 1437819, at *3 (S.D.N.Y. May 19, 2009).

The trial court must approve a settlement if it is fair, reasonable and adequate. *Jones v. Nuclear Pharmacy, Inc.*, 741 F.2d 322, 324 (10th Cir. 1984). The standards in the Tenth Circuit for assessing, at the final approval hearing, whether the settlement is fair, reasonable and adequate are well established. The district court should consider: (1) whether the proposed settlement was fairly and honestly negotiated; (2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt; (3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and (4) the judgment of the parties that the settlement is fair and reasonable. *Rutter & Wilbanks*

Corp. v. Shell Oil Co., 314 F.3d 1180, 1188 (10th Cir. 2002); *accord Gottlieb v. Wiles*, 11 F.3d 1004, 1014 (10th Cir. 1993), *overruled in part on other grounds, Devlin v. Scardeletti*, 536 U.S. 1 (2002); *Jones*, 741 F.2d at 324.

The Court must consider these factors at the final approval hearing, but they are a useful guide at the preliminary approval stage as well. *Motor Fuel Temp.*, 258 F.R.D. at 680; *Lucas*, 234 F.R.D. at 693. The Court, however, need not consider final approval of the terms of the settlement until the final approval hearing. *DeJulius*, 429 F.3d at 939. Accordingly, the Court's examination of these standards for purposes of preliminary approval is less stringent than for final approval. *Motor Fuel Temp.*, 258 F.R.D. at 675-76. This is especially the case where, as here, the settlement is negotiated after the class has been certified. *Motor Fuel Temp.*, 258 F.R.D. at 675; *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001). This Settlement satisfies each of these factors.

In evaluating the fairness of a settlement, "courts are not to decide the merits of the case or resolve unsettled legal questions." *Wilkerson v. Martin Marietta Corp.*, 171 F.R.D. 273, 284 (D. Colo. 1997). Instead, the court determines whether the proposed settlement is "within the range of possible approval." *In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 205 (5th Cir. 1981); *Motor Fuel Temp.*, 258 F.R.D. at 675; *AMA*, 2009 WL 1437819, at *3. The Court's assessment of whether the proposed settlement falls within the preliminarily acceptable range is informed by the "strong judicial policy in favor of settlements of class actions." 5 *Moore's Federal Practice* § 23.161[1] (2005); *see Wilkerson*, 171 F.R.D. at 284; *Alvarado Partners, L.P. v. Mehta*, 723 F. Supp. 540, 551 (D. Colo. 1989) (noting strong judicial policy in favor of settlements, particularly in class actions). Settlement of complex litigation generally "is

encouraged by the courts and favored by public policy." 4 Newberg on Class Actions at § 11:41 (4th ed. 2002).

1. The Settlement Was Fairly, Honestly and Extensively Negotiated

A settlement is considered to be fairly and honestly negotiated when reached after arm's-length negotiations by experienced counsel. *See Marcus v. Kansas Dept. of Revenue,* 209 F. Supp. 2d 1179, 1182 (D. Kan. 2002) (finding this factor satisfied where the "settlement was reached after arm's-length negotiations" "by experienced counsel for the class"); *In re New Mexico Natural Gas Antitrust Litig.*, 607 F. Supp. 1491, 1506-07 (D. Colo. 1984) (finally approving settlement where court was "wholly satisfied that the negotiations took place at arms length"); *In re King Resources Co. Sec. Litig.*, 420 F. Supp. 610, 626 (D. Colo. 1976) (finally approving settlements where court found "that each settlement was arrived at through arms-length and extensive negotiations between counsel for the plaintiffs and counsel for settling defendants and that such counsel engaged in no collusion whatsoever in arriving at such settlements").

This settlement is the result of extensive arms'-length negotiations by experienced counsel for Class Plaintiffs and Huntsman. Counsel participated in multiple face-to-face meetings and conference calls where they exchanged their respective views on the merits of Plaintiffs' case against Huntsman, Huntsman's defenses, and the monetary amount for which Huntsman should settle. Importantly, the substantive negotiations between the parties were informed by a significantly developed factual record. Indeed, by the time the last series of in-person meetings occurred in February and March 2011, the parties had all but completed merits discovery, and thus had a firm grasp of the facts underlying Class Plaintiffs' claims and Huntsman's defenses. *Accord In re Pressure Sensitive Labelstock Antitrust Litig.*, 584 F. Supp.

2d 697, 701 (M.D. Pa. 2008) (approving settlement before merits discovery began, noting that "Class Plaintiffs have been able to uncover sufficient information to evaluate the strengths and weaknesses of the claims and defenses in this matter").

Moreover, the terms of the Settlement—the ultimate result of the parties' negotiations—speak for themselves. The $33 million settlement fund, which represents approximately 1.4% of Huntsman's relevant sales, net of discounts and excluding sales to those who opted-out of the litigation class, is a significant recovery for the Class when compared to settlements reached in other price-fixing class actions. *See id.* at 702 (approving $8.25 million settlement that constituted about 1.5% of the settling defendants' class sales); *Fischer Bros., Inc. v. Mueller Brass Co.*, 630 F. Supp. 493, 499 (E.D. Pa. 1985) (approving settlements constituting 0.1%, 0.2%, 0.3%, 0.65% and 0.88% of defendants' respective sales).

In sum, the history of the parties' negotiations as well as the settlement's terms reveal that the settlement was fairly, honestly and vigorously negotiated.

2. Disputed Questions of Law and Fact Remain

The Court also "consider[s] the existence of serious questions of law and fact which place the ultimate outcome of the litigation in doubt." *King Resources*, 420 F. Supp. at 625. The risks to Class Plaintiffs in further litigating the complex legal and factual issues raised by their claims militate in favor of settlement.

Whenever a settlement is presented for approval, there is a possibility that it could be disapproved and the parties and their counsel could later find themselves locked in continuing litigation and a full-scale trial. Therefore, courts have recognized that it is not realistic to expect counsel to highlight potential weaknesses or to emphasize any particularly vulnerable point in their case. Still, no outcome is guaranteed, and there are risks that can be identified.

Antitrust litigation generally involves complex issues of fact and law, and this case is no exception. To prove that Huntsman violated Section 1 of the Sherman Act, Class Plaintiffs must show the existence of a price-fixing agreement, that Huntsman was party to that agreement, and that its conduct injured Class Plaintiffs. While Class Plaintiffs have uncovered compelling evidence supporting their allegations, there can be no assurances in complex litigation, such as this, what the ultimate result might be before a jury. *See New Mexico Natural Gas,* 607 F. Supp. at 1505 ("No one can predict whether a jury would have ultimately found in favor of the plaintiffs. Succinctly stated, the competing liability positions do not lend themselves to ready evaluation of relative strength.").

In addition to defenses to liability, Huntsman surely would have asserted defenses regarding damages. Huntsman may have argued in its expert reports and at trial that the conspiracy damaged Class Plaintiffs (if at all) much less than Class Plaintiffs contend. Consequently, Class Plaintiffs and Huntsman would have presented a jury with vastly different damage estimates. "Damages would likely be established at trial through a 'battle of experts,' with each side presenting its figures to the jury and with no guarantee whom the jury would believe." *In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 256 (D. Del. 2002), *aff'd*, 391 F.3d 516 (3d Cir. 2004) (internal quotations, citation omitted).

Given the risks inherent in litigating the claims that Class Plaintiffs assert in this case, and the size of the monetary recovery and the other provisions obtained in Settlement, the Settlement is worthy of preliminary approval.

3. The $33 Million Guaranteed Recovery Outweighs the Mere Possibility of Future Monetary Relief

Next, the Court should "consider the vagaries of litigation and compare the significance of immediate recovery by way of compromise to the mere possibility of relief in the future, after

protracted and expensive litigation." *King Resources*, 420 F. Supp. at 625. "In this respect, it has been held proper to take the bird in the hand instead of a prospective flock in the bush." *Id.* (citations and internal quotations omitted).

There is no doubt that establishing liability and proving damages against Huntsman would have been expensive and time-consuming. Settlement is therefore appropriate in this matter for reasons similar to those stated in *South Carolina National Bank v. Stone*, 749 F. Supp. 1419, 1426 (D.S.C. 1990): "Although Plaintiffs will continue to pursue their claims against the non-settling Defendants, many additional hours would have been required to complete discovery, to prepare and respond to anticipated summary judgment motions, and to try the case against the settling Defendants."

Indeed, while merits discovery is nearing completion, many hours of experienced attorney work remain before this case can be tried. By settling with Huntsman, Class Plaintiffs need not invest in preparation for trial against Huntsman, and instead may devote all of their resources to prosecuting their claims against the conspiracy's key players, Dow and BASF. Huntsman's assistance with authentication and data-related requests will assist in those efforts and save Plaintiffs' counsel considerable time and effort. Furthermore, whatever the outcome of a trial against Huntsman, it is more than likely that appeals would have been filed, delaying any recovery of proceeds from Huntsman by years. These non-monetary aspects of the Settlement inure to the Class's benefit as well.

In short, a settlement at this time results in a substantial, tangible, and immediate recovery for the benefit of Class Plaintiffs, without the attendant expense, risk and delay of trial and post-trial proceedings. *Accord Dep't of Energy Stripper Well Exemption Litig.*, 653 F. Supp. 108, 117 (D. Kan. 1986) ("The risks of continued litigation are substantial for all of the

parties."); *King Resources*, 420 F. Supp. at 627 ("The Court recognizes that had these settlements not been reached, chances of the class prevailing against settling defendants would have been uncertain and disbursement of funds to the class, should it have prevailed, would undoubtedly have been delayed for some, perhaps lengthy, period of time given the high probability of an appeal or appeals in this case.").

4. Class Counsel Believe that the Settlement is Fair and Reasonable

Courts rely on the considered judgment of experienced counsel in evaluating the fairness of proposed class action settlements. *See, e.g.*, *Lucas*, 234 F.R.D. at 695 ("Counsels' judgment as to the fairness of the agreement is entitled to considerable weight.") (quoting *Marcus*, 209 F. Supp. 2d at 1183); *Wilkerson*, 171 F.R.D. at 288-89 ("[T]he recommendation of a settlement by experienced plaintiffs' counsel is entitled to great weight."); *Alvarado*, 723 F. Supp. at 548 ("Courts have consistently refused to substitute their business judgment for that of counsel and the parties."). Class Plaintiffs' counsel, who are among the most experienced and respected antitrust class action lawyers in the nation, have tirelessly advanced the Class's claims since the case's inception. In their considered judgment, the Settlement is more than fair and reasonable—it represents an excellent result for the Class.

Relying on the judgment of counsel makes particular sense in the context of preliminary approval. Because preliminary approval is provisional, and is followed by more formal and comprehensive review and objection procedures, "[t]he Court will ordinarily grant preliminary approval where the proposed settlement 'appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval.'" *Motor Fuel Temp.*, 258 F.R.D. at 675 (quoting *AMA*, 2009 WL 1437819, at *3).

Those criteria are satisfied here.

In sum, because the Huntsman settlement agreement satisfies each of the Tenth Circuit's stated criteria for approval, the Court should grant preliminary approval.

B. Notice Should Be Disseminated to the Class

Rule 23(e) requires that court-approved notice of the Settlement be distributed to all reasonably identifiable Class members. *DeJulius*, 429 F.3d at 939; 4 *Newberg on Class Actions* § 11.25 (4th ed. 2002). Rule 23(e)(1) provides that "[t]he court must direct notice in a reasonable manner to all class members who would be bound by the proposal."

Here, Class Plaintiffs propose to follow the same dissemination plan approved by the Court to provide notice of the proposed plan of allocation of the Bayer settlement fund. *See* Dkt. No. 911, Order Authorizing Notice to the Class. Specifically, Class Plaintiffs propose individual notice via first-class mail to those class members who were previously identified in connection with the May 2009 mailing.[6] To the extent that the mailing list has been updated since that time, those added persons or addresses will also receive the mailed notice.[7]

The proposed form of notice includes information concerning both the proposed Huntsman settlement and the proposed Lyondell settlement. Class Plaintiffs believe that

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6/ *See* Dkt. No. 962-2, Mailing Affidavit of Richard L. Sartory Re: Mailing of Notice (describing mailing of the notices).

7/ Plaintiffs do not propose publication notice in connection with the instant settlement. Publication notice already has been provided twice in this litigation—first, in connection with the 2006 notice of the Bayer settlement and, second, in connection with the Court's order certifying the litigation class. *See* Dkt. Nos. 389, 397 & 775-2 (describing notice programs). Moreover, there was an additional notice program—approved without a publication component—in connection with the proposed allocation of the Bayer settlement. *See* Dkt. No. 911. Class Counsel believe these substantial (and expensive) efforts have provided effective notice to the class, and that it is highly unlikely that any significant number of *additional* class members will be notified by a third publication notice. In short, in Class Counsel's judgment, it would not be an efficient use of resources to repeat publication notice a third time.

distributing a joint notice of the Huntsman and Lyondell settlements, as opposed to multiple notices, will be the cleanest and most efficient way to educate Class members about their rights under the settlements, as they will receive one notice, rather than piecemeal notices, that sets forth everything they need to know about their rights under both settlements.

The proposed form of notice defines the Class (Part I), describes the allegations and pertinent procedural history of this class action (Part II), outlines the terms of the proposed settlements (Part III), provides notice of the fairness hearing and how to object to the proposed settlements (Part IV), and explains how Class members may obtain additional information, including a copy of the two settlement agreements (Part V). *See* Ex. A to the proposed preliminary approval order.

The contents of the proposed Notice, and the proposed method of its dissemination, comport with Federal Rules of Civil Procedure 23(c)(2) and 23(e), as well as due process. *See generally Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 175-77 (1974) (due process is satisfied by mailed notice to all class members who reasonably can be identified); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1025-26 (9th Cir. 1998) (finding that form and distribution of notice was adequate where it complied with criteria described above).[8]

Accordingly, Class Counsel respectfully request that the Court approve the form and plan of dissemination of notice.

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[8] Once the members of the Class have had an initial opportunity to opt out of the class, their rights "are protected by the mechanism provided in the rule: approval by the district court after notice to the class and a fairness hearing at which dissenters can voice their objections, and the availability of review on appeal." *Officers for Justice v. Civil Service Com'n of City and County of San Francisco*, 688 F.2d 615, 635 (9th Cir. 1982); *see In re Brand Name Prescription Drugs*, No. 94-cv-897, 1996 WL 167347, at *4 (N.D. Ill. Apr. 4, 1996) ("Neither Rule 23 nor due process requires that the objectors now be afforded a second opportunity to opt out" because they now oppose a settlement that did not exist at the time of class certification). Similarly, this Court should approve this Settlement without providing Class members a second opportunity to opt out.

V. CONCLUSION

For the reasons stated herein, Class Plaintiffs respectfully request that the Court grant the motion for preliminary approval of the settlement with Huntsman, and order dissemination of the Notice, in the form and manner described above, to the Class Members. A proposed order is being submitted herewith.

Dated: June 2, 2011

Respectfully submitted,

/s/

Robert W. Coykendall, #10137
Roger N. Walter, #08620
Morris, Laing, Evans, Brock & Kennedy, Chartered
Old Town Square
300 North Mead - Suite 200
Wichita, KS 67202
Tel: (316) 262-2671
Fax: (316) 262-5991

Class Plaintiffs' Liaison Counsel

Allen D. Black
Roberta D. Liebenberg
Donald L. Perelman
Gerard A. Dever
Paul Costa
Fine, Kaplan and Black, R.P.C.
1835 Market Street, 28th Floor
Philadelphia, PA 19103
Tel: (215) 567-6565
Fax: (215) 568-5872

Richard A. Koffman
Christopher J. Cormier
Sharon K. Robertson
Cohen Milstein Sellers & Toll PLLC
1100 New York Avenue, N.W.
Suite 500, West Tower
Washington, DC 20005
Tel: (202) 408-4600
Fax: (202) 408-4699

Class Plaintiffs' Co-Lead Counsel