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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)

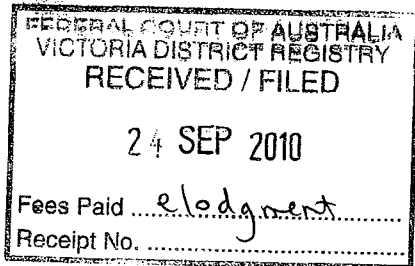
Second Respondent

**Chemtura Corporation**

Third Respondent

**Chemtura Australia Pty Limited**  
(ACN 005 225 507)

Fifth Respondent



## DEFENCE OF THE FIRST RESPONDENT

(Form 16 - Order 11, rule 20)

In answer to the Second Amended Statement of Claim filed on 2 August 2010, the First Respondent, Bayer AG, 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;

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### Filed by the First Respondent

Address for service:

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**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

*Michael 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 First Respondent denies or admits an allegation, unless otherwise specified, that is a reference to the First Respondent denying or admitting the allegation:
    - (i) in so far as the allegation is made against the First Respondent; and
    - (ii) only as against the First Respondent.
1. In relation to paragraph 1, the First 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.
  2. In relation to paragraph 2, the First 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 First Respondent does not admit paragraph 3.
  4. In relation to paragraph 4, the First 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 First Respondent does not admit paragraph 4A.

**The First Respondent**

5. In relation to paragraph 5, the First 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 First Respondent:
- (a) admits paragraphs 6(a), (b) and (c);
  - (b) admits that, at all material times, the Second Respondent carried on the business of supplying certain rubber chemicals in Australia (*Bayer Chemicals*); and
  - (c) otherwise denies paragraph 6.
7. The First Respondent does not plead to paragraph 7 as it contains no allegation.

#### **The Chemtura Respondents**

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

#### **Market for Rubber Chemicals in Australia**

12. The First Respondent:
- (a) does not understand what is meant by “Rubber Compounds” and “Rubber Products”; and
  - (b) otherwise does not admit paragraph 12.
13. The First Respondent denies paragraph 13.

### **Global Cartel Arrangement**

14. The First Respondent denies paragraph 14.
15. The First Respondent denies paragraph 15.

### **Periodic Global Cartel Arrangements**

16. The First Respondent denies paragraph 16.
17. The First Respondent denies paragraph 17.

### **Giving effect to the Global and Periodic Cartel Arrangements**

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

### **Australian Respondents giving effect to the Global and Periodic Cartel Arrangements**

26. The First Respondent denies paragraph 26.
27. The First Respondent denies paragraph 27.
28. The First Respondent denies paragraph 28.
29. The First Respondent denies paragraph 29.
30. The First Respondent denies paragraph 30.

## **Foreign Respondents – conduct "by" Australian Respondents**

31. The First Respondent denies paragraph 31.
32. The First Respondent denies paragraph 32.
33. The First Respondent denies paragraph 33.
34. The First Respondent denies paragraph 34.
35. The First Respondent denies paragraph 35.
36. The First Respondent:
  - (a) denies that it was involved in the alleged conduct of the Australian Respondents pleaded in paragraphs 26 and 27 of the Second Amended Statement of Claim;
  - (b) says further that to the extent that paragraph 36 makes any other allegation against the First 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 First Respondent:
  - (a) admits the Second Respondent supplied the Bayer Chemicals in Australia;
  - (b) otherwise denies the allegations made in paragraph 37.
38. The First Respondent denies paragraph 38.
39. The First Respondent denies paragraph 39.
40. The First Respondent denies paragraph 40.
41. The First Respondent denies paragraph 41.
42. Further to paragraphs 38 to 41 above:
  - (a) if (which is denied) the First 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 First 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 First 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 First Respondent from all such liability and that the First Respondent has no liability to such Group Members.

#### **Particulars**

Confidential Deeds of Release entered into by the First Respondent and certain Group Members.

#### **Jurisdiction under the Act**

44. In further answer to the Second Amended Statement of Claim, the First 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); and
- (b) 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.

#### **Relief**

45. The First 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 )

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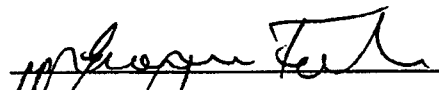
## CERTIFICATE OF LEGAL REPRESENTATIVE

(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:

- (c) each allegation in the pleading; and
- (d) each denial in the pleading; and
- (e) each non-admission in the pleading.

**Date:** 24 September 2010.



**Andrew John Christopher**  
Solicitor for the First Respondent

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### Filed by the First Respondent

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