

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

IN RE: ETHYLENE PROPYLENE DIENE
MONOMER (EPDM) ANTITRUST
LITIGATION

Case No. 3:03 MD 1542 (PCD)

THIS DOCUMENT RELATES TO:
ALL ACTIONS

**[PROPOSED] ORDER AND FINAL JUDGMENT
(DUPONT DOW ELASTOMERS LLC)**

The Class Plaintiffs¹ and defendant DuPont Dow Elastomers LLC ("DDE") entered into the Settlement Agreement to fully and finally resolve the DDE Settlement Class' claims against DDE and other Releasees. On February 15, 2005, the Court entered its Order Granting Preliminary Approval of Proposed Settlement with DuPont Dow Elastomers LLC ("Preliminary Approval Order"). Among other things, the Preliminary Approval Order authorized the Class Plaintiffs to disseminate notice of the proposed settlement, fairness hearing, and related matters to the DDE Settlement Class. Notice was provided to the DDE Settlement Class and the Court held a fairness hearing on May 20, 2005.

Having the Class Plaintiffs' Motion for Final Approval of Proposed Settlement With Defendant DuPont Dow Elastomers LLC, Approval of the Plan of Allocation, Certification of

^{1/} All capitalized terms have the same meaning as those used in the Settlement Agreement with DDE dated as of January 14, 2005 ("Settlement Agreement").

the DDE Settlement Class, and Affirmation of the Appointment of Class Counsel Pursuant to Rule 23(g) submitted to the Court, the responses (if any) of DDE Class Members, oral argument presented at the fairness hearing, and the complete records and files in this matter,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The Court has jurisdiction over the subject matter of this litigation.
2. Terms capitalized in this Order and Final Judgment have the same meanings as those used in the Settlement Agreement.
3. The Preliminary Approval Order outlined the form and manner by which the Class Plaintiffs would provide the DDE Settlement Class with notice of the settlement, the fairness hearing, and related matters. The notice program included individual notice to DDE Settlement Class Members that could be identified through reasonable effort, as well as the publication of a summary notice in *The Wall Street Journal*, *Rubber & Plastics News*, *Chemical Marketing Reporter*, and more than 70 additional publications worldwide. Proof that the mailing and publication conformed with the Preliminary Approval Order has been filed with the Court. This notice program fully complied with Rule 23² and provided due and adequate notice to the DDE Settlement Class.
4. The settlement was attained following an extensive investigation of the facts, including the analysis and organization of over 1.4 million pages of documents produced by the Defendants. The settlement resulted from vigorous arm's-length negotiations which were undertaken in good faith. Counsel for both the Class Plaintiffs and DDE have significant

^{2/} References to "Rule ___" are to the Federal Rules of Civil Procedure.

experience with antitrust class actions. Class Counsel competently represented the DDE Settlement Class' interests.

5. Final approval of the settlement with DDE is granted pursuant to Rule 23(e) because the settlement is "fair, reasonable and adequate" to the DDE Settlement Class. In reaching this conclusion, the Court considered: (a) the complexity, expense, and likely duration of the litigation; (b) the DDE Settlement Class' reaction to the settlement; (c) the stage of the proceedings and the amount of discovery completed; (d) the risks of establishing liability; (e) the risks of establishing damages; (f) the risks of maintaining the class action through the trial; (g) DDE's ability to withstand a greater judgment; (h) the reasonableness of the settlement considering the best possible recovery; and (i) the reasonableness of the settlement considering the risks of continued litigation.

6. The Plan of Allocation set forth in the Class Notice is "fair, reasonable and adequate" to the DDE Settlement Class and, therefore, is granted final approval.

7. The following DDE Settlement Class is certified pursuant to Rule 23:

All individuals or entities (excluding governmental entities, Defendants and Defendants' owners, predecessors, subsidiaries, affiliates, and co-conspirators, and Opt-Outs) who directly purchased ethylene propylene diene monomer ("EPDM") in the United States or from a facility located in the United States from any Defendant or any of their predecessors, subsidiaries or affiliates from January 1, 1997 to December 31, 2001.

This DDE Settlement Class satisfies the prerequisites to certification set forth in Rule 23(a) in that: (a) the DDE Settlement Class is so numerous that joinder of all members is impracticable; (b) the DDE Settlement Class Members share common questions of law or fact; (c) the Class

Plaintiffs' claims are typical of those of the DDE Settlement Class; and (d) the Class Plaintiffs have, and will, fairly and adequately protect the interests of the DDE Settlement Class. In addition, the requirements of Rule 23(b)(3) are satisfied in that: (a) common questions of law or fact predominate over questions affecting only individual members; and (b) litigating this case as a class action is superior to other methods available for the fair and efficient adjudication of the controversy. Therefore, final certification of the DDE Settlement Class is granted.

8. The Class Plaintiffs previously appointed by the Court (Alco Industries, Inc., Diamond Holding Corporation, Duraplas Corporation, Functional Products, Inc., Polymeric Inc., Precision Associates, Inc., Schlegel Corporation, and Synaflex Rubber Products Co. Inc.) are adequate representatives of the DDE Settlement Class and hereby are appointed as the class representatives.

9. Pursuant to Rule 23(g), Class Counsel previously appointed by the court (Cohen, Milstein, Hausfeld & Toll, P.L.L.C.; Gold Bennett Cera & Sidener LLP; Bolognese & Associates, LLC; and Levin, Fishbein, Sedran & Berman) are appointed as counsel for the DDE Settlement Class, and Brenner, Saltzman & Wallman LLP is appointed as liaison counsel for the DDE Settlement Class. These firms have, and will, fairly and competently represent the interests of the Class.

10. The people/entities identified on Exhibit A (if any) have timely and validly requested exclusion from the DDE Settlement Class and hereby are excluded from the DDE Settlement Class. Such people/entities are not included in or bound by this Order and Final Judgment and may individually pursue claims (if any) against DDE. Having excluded themselves from the DDE Settlement, such people/entities are not entitled to any recovery from

the settlement proceeds obtained through this settlement. However, this Final Order and Judgment in no way affects the right of such people/entities to participate in any recovery obtained from any other Defendant.

11. All Released Claims are hereby dismissed with prejudice and without costs. The Releasors are barred from instituting or prosecuting, in any capacity, an action or proceeding that asserts a Released Claim against any Releasee. This dismissal applies only in favor of DDE and the Releasees. It is made without prejudice to any claims the DDE Settlement Class have against any other Defendant.

12. The escrow account established by the parties, and into which DDE has already deposited the \$25,400,000 settlement amount, is approved as a Qualified Settlement Fund pursuant to Internal Revenue Code Section 468B and the Treasury Regulations promulgated thereunder.

13. Neither the Settlement Agreement, nor any act performed or document executed pursuant to the Settlement Agreement, may be deemed or used as an admission of wrongdoing in any civil, criminal, or administrative proceeding.

14. Without affecting the finality of this Order and Final Judgment, the Court retains exclusive jurisdiction over: (a) the enforcement of this Order and Final Judgment; (b) the litigation between the Class Plaintiffs and all remaining Defendants; (c) the implementation, administration, and enforcement of the Settlement Agreement; (d) any application for an award of attorneys' fees and reimbursement of litigation expenses made by Class Counsel; and (e) the distribution of the settlement proceeds to the DDE Settlement Class Members.

15. Pursuant to Rule 54(b), the Court finds that there is no just reason for delay and the Court hereby directs the entry of judgment as to defendant DDE.

Dated: June 29, 2005

HON. PETER C. DORSEY
UNITED STATES DISTRICT JUDGE

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