

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

IN RE: POLYCHLOROPRENE RUBBER (CR) ANTITRUST LITIGATION	DOCKET NO. 3:05 MD 1642 (PCD) (D. Conn.)
THIS DOCUMENT RELATES TO:	3:05CV00367(PCD) 3:05CV00368(PCD) 3:05CV00369(PCD) 3:05CV00370(PCD) 3:05CV00394(PCD) 3:05CV00519(PCD) 3:05CV00605(PCD)
<u>Bayer Settlement</u>	

**NOTICE OF PROPOSED SETTLEMENT IN CLASS ACTION AND HEARING
ON SETTLEMENT APPROVAL, PLAN OF ALLOCATION AND REQUEST
FOR ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES**

TO: ALL PERSONS AND ENTITIES IN THE UNITED STATES AND ITS TERRITORIES (EXCLUDING GOVERNMENT ENTITIES) WHO DIRECTLY PURCHASED POLYCHLOROPRENE RUBBER OR "CR" FROM ANY OF THE FOLLOWING COMPANIES AT ANY TIME FROM JANUARY 1, 1999 THROUGH DECEMBER 31, 2003:

Bayer AG	Polimeri Europa S.p.A.
Bayer Corporation	(f/k/a Polimeri Europa Srl)
Bayer MaterialScience LLC	Polimeri Europa Americas, Inc.
(f/k/a Bayer Polymers LLC)	(f/k/a EniChem Americas, Inc.)
DuPont Dow Elastomers, LLC	Syndial S.p.A.
LANXESS AG	(f/k/a Enichem S.p.A.)
LANXESS Corporation	

Please read this Notice carefully and in its entirety. Your rights may be affected by this settlement. If you are a member of the Class described in this Notice, you may be entitled to a portion of the settlement fund resulting from a settlement with defendants Bayer AG, Bayer Corporation and Bayer MaterialScience LLC (f/k/a Bayer Polymers LLC) (hereinafter collectively referred to as the "Bayer Defendants"). To participate, you must submit the enclosed Proof of Claim form postmarked **no later than November 30, 2006**.

This Notice has been sent pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the District of Connecticut (the "Court"). Its purpose is to inform you of the pending class action lawsuit (the "Action") and the settlement with the Bayer Defendants. To resolve the claim against them, the Bayer Defendants have deposited more than fifteen million dollars (\$15,000,000) into escrow.

If you purchased CR from one or more of the Defendants in the Action or DuPont Dow Elastomers, LLC ("DDE") during the Class Period (all as defined below), you are a member of the Class, you have the right to share in the settlement fund, object to the proposed settlement and/or to Class Counsel's request for an award of attorneys' fees and reimbursement of expenses, and/or enter an appearance through your own counsel at your own expense. You also have the right to exclude yourself from the Settlement Class, in which case you will **not** be entitled to share in this settlement fund or object to this settlement, or to object to Class Counsel's request for an award of attorneys' fees and reimbursement of expenses.

DEFINITIONS

1. "Class" means all persons and entities in the United States and its territories who directly purchased CR from Defendants and DDE at any time from January 1, 1999 through December 31, 2003. Excluded from the Class are Defendants and DDE, their respective parents, employees, subsidiaries and affiliates, and all government entities.

2. "Class Counsel" means the law firms of Cohen, Milstein, Hausfeld & Toll, P.L.L.C., 1100 New York Avenue, N.W., Washington, D.C. 20005; Gold Bennett Cera & Sidener LLP, 595 Market Street, Suite 2300, San Francisco, CA 94105; Bolognese & Associates, LLC, One Penn Center, 1617 JFK Blvd., Suite 650, Philadelphia, PA 19103; and Levin Fishbein Sedran & Berman, 510 Walnut Street, Suite 500, Philadelphia, PA 19106.

3. "Class Member" means each member of the Class who does not timely and validly elect to be excluded from the Settlement Class, certified for purposes of the Implementing Settlement Agreement.

4. "Class Period" means the period from and including January 1, 1999 up to and including December 31, 2003.

5. "Defendants" mean the following companies:

Bayer AG	Polimeri Europa S.p.A.
Bayer Corporation	(f/k/a Polimeri Europa Srl)
Bayer MaterialScience LLC	Polimeri Europa Americas, Inc.
(f/k/a Bayer Polymers LLC)	(f/k/a EniChem Americas, Inc.)
DuPont Dow Elastomers, LLC	Syndial S.p.A.
LANXESS AG	(f/k/a Enichem S.p.A.)
LANXESS Corporation	

6. "CR" includes polychloroprene, PCP, chloroprene rubber, and polychloroprene rubber, and means a type or family of synthetic elastomers produced by free radical initiated emulsion polymerization of chloroprene or emulsion co-polymerization of chloroprene and at least one other co-monomer and, in some cases, other additives.

7. "Effective Date" means the date of final approval of the Settlement Agreement, which shall occur upon: (a) the entry by the Court of 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 Implementing Settlement Agreement and entry of the Final Judgment or, if an appeal from an approval and Final Judgment is taken, the affirmation 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. 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 when the judgment in this Class Action becomes final.

8. "Final Judgment" means a final order approving the Implementing Settlement Agreement under Rule 23(e) of the Federal Rules of Civil Procedure together with entry of the final judgment dismissing the Class Actions and all claims therein against Releasees on the merits with prejudice as to all Class Members.

9. "Plaintiffs" mean Alco Industries, Inc., Alfa Adhesives, Inc., Chemionics Corporation, Crossfield Products Corporation, Industrial Rubber Products, Inc., Rubber Millers, Inc., and Standard Rubber Products, Inc.

10. "Released Claims" mean upon the occurrence of the Effective Date and in consideration of the payment of the Settlement Amount, the Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits, and causes of action, whether class, individual, or otherwise in nature, damages whenever incurred, liabilities of any nature whatsoever, including costs, expenses, penalties, and attorneys' fees that Releasers, or anyone of them, whether directly, representatively, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have against the Releasees, whether known or unknown, relating in any way to any conduct by the Releasees prior to the Effective Date concerning the pricing, selling, discounting, marketing, manufacturing and/or distributing of CR in the United States and its territories or for delivery in the United States and its territories. The Released Claims include but are not limited to claims related to or arising out of the facts, occurrences, transactions, or other matters alleged in the Class Actions during the Class Period. However, nothing herein shall be construed to release any claims relative to any product defect, breach of contract, or similar claim between the parties relating to CR. Moreover, nothing herein shall preclude the Releasers from participating in or benefiting from any relief or other recovery as part of a settlement or judgment on behalf of a class of indirect purchasers of CR (such reservation by the Releasers of any right to participate in any relief or other recovery as part of a settlement or judgment on behalf of a class of indirect purchasers of CR shall under no circumstances be construed to constrain the Releasees from asserting any defense or opposing the certification of any putative class of indirect purchasers of CR). The Releasers shall not, after the Effective Date, seek to recover against any of the Releasees for any of the Released Claims.

11. "Releasees" shall refer jointly and severally, individually and collectively to the Bayer Defendants, LANXESS AG, LANXESS Corporation, LANXESS Deutschland GmbH, Rhein Chemie Corporation, and Rhein Chemie Rheinau GmbH, 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.

12. "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.

13. "Settlement Class" means all members of the Class who do not timely and validly elect to be excluded from the Settlement Class, certified for purposes of the Implementing Settlement Agreement and the Global Settlement Agreement only.

THE LITIGATION

14. In April 2004, a class action complaint was filed against DDE in the United States Court for the District of Columbia alleging violations of the federal antitrust laws by DDE with respect to the sale of CR (the "DDE Action"). A settlement was reached between Plaintiffs and DDE. The Honorable Henry Kennedy granted final approval of that settlement with DDE on November 22, 2004.

15. Shortly after the initial complaint was filed against DDE, other class action complaints alleging violations of the federal antitrust laws by major manufacturers of CR were filed in multiple federal District Courts. A motion was made to the Judicial Panel on Multidistrict Litigation ("JPML") to centralize the cases in a single court to promote the just and efficient conduct of the litigation. On February 4, 2005, the JPML entered a Transfer Order centralizing the cases, other than the DDE Action, in the United States District Court for the District of Connecticut and recommending that they be assigned to the Honorable Peter C. Dorsey for coordinated or consolidated pretrial proceedings. By Order dated May 20, 2005, Judge Dorsey appointed Class Counsel to conduct the litigation on behalf of the Class.

16. Plaintiffs filed their Consolidated Amended Complaint ("Complaint"), the operative complaint in this Action, on April 7, 2005. The Complaint alleges that Bayer and other Defendants¹ and their co-conspirators² engaged in an unlawful conspiracy to fix, raise, maintain and/or stabilize the price of, and/or allocate markets and customers for, CR in the United States in violation of Section 1 of the Sherman Act, 15 U.S.C. §1. Plaintiffs contend that, as a result of the unlawful conspiracy, they and other purchasers of CR have paid more for CR than they would have paid absent the conspiracy.

17. On September 21, 2005, this Court approved the Plaintiffs' settlement with Syndial and its predecessors for up to \$5,290,000. Under the Syndial Settlement, Syndial has cooperated with Class Counsel in their prosecution of claims against the remaining Defendants.

18. This Action has been vigorously litigated. Class Counsel have analyzed hundreds of thousands of documents produced by the Defendants and DDE. They have also conducted an independent investigation of the facts and analyzed the sales and pricing data produced by the Defendants and DDE. They have obtained cooperation from both DDE and Syndial pursuant to Plaintiffs' settlement agreements with these respective Defendants.

19. The Plaintiffs filed their motion for class certification on or about November 18, 2005. In connection with that filing, Plaintiffs submitted a detailed expert report as to why, from an economic point of view, the class certification motion should be granted. That motion was pending when a settlement with Bayer, in principal, was reached.

20. While the Plaintiffs believe they have meritorious claims against the Bayer Defendants, the Bayer Defendants have asserted that they have meritorious defenses which would serve to undercut their liability and economic exposure to the Class. The parties entered into the settlement to eliminate the burden and expense of further litigation. Class Counsel have determined that settling the claim against the Bayer Defendants is in the best interest of the Class. The settlement provides an immediate and substantial cash benefit to the Class Members and avoids the risk of a trial relating to liability and damages.

21. No determination has been made by the Court in this case as to liability of any of the Defendants or the amount of damages suffered by the Class.

THE PROPOSED SETTLEMENT WITH THE BAYER DEFENDANTS

22. The Bayer Defendants and Class Counsel negotiated vigorously and at arm's-length for a protracted period of time to reach a fair and reasonable resolution of the claims brought in this action. The Bayer Settlement Fund totals more than fifteen million dollars (\$15,000,000) and consists of three separate funds: (i) a Settlement Fund of \$12 million for the payment to Class Members; (ii) an Attorneys' Fees Fund of \$2,850,000 for

¹ The other Defendants named in the Action are the Enichem/Polimeri entities. In or around 2001, Enichem S.p.A., an Italian corporation that manufactured, distributed, and sold CR nationwide, acquired full interest in its former joint venture with Union Carbide, Polimeri Europa S.r.l. Polimeri Europa Americas, Inc. was formerly known as Enichem Americas, Inc. Syndial S.p.A. is an entity organized and existing under the laws of Italy. During the class period, Syndial was a corporation operating under the name Enichem S.p.A. On or about May 1, 2003, Enichem S.p.A. changed its legal name to Syndial S.p.A.

² Bayer's alleged co-conspirators were Syndial and DDE.

the payment of attorneys' fees and expenses to counsel for Plaintiffs subject to the Court's approval; and (iii) an Administration Fund of \$300,000 to pay for the costs of administering this settlement.

23. In exchange for the settlement payment, the Bayer Defendants and the other Releasees will be released of all Released Claims (as defined above) asserted against them on behalf of the Settlement Class for alleged price fixing of CR in the United States prior to the Effective Date.

24. The Settlement Fund is subject to reduction based on a formula set forth in the Settlement Agreement taking into account the relative amount of CR purchases by opt-outs. Any such reduction shall be returned to Bayer. Any portion of the Attorneys' Fee Fund that is not approved by the Court shall be returned to the Bayer Defendants. The remaining balance, if any, in the Administration Fund shall be returned to Bayer at the conclusion of the administration of the settlement. Under certain circumstances, Bayer will have the option to rescind or terminate this settlement.

ATTORNEYS' FEES AND COSTS

25. The Bayer Defendants are the last remaining Defendants in the Action. Therefore, if the proposed settlement with the Bayer Defendants is approved by the Court, this Action will be concluded.

26. Class Counsel intend to seek an award of attorneys' fees and reimbursement of expenses in the total amount of \$3,730,000, broken down as follows:

a. \$2,850,000 to be paid from the Attorneys' Fee Fund in connection with the Bayer settlement.

b. \$880,000 to be paid by the Syndial Defendants pursuant to a settlement with Syndial and related Defendants. The settlement, but not the attorneys' fee award, was approved by the Court by Order dated September 21, 2005.

27. Any amounts awarded by the Court to Class Counsel for attorneys' fees and reimbursement of expenses will be paid out of the Attorneys' Fee Fund or by Syndial set aside for those purposes and not from the amounts the Bayer Defendants and Syndial have agreed to pay to the Class.

YOUR OPTIONS

28. If you are a member of the Class, you will remain in the Settlement Class for purposes of this settlement unless you elect to be excluded. As a Class Member, you will be bound by the judgment or other final disposition of this Action as to the Bayer Defendants, and you will be prevented from bringing or asserting any Released Claims (as defined above) against the Bayer Defendants and the Releasees. Your interests will be represented by the Plaintiffs and Class Counsel. However, at your own expense, you may have your own attorney appear on your behalf. You may, but are not required to, appear at the hearing at which the Court will decide whether to grant final approval to the settlement and the plan of allocation.

29. **If you remain in the Settlement Class, you must timely and properly submit the enclosed Proof of Claim form to the Claims Administrator, Gilardi & Co., LLC, in order to share in the proceeds of the Bayer Settlement.** Otherwise, your claim may be rejected and you may be precluded from any recovery from the Bayer Defendants, although you still would be bound by the judgment or other final disposition entered by the Court as to the Bayer Defendants.

30. To exclude yourself from the Settlement Class in connection with the Bayer Settlement, you must submit a written request which includes the full name of the purchaser of CR (including any predecessor entities), your address and your request for exclusion from the Bayer Settlement. If you exclude yourself from the Bayer Settlement, you will not be bound by this settlement and can independently, at your own expense, pursue claims you may have against the Bayer Defendants. However, you will not receive a portion of the settlement proceeds obtained from the Bayer Defendants. Requests for exclusion from the Bayer Settlement should be sent by First-Class mail, and postmarked so they are **actually received no later than September 22, 2006**, to:

In re CR Antitrust Litigation (Bayer)
c/o Gilardi & Co., LLC
Claims Administrator
P.O. Box 1110
Corte Madera, CA 94976-1110

PLAN OF ALLOCATION

31. The settlement proceeds available for the Class will be distributed on a *pro rata* basis among the members of the Settlement Class who timely and properly file a Proof of Claim. Each claimant's *pro rata* share will be based on the dollar amount of its purchases of CR in the United States from all Defendants and DDE. Purchases must have been made directly from a Defendant or DDE during the Class Period to qualify. The Court retains the power to approve or reject, in full or partially, any individual claim of a Class Member based on

equitable grounds. Because the alleged overcharge is only a portion of the price paid for CR, your recovery will be less than the total amount you paid.

32. To submit a claim, complete and sign the enclosed Proof of Claim form. It must be postmarked **no later than November 30, 2006** and mailed to:

In re CR Antitrust Litigation (Bayer)
c/o Gilardi & Co., LLC
Claims Administrator
P.O. Box 1110
Corte Madera, CA 94976-1110

THE SETTLEMENT HEARING

33. The Court will hold a hearing on **November 7, 2006 at 10:00 a.m.** at the United States District Court for the District of Connecticut, Courtroom No. 1, 141 Church Street, New Haven, Connecticut to decide the Plaintiffs' motions for final approval of the settlement and the plan of allocation, and Plaintiffs' motion for an award of attorneys' fees and reimbursement of expenses (the "Motions"). The hearing date and/or time may change without further notice.

34. No later than **October 24, 2006**, Class Counsel shall file their Motions with the Court. You may view these papers in the Court's public file room or by writing to Class Counsel.

35. Any Class Member who objects to the Bayer Settlement, the plan of allocation or the request for attorneys' fees and expenses must do so in writing. The objection must include the caption of this Action, be signed, and be **received** by the Court and Class Counsel at the following addresses **no later than September 22, 2006**:

Clerk of Court United States District Court For The District of Connecticut 141 Church Street New Haven, CT 06510	Michael D. Hausfeld, Esq. Cohen, Milstein, Hausfeld & Toll, P.L.L.C. 1100 New York Avenue, N.W. Washington, D.C. 20005-3964
Paul F. Bennett, Esq. Gold Bennett Cera & Sidener LLP 595 Market Street, Suite 2300 San Francisco, CA 94105	Anthony J. Bolognese, Esq. Bolognese & Associates, LLC One Penn Center 1617 JFK Blvd., Suite 650 Philadelphia, PA 19103
Howard J. Sedran, Esq. Levin Fishbein Sedran & Berman 510 Walnut Street, Suite 500 Philadelphia, PA 19106	

36. If you do not object, you do not need to appear at the hearing. **However, you must complete and return the Proof of Claim form if you want to receive payment for your claim against the Bayer Defendants.**

CHANGE OF ADDRESS

37. If this Notice reached you at an address other than the one on the mailing label, or if your address changes in the future, please send the current information to the Claims Administrator at:

In re CR Antitrust Litigation (Bayer)
c/o Gilardi & Co., LLC
Claims Administrator
P.O. Box 1110
Corte Madera, CA 94976-1110

ADDITIONAL INFORMATION

38. The Settlement Agreement, Complaint, and other documents filed in this Action are available for review during business hours at the office of the Clerk of Court, United States District Court for the District of Connecticut, 141 Church Street, New Haven, Connecticut 06510. If you have questions about this Notice, the Proof of Claim form, or the Action in general, contact Class Counsel in writing at the following addresses:

Michael D. Hausfeld, Esq. Cohen, Milstein, Hausfeld & Toll, P.L.L.C. 1100 New York Avenue, N.W. Washington, D.C. 20005-3964	Paul F. Bennett, Esq. Gold Bennett Cera & Sidener LLP 595 Market Street, Suite 2300 San Francisco, CA 94105
Anthony J. Bognese, Esq. Bognese & Associates, LLC One Penn Center 1617 JFK Blvd., Suite 650 Philadelphia, PA 19103	Howard J. Sedran, Esq. Levin Fishbein Sedran & Berman 510 Walnut Street, Suite 500 Philadelphia, PA 19106

Do not contact the Judge or the Clerk of the Court.

Dated: July 19, 2006

BY ORDER OF:
Clerk of the United States District Court
for the District of Connecticut