

CLASS ACTION ATTORNEY FEE DIGEST

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SAMPLE ANTITRUST CASE ABSTRACT

In re Ethylene Propylene Diene Monomer (EPDM) Antitrust Litigation

No. 03-md-1542 (D. Conn. May 9, 2007)

JUDGE: Stefan R. Underhill

SUBSTANTIVE TOPIC: Antitrust

PLAINTIFFS' COMPLAINT: Plaintiffs allege that Defendants conspired to fix or maintain the prices of, and/or allocate markets for, Ethylene Propylene Diene Monomer (EPDM) sold in the United States, in violation of Section 1 of the Sherman Antitrust Act. Plaintiffs allege further that, as part of the conspiracy, Defendants agreed to limit the supply of EPDM and to allocate markets and customers for the sale of EPDM. Defendants are divided into two groups: Settling Defendants: DuPont Dow Elastomers, LLC (DDE), Syndial S.p.A., Crompton Corp. (n/k/a Chemtura Corp.) and Uniroyal Chemical Corp. (n/k/a Chemtura USA Corp. (collectively, Crompton), and Bayer AG, Bayer Corp., and Bayer MaterialScience LLC (collectively Bayer); and Non-Settling Defendants: Exxon Mobil Chemical Corp.; DSM Elastomers, B.V., DSM Elastomers Europe B.V., and DSM Elastomers Americas (f/k/a DSM Copolymer, Inc.).

SETTLEMENT BENEFITS: \$82,245,000. The case involved four separate partial settlements: (1) \$25,400,000 settlement with DDE; (2) \$3,370,000 settlement with Syndial; (3) \$32,475,000 settlement with Bayer (of which \$7,732,986 was returned to Bayer as per opt-out reduction formula, though Court included entire settlement amount in awarding fees); and (4) \$21,000,000 settlement with Chemtura Corp. (f/k/a Crompton Corp.) and Chemtura USA Corp. (f/k/a Uniroyal Chemical Co.) (jointly Crompton).

The remaining (non-settling) Defendants are: Exxon Mobil Chemical Corp.; DSM Elastomers, B.V., DSM Elastomers Europe B.V., and DSM Elastomers Americas (f/k/a DSM Copolymer, Inc.).

ATTORNEY FEES: \$17,829,000 (the amount requested).

FEE AS % OF RECOVERY: 21.7% (of the total amount recovered in the four partial settlements; fee represented 23.9% of the settlements after first reducing the recovery by \$7,732,986, the amount that was returned to Bayer as per opt-out reduction formula—though the Court included the returned amount in calculating the fee award).

EXPENSES: \$2,155,356

HOURS: Not stated. *See Editor's Notes.*

MULTIPLIER: 1.31 (based on current hourly rates; 1.48 based on historical hourly rates).

COURT'S REASONING: The Court ruled that the amount requested (21.7% of the \$82,245,000 total settlement amounts) was fair and reasonable.

EDITOR'S NOTES: Plaintiffs' supporting papers state that the \$82.245 million in partial settlements represent approximately 6.47% of the Settling Defendants' sales of EPDM in the United States during the class period.

Plaintiffs' supporting papers state that the settlements were achieved without the benefit of any criminal indictments, guilty pleas, or convictions, in that the federal government's grand jury investigation into alleged price-fixing in the EPDM industry was terminated in 2006 without any admission of liability or guilty pleas from any of the Defendants.

Plaintiffs' supporting papers state that, among other things, class counsel: (1) prepared and filed complaints; (2) investigated the facts; (3) interviewed witnesses; (4) engaged in extensive discovery; (5) conducted or participated in at least 25 depositions; (6) obtained detailed proffers; (7) reviewed and analyzed more than 2 million pages of documents; (8) consulted with experts; (9) prepared and filed a motion for class certification; and (10) engaged in difficult and protracted settlement negotiations.

Plaintiffs' supporting papers state that the \$21 million Crompton settlement (\$16 million class fund plus \$5 million in fees and expenses) was reached more than one year after Crompton terminated a \$30 million settlement payable over time as a result of excessive opt-outs. Since that time, Crompton has settled separately with most of the opt-outs, who are excluded from this settlement class. Therefore, the Crompton settlement represents 6.3% of Crompton's sales of EPDM to class members in the U.S. during the class period as defined in the current Crompton settlement—a 35% improvement on the return to class members over the previous, terminated Crompton settlement.

Plaintiffs' supporting papers state that the Settling Defendants have agreed to cooperate with Co-Lead Counsel in connection with the prosecution of related claims against other alleged co-conspirators/non-settling defendants.

Plaintiffs' supporting papers state that: (1) in the Bayer and Crompton settlements, the amount of attorney fees and expenses was separately negotiated and agreed to be paid by those Settling Defendants, and any portion of the agreed-

upon fees and expense not awarded by the Court will be returned to those Settling Defendants; and (2) the DDE and Syndial settlements do not provide for a separate attorney fee/expense fund, so that co-lead counsel seek fees and costs in those two settlements purely as a percentage (28%) of the common funds.

Plaintiffs' supporting papers state that, other than disclosing their total lodestar (on the basis of both current rates and hourly rates) "Co-Lead Counsel wishes not to publicly disclose the details or amount of the work performed by each plaintiffs' law firm at this time because it may provide the non-settling defendants with an unfair strategic advantage going forward", though "Co-Lead Counsel are willing and prepared to submit these declarations for review *in camera*, should the Court so request." There is no indication in the pleadings or docket sheets that the Court requested submission of the time records.

Objections— Plaintiffs' supporting papers state that there were no objections to the fee/expense request, after: (1) settlement notice was mailed to more than 3,980 potential class members; (2) settlement notice was posted on the Internet; and (3) summary notice was published in both THE WALL STREET JOURNAL and the INTERNATIONAL HERALD TRIBUNE.

DATE CASE FILED: August 12, 2003

DATE FEE AWARDED: May 9, 2007

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