

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

IN RE
URETHANE ANTITRUST LITIGATION

MDL No. 1616

This document relates to:
The Polyether Polyol Cases

Civil No. 2:04-md-01616-JWL

SETTLEMENT AGREEMENT

This Settlement Agreement ("Settlement Agreement") is made and entered into this 1st day of March, 2011 (the "Execution Date"), by and among Defendant Lyondell Chemical Company ("Lyondell," as defined in Paragraph 1 below) and plaintiffs Seegott Holdings Inc., Quabaug Corporation, and Industrial Polymers, Inc. (collectively "Plaintiffs"), who have been certified by the Court as representatives of a class of similarly situated direct purchasers, as more specifically defined below. Plaintiffs enter this Settlement Agreement both individually and on behalf of a class of all persons and entities who purchased Polyether Polyol Products (defined below) directly from a Defendant at any time from January 1, 1999 through December 31, 2004 in the United States and its territories (excluding all governmental entities, any defendants, their employees, and their respective parents, subsidiaries and affiliates) (the "Class"). Polyether Polyol Products are: propylene oxide-based polyether polyols; monomeric or polymeric diphenylmethane diisocyanates (MMDI or PMDI – collectively, MDI); toluene diisocyanates (TDI); MDI-TDI blends; or propylene oxide-based polyether polyol systems (except those that also contain polyester polyols).

WHEREAS on January 6, 2009, Lyondell Chemical Company and certain of its affiliates (collectively, the "Reorganized Debtors" or, during the chapter 11 cases, the "Debtors") each

filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, commencing chapter 11 cases which are jointly administered under case number 09-10023¹ in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court").

WHEREAS Plaintiffs filed proofs of claim listed on the attached Exhibit A (the "Claims") against Lyondell Chemical Company and Lyondell Chemical Nederland, Ltd., asserting unliquidated claims arising out of an alleged unlawful antitrust conspiracy with respect to Polyether Polyol Products.

WHEREAS On April 23, 2010, the Bankruptcy Court entered an order [Docket No. 4418] confirming the Debtors' plan of reorganization (the "Plan"), which became effective by its terms on April 30, 2010 (the "Effective Date").²

WHEREAS Pursuant to Article 8 of the Plan, the Reorganized Debtors are authorized to resolve proofs of claim without further Bankruptcy Court order.

WHEREAS Lyondell has denied it engaged in an unlawful conspiracy, and maintains that the claims asserted in the Bankruptcy based on antitrust violations have no value.

WHEREAS Lyondell's Plan of Reorganization has been approved by the Bankruptcy Court.

WHEREAS, the parties dispute the value of the Plaintiffs' claims, and desire to avoid the expense of litigating valuation in exchange for the consideration stated herein.

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, it is agreed by and among the

¹ Additional Debtors filed for chapter 11 protection on April 24, 2009, under case numbers 09-12518 and 09-12519, and on May 8, 2009, under case numbers 09-12940 through 09-12955.

² Capitalized terms used but not defined herein shall have the meaning ascribed thereto in the Plan.

undersigned that the Class Actions be settled, compromised, and dismissed on the merits with prejudice as to Lyondell only, without costs as to Plaintiffs, the Class, or Lyondell, and Plaintiffs' proof of claim be withdrawn with prejudice, subject to the approval of the Court in which the class action is pending, on the following terms and conditions.

Definitions

The following terms, as used in this Settlement Agreement, have the following meanings:

1. "Lyondell" means Lyondell Chemical Company, each entity owned or controlled by Lyondell, and each of Lyondell's past, present, predecessor, successor or successor in interest subsidiaries, and related, affiliated and parent entities.
2. "Class Actions" shall mean the above-captioned action and all cases consolidated therein.
3. "Class Counsel" shall refer to the law firms of Cohen Milstein Sellers & Toll PLLC and Fine, Kaplan and Black, R.P.C.
4. "Class Member" means each member of the Class who has not timely elected to be excluded from the Class.
5. "Class Period" means the period from and including January 1, 1999 up to and including December 31, 2004.
6. "Class Representatives" or "Plaintiffs" means Seegott Holdings Inc., Quabaug Corporation and Industrial Polymers, Inc.
7. "Defendants" means Bayer AG, Bayer Corporation, Bayer MaterialScience LLC (f/k/a Bayer Polymers LLC), BASF AG, BASF Corporation, The Dow Chemical Company, Huntsman International LLC, and Lyondell Chemical Company.
8. "Document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a), including, without limitation, electronic or

computerized data compilations. A draft or non-identical copy is a separate document within the meaning of this term.

9. "Released Claims" means those claims released pursuant to Paragraph 17 of this Settlement Agreement.

10. "Releasees" shall refer jointly and severally, individually and collectively to Lyondell Chemical Company, each entity owned or controlled by Lyondell, and each of Lyondell's past, present, predecessor, successor or successor in interest subsidiaries, and related, affiliated and parent entities (the "Released Entities"), and the Released Entities' past or present directors, officers, employees and agents.

11. "Releasers" shall refer jointly and severally, individually and collectively to Plaintiffs, the Class Members, and their respective past and present parents, subsidiaries, affiliates, officers, directors, employees, agents, attorneys, servants, representatives (and the parents', subsidiaries', and affiliates' past and present officers, directors, employees, agents, attorneys, servants, and representatives), and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing.

Approval of this Settlement Agreement and Dismissal of Claims

12. Plaintiffs and Lyondell shall use their best efforts to effectuate this Settlement Agreement, and shall cooperate to promptly seek and obtain the Court's preliminary and final approval of this Settlement Agreement (including providing class notice under Federal Rules of Civil Procedure 23 (c) and (e)) and to secure the prompt, complete, and final dismissal with prejudice of the Class Actions as to Lyondell only.

13. Lyondell agrees to pay all administrative expenses associated with providing notice of the settlement to the Class not to exceed \$35,000 of documented expenses.

14. Within twenty (20) business days after the Execution Date, Plaintiffs shall submit to the Court and Lyondell shall not object to a motion requesting entry of an Order preliminarily approving the settlement and authorizing dissemination of notice to the Class (the "Motion"). The Motion shall include: (a) the definition of the Class; and (b) the proposed form of, method for, and timetable for dissemination of notice to the Class. Unless otherwise directed by the Court, individual notice of the settlement shall be mailed and/or e-mailed to persons and entities identified as Class Members.

15. Plaintiffs shall seek and Lyondell shall not object to entry of a final judgment order:

a. approving finally this Settlement Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Class Members within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation according to its terms;

b. directing that, as to Lyondell, the Class Actions be dismissed with prejudice and, except as provided for in this Settlement Agreement, and Plaintiffs' proofs of claim be withdrawn with prejudice, with each party to bear their own respective fees and costs;

c. reserving exclusive jurisdiction over the settlement and this Settlement Agreement, including the administration and consummation of this settlement; and

d. finding under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing that the judgment of dismissal as to Lyondell shall be final and entered forthwith.

16. This Settlement Agreement shall become final only upon: (a) the entry by the Court of a final order approving the Settlement Agreement under Rule 23(e) of the Federal Rules of Civil Procedure together with entry of a final judgment dismissing the Class Actions and all claims therein against Lyondell on the merits with prejudice as to all Class Members (the "Final Judgment"), and (b) the expiration of the time for appeal or to seek permission to appeal from the Court's approval of the Settlement Agreement and entry of the Final Judgment or, if an appeal

from an approval and Final Judgment is taken, the affirmance of such Final Judgment in its entirety, without modification, by the court of last resort to which an appeal of such Final Judgment may be taken (the "Effective Date"). It is agreed that neither the provisions of Rule 60 of the Federal Rules of Civil Procedure nor the All Writs Act, 28 U.S.C. § 1651, shall be taken into account in determining the above-stated times.

Release and Discharge

17. Upon the occurrence of the Effective Date, the Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, or causes of action of whatsoever nature, whether asserted or unasserted, arising out of or in any way related to the fact allegations in or factual bases for the Class Actions or the Proofs of Claim ("Released Claims"). Released Claims do not include any other claims relating to Polyether Polyol Products other than the specified Released Claims, and specifically do not include, by way of illustration but not limitation, any breach of contract, warranty, product defect, or similar claims between or among the Parties relating to Polyether Polyol Products. Released Claims also do not include any claims relating to any other materials or products other than Polyether Polyol Products. Similarly, Released Claims do not include claims of any nature against any person or entity other than Released Entities, and Plaintiffs expressly do not release and retain any and all claims against the remaining Defendants in the Class Actions. This Release shall not affect the rights of any Plaintiff, against any entity or person other than the Released Entities, and shall not affect, alter, or limit in any manner any otherwise applicable joint and several liability Plaintiffs might assert against or among persons or entities other than Released Entities. Plaintiffs expressly reserve any and all claims they have or may have against Released Entities,

other than the Released Claims, whether arising before or after the Execution Date of this Agreement.

18. The Plaintiffs, on behalf of themselves and all other entities wholly owned or controlled by Plaintiffs, covenant not to sue Lyondell, each entity owned or controlled by Lyondell, and each of Lyondell's past, present, predecessor, successor or successor in interest subsidiaries, and related, affiliated and parent entities (the "Lyondell Entities"), and the Lyondell Entities past or present directors, officers, employees and agents, with respect to any and all claims, demands, actions; or causes of action of whatsoever nature, whether asserted or unasserted, arising out of or in any way related to the fact allegations in or factual basis for the Class Actions and the Proofs of Claim.

Rescission if the Settlement Agreement is Not Finally Approved

19. If the Court declines to approve this Settlement Agreement or any part hereof, or if such approval is modified or set aside on appeal, or if the Court does not enter the Final Judgment, or if the Court enters the Final Judgment and order and appellate review is sought and, on such review, such Final Judgment is not affirmed, then Lyondell and the Plaintiffs shall each, in their respective sole discretion, have the option to rescind this Settlement Agreement in its entirety. If the Settlement Agreement is rescinded, canceled, or terminated pursuant to this Paragraph, any obligations pursuant to this Settlement Agreement shall cease immediately. However, Lyondell would still pay for already incurred expenses related to providing notice to the Class and Lyondell would not be entitled to any refund for amounts already paid relating to notice.Lyondell Documents and Witnesses

20. Upon execution of the agreement and in exchange for the consideration from Plaintiffs stated herein, Lyondell agrees to the following with respect to Lyondell documents and witnesses:

- a. Lyondell will promptly produce to the Plaintiffs after execution of this Agreement documents collected by Lyondell counsel prior to the Commencement of the Bankruptcy Cases. Lyondell will provide reasonable assistance to Plaintiffs in locating documents within this collection.
- b. Lyondell will use reasonable efforts with respect to witnesses currently or previously employed by Lyondell, Arco or Rhone-Poulenc to have them prepare declarations and/or affidavits and/or make themselves available for interviews and/or

provide testimony at deposition and/or at trial. Any persons made available under this Paragraph shall be made available at a time and place convenient to the witnesses for interviews and/or depositions and at a time scheduled by the Court for trial testimony;

c. Lyondell will use reasonable efforts to secure the voluntary cooperation of individuals previously employed by Lyondell, Arco, or Rhone-Poulenc so Plaintiffs do not need to resort to formal process to secure the discovery sought;

d. Lyondell will comply with reasonable requests from Plaintiffs' counsel to establish for admission into evidence Lyondell documents produced or to be produced in this litigation or provided to Plaintiffs;

e. Lyondell will use reasonable efforts to comply with reasonable requests from Plaintiffs' counsel for assistance in the further prosecution of this litigation.

21. Lyondell's obligations with respect to documents and witnesses shall not be affected by the Release set forth in Paragraph 17 of this Settlement Agreement. Lyondell's obligations shall cease as of the date that a final judgment has been rendered or final settlement reached in the Class Actions against all Defendants.

Miscellaneous

22. This Settlement Agreement does not settle or compromise any claim other than the Released Claims against the Releasees. All rights of any Class Member against any person or entity other than the Releasees for sales made by Lyondell are specifically reserved by Plaintiffs and the Class Members. Sales of Polyether Polyol Products by Lyondell in the United States shall remain in the Class Actions against the remaining Defendants and/or any future defendants other than the Releasees as a basis for damage claims, and shall be part of any joint and several liability claims in the Class Actions against the remaining Defendants and/or any future defendants or any persons or entities other than the Releasees.

23. This Settlement Agreement constitutes the entire agreement among Plaintiffs and Lyondell pertaining to the settlement of the Class Actions against Lyondell only and supersedes any and all prior and contemporaneous undertakings of Plaintiffs and Lyondell in connection

therewith. This Settlement Agreement may be modified or amended only by a writing executed by Class Counsel and Lyondell and approved by the Court.

24. This Agreement shall be construed in accordance with and shall be governed by the laws of the State of Kansas, irrespective of whether a different state's law would be applied by reference to Kansas choice of law.

25. The United States District Court for the District of Kansas retains exclusive jurisdiction over all matters relating to the implementation and enforcement of the Settlement Agreement.

26. This Settlement Agreement may be executed in counterparts by Plaintiffs and Lyondell, and a facsimile signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

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

IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives, have agreed to this Settlement Agreement as of the date first herein written above.

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