

Rubber Chemicals Class Action

**Maurice
Blackburn**
Lawyers
Since 1919

Rubber Chemicals Class Action

Maurice Blackburn is conducting a price-fixing class action in the Federal Court of Australia against Bayer and Chemtura (formerly Crompton / Uniroyal) in relation to sales of Rubber Chemicals from 1 July 1995 to 31 December 2001.

For further information

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The case alleges a conspiracy to fix the price of Rubber Chemicals sold in Australia between 1995 and 2001, in breach of Sections 45 and 45A of the *Trade Practices Act 1974* (Cth). It is claimed that the prices of certain Rubber Chemicals were fixed, controlled and maintained through secret arrangements between various Rubber Chemicals manufacturers, pursuant to which they allocated customers, sales volumes and market shares by preventing, restricting or limiting the supply of Rubber Chemicals.

Wright Rubber Chemicals Pty Limited has commenced the class action on its own behalf and as a representative of all other Group Members.

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What are "Rubber Chemicals"?

Rubber chemicals are chemicals used as quality and/or productivity enhancers in the manufacture of rubber and rubber compounds. Rubber compounds are used to manufacture a wide range of rubber products including components for mechanical applications, such as parts for motor vehicles, machinery and equipment, tyres and inner tubes, hoses and belting, sheeting, outdoor furniture, surgical gloves, footwear and other products.

Rubber chemicals include antidegradants (antioxidants, antiozonants and stabilisers), accelerators (accelerators, activators and vulcanising agents) and rubber processing chemicals (including antiscorch agents, blowing agents, polymerisation regulators and shortstops).

In the Rubber Chemicals Class Action, it is alleged that over sixty rubber chemicals commonly used in Australia were the subject of price fixing. Please contact us if you would like us to send you a list of, or would like more information about, those Rubber Chemicals

Are you a group member?

The Group Members to whom this proceeding relates are commercial manufacturers of Rubber Compounds and/or Rubber Products who, during the period 1 July 1995 to 31 December 2001 ("Cartel Period"), paid at least AUD\$5,000 for Rubber Chemicals or paid at least AUD\$10,000 for Rubber Compounds and who were at all relevant times ordinarily resident in or carrying on business in Australia.

In the proceeding:

"Rubber Compounds" means compounds of natural or synthetic rubber and other raw materials manufactured using Rubber Chemicals; and

"Rubber Products" means intermediate and/or finished products manufactured using Rubber Compounds for manufacturers and consumers.

The class action claims compensation from Bayer and Chemtura for all losses, regardless of whether the Rubber Chemicals were sourced from Bayer and/or Chemtura.

Prosecutions by competition regulators

In September 2002, the Commission of the European Communities (EU Commission) commenced its investigations into anti-competitive practices in the rubber chemicals industry in the European Economic Area. The Canadian Competition Bureau (CCB) and the US Department of Justice (US DOJ) commenced similar prosecutions in 2002 and 2004 respectively.

The international chemical companies found guilty of cartel conduct include Bayer AG, Chemtura Corporation (formally Crompton Corporation), Flexsys NV, General Quimica SA, Repsol Quimica SA and Repsol YPF SA.

On 21 December 2005 the EU Commission published its decision handing down fines totalling approximately 88m Euros. Flexsys NV avoided a fine, as it blew the whistle on the existence of the cartel and assisted the EU Commission with its investigations.

On 15 March 2004, Crompton Corporation pleaded guilty to charges brought by the US DOJ of participating in an international conspiracy to fix the prices of certain rubber chemicals sold in the US and elsewhere from July 1995 to December 2001. Bayer AG pleaded guilty on 8 July 2004. Both companies agreed to pay fines totalling US\$116M.

On 28 May 2004, the CCB announced that Crompton Corporation had pleaded guilty and was to be fined CAN\$9m for its part in the international price fixing conspiracy for certain rubber chemicals. Bayer AG pleaded guilty on 30 October 2007 and was fined CAN\$2.9M.



Class actions in the US and Canada

A number of class actions alleging cartel arrangements in the rubber chemicals industry were commenced in Canada and the USA.

In Canada, separate settlements were reached with Bayer AG and Flexsys NV in February 2007, while a settlement with Chemtura Corporation was reached in December 2005. The value of the combined settlements totalled approximately CAN\$10M.

In the USA, separate settlements were also reached with Bayer AG, Flexsys NV and Chemtura Corporation. The value of these combined settlements totalled approximately US\$320M.

The Australian Rubber Chemicals Class Action

The only way that victims of the cartel conduct can recover compensation for losses suffered by reason of the cartel is if the wrongdoers agree to pay compensation, either voluntarily, by settlement of court proceedings, or by court order.

The basic measure of the compensation payable is that which will put the victim in the position it would have been had it not been for the cartel conduct. For most businesses this will mean the difference between the prices actually paid for Rubber Chemicals and Rubber Compounds over the Cartel Period and the prices they would have paid in a competitive market, less any price increases passed on to their own customers. Other damages may be claimed depending on the circumstances.

Although it is difficult to precisely measure the overcharge to prices caused by the cartel at this stage, it is clear that the average price per kilogram of rubber chemicals in Australia increased significantly during the Cartel Period. The average price of rubber chemicals per kilogram in Australia before, during and after the Cartel Period is plotted on the graph below. In the last full year before the Cartel Period, 1994, the average price of rubber chemicals in Australia was \$4.49 per kilogram. By 2003, the average price of rubber chemicals in Australia had returned to \$4.48 per kilogram.

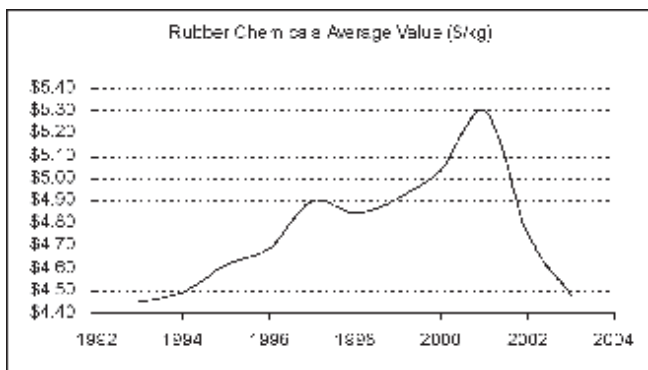


What you can do

If you fit within the description of "Group Member" you will remain a group member unless and until you formally opt out of the proceeding.

We recommend that you register your interest with us by returning a completed registration form. We will then contact you. If you do not register with us we will not be able to advise you of major developments, although the Court may order that notices about the case be published in the media from time to time. Registration does not oblige you to pay any legal costs.

You should also keep all relevant documents, including any invoices and contracts from suppliers for purchases of Rubber Chemicals and/or Rubber Compounds, from as early as possible to the present.



Freecall 1800 810 812
www.mauriceblackburn.com.au

Our reputation

Maurice Blackburn has an unparalleled record in successful class actions in Australia. No other Australian legal firm can match our experience in this specialist area. We have successfully brought cases for tens of thousands of claimants in more than 20 class or group actions including the Aristocrat shareholder class action which achieved a settlement of \$144.5M, the largest class action settlement in Australian legal history.

Our firm also led the Federal Court proceeding against Roche, BASF and Aventis regarding an elaborate global cartel, which took place over a 10-year period during the 1990's. In October 2006, a landmark settlement was approved in the Vitamins class action of \$30.5M plus costs.

In April 2006, Maurice Blackburn commenced a further cartel class action in the Federal Court against Amcor Limited following the exposure of a national cartel involving corrugated fibreboard packaging. Estimated losses of between \$200M and \$300M have been claimed in this proceeding.

In 2007, our firm commenced another price-fixing cartel class action in the Federal Court against seven major international airlines including Qantas, Lufthansa, Singapore Airlines, Cathay Pacific, Air New Zealand, JAL and British Airways relating to the provision of international airfreight services. Claimed losses in this action are estimated at \$200M.

Contact Us

If you would like to register your interest in the Rubber Chemicals Class Action, please complete and submit a Registration of Interest Form at www.mauriceblackburn.com.au

If you would like information about retaining Maurice Blackburn as your lawyers or you are unsure whether you are a Group Member in the class action, please contact Brooke Dellavedova or Natalie Sheard at Maurice Blackburn on (03) 9605 2700.

Our Rubber Chemicals Class Action Team



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