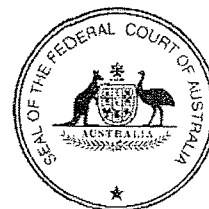


PROCESSED



IN THE FEDERAL COURT OF AUSTRALIA)
VICTORIA DISTRICT REGISTRY)

No. VID882 of 2007

Wright Rubber Products Pty Limited
(ACN 075 384 100)

Applicant

Bayer AG

First Respondent

Bayer Australia Limited
(ACN 000 138 714)

Second Respondent

Chemtura Corporation

Third Respondent

Chemtura Australia Pty Limited
(ACN 005 225 507)

Fifth Respondent

FEDERAL COURT OF AUSTRALIA VICTORIA DISTRICT REGISTRY RECEIVED / FILED 24 SEP 2010 Fees Paid <i>e lodgment</i> Receipt No.
--

DEFENCE OF THE SECOND RESPONDENT

(Form 16 - Order 11, rule 20)

In answer to the Second Amended Statement of Claim filed on 2 August 2010, the Second Respondent, Bayer Australia Limited, says as follows by way of defence:

A. In this Defence:

- (a) paragraph references are references to the paragraphs of the Second Amended Statement of Claim;
- (b) capitalised terms have the same meaning as defined in the Second Amended Statement of Claim;

Filed by the Second Respondent

Address for service:

Baker & McKenzie, Solicitors
Level 27, 50 Bridge Street
Sydney NSW 2000

DX: 218, Sydney
Tel: (02) 9225 0200
Fax: (02) 9225 1595
1232491-v1\SYDDMS\AUSGMF

**IN THE FEDERAL COURT OF AUSTRALIA (FCA)
VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
GENERAL DIVISION**

No: VID882/2007

NOTICE OF FILING

This document was filed electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 24/09/2010.

DETAILS OF FILING

Document Lodged: Defence: Federal Court Rules form 16
File Number: VID882/2007
File Title: Wright Rubber Products Pty Ltd -v- Bayer AG & Ors
District Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



★ **Dated:** 24/09/2010

Registrar

David Soden

Note

This Notice forms part of the document and contains information that might otherwise appear elsewhere in the document. The Notice must be included in the document served on each party to the proceeding.

- (c) headings are copied from the Second Amended Statement of Claim and have no particular meaning in relation to this Defence; and
- (d) where it is pleaded that the Second Respondent denies or admits an allegation, that is a reference to the Second Respondent denying or admitting the allegation:
 - (i) in so far as the allegation is made against the Second Respondent; and
 - (ii) only as against itself.

1. In relation to paragraph 1 the Second Respondent:

- (a) admits that the Applicant was a company incorporated pursuant to the *Corporations Act 2001* and capable of suing since its incorporation on 29 August 1996;
- (b) otherwise does not admit the allegations made in paragraph 1(a);

2. In relation to paragraph 2, the Second Respondent:

- (a) admits that the Applicant purports to bring the proceedings as a representative under Part IVA of the *Federal Court of Australia Act 1976* (Cth);
- (b) otherwise does not admit the allegations made in paragraph 2.

3. The Second Respondent does not admit paragraph 3.

4. In relation to paragraph 4, the Second Respondent:

- (a) says that Group Members who have released the Respondents in relation to their purchases of rubber chemicals do not have a claim against the Respondents within the meaning of section 33C of the *Federal Court of Australia Act 1976* (Cth); and
- (b) otherwise does not admit paragraph 4.

4A. The Second Respondent does not admit paragraph 4A.

The Bayer Respondents

5. In relation to paragraph 5, the Second Respondent:

- (a) admits paragraphs 5(a), (b) and (c);

- (b) does not understand what is meant by the “business of coordinating and supervising the manufacture and supply of Rubber Chemicals throughout the world” in paragraph 5(d); and
 - (c) otherwise denies paragraph 5.
6. In relation to paragraph 6, the Second Respondent:
- (a) admits paragraphs 6(a), (b) and (c);
 - (b) admits that, at all material times, it carried on the business of supplying certain rubber chemicals in Australia (*Bayer Chemicals*); and
 - (c) otherwise denies paragraph 6.
7. The Second Respondent does not plead to paragraph 7 as it contains no allegation.

The Chemtura Respondents

8. The Second Respondent does not plead to paragraph 8 as it contains no allegation against it.
9. The Second Respondent does not plead to paragraph 9 as it contains no allegation against it.
10. The Second Respondent does not plead to paragraph 10 as it contains no allegation against it.
11. The Second Respondent does not plead to paragraph 11 as it contains no allegation.

Market for Rubber Chemicals in Australia

12. The Second Respondent:
- (a) does not understand what is meant by “Rubber Chemicals” and “Rubber Products”; and
 - (b) otherwise does not admit paragraph 12.
13. In relation to paragraph 13, the Second Respondent:

- (a) admits that, at all material times, it was in competition with the Fifth Respondent and other persons in Australia for the supply of the Bayer Chemicals; and
- (b) otherwise denies paragraph 13.

Global Cartel Arrangement

- 14. The Second Respondent denies paragraph 14.
- 15. The Second Respondent denies paragraph 15.

Periodic Global Cartel Arrangements

- 16. The Second Respondent denies paragraph 16.
- 17. The Second Respondent denies paragraph 17.

Giving effect to the Global and Periodic Cartel Arrangements

- 18. The Second Respondent denies paragraph 18.
- 19. The Second Respondent denies paragraph 19.
- 20. The Second Respondent denies paragraph 20.
- 21. The Second Respondent denies paragraph 21.
- 22. The Second Respondent denies paragraph 22.
- 23. The Second Respondent denies paragraph 23.
- 24. The Second Respondent denies paragraph 24.
- 25. The Second Respondent denies paragraph 25.

Australian Respondents giving effect to the Global and Periodic Cartel Arrangements

- 26. The Second Respondent denies paragraph 26.
- 27. The Second Respondent denies paragraph 27.
- 28. The Second Respondent:

- (a) denies paragraph 28;
- (b) says further that it cannot be found to have "given effect to", within the meaning of sections 4(1) and 45(2)(b) of the Act, the Global Cartel Arrangement and/or the Periodic Cartel Arrangements in circumstances where the Applicant has not alleged that the Second Respondent was a party to the Global Cartel Arrangement and/or the Periodic Cartel Arrangements.

29. The Second Respondent denies paragraph 29.

30. The Second Respondent denies paragraph 30.

Foreign Respondents – conduct "by" Australian Respondents

31. The Second Respondent denies paragraph 31.

32. The Second Respondent denies paragraph 32.

33. The Second Respondent denies paragraph 33.

34. The Second Respondent denies paragraph 34.

35. The Second Respondent denies paragraph 35.

36. The Second Respondent:

- (a) denies that it was involved in the alleged conduct of the Foreign Respondents pleaded in paragraphs 14, 15, 16, 17, 18, 19, 20, 31, 32 and 33 of the Second Amended Statement of Claim;
- (b) says further that to the extent that paragraph 36 makes any other allegation against the Second Respondent it is embarrassing within the meaning of Order 11 rule 16 of the *Federal Court Rules*; and
- (c) otherwise denies paragraph 36.

Damages

37. In relation to paragraph 37, the Second Respondent:

- (a) admits that it supplied the Bayer Chemicals in Australia;

- (b) otherwise denies the allegations made in paragraph 37.
38. The Second Respondent denies paragraph 38.
39. The Second Respondent denies paragraph 39.
40. The Second Respondent denies paragraph 40.
41. The Second Respondent denies paragraph 41.
42. Further to paragraphs 38 to 41 above:
- (a) if (which is denied) the Second Respondent has committed a contravention or contraventions of the Act; and
- (b) if (which is denied) that contravention or contraventions has caused the prices charged for rubber chemicals by the Australian Respondents and other importers of rubber chemicals and for rubber compounds to be higher than would otherwise have been,
- the Second Respondent says that the Applicant and Group Members – whether they are purchasers of Rubber Chemicals or Rubber Compounds – have passed on these higher costs to their own customers and, accordingly, have not suffered any loss or damage.
43. The Second Respondent further says that, to the extent that it is liable to the Applicant and Group Members for any loss or damage suffered, certain Group Members have released the Second Respondent from all such liability and that the Second Respondent has no liability to such Group Members.

Particulars

Confidential Deeds of Release entered into by or on behalf of the Second Respondent and certain Group Members.

Jurisdiction under the Act

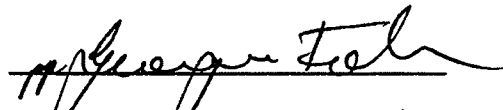
44. In further answer to the Second Amended Statement of Claim, the Second Respondent says that:

- (a) section 5 of the Act does not operate to extend the relevant provisions of the Act to the conduct of the First Respondent, and the Act otherwise does not apply to the conduct of the First Respondent (which is outside Australia);
- (b) accordingly, the Second Respondent is not, and cannot be, a person involved in direct contraventions by the First Respondent as pleaded in paragraph 36 of the Second Amended Statement of Claim;
- (c) neither the First Respondent nor any of the other alleged parties to the alleged Global Cartel Arrangement or Periodic Global Cartel Arrangements are in competition with each other in a market in Australia within the meaning of section 4E of the Act, such that section 45 of the Act does not apply to the alleged conduct (including the alleged conduct of the Second Respondent).

Relief

- 45. The Second Respondent denies that the Applicant and Group Members are entitled to the relief specified in the Application.
- 46. Further and in the alternative, in so far as the Applicant claims relief under section 82(1) of the Act:
 - (a) in respect of any cause of action that accrued before 26 July 1998; and
 - (b) in respect of any cause of action that accrued after 26 July 1998 and more than 6 years before the commencement of the action in respect of that cause of action,any such claim is statute-barred by reason of section 82(2) of the Act.

Date: 24 September 2010.



Andrew John Christopher

Solicitor for the Second Respondent

This pleading was prepared by Andrew John Christopher, Solicitor.

IN THE FEDERAL COURT OF AUSTRALIA)
VICTORIA DISTRICT REGISTRY)

No. VID882 of 2007

Wright Rubber Products Pty Limited
(ACN 075 384 100)

Applicant

Bayer AG

First Respondent

Bayer Australia Limited
(ACN 000 138 714)

Second Respondent

Chemtura Corporation

Third Respondent

Chemtura Australia Pty Limited
(ACN 005 225 507)

Fifth Respondent

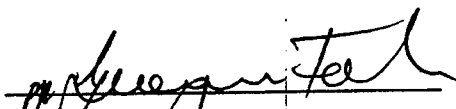
CERTIFICATE OF LEGAL REPRESENTATIVE

(Form 15B - Order 11, rule 1B)

I, Andrew John Christopher, certify to the Court that the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non-admission in the pleading.

Date: 24 September 2010.


Andrew John Christopher
Solicitor for the Second Respondent

Filed by the Second Respondent

Address for service:

Baker & McKenzie, Solicitors
Level 27, 50 Bridge Street
Sydney NSW 2000

DX: 218, Sydney
Tel: (02) 9225 0200
Fax: (02) 9225 1595
1232491-v1\SYDDMS\AUSGMF

