

DID YOU PURCHASE POLYETHER POLYOL PRODUCTS IN CANADA BETWEEN 1999 AND 2004?

IF SO, APPLY NOW TO RECEIVE MONEY FROM CLASS ACTION SETTLEMENTS.

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

THE DEADLINE TO APPLY TO RECEIVE A PAYMENT IS FEBRUARY 11, 2019.

This notice applies to: all persons in Canada who purchased polyether polyols, together with polyether polyol systems, monomeric or polymeric diphenylmethane diisocyanate (“MDI”) and toluene Diisocyanate (“TDI”) (collectively “Polyether Polyol Products”) between January 1, 1999 and December 31, 2004, except the defendants and certain parties related to the defendants (“Settlement Class Members”).

I. BACKGROUND

Class action lawsuits were commenced in Ontario and Quebec alleging that the defendants unlawfully conspired to fix prices for Polyether Polyol Products in Canada from January 1, 1999 to December 31, 2004.

The following entities were named as defendants in the class actions: BASF Canada, BASF Corporation, BASF A.G., Bayer Inc., Bayer A.G., Bayer Material Science LLC, Bayer Corporation, Dow Chemical Company, Dow Chemical Canada Inc., Huntsman International LLC, Lyondell Chemical Company, Rhodia, Rhodia Inc., and Rhodia Canada Inc.

The Ontario action was discontinued against the Rhodia defendants.

In March 2014, the Ontario action was certified against Dow Chemical Company and Dow Chemical Canada Inc. This means that the court found that the action could be properly pursued as a class action. Leave to appeal the certification decision was denied.

In light of the certification of a national class in Ontario, the Quebec action was discontinued.

II. COURT APPROVED SETTLEMENTS

Settlements have been reached with the following defendants:

Settling Defendant(s)	Settlement Amount
Bayer Inc., Bayer A.G., Bayer Material Science LLC (formerly known as Bayer Polymers LLC) and Bayer Corporation	CDN \$2,500,000
Lyondell Chemical Company	Up to \$35,000 towards Notice
Huntsman International LLC	USD \$1,700,000
BASF Corporation	CDN \$2,000,000
BASF Canada	CDN \$2,000,000
Dow Chemical Company and Dow Chemical Canada Inc.	CDN \$5,080,000

All of these settlements have received court approval. The settling defendants do not admit any wrongdoing or liability.

The settlements resolve the class action in its entirety.

III. DISTRIBUTION OF THE SETTLEMENT FUNDS

A. Amount Available for Distribution

The settlements achieved in this litigation total approximately CDN \$13.3 million. The aggregate settlement funds, plus any costs awards and interest, and less court approved legal fees, disbursements, administration expenses, and applicable taxes, are available for payment to eligible Settlement Class Members (“Net Settlement Amount”). The Net Settlement Amount equals approximately CDN \$9.6 million.

The Ontario Court approved a protocol for distributing the Net Settlement Amount. A copy of the distribution protocol is available at www.polyethersettlement.com.

B. Persons Eligible to Claim

Settlement Class Members are eligible to file a claim if they purchased any of the following products in Canada between January 1, 1999 and December 31, 2004:

- (a) polyether polyols, MDI and/or TDI from any source; and/or
 - (b) polyether polyol systems from the defendants.
- (collectively referred to as “Eligible Polyether Polyol Products”).

C. How Settlement Funds will be Distributed

The Net Settlement Amount will be distributed to eligible Settlement Class Members *pro rata* (proportionately) based on the value of the Settlement Class Member’s Notional Entitlement (calculated in accordance with section D below), as compared to the value of all qualifying Settlement Class Members’ Notional Entitlement. Because settlement benefits are being distributed *pro rata*, the amount payable to individual claimants will not be known until after the claims process is complete.

D. Calculation of Notional Entitlement

For the purpose of the distribution, a Settlement Class Member’s Notional Entitlement will be calculated based on: (a) the value of the Settlement Class Member’s Aggregate Purchases (defined below); (b) the categorization of the Settlement Class Member; (c) the type of Eligible Polyether Polyol Products purchased; and (d) the date of purchase.

(a) Value of the Aggregate Purchases

Aggregate Purchases means the aggregate amount paid by a Settlement Class Member for Eligible Polyether Polyol Products, less any taxes, delivery or shipping charges, rebates, or other form of discounts.

(b) The Categorization of the Settlement Class Member

Settlement Class Members will be categorized into one of three purchaser groups depending on the vendor of their purchased products and the purpose for which the products were purchased. The purchaser groups are as follows:

- Direct Purchaser: means a Settlement Class Member who purchased Eligible Polyether Polyol Products from a manufacturer for either (i) its own use and not for commercial resale; or (ii) inclusion in a product for commercial resale;
- Distributor: means a Settlement Class Member who purchased Eligible Polyether Polyol Products and resold those products without further processing and without including them in any product; or
- Indirect Purchaser: means a Settlement Class Member who purchased Eligible Polyether Polyol Products from a Distributor.

Settlement Class Members can fall within multiple purchaser groups.

For the purposes of calculating a Settlement Class Member’s Notional Entitlement, the following values will be applied to account for the categorization of the Settlement Class Member:

- Aggregate Purchases made in the capacity of a Direct Purchaser will be valued at 100%;
- Aggregate Purchases made in the capacity of a Distributor will be valued at 25%; and
- Aggregate Purchases made in the capacity of an Indirect Purchaser will be valued at 75%.

(c) Type of Eligible Polyether Polyol Product

For the purposes of calculating a Settlement Class Member’s Notional Entitlement, the following values will be applied to account for the type of Eligible Polyether Polyol Product:

- Aggregate Purchases attributable to purchases of MDI, TDI and/or polyether polyol will be valued at 100%; and
- Aggregate Purchases attributable to purchases of polyether polyol systems will be valued at 50%.

(d) Date of Purchase

For the purposes of calculating a Settlement Class Member's Notional Entitlement, the following values will be applied to account for the date of purchase:

- Aggregate Purchases made between January 1, 2002 and December 31, 2003 will be valued at 100%; and
- Aggregate Purchases made between January 1, 1999 to December 31, 2001 and January 1, 2004 to December 31, 2004 will be valued at 30%.

(e) Sample Calculations

Sample 1: If a Distributor purchased \$1,000,000 of MDI and TDI in 2001, its Notional Entitlement would be as follows:

$\$1,000,000$ (representing the Aggregate Purchases of MDI and TDI) \times 0.25 (representing the categorization of the purchaser as a Distributor) \times 1.0 (representing the type of product purchased) \times 0.3 (representing the timing of the purchase) = \$75,000

Sample 2: If an Indirect Purchaser purchased \$200,000 worth of polyol systems in 2002 and \$500,000 worth of polyether polyols in 2004, its Notional Entitlement would be calculated as follows:

$\$200,000$ (representing the Aggregate Purchases of polyol systems) \times 0.75 (representing the categorization of the purchaser as an Indirect Purchaser) \times 0.5 (representing the type of product purchased) \times 1.0 (representing the date of purchase) = \$75,000

plus

$\$500,000$ (representing the Aggregate Purchases of polyether polyols) \times 0.75 (representing the categorization of the purchaser as an Indirect Purchaser) \times 1.0 (representing the type of product purchased) \times 0.3 (representing the date of purchase) = \$ 112,500

These numbers do not reflect the actual amount to be paid to Settlement Class Members, but rather the value of their Notional Entitlement for the purpose of determining their *pro rata* share of the Net Settlement Amount.

(f) Minimum Payments

Notwithstanding the above, Settlement Class Members with valid claims will receive a minimum payment of \$20. The \$20 valuation target is not an estimate of any damages suffered. It is a minimum administrative threshold designed to maintain a feasible economic and administrative platform for the settlement distribution.

IV. APPLYING TO RECEIVE A PAYMENT

(a) Filing a claim

Settlement Class Members who wish to apply for payment under the settlements must apply no later than February 11, 2019. Claims that are not made before the deadline may not be eligible for payment. You can apply online to receive a payment at www.polyethersettlement.com. If you do not have internet access, but wish to apply to receive a payment, please contact the claims administrator at 1-866-674-1760.

(b) Proof of Purchase

Where possible, Settlement Class Members will be able to rely on the defendants' sales records to establish their purchases. This information will be provided by email or letter from the claims administrator and will be pre-populated on the online claims portal. If a Settlement Class Member's claims are fully substantiated by the defendants' sales records, no further proof of purchase is required.

Where the defendants have not provided sales information in respect of a Settlement Class Member and/or the Settlement Class Member is claiming for purchases of Polyether Polyol Products in addition to those substantiated by the defendants' data, the Settlement Class Member must provide a declaration attesting to: (a) the type of Polyether Polyol Products purchased, (b) the value of the Polyether Polyol Products, (c) the time period in which the Polyether Polyol Products were purchased, and (d) whether the purchases were made in the capacity of a Direct Purchaser, Distributor and/or Indirect Purchaser.

Where a Settlement Class Member has purchase records for at least two years during the Class Period, the Settlement Class Member can use such records to extrapolate its purchases of Polyether Polyol Products for the remainder of the

Class Period. Settlement Class Members may also be able to extrapolate their purchases of Polyether Polyol Products using sales data provided by the defendant Bayer (Bayer only provided sales data for part of the relevant period).

Claims that are fully substantiated by the defendants' sales information are not subject to audit. All other claims may be subject to an audit by the Claims Administrator. If a Settlement Class Member's claim is selected for audit, the Settlement Class Member will be required to provide additional information or documents to substantiate their purchases. Details respecting the audit process are included in the Distribution Protocol found at www.polyethersettlement.com.

V. CLAIMS ADMINISTRATOR

The courts have appointed RicePoint Administration Inc. (an independent third-party) to receive and review claims, make determinations in respect of direct payment benefits, and issue payments to eligible class members.

Questions regarding the claims process should be directed to RicePoint Administration Inc. at 1-866-674-1760 or polyether@ricepoint.com.

VI. CLASS COUNSEL & LEGAL FEES

The law firm of Siskinds LLP represents Settlement Class Members. Siskinds LLP can be reached by email at polyetherpolyols@siskinds.com, by telephone toll-free at 1-800-461-6166 ext. 2455, or by mail at 680 Waterloo St., London, ON N6A 3V8, Attn: Charles Wright.

You do not need to pay out-of-pocket for the lawyers working on the class action. The lawyers will be paid from the settlement funds in an amount approved by the courts.

VII. QUESTIONS ABOUT THE SETTLEMENTS

More information about the settlements, the distribution of the settlement funds and the claims process is available online at www.polyethersettlement.com, by email at polyether@ricepoint.com or by calling toll-free 1-866-674-1760.

VIII. INTERPRETATION

This notice contains a summary of some of the terms of the settlement agreements and the distribution protocol. If there is a conflict between the provisions of this notice and the settlement agreements (including the appendices) and/or the distribution protocol, the terms of the settlement agreements and/or distribution protocol shall prevail.

This notice has been approved by the Ontario Court.