

This Settlement Agreement was achieved as a result of mediation assistance provided by the Fifth Circuit Appellate Conference Attorney's Office. It is a compromise of disputed claims and shall not be construed as an admission by Elf Atochem or any other Released Party of any liability or wrongdoing or as an admission by the Class Representatives or members of the Settlement Class and subclasses defined herein ("Settlement Class Members") that their claims lacked merit.

The Parties agree, subject to Final Judicial Approval as defined below, compliance with applicable legal requirements, and other conditions set forth below, that the Settled Claims are settled, compromised, and released in accordance with the following terms and conditions.

I. DEFINITIONS

For purposes of this Settlement Agreement, the following terms shall have the meanings set forth in this section.

1. "Bryan Plant" shall mean the agrichemicals plant located at 201 West Dodge Street, Bryan, Texas.
2. "Claimant" shall mean any individual Settlement Class Member (or legal representative of a Settlement Class Member) who submits a Settlement Fund Claim under this Agreement.
3. "Class Area" shall mean the geographic area where, according to the air dispersion model previously developed by experts for Class Counsel, annual air concentrations of arsenic from the Bryan Plant averaged 5 nanograms or more per cubic meter of air.
4. "Class Counsel" shall mean those attorneys executing this Settlement Agreement on behalf of the Class Representatives.
5. "Class Representatives" shall mean those persons approved by the District Court to serve as representatives of the class defined in this Settlement Agreement.
6. "District Court" shall mean the United States District Court for the Southern District of Texas, Houston Division, which is presiding over the *Hayden* lawsuit, as defined below.
7. "Elf Atochem" shall mean ATOFINA Chemicals, Inc., formerly known as Elf Atochem North America, Inc., and its predecessors, successors, or assigns.
8. "Final Judicial Approval" shall mean the entry of an order by the District Court approving the Settlement Agreement as a whole and the exhaustion of all appeals (or expiration of the time for bringing appeals), if any, without substantial modification of the order granting such approval. In determining the time for appeal, the provisions of Rule 60, Fed.R.Civ.P., and of the All Writs Act, 28 U.S.C. Sec. 1651, shall not be taken into account.
9. "Final Judicial Approval Date" shall mean the date on which Final Judicial Approval occurs.
10. "*Hayden* lawsuit" shall mean *Hayden et al v. Atochem North America, Inc., et al.* C.A. No. H-92-1054, which is pending in the United States District Court for the Southern District of Texas.
11. "Initial Opt-Out Period" shall mean the period to be established by the District Court during

which Settlement Class Members may exercise their Initial Opt-Out Right described in Section II.F.1.

12. "Net Settlement Subclass Fund" shall mean the amount remaining in each Subclass Fund after payment of its respective share of any award of attorneys' fees and litigation expenses to Class Counsel, incentive awards to the Class Representatives, and the costs, approved by the District Court, of administering the settlement, including the fees and expenses of the Settlement Administrator.
13. "Ogden Allied Entities" shall mean Ogden Services Corporation, Ogden-Allied Building Service Corporation, Ogden-Allied Maintenance Corporation of Texas, Ogden-Allied Abatement and Decontamination Service Inc., Ogden-Allied Eastern States Maintenance Corporation, and their predecessors, successors or assigns.
14. "Parties" shall mean the Settlement Class Members and the Defendants in the *Hayden* lawsuit.
15. "Persons" shall mean natural persons or entities.
16. "Preliminary Approval" shall mean the conditional certification of the Settlement Class and preliminary approval of this Settlement Agreement by the District Court pursuant to Fed. R. Civ. P. 23 and entry of an order or orders providing for issuance of notice to the Settlement Class.
17. "Preliminary Approval Date" shall mean the date on which Preliminary Approval occurs.
18. "Protocol" shall mean the Protocol for Distribution of Settlement Fund attached and incorporated herein as Exhibit A.
19. "Released Parties" shall mean Elf Atochem, Elf Aquitaine, Inc., The Missouri Pacific Company doing business as Union Pacific Railroad, the Ogden Allied Entities, and each of their respective parents, subsidiaries, affiliates, predecessors, successors, assigns, shareholders, directors, officers, and employees, past or present.
20. "Settlement Administrator" means a third party individual to be appointed by the Court upon the recommendation of Class Counsel to implement and administer the Settlement pursuant to this Agreement, including the Protocol as defined above. The Settlement Administrator shall investigate and approve qualifying Settlement Fund Claims, and perform such other activities as described herein or required by the District Court.
21. "Settled Claims" shall mean any and all claims, other than those that satisfy the terms of the Back-End Opt-Out Right described in Section II, including assigned claims, whether known or unknown, asserted or unasserted, existing now or arising in the future, regardless of the legal theory, by any or all Settlement Class Members and all persons claiming through them, arising out of or relating to the alleged release of arsenic or other substances from the Bryan Plant, including all claims that were brought or could have been brought in the *Hayden* lawsuit. These Settled Claims include, without limitation and by way of example, all claims for damages or remedies of whatever kind or character, known or unknown, that are now recognized by law or that may be created or recognized in the future, including claims for:

- a. personal or bodily injury, wrongful death, or pain and suffering;
 - b. emotional distress, mental anguish, or fear of disease;
 - c. compensatory or punitive damages, including damages for loss of income or earning capacity, medical expenses, loss of support, consortium, society or affection, or damage to familial relations;
 - d. exposure, nuisance, increased risk of disease, medical screening or monitoring;
 - e. lost profits or other economic injury;
 - f. property damage;
 - g. injunctive and declaratory relief;
 - h. violations of statutes and regulations.
22. "Settlement Fund" shall mean the Qualified Settlement Fund to be established by the Settlement Administrator for the purpose of receiving and distributing the funds to be paid by Elf Atochem as provided by this Agreement.
23. "Supplemental Notice" shall mean the Supplemental Notice of Proposed Settlement of Class Action and Fairness Hearing attached as Exhibit B.

II. THE SETTLEMENT CLASS

- A. Subject to the approval of the District Court and for purposes of settlement only, the Parties agree that the following Settlement Class and subclasses shall be certified.
- B. The Settlement Class Members shall include:
- (1) All persons who between January 1, 1973 and April 10, 1995 (a) lived within the 5 nanogram zone of the Class Area, (b) worked within the 10 nanogram zone of the Class Area (other than exclusively at the Bryan Plant), or (c) were *in utero* while their mother lived within the 5 nanogram zone of the Class Area or worked within the 10 nanogram zone of the Class Area (other than exclusively at the Bryan Plant), and (2) all persons who between January 1, 1992 and April 10, 1995 owned property within the 5 nanogram zone of the Class Area.
- C. The Settlement Class shall have the following three subclasses:
- 1. "Subclass A" includes all Settlement Class Members (1) who have or have had any form of cancer, whose pregnancy has ended in a stillbirth, or who have or have had any of the following birth defects: anencephaly, microencephaly, holoprosencephaly, spina bifida, microphthalmia, anophthalmia, renal agenesis, myelomeningocele and coarctation of the aorta and (2) who between January 1, 1973 and April 10, 1995 (a) lived within the 5 nanogram zone of the Class Area, (b) worked within the 10 nanogram zone of the Class Area (other than exclusively at the Bryan Plant), or (c) were *in utero* while their mother either lived within the 5 nanogram zone of the Class Area or worked within the 10 nanogram zone of the Class Area (other than

exclusively at the Bryan Plant).

2. "Subclass B" includes all Settlement Class Members who do not have and have not had a stillbirth, any form of cancer or any of the birth defects identified in Subclass A above and who between January 1, 1973 and April 10, 1995 (a) lived within the 5 nanogram zone of the Class Area, (b) worked within the 10 nanogram zone of the Class Area (other than exclusively at the Bryan Plant), or (c) were *in utero* while their mother either lived within the 5 nanogram zone of the Class Area or worked within the 10 nanogram zone of the Class Area (other than exclusively at the Bryan Plant).
3. "Subclass C" includes all persons who between January 1, 1992 and April 10, 1995 owned property within the 5 nanogram zone of the Class Area.

D. The Settlement Class does not include:

1. persons whose claims against the Released Parties were previously resolved by release or otherwise;
2. the Released Parties; and
3. District Court officials with adjudicatory responsibilities for this case or persons appointed by the District Court for the purpose of supervising the administration of this Settlement.

E. Compensation for a claim for wrongful death under Subclass A or Subclass B against the Settlement Fund is not available if the decedent died prior to September 8, 1990.

F. Opt-Out Rights

1. Initial Opt-Out Right

- a. All Settlement Class Members are eligible to exercise an Initial Opt-Out Right.
- b. Each Settlement Class Member wishing to exercise the Initial Opt-Out Right must sign and submit timely written notice to the Settlement Administrator stating the Settlement Class Member's intent to opt out of the Settlement. The written notice shall be in the form appended as Exhibit B to the Supplemental Notice or in substantially similar form. To be effective, this written notice must be signed and submitted by the expiration of the Initial Opt-Out Period. Class Counsel will recommend that the District Court approve an Initial Opt-Out Period of at least thirty (30) days from the Preliminary Approval Date. The Settlement Administrator shall provide to the District Court and promptly make available to the Parties all Opt-Out forms submitted by Settlement Class Members.
- c. Any Settlement Class Member who timely and properly exercises an Initial Opt-Out Right may

initiate or otherwise pursue any legal claim against Elf Atochem and any other Released Party without any limitation or defense arising from the terms of the Settlement Agreement and subject to all defenses that Elf Atochem and the Released Parties would otherwise have in the absence of the Settlement

Agreement.

2. Back-End Opt-Out Right

a. General

1. Settlement Class Members eligible to exercise a Back-End Opt-Out Right (the "Eligible Class Members") are members of Subclass B who do not exercise the Initial Opt-Out Right and who
 - i. following Final Judicial Approval, are diagnosed with a birth defect or cancer that the Eligible Class Member contends was caused by exposure to emissions from the Bryan Plant that allegedly occurred prior to April 10, 1995; or
 - ii. now have, previously had, or are diagnosed in the future as having medical conditions other than birth defects or cancer that, following Final Judicial Approval, the scientific literature reports for the first time in a peer-reviewed publication are causally associated with arsenic exposure and that the Eligible Class Member contends was caused by exposure to emissions from the Bryan Plant prior to April 10, 1995.
2. To exercise a Back-End Opt-Out Right with respect to any claim based on any of the above conditions (the "New Claim"), the Eligible Class Member must preliminarily demonstrate that
 - i. the New Claim satisfies Texas law on general causation as set forth in *Havner v. Merrill Dow Pharm.*, 953 S. W.2d 706 (1997), or, if that decision is superseded or modified, in accordance with then prevailing Texas law on general causation; and
 - ii. the amount of time that passed between the Eligible Class Member's alleged exposure and the onset of the medical condition and the level of such exposure on which the New Claim is based according to the peer-reviewed scientific literature, consistent with causation.
3. For the purpose of any exposure assumptions relating to the preliminary general causation determination, Eligible Class Members seeking to exercise the Back-End Opt-Out Right may use the air dispersion model currently available that has been prepared by the experts for Class Counsel in the *Hayden* lawsuit and/or documents previously produced in discovery that, as agreed by Class Counsel and Elf Atochem, relate to emissions that potentially resulted from the operation of the Bryan plant (the "Exposure Documents"). Because this information is available, further discovery against Elf Atochem relating to the preliminary general causation determination will not be permitted. Class Counsel will make the Exposure Documents available for inspection by Class Members as of September 15, 2000.

4. Eligible Class Members who satisfy the conditions of the Back-End Opt-Out Right may pursue their New Claim against Elf Atochem and any other Released Party without any limitation or defense arising from the terms of the Settlement Agreement and subject to all defenses that Elf Atochem and the Released Parties would otherwise have in the absence of the Settlement Agreement.
 5. A preliminary determination of general causation favorable to an Eligible Class Member shall be without prejudice to the right of Elf Atochem and any other Released Party to raise any available defenses, including challenging any exposure assumptions, at later stages in judicial proceedings involving that Eligible Class Member.
 6. The filing of a motion or a lawsuit as set forth in Sections II.F.2.b. or II.F.2.c below by the Eligible Class Member seeking a preliminary general causation determination will toll the statute of limitations that applies to the New Claim.
 7. The law of Texas will apply to the New Claim in any such proceeding brought by Eligible Class Members.
- b. The exercise of the Back-End Opt-Out Right by Eligible Class Members who have received compensation under the Protocol is subject to the provisions of Section II.F.2.a and the following additional provisions:
1. The Eligible Class Member must file a motion with the District Court seeking a preliminary determination of general causation as required by Section II.F.2.a. and a determination that he or she is entitled to exercise the Back-End Opt-Out Right. Unless otherwise agreed, the District Court alone has the authority to determine whether Eligible Class Members have satisfied the requirements of the Back-End Opt-Out Right.
 2. At the same time that the Eligible Class Member files a motion pursuant to this section with the District Court, he or she must provide a copy of that motion to Elf Atochem, General Counsel, 2000 Market Street, Philadelphia, PA 19103.
- c. The exercise of the Back-End Opt-Out Right by Eligible Class Members who have not received any compensation under the Protocol is subject to the provisions of Section II.F.2.a. and the provisions of either Section II.F.2.b. or this Section II.F.2.c., whichever Section the Eligible Class Member chooses:
1. Eligible Class Members who have not received any settlement proceeds may bring suit in the United States District Court for the district in which they reside. If necessary, Elf Atochem will waive venue restrictions and submit to in-personam jurisdiction.
 2. If federal subject matter jurisdiction is unavailable because the amount in controversy is stipulated to be below the jurisdictional amount or because the Eligible Class Member has the same citizenship as Elf Atochem, the Eligible Class Member may bring suit in the state court of general

jurisdiction for the city, county or judicial district in which the Eligible Class Member resides. A stipulation as to the amount in controversy must be irrevocable. The Eligible Class Members must sue separately. Potential codefendants must be sued separately if necessary to preserve diversity.

3. Within forty-five days of filing such a lawsuit, the Eligible Class Member must file a motion seeking a preliminary determination of general causation as required by Section II.F.2.a. and a determination that he or she is entitled to exercise the Back-End Opt-Out Right.
4. No discovery may be undertaken, either of the Eligible Class Member or of Elf Atochem, until and unless the court in which the Eligible Class Member brings the lawsuit makes the preliminary general causation determination described above.
5. At the same time that the Eligible Class Member files a lawsuit pursuant to this section, he or she must serve a copy of the complaint on Elf Atochem, General Counsel, 2000 Market Street, Philadelphia, PA 19103.

III. CONSIDERATION TO BE PROVIDED TO THE CLASS

A. Payment Obligations of Elf Atochem.

1. As described in Section V below, the Settlement Administrator shall establish a Settlement Fund to receive the amount to be paid by Elf Atochem under the terms of this Settlement Agreement.
2. Elf Atochem shall pay into this Settlement Fund on behalf of all Released Parties the sum of \$41,400,000 (U.S. Currency or cash equivalent) (the "Total Payment").
3. In the event there is no appeal, the Total Payment will be paid thirty days after the Final Judicial Approval Date.
4. In the event of an appeal, the Total Payment will be deposited by Elf Atochem in a court-approved escrow account held by a court-appointed escrow agent within thirty days after notice of the appeal is received by Elf Atochem. If this Settlement Agreement is ultimately upheld on appeal, the Total Payment and interest earnings thereon in the escrow account will be paid immediately to the Settlement Fund. If the District Court's order approving this Settlement Agreement is vacated or reversed on appeal, the Total Payment and interest earnings thereon in the escrow account will be returned immediately to Elf Atochem.
5. Elf Atochem shall have no financial obligations to the Settlement Fund other than as explicitly set forth above.
6. The Total Payment due from Elf Atochem will be paid by wire transfer. If the date the payment is due is not a normal day of bank operation, the payment shall be due and payable on the first normal day of bank operation following such date.

B. Other Consideration

1. Future Plant Operations.
2. Elf Atochem agrees not to produce, use, or handle arsenic or arsenic-containing materials, organophosphates, pesticides, fungicides, herbicides, insecticides and rodenticides at the Bryan Plant, except as necessary for remediation activities.
3. The Final Judgment and Order of Dismissal in this action shall include an injunction so providing.
4. Attic dust sampling and remediation.
5. Elf Atochem agrees that it will offer to sample the attic dust in the residential property of any Settlement Class Member whose home is within the 100 nanogram zone of the Class Area and remediate the arsenic in the attic if the level of total arsenic exceeds 100 parts per million. Elf Atochem's funding obligation for this attic dust sampling and remediation program is not to exceed \$3.5 million.
6. Those residential properties that Plaintiffs' experts believe are eligible for this program are identified on Table 1 in the Supplemental Notice. Class Members who own a property listed on Table 1 and who would like to have their attic dust sampled are required to submit their requests to the Settlement Administrator in writing within 120 days after the Preliminary Approval Date.
7. The Final Judgment and Order of Dismissal in this action shall include an injunction requiring Elf Atochem to provide this attic dust sampling and remediation service as indicated above.

IV. CLASS MEMBER PAYMENT RIGHTS

A. The Subclass Funds

1. The Settlement Administrator shall create three Subclass Funds for the benefit of the subclass indicated:
 - a. Fund A shall be used to fund payments to the members of Subclass A who qualify for such payments;
 - b. Fund B shall be used to fund payments to the members of Subclass B who qualify for such payments; and
 - c. Fund C shall be used to fund payments to the members of Subclass C who qualify for such payments.
2. The amount that Elf Atochem pays into the Settlement Fund shall be allocated to the Subclass Funds as follows:
 - a. \$24,340,000 will be allocated to Fund A;
 - b. \$6,460,000 will be allocated to Fund B; and

c. \$10,600,000 will be allocated to Fund C.

3. Elf Atochem shall have no responsibility for the management of the Settlement Fund or the Subclass Funds and no liability to any Settlement Class Member arising from the handling or disposition of claims made against the Settlement Fund or the Subclass Funds.

B. Payments to Settlement Class Members

1. The amount available for distribution to subclass members will be the amount remaining in each Subclass Fund after payment by each fund of its respective share of all court-approved fees and expenses of Class Counsel, any incentive awards for class representatives, and the expenses associated with the administration of each Subclass Fund, including the fees and expenses of the Settlement Administrator. This amount is the Net Settlement Subclass Fund.
2. Settlement Class Members are eligible for payments from the Net Settlement Subclass Funds as set forth in the Protocol, which explains, for each subclass, the procedures to be followed in order to apply for payments from the Subclass Funds and the criteria the Settlement Administrator will use in determining the amounts that will be paid to Settlement Class Members. Elf Atochem is not responsible for the provisions of the Protocol or for distributing to subclass members the amounts allocated to their subclass. In the event of any conflict between the terms of the Protocol and the terms of this Settlement Agreement, the terms of this Settlement Agreement govern.
3. As set forth in the Protocol,
 - a. Amounts to be paid to members of Subclass A will be distributed between two categories: (1) claims by Subclass A members for a stillbirth with a congenital malformation, the birth defects listed in the definition of Subclass A, and the following cancers that Class Counsel contends can be caused by arsenic exposure: kidney, liver, lung, squamous cell skin carcinoma, basal cell skin carcinoma, bladder, gastrointestinal, and esophageal; and (2) claims by Subclass A members for all other cancers and all other stillbirths. Notwithstanding the foregoing, if a member of Subclass A whose cancer claim falls in the second category is able to demonstrate that reliable scientific evidence establishes that his or her form of cancer can be caused by exposure to arsenic or other chemicals emitted from the Bryan Plant, that Subclass A member's claim will be treated as falling within the first category.
 - b. In determining the amounts to be paid to members of Subclass A in the first category, the Settlement Administrator shall take into account such factors as:
 1. the extent and duration of the Settlement Class Member's alleged exposure to Bryan Plant emissions (as determined by residence or work history within the Class Area);
 2. the seriousness of any condition that the Settlement Class Member claims may have been caused by exposure to arsenic or other chemicals from the Bryan Plant;

3. the extent to which the scientific literature has reported an association between that condition and those chemicals;
 4. when the stillbirth, birth defect or cancer was first diagnosed;
 5. the presence or absence of other risk factors, including smoking.
- c. The second category of Subclass A members will be awarded a per capita share of the monies available for distribution to the Subclass A members in the second category.
 - d. In determining the amounts to be paid to members of Subclass B, the Settlement Administrator shall take into account such factors as:
 1. the extent and duration of the Settlement Class Member's alleged exposure to Bryan Plant emissions (as determined by residence or work history within the Class Area);
 2. the age of the Settlement Class Member at the time of the Settlement Class Member's alleged exposure to Bryan Plant emissions.
 - e. In determining the amounts to be paid to members of Subclass C, the Settlement Administrator may take into account such factors as the proximity of the Settlement Class Member's property to the Bryan Plant or to contaminated surface water, if any, the nature and use of the property, and potential past arsenic air concentration levels (as computed by Class Counsel's experts' air model) in the area of the property.

V. SETTLEMENT ADMINISTRATION

A. The Settlement Administrator

1. The Settlement Administrator shall be proposed by Class Counsel subject to the approval of the District Court and shall act under the Court's supervision and continuing jurisdiction to administer the relief provided by the Settlement Agreement and the Protocol. The Settlement Administrator is responsible for resolving claims in a rational, responsive, cost-effective and timely manner.
2. The Settlement Administrator shall maintain the records of its activities in computerized data base form, and shall provide periodic and special reports concerning its activities as required by the Protocol or the District Court.
3. The Settlement Administrator will have discretion to determine the nature and extent of any medical records or documentation that Settlement Class Members must submit to establish their class membership or the sufficiency of their claim for settlement proceeds. In evaluating claims, the Settlement Administrator may, in his discretion, confer with medical or property experts.

B. Responsibilities with Respect to the Settlement Fund

1. The Settlement Administrator shall take all necessary steps to ensure that the Settlement Fund that is to receive the payment to be made by Elf Atochem is established and maintained as a Qualified Settlement Fund in accordance with Section 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder. The Qualified Settlement Fund may provide Settlement Class Members with lump sum settlements or periodic payment settlements. If periodic payment settlements are provided then the obligation to make the periodic payments shall be assigned to a qualified assignee in accordance with Sections 104(a)(2) and 130(c) of the Internal Revenue Code of 1986, as amended. The proceeds of any periodic payments shall represent damages on account of personal injuries or sickness within the meaning of the above referenced provisions of the Internal Revenue Code of 1986, as amended.
2. The Settlement Administrator will undertake the following actions in accordance with applicable regulations under IRC Section 468B: (a) apply for the Tax Identification Number required for the Settlement Fund; (b) file, or cause to be filed, all tax returns the Settlement Fund is required to file under federal or state laws; (c) pay from the Settlement Fund all taxes that are imposed upon the Settlement Fund by federal or state law; and (d) file, or cause to be filed, tax elections available to the Settlement Fund, including a request for a prompt assessment under IRC Section 6501(d) if and when the Settlement Administrator deems it appropriate to do so.
3. Elf Atochem, as transferor of the funds that are to be deposited in the Settlement Fund, shall prepare and file the information statements concerning its settlement payment as required by applicable regulations under IRC Section 468B.

VI. RIGHTS OF ELF ATOCHEM AND THE RELEASED PARTIES

A. Effect on Claims

1. Effective upon Final Judicial Approval, every Settled Claim against Elf Atochem or any other Released Party by every Settlement Class Member who has not exercised an Initial Opt-Out Right shall be conclusively compromised, settled and released. As a consequence thereof, any Settlement Class Member who has not exercised an Initial Opt-Out Right shall be barred from initiating, asserting or prosecuting any Settled Claim against Elf Atochem or any other Released Party, with the sole exception that this bar does not prohibit any Subclass B Member who has timely and properly exercised his or her Back-End Opt-Out Right from pursuing any New Claim that satisfies the conditions of Section II.F.2 of this Settlement Agreement.
2. As a condition precedent to receiving any payment under this Settlement Agreement, each Settlement Class Member (or the duly authorized representative of that Settlement Class Member) shall be required to execute an individual Release and Covenant Not to Sue as part of the forms he or she submits to apply for benefits under the Settlement. These individual releases shall become ineffective, null and void in the event that the Settlement Agreement fails to obtain Final Judicial Approval or in the event that this Settlement Agreement is terminated for any reason. These individual releases shall furthermore be ineffective, null and void as to all Settled Claims asserted by Class Members who, subsequent to executing them, timely and properly exercise the Initial Opt-Out Right.

B. Protection of Elf Atochem and the Released Parties from Possible Subrogation Claims.

1. To the extent that any person has rights of subrogation by virtue of a payment or payments made to or for the benefit of any Settlement Class Member, those rights may not be asserted except to the extent required by applicable Federal or State law. Upon Final Judicial Approval, the Parties shall seek an order from the District Court barring the assertion of such subrogation claims except to the extent that it would be impermissible to bar such claims under the provisions of applicable law.
2. The Settlement Administrator shall take reasonable steps to ensure that no liens to which a right of subrogation might attach are pending against any member of Subclass A to whom a payment is to be made. If the Settlement Administrator determines that such liens are outstanding against any such Settlement Class Member, it shall withhold payment until the lien is withdrawn or otherwise resolved.
3. Elf Atochem will promptly notify the Settlement Administrator and the affected Settlement Class Member if a subrogation claim is asserted and afford the Settlement Class Member an opportunity to contest, object to, or compromise the claim.

C. Walkaway Rights

1. For twenty (20) days following the expiration of the Initial Opt-Out period, Elf Atochem will have an absolute right, exercisable in its sole discretion, to terminate and withdraw from the Settlement Agreement if either of the following occurs:
 - a. more than 135 Settlement Class Members timely and properly opt out of the Settlement (regardless of subclass); or
 - b. more than seventeen members of Subclass A timely and properly opt out of the Settlement.
2. So that Elf Atochem can make an informed decision concerning the exercise of this "walkaway right," Class Counsel agree to use their best efforts to determine the number and nature of any opt-outs, to advise Elf Atochem of the same within five days of the close of the Initial Opt-Out period, and to respond to reasonable requests for non-confidential information relating to the Settlement Class Members who opt out.

VII. SETTLEMENT APPROVAL AND IMPLEMENTATION

A. Conditions

1. Elf Atochem's obligation to make the Total Payment to the Settlement Fund is subject to the following conditions:
2. District Court approval of the Settlement through the entry of an order or orders:
3. Confirming the certification of the Settlement Class and the creation of the Subclasses described above for settlement purposes only;
4. Approving this Agreement in its entirety pursuant to Fed. R. Civ. P. 23(e);

5. Barring and enjoining each Settlement Class Member who does not properly and timely exercise an Initial Opt-Out right from asserting any and all Settled Claims that the Settlement Class Member had, has, or may have in the future in any court, except to the extent that any member of Subclass B satisfies the requirements of the Back-End Opt-Out right described in Section II.F.
6. Barring and enjoining the commencement and/or prosecution of any claim against Elf Atochem and any other Released Party in any court based on rights of subrogation by virtue of a payment or payments made to or for the benefit of a Settlement Class Member arising out of or in relation to any Settled Claims, except to the extent that it would be impermissible to bar such claims under applicable law;
7. Reserving the District Court's continuing and exclusive jurisdiction over the Parties, including Elf Atochem and the Settlement Class Members, to administer, supervise, interpret, and enforce this Settlement Agreement in accordance with its terms, and to supervise the operation of the Settlement Fund by the Settlement Administrator;
8. Final Judicial Approval of this Settlement Agreement.
9. Other than those responsibilities specifically allocated to Elf Atochem in this Settlement Agreement, the Released Parties shall have no further responsibility to the Settlement Class Members for the Settled Claims.

B. Approval Process and Notice Provisions.

1. After executing this Settlement Agreement, Class Counsel shall move the District Court for the entry of an order granting Preliminary Approval. Such order shall:
2. preliminarily and conditionally certify the Settlement Class, for settlement purposes only;
3. grant Preliminary Approval of this Settlement Agreement;
4. authorize the dissemination of the Supplemental Notice;
5. designate the Initial Opt-Out Period;
6. schedule the deadline for filing objections to the Settlement; and
7. schedule a formal fairness hearing to review comments concerning this Settlement, to consider its fairness, reasonableness, and adequacy under Fed. R. Civ. P. 23(e), and to determine whether to enter an order approving the Settlement.
8. The Parties shall cooperate and assist in all of the filings and proceedings relating to the obtaining of Preliminary Approval of the Settlement and in any further filings and proceedings necessary to obtain Final Judicial Approval, and in any related appeals.

C. Notice

1. Class Counsel shall disseminate to potential Settlement Class Members the

Supplemental Notice by first-class mail, newspaper publication, and radio and television announcements, as ordered by the District Court.

2. Elf Atochem agrees to pay 50% of the out-of-pocket cost of printing, publishing, or otherwise disseminating the notice to Class Members. If, however, Elf Atochem exercises its right to withdraw from the settlement, it will pay 100% of this cost.

D. Attorneys' Fees and Costs

1. In the event that the Settlement receives Final Judicial Approval, Class Counsel shall be entitled to an award of their reasonable attorneys' fees and litigation expenses for the benefit their work conferred on Settlement Class Members. The amount of any such award shall be determined by the District Court and will be paid solely from the Settlement Fund. The Parties agree that the maximum amount of attorneys' fees that Class Counsel may seek to recover is 30% of the Settlement Fund. The maximum amount of costs, including out-of-pocket costs and the anticipated costs of administering this Settlement, that Class Counsel may seek is \$4 million. Elf Atochem will not object to any fee or cost petitions seeking an award up to these amounts.
2. Elf Atochem will have no responsibility for the payment of attorneys' fees or litigation expenses to Class Counsel or to counsel for any individual Settlement Class Member, unless, however, Elf Atochem exercises its right to withdraw from the settlement. Should that occur, Elf Atochem agrees to pay Class Counsel up to \$50,000 of the attorneys' fees and out-of-pocket costs incurred by Class Counsel from the date that the Settlement is submitted to the District Court for preliminary approval until the date Elf Atochem gives notice of its withdrawal.
3. Each Settlement Class Member who submits a Settlement Fund Claim may be represented by counsel of the Settlement Class Member's choice. All fees and expenses for such counsel shall be paid by the Settlement Class Member.
4. Elf Atochem will not object to an award of reasonable incentive payments to the Class Representatives.

E. Cost of Claims Administration

1. All costs necessary for the establishment and operation of the Settlement Fund, including the costs of processing claims and the fees of the Settlement Fund Administrator, shall be paid from the Settlement Fund and approved by the District Court.

F. Other Provisions

1. The District Court will have original jurisdiction over all provisions of this Settlement Agreement, including the creation and operation of the Settlement Fund and the award of attorneys' fees and reimbursement of litigation expenses.
2. Elf Atochem agrees that in the event that the Settlement is not approved, the statute of limitations is tolled from September 1, 1994 until the date of any order refusing approval of the Settlement, but only as to those claims by Settlement Class Members

who do not exercise an Initial Opt-Out Right. In the event that this Settlement is approved, this tolling agreement will expire on the date of Final Judicial Approval.

3. This Settlement Agreement is not intended to, and shall not, modify the terms of any other settlement or release entered into by any Settlement Class Member and any of the Released Parties relating to the Bryan Plant.
4. This Settlement Agreement shall be binding on the successors and assigns of the Parties.
5. The Parties shall not seek to introduce the terms of the Settlement Agreement or any statements made in connection with its negotiation, execution or implementation, in any judicial proceeding, except insofar as it is necessary to enforce the terms of the Settlement. Neither this Settlement Agreement nor any statements made in connection with its negotiation, execution or implementation, is intended to be or shall be construed to be evidence of an admission by Elf Atochem or any of the Released Parties of any liability or wrongdoing.
6. Elf Atochem will not participate in any decisions relating to the allocation and disbursement of the Settlement Fund amounts.
7. Class Counsel, the Class Representatives, and Elf Atochem agree that they will use their best efforts to secure Final Judicial Approval of the Settlement Agreement.
8. In the event of an appeal from an order certifying the proposed class and approving this Settlement, the Class Representatives will have an absolute right, exercisable in their sole discretion, to withdraw from the Settlement if the appeal is not withdrawn or otherwise resolved within six months from the date of the notice of appeal.
9. Settlement Class Members who receive payments from the Settlement Fund agree to indemnify and hold the Released Parties harmless from and against any and all damages, liability, judgment, costs, or expenses whatsoever arising from:
 - a. any claims by any third party, including, but not limited to past, present, or putative spouses, parents, siblings, children, or the government, arising directly or indirectly from the characterization, payment, or taxability of the settlement payments;
 - b. any medical, hospital, insurance, or workers compensation bill, lien, or expense as a result of the incidents that are the basis of this lawsuit; or
 - c. any and all claims or damages of whatsoever kind or nature that plaintiffs have asserted or may hereafter assert against the Released Parties.
10. Class Counsel represent that:
 - a. the Settlement is for Settlement Class Members they now represent with claims against the Released Parties;
 - b. in the last six months they have not referred to other counsel persons having claims against the Released Parties; and

- c. they have independently determined that the Settlement is fair and reasonable and in the best interests of the members of the subclasses they represent.
11. Elf Atochem represents and warrants that it (i) has all requisite corporate power and authority to execute, deliver and perform this Settlement Agreement and to consummate the transactions contemplated hereby; (ii) the execution, delivery and performance by Elf Atochem of this Settlement Agreement and the consummation by it of the actions contemplated herein have been duly authorized by all necessary corporate action on the part of Elf Atochem; and (iii) this Settlement Agreement has been duly and validly executed and delivered by Elf Atochem and constitutes its legal, valid and binding obligation.
12. Elf Atochem shall retain its right to contest class certification for litigation purposes.
13. Any notices required to be submitted by Class Counsel to Elf Atochem or vice versa under this Settlement Agreement shall be in writing and delivered personally or sent by express delivery or facsimile as follows:
 - a. If to Elf Atochem:
 - General Counsel
 - ATOFINA Chemicals, Inc.
 - 2000 Market Street
 - Philadelphia, PA 19103
 - (215) 419-7958
 - b. If to the Class or Class Counsel:
 - Dennis Reich
 - Reich & Binstock
 - 4265 San Felipe, Suite 1000
 - Houston, TX 77027
 - (713) 622-7271
14. Any form or other documentation required to be submitted by Class Counsel to Elf Atochem or vice versa under this Settlement Agreement shall be deemed timely if postmarked or faxed on or before the date by which it is required to be submitted under this Settlement Agreement.
15. This Settlement Agreement and the attachments hereto contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes and cancels all previous agreements, negotiations, and commitments in writings between the Parties hereto with respect to the subject matter hereof. This Agreement may not be changed or modified in any manner unless in writing and signed by a duly authorized officer of Elf Atochem and by a duly authorized representative of the Class.

IN WITNESS WHEREOF, the Parties, by and through their respective counsel as set forth below, have

duly executed this Class Action Settlement Agreement on this ____ day of August, 2000.

ATOFINA Chemicals, Inc.

By: _____

Andrea Utecht, Senior Vice-President,
Secretary, and General Counsel

CLASS COUNSEL

Dennis C. Reich

Elaine Watson

Newton Schwartz

For Subclass A

Steven Steele

Philip C. Banks

For Subclass B

Lane D. Thibodeaux

For Subclass C

W. Tyler Moore, Jr.