Federal Court Cour fédérale

Date: 20160122

Docket: T-2051-10

Citation: 2016 FC 91

Ottawa, Ontario, January 22, 2016

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

THE DOW CHEMICAL COMPANY,
DOW GLOBAL TECHNOLOGIES INC. and
DOW CHEMICAL CANADA ULC

Plaintiffs

and

NOVA CHEMICAL CORPORATION

Defendant

REASONS FOR JUDGMENT AND JUDGMENT

[1] When the decision was released in this matter, the plaintiffs, The Dow Chemical Company, Dow Global Technologies Inc. and Dow Chemical Canada ULC were awarded their costs of the proceeding. The plaintiffs were granted a declaration that the defendant [NOVA] had infringed Canadian Patent No. 2,160,705 by manufacturing in Canada and distributing, offering for sale, selling or otherwise making available film-grade polymers under the name SURPASS.

[2] The trial of the liability phase of this action took place over a period of 32 days and was an extremely complex patent case involving much expert testimony.

[3] Both parties carried out large amounts of testing. The plaintiffs claim that they did more than 180 days of testing.

[4] With respect to counsel fees, the plaintiffs asked for a lump sum award based on a percentage of their actual counsel fees. The plaintiffs also asked to be paid their reasonable disbursements of the litigation.

[5] In the alternative, the plaintiffs requested the following at paragraph 8 of their submissions on costs:

> In the alternative, Dow requests a lump sum award in the range between **$6.5 million and $4.7 million** for its fees and all reasonable and necessary disbursements. The upper end of the range comprises **$2.9 million** for fees, which represents 30% of Dow's total legal fees, and $3.6 million for its reasonable and necessary disbursements. The lower end comprises $1.1 million for Dow's fees, based on Column V of the Tariff, and $3.6 million for all its reasonable and necessary disbursements.
>
> [emphasis in original]

[6] At paragraph 150 of its submissions, the defendant requested:

> Nova respectfully requests an order that quantification of Dow's costs proceed to assessment with the following directions to the assessment officer:
>
> (a) Fees and allowable disbursements are to be recovered only in relation to procedures that were necessary for the conduct of the trial and distinct from the *Competition Act* counterclaim;

(b) Allowable disbursements for travel, living and related expenses are recoverable only at modest levels. All travel expenses are to be based on economy class rates, and do not extend to second, third or fourth counsel for Tariff items where second, third or fourth counsel have not specifically been allowed. Hotel expenses are to be based on moderate rooms. Expenses for alcohol, movies and other entertainment are not recoverable;

(c) Fees are not recoverable for the duration of lunch recesses at hearings or examinations for discovery;

(d) Dow's costs are to be taxed at the top of Column IV of Tariff B;

(e) Fees for one counsel to attend testing are allowed and are to be assessed at 1 unit/hour pursuant to item no. 27 of Tariff B;

(f) Except for the preparation of expert and fact witnesses, where costs for one first counsel, only, are allowed fees and reasonable disbursements for one first and one second counsel are allowed for pre-trial proceedings:

> (i) Costs for first and second counsel are only recoverable where Dow was represented by multiple counsel;
>
> (ii) Dow may only recover for case management conferences where they relate to motions on which Dow was awarded costs. Where the costs of a motion were fixed, Dow may not recover for case management conferences that related to the motion; and
>
> (iii) The fees and travel expenses of Dow's fact witness Paul Margolis are not recoverable.

(g) Fees for two first and two second counsel are allowed for preparation and attendance at trial, where Dow was represented by four lawyers. Fees for two first and two second counsel are allowed for the preparation and filing of written argument at trial;

(h) No costs are permitted for travel, living and related expenses incurred by Dow's co-counsel, Mr. Garland, to attend or appear at trial;

(i) Reasonable fees and disbursements are allowed for Drs. Soares, Young, Scott and Mehdiabadi for preparing their expert reports, attending on testing, and for days testifying at trial. Fees

and disbursements associated with experimental testing that was not tendered by Dow as evidence at trial are not allowed;

(j) No costs are allowed for in-house testing conducted by Dow;

(k) The cost of developing new graphic trial aids that were not previously used in the U.S. litigation are recoverable;

(l) No costs are allowed for production management and hosting fees.

(m) The lesser of the actual costs incurred by Dow, or 16¢ per copy, for essential photocopies are allowed;

(n) Reasonable disbursements for fact witnesses attending at trial are allowed;

(o) Reasonable fees and disbursements for one counsel for the preparation and attendance on the assessment of costs are allowed; and

(p) No additional costs for provincial or federal taxes are awarded.

[7] Rule 400 of the *Federal Courts Rules*, SOR/98-106 states in part:

400. (1) The Court shall have full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid.	400. (1) La Cour a le pouvoir discrétionnaire de déterminer le montant des dépens, de les répartir et de désigner les personnes qui doivent les payer.
(2) Costs may be awarded to or against the Crown.	(2) Les dépens peuvent être adjugés à la Couronne ou contre elle.
(3) In exercising its discretion under subsection (1), the Court may consider	(3) Dans l’exercice de son pouvoir discrétionnaire en application du paragraphe (1), la Cour peut tenir compte de l’un ou l’autre des facteurs suivants :

(a) the result of the proceeding;	a) le résultat de l'instance;
(b) the amounts claimed and the amounts recovered;	b) les sommes réclamées et les sommes recouvrées;
(c) the importance and complexity of the issues;	c) l'importance et la complexité des questions en litige;
(d) the apportionment of liability;	d) le partage de la responsabilité;
(e) any written offer to settle;	e) toute offre écrite de règlement;
(f) any offer to contribute made under rule 421;	f) toute offre de contribution faite en vertu de la règle 421;
(g) the amount of work;	g) la charge de travail;
(h) whether the public interest in having the proceeding litigated justifies a particular award of costs;	h) le fait que l'intérêt public dans la résolution judiciaire de l'instance justifie une adjudication particulière des dépens;
(i) any conduct of a party that tended to shorten or unnecessarily lengthen the duration of the proceeding;	i) la conduite d'une partie qui a eu pour effet d'abréger ou de prolonger inutilement la durée de l'instance;
(j) the failure by a party to admit anything that should have been admitted or to serve a request to admit;	j) le défaut de la part d'une partie de signifier une demande visée à la règle 255 ou de reconnaître ce qui aurait dû être admis;
(k) whether any step in the proceeding was	k) la question de savoir si une mesure prise au cours de l'instance, selon le cas :
(i) improper, vexatious or unnecessary, or	(i) était inappropriée, vexatoire ou inutile,
(ii) taken through negligence, mistake or excessive caution;	(ii) a été entreprise de manière négligente, par erreur ou avec trop de circonspection;

(l) whether more than one set of costs should be allowed, where two or more parties were represented by different solicitors or were represented by the same solicitor but separated their defence unnecessarily;

l) la question de savoir si plus d’un mémoire de dépens devrait être accordé lorsque deux ou plusieurs parties sont représentées par différents avocats ou lorsque, étant représentées par le même avocat, elles ont scindé inutilement leur défense;

(m) whether two or more parties, represented by the same solicitor, initiated separate proceedings unnecessarily;

m) la question de savoir si deux ou plusieurs parties représentées par le même avocat ont engagé inutilement des instances distinctes;

(n) whether a party who was successful in an action exaggerated a claim, including a counterclaim or third party claim, to avoid the operation of rules 292 to 299;

n) la question de savoir si la partie qui a eu gain de cause dans une action a exagéré le montant de sa réclamation, notamment celle indiquée dans la demande reconventionnelle ou la mise en cause, pour éviter l’application des règles 292 à 299;

(n.1) whether the expense required to have an expert witness give evidence was justified given

n.1) la question de savoir si les dépenses engagées pour la déposition d’un témoin expert étaient justifiées compte tenu de l’un ou l’autre des facteurs suivants :

(i) the nature of the litigation, its public significance and any need to clarify the law,

(i) la nature du litige, son importance pour le public et la nécessité de clarifier le droit,

(ii) the number, complexity or technical nature of the issues in dispute, or

(ii) le nombre, la complexité ou la nature technique des questions en litige,

(iii) the amount in dispute in the proceeding; and

(iii) la somme en litige;

(o) any other matter that it considers relevant.

o) toute autre question qu’elle juge pertinente.

(4) The Court may fix all or

(4) La Cour peut fixer tout ou

part of any costs by reference to Tariff B and may award a lump sum in lieu of, or in addition to, any assessed costs.	partie des dépens en se reportant au tarif B et adjuger une somme globale au lieu ou en sus des dépens taxés.
(5) Where the Court orders that costs be assessed in accordance with Tariff B, the Court may direct that the assessment be performed under a specific column or combination of columns of the table to that Tariff.	(5) Dans le cas où la Cour ordonne que les dépens soient taxés conformément au tarif B, elle peut donner des directives prescrivant que la taxation soit faite selon une colonne déterminée ou une combinaison de colonnes du tableau de ce tarif.

[8] Rule 407 of the *Federal Courts Rules* states:

407. Unless the Court orders otherwise, party-and-party costs shall be assessed in accordance with column III of the table to Tariff B.	407. Sauf ordonnance contraire de la Cour, les dépens partie-partie sont taxés en conformité avec la colonne III du tableau du tarif B.

[9] As part of their costs submissions, the plaintiffs provided a bill of costs (marked therein as Schedule A), details of disbursements (marked therein as Schedule B), and marked therein as Schedule C, details of fees.

[10] In *Philip Morris Products S.A. v Marlboro Canada Ltd.*, 2011 FC 1113, Justice de Montigny stated at paragraphs 11 and 12:

> 11 There are various factors to bear in mind while exercising the Court's discretion to award costs. An award of party-and-party costs is not an exercise in exact science, nor an accounting exercise. Rather, it is an estimate of the amount that the Court considers appropriate as a contribution towards the successful party's solicitor-client costs. As a general rule, an award of costs represents a compromise between compensating a successful party and not unduly burdening an unsuccessful party (*Apotex Inc v Wellcome Foundation Ltd* (1998) 159 FTR 233, 84 ACWS (3d)

> 641, aff'd 199 FTR 320, 103 ACWS (3d) 269). Moreover, cost awards are not only meant to provide partial compensation to the successful party, but also to encourage settlement and to deter abusive conduct (*Consorzio del Prosciutto di Parma v Maple Leaf Meats Inc*, above, at paras 8-10; *Sherman v Minister of National Revenue* 2003 CAF 202 at para 46, [2003] 4 FC 865).
>
> 12 A non-exhaustive list of factors that the Court may consider in making an award of costs is set out in Rule 400(3). Potentially relevant factors include the following:
>
> (3) In exercising its discretion under subsection (1), the Court may consider
>
> (a) the result of the proceeding
>
> (c) the importance and complexity of the issues;
>
> ...
>
> (g) the amount of work;
>
> (h) whether the public interest in having the proceeding litigated justifies a particular award of costs;
>
> (i) any conduct of a party that tended to shorten or unnecessarily lengthen the duration of the proceeding;
>
> ...
>
> (o) any other matter that it considers relevant.
>
> ...

[11] In the present case, the plaintiffs clearly won the case which resulted in being awarded costs but the question now is: what amount of costs should be awarded and how should the amount be established?

[12] With respect to the complexity of the case, there is no dispute it was a most complex case with many complicated concepts and issues. The case dealt with many complex aspects of

chemistry. There were at least 22 allegations of invalidity raised by the defendant. The time for the trial was extended from 20 trial days to 32 days of trial. The written submissions at the end of the trial were over 700 pages in length and the oral closing argument took approximately three days.

[13] In light of the facts in paragraph 12 above, the amount of work involved in this trial was very extensive. The Court has also been informed that the parties conducted 33 days of examinations for discovery in Canada.

[14] As well, extensive testing of materials was carried out by the parties as far away as Holland and Texas.

[15] In my opinion, the above factors favour an increased award of costs to the plaintiffs.

[16] At this point, it would be instructive to consider some judgments with respect to costs in this Court.

[17] In *Air Canada v Toronto Port Authority*, 2010 FC 1335, Justice Hughes stated at paragraphs 14 to 16:

> [14] Traditionally, the Federal Court of Canada has been laggard in comparison with other Canadian superior courts, such as Ontario, in escalating an appropriate scale of costs. Many cases in the Federal Court involve persons of limited means who engage the federal government in litigation of one kind or another. The scale of costs is usually modest in such circumstances or usually non-existent in cases such as immigration. Complex commercial cases are frequently those involving intellectual property such as

> patent infringement actions or applications made pursuant to *Patented Medicines (Notice of Compliance) Regulations*, SOR/93-133 as amended. Still costs in such matters are assessed largely with reference to the Tariff on one of the higher levels such as Column IV or V.
>
> [15] Other jurisdictions, such as Ontario, have moved away from a tariff toward concepts of full indemnity or partial indemnity based upon the actual costs and disbursements incurred in the proceeding. The theory is that a successful party should not be penalized just because they become engaged in, or had to resort to, litigation. In so doing however, a Court has to be mindful that a party, while successful, may not have been entirely successful or, that the matter was a close call, or that it was one in which the assistance of a Court in its resolution was essential. Therefore an unsuccessful party should not be unduly punished by having to bear not only its own expenses but a large proportion of those of the other parties as well.
>
> [16] In the present case I am satisfied that the indemnification approach is the proper one, the only question being whether that indemnification should be full or partial and, if partial, what part. As I stated earlier, there appears to be no genuine dispute as to the quantum of the actual costs and disbursements incurred. I am satisfied that each of Toronto Port Authority and Porter Airlines Inc. should recover the full amount of their stated disbursements from Air Canada.

[18] In *Philip Morris Products SA v Marlboro Canada Ltd*, 2015 FCA 9, Justice Gauthier stated for the Court at paragraph 4:

> The appellants argue that Justice de Montigny relied on inapplicable and insufficient considerations in departing from Tariff B. We disagree. Given that a departure from Tariff B is expressly contemplated by Rule 400(4) of the Rules, the judge committed no error in principle by awarding a lump sum in lieu of the Tariff rate. The appellants acknowledged at the hearing that there is, in fact, a judicial trend to grant costs on a lump sum basis whenever possible (see for example the Notice to the Parties and Profession of the Federal Court on costs dated April 30, 2010 and *Consorzio del Prosciutto di Parma c. Maple Leaf Meats Inc.*, 2002 FCA 417, [2003] 2 C.F. 451). In my view, when dealing with sophisticated commercial parties, it is not uncommon for such

> lump sums to be awarded based on a percentage of the actual costs incurred.

[19] In *Philip Morris Products S.A. and Rothmans, Benson & Hedges Inc. v Marlboro Canada Limited and Imperial Tobacco Canada Limited*, 2014 FC 2, Justice de Montigny stated at paragraph 6:

> I have already outlined the principles governing the allocation of costs in my earlier decision, as well as the reasons why a lump sum cost award is appropriate in the circumstances of this case. I see no reason to depart from that reasoning. In particular, I am still convinced that an award under Tariff B, even at the highest point of Column V, would be inadequate to reflect and come close to the actual costs related to the litigation. This was a complex and important case for both parties, raising difficult questions of fact and law. This factor, in and of itself, militates for an increased award of costs, and this is as much true now as it was before the Federal Court of Appeal partially reversed the trial decision. I am in full agreement with my colleague Justice Hughes when he stated in *Air Canada v Toronto Port Authority*, 2010 FC 1335, at para 15, that " …a successful party should not be penalized just because they become engaged in, or had to resort to, litigation".

[20] The defendant submits that the proper disposition of costs is an assessment with directions. It states that a lump sum award is inappropriate because there is an insufficient record and the bill of costs is lacking meaningful detail. The defendant states that there is no evidence of the claimed disbursements in the amount of $3.6 million and cites Tariff B of the *Federal Courts Rules* at subsection 1(4). The defendant's objections to the bill of costs are outlined in the table of contents to the defendant's written representations on costs and the details of its objections are outlined in its written representations on costs.

[21] In *Apotex Inc v Syntex Pharmaceuticals International Ltd et al* (1999), 2 CPR (4th) 368 (FCTD) at paragraphs 2 to 4, Justice Reed stated:

> 2 Counsel for the plaintiff rightly states that the motion should be decided in accordance with the spirit of the 1995 amendment to the costs provisions of the *Federal Court Rules* (SOR/95-282). The purpose of awarding costs to a successful party has two aspects: to discourage unmeritorious litigation and to partially indemnify the successful party for the costs incurred defending or prosecuting an action as the case may be.
>
> 3 While full compensation may never have been the objective of costs awards, in recent years, the Tariff in the *Federal Court Rules*, as well as those of other jurisdictions, led to awards that were ridiculously low.
>
> 4 The 1995 amendments to the *Federal Court Rules* introduced a new flexible scale of costs and conferred on the Court a broad discretion to direct additional costs beyond the amounts described in the Tariff in appropriate cases. The *Federal Court Rules* have been described as now reflecting the philosophy that an award of costs *should reasonably reflect the actual costs incurred in the conduct of the litigation*:
>
>> The more current rule brings a new approach to taxing costs. Under the old regime, the jurisprudence was clear; the parties could not expect to recover all their costs under the tariff relating to party and party costs. However, under the new rule the general philosophy is that party and party *costs should bear a reasonable relationship to the actual costs of the litigation*.
>>
>> This new tendency is to ensure that parties will be able to recover closer to actual costs related to the litigation, always under the scrutiny of the Court's discretion. Procedures and delays which could reasonably have been avoided by a party, will be taken into consideration when determining taxation of costs. In other words, a clear message is sent to the parties: a party that has not been diligent will have to pay for the consequences. [Emphasis added.]
>>
>> *Sanmammas Compania Maritima S.A. v. Netuno et al.* (1995), 102 F.T.R. 181 at 184 (F.C.T.D.)

[22] After considering the submissions of both parties and the jurisprudence of this Court, I am of the opinion that a lump sum award for costs is appropriate in this case.

[23] The submissions show that Dow's actual total legal costs were $9.6 million. Details of these fees are shown in Schedule C of the plaintiffs' details of fees.

[24] As well, the plaintiffs' submissions state that should their fees be assessed under Column V of Tariff B, their costs would only amount to $1,099,725, which is 11% of the plaintiffs' total legal costs.

[25] In its submissions, the defendant did not present any data with respect to its actual total legal costs for this action.

[26] I am of the view that costs in the amount of $1,099,725 pursuant to Column V of Tariff B, would be totally inadequate as an amount of costs for the plaintiffs in this case. To only recoup 11% of your costs in such a complex case is not acceptable.

[27] I am also of the opinion that to order an assessment of costs in this case is not a proper approach. The costs to the parties and the time to complete this assessment would be very great. In fact, the submissions on costs before me were extensive and the record on an assessment would be much larger.

[28] I therefore find it is more appropriate to award the plaintiffs a lump sum award for costs. An assessment of costs would serve no purpose.

[29] As noted earlier, the plaintiffs seek a lump sum of $2.9 million for their costs for legal fees. This is approximately 30% of the actual legal fees. Because of the complexity and the many issues raised in this case, I find this to be a reasonable amount. The plaintiffs are awarded $2.9 million for legal costs for their legal fees.

[30] With respect to disbursements, I am satisfied that the plaintiffs' bill of costs and Schedules provide sufficient detail to grant the requested disbursements. The disbursements were reasonable.

[31] The defendant submitted that an affidavit should have been provided to support the claim for disbursements and since there was no affidavit, the disbursements have not been proven.

[32] Section 1(4) of Tariff B of the *Federal Courts Rules* states:

1. (4) No disbursement, other than fees paid to the Registry, shall be assessed or allowed under this Tariff unless it is reasonable and it is established by affidavit or by the solicitor appearing on the assessment that the disbursement was made or is payable by the party.	1. (4) À l'exception des droits payés au greffe, aucun débours n'est taxé ou accepté aux termes du présent tarif à moins qu'il ne soit raisonnable et que la preuve qu'il a été engagé par la partie ou est payable par elle n'est fournie par affidavit ou par l'avocat qui comparaît à la taxation.

[33] I am of the view that should the matter of costs have gone to assessment, the solicitor could have established the amount of the disbursements when awarding a lump sum award which addresses disbursements. I am of the opinion the same reasoning should apply here.

[34] The bill of costs and Schedules satisfy me as to the reasonableness and the amount of the disbursements. While some amounts may be questioned, overall I am satisfied as noted above, so as to allow the claim for disbursements.

[35] I would note that with respect to disbursement costs for testing in relation to the polymer made in its first reactor [Reactor 1], the defendant stated initially that it could not reproduce any Reactor 1 components but on cross-examination NOVA's witness, Dr. Kelusky, admitted that NOVA could have and previously had reproduced Reactor 1 components.

[36] In conclusion, I will grant an order granting the plaintiffs a lump sum payment of $6.5 million for their costs in this matter. The amount consists of $2.9 million for legal fees and $3.6 million for the plaintiffs' reasonable and necessary disbursements.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. A declaration will issue that claims 11, 15, 29, 30, 33, 35, 36, 41 and 42 of Canadian Patent No. 2,160,705 are valid and that NOVA Chemical Corporation has infringed these claims by manufacturing in Canada and distributing, offering for sale, selling or otherwise making available film-grade polymers under the name SURPASS.

2. The plaintiffs are entitled to elect after due inquiry and full discovery, either an accounting of profits of the defendant or all damages sustained by reason of infringement by the defendant of the above mentioned patent. Such damages or accounting of profits will be assessed by reference preceded by discovery, if requested.

3. The plaintiffs shall be entitled to reasonable compensation for the acts of the defendant under subsection 55(2) of the *Patent Act*, RSC 1985, c P-4 from the time the application for the Canadian Patent No. 2,160,705 became open to public inspection until its date of issue. Such damages will be assessed by reference preceded by discovery, if requested.

4. The plaintiffs shall be entitled to pre-judgment interest, not compounded, on the award of reasonable compensation for the acts of the defendant under subsection 55(2) of the *Patent Act* and damages (if elected), at a rate of interest to be calculated separately for each year since infringing activity began at the average annual bank rate established by the Bank of Canada as the minimum rate at which it makes short-term advances to the banks listed in Schedule I of the *Bank Act*, SC 1991, c 46. However, such award is conditional upon the reference judge not awarding interest under paragraph 36(4)(f) of the *Federal Courts Act*, RSC 1985, c F-7.

5. In the event that the plaintiffs elect an accounting of profits, pre-judgment interest shall be determined by the reference judge.

6. The plaintiffs shall be entitled to post-judgment interest on the award of damages (if elected), not compounded, at a rate of 5% per annum. This interest shall commence upon the final assessment of the monetary damage amount or profits amount. Until then, pre-judgment interest shall prevail.

7. The plaintiffs are entitled to their costs and the parties may make submissions as to the amount of the costs in the following manner:

   a. The plaintiffs shall serve and file their submissions as to the amount of costs within 20 working days of the issuance of these reasons for judgment.

   b. NOVA shall serve and file its submissions as to the amount of costs within 20 working days of the issuance of these reasons for judgment.

   c. Dow shall serve and file any reply submissions as to the amount of costs 20 working days after service and filing of NOVA's responding submissions.

8. The defendant's counterclaim is hereby dismissed, with costs to be assessed as above.

9. The following paragraphs of the Experts' Reports are inadmissible:

Expert Reports	Paragraphs
Rebuttal Expert Report of Dr. Joao Soares (15 July 2013)	182 to 185 (plots of SURPASS' component B)
Reply Expert Report of Dr. Robert Young (3 September 2013)	88 to 93
Reply Expert Report of Dr. Joao Soares (3 September 2013)	31 to 34

10. The plaintiffs are granted a lump sum payment of $6.5 million for their costs in this matter. The amount consists of $2.9 million for legal fees and $3.6 million for the plaintiffs' reasonable and necessary disbursements.

"John A. O'Keefe"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2051-10
STYLE OF CAUSE:	THE DOW CHEMICAL COMPANY, DOW GLOBAL TECHNOLOGIES INC. AND DOW CHEMICAL CANADA ULC v NOVA CHEMICAL CORPORATION

COSTS SUBMISSIONS MADE IN WRITING AND CONSIDERED AT OTTAWA, ONTARIO

REASONS FOR JUDGMENT AND JUDGMENT:	O'KEEFE J.
DATED:	JANUARY 22, 2016

WRITTEN REPRESENTATIONS BY:

Ronald E. Dimock Michael D. Crinson Angela M. Furlanetto Ryan T. Evans	FOR THE PLAINTIFFS THE DOW CHEMICAL COMPANY, DOW GLOBAL TECHNOLOGIES INC. and DOW CHEMICAL CANADA ULC
Robert H. C. MacFarlane Michael E. Charles Joshua W. Spicer	FOR THE DEFENDANT NOVA CHEMICAL CORPORATION

SOLICITORS OF RECORD:

Dimock Stratton LLP Barristers and Solicitors Toronto, Ontario	FOR THE PLAINTIFFS THE DOW CHEMICAL COMPANY, DOW GLOBAL TECHNOLOGIES INC. and DOW CHEMICAL CANADA ULC
Smart & Biggar/Fetherstonhaugh Barristers and Solicitors Toronto, Ontario	
Bereskin & Parr LLP Barristers and Solicitors Toronto, Ontario	FOR THE DEFENDANT NOVA CHEMICAL CORPORATION