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 12

13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

15
 16 IN RE RUBBER CHEMICALS ANTITRUST
 LITIGATION

MDL Case No. C 04-1648 MMC
 Individual Case No. C 06-5700 MMC

17
 18 THIS DOCUMENT RELATES TO:

**STIPULATION AND [PROPOSED]
 ORDER TO SUBMIT TO ARBITRATION
 AND SETTING DEADLINE TO FILE JOINT
 STATUS REPORT**
 Date: N/A
 Time: N/A
 Ct. Room: No. 7
 Hon. Maxine M. Chesney

19 *Bridgestone Americas Holdings, Inc., et al. v.*
 20 *Chemtura Corporation, et al.*

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MDL Case No. C 04-1468 MMC
 Individual Case No. C 06-5700 MMC

1 WHEREAS, there is pending in the United States District Court for the Northern District
2 of California (San Francisco Division) a multidistrict proceeding captioned *In re Rubber*
3 *Chemicals Antitrust Litigation*, MDL Docket No. M:04-CV-01648-MMC, alleging, among other
4 things, price-fixing in connection with the sale of Rubber Chemicals (the “Rubber Chemicals
5 MDL Proceeding”);

6 WHEREAS, there is pending in the United States District Court for the Northern District
7 of California (San Francisco Division) an action captioned *Bridgestone Americas Holding, Inc. et*
8 *al. v. Chemtura Corporation et al.*, Individual Case No. 3:06-CV-05700-MMC, alleging, among
9 other things, price-fixing in connection with the sale of Rubber Chemicals (the “Dispute” or
10 “Action”). The Judicial Panel on Multi-District Litigation transferred the Action from the Middle
11 District of Tennessee to the Northern District of California to be coordinated with the Rubber
12 Chemicals MDL Proceeding;

13 WHEREAS, Plaintiff Bandag, Incorporated (now Bridgestone Bandag, LLC) (“Bandag”)
14 and Defendants Chemtura Corporation and Uniroyal Chemical Company, Inc. (“Chemtura”)
15 (Bandag and Chemtura collectively referred to as the “Parties”) wish to utilize a litigated and
16 binding arbitration to try the Dispute in accordance with the Commercial Arbitration Rules of the
17 American Arbitration Association (“AAA Rules”) in effect as of the date of this stipulation and as
18 modified herein or by the Parties;

19 WHEREAS, the Parties have agreed to stay all discovery and pre-trial deadlines pending
20 the execution and Court approval of this stipulation;

21 **IT IS HEREBY STIPULATED** between the Parties by and through their respective
22 counsel that:

23 I. **Agreement to Arbitrate**

24 A. The Dispute shall be submitted to be finally determined by an ad hoc
25 arbitration in accordance with AAA Rules as modified herein or by the Parties.

26 B. The Parties shall submit the Dispute to arbitration no later than January of
27 2009, subject to the availability of the arbitration panel.

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1 C. The arbitration hearings shall be conducted in Washington, D.C. at a
2 mutually agreeable location.

3 D. The arbitration costs, including the costs and fees of the arbitrators and any
4 other fees, costs, or expenses unique to arbitration, shall be equally shared by Bandag and
5 Chemtura. Each party shall otherwise bear its own costs and attorneys' fees except that Bandag
6 may recover reasonable attorneys' fees and costs as alleged in its complaint and as permitted
7 under 15 U.S.C. § 15(a).

8 E. The award of the arbitrators shall be final and binding, with no right of
9 appeal, and shall be confirmed in this Court pursuant to the Federal Arbitration Act, 9 U.S.C. sec.
10 1 et seq.

11 **II. Selection and Appointment of Arbitrators**

12 A. The Dispute shall be heard and determined by an arbitration panel
13 consisting of three arbitrators (the "Panel" or "Arbitrators"). Within fifteen (15) calendar days of
14 the execution of this stipulation, Bandag and Chemtura will each appoint one person to act as
15 arbitrator (the "Party Arbitrators"). Within twenty (20) calendar days of the appointment of the
16 Party Arbitrators, the Party Arbitrators will select and appoint the third arbitrator from a list of
17 arbitrators jointly provided by Bandag and Chemtura. Bandag and Chemtura shall each exchange
18 three (3) names with each other to be included on this list at a time prior to the appointment of the
19 Party Arbitrators.

20 B. Any arbitrator, including the arbitrators appointed by the Parties, shall be
21 impartial and independent and shall perform his or her duties with diligence and in good faith.

22 C. No party and no one acting on behalf of any party shall communicate *ex*
23 *parte* with an arbitrator concerning the arbitration, except that a party, or someone acting on behalf
24 of a party, may communicate *ex parte* with candidates for the arbitration panel in order to advise
25 the candidates of the general nature of the controversy and of the anticipated proceedings and to
26 discuss qualifications, availability, or independence and conflicts in relation to the Parties.

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1 D. The third arbitrator shall be the Chairperson of the Panel. After the
2 appointment of the Panel, if there are any inquiries regarding scheduling or general arbitration
3 procedures, such inquiries shall be made to the Chairperson.

4 **III. Commencement of Arbitration and Briefing Schedule**

5 A. At least sixty (60) calendar days before the commencement of the
6 arbitration hearings, Bandag and Chemtura shall simultaneously exchange with each other and
7 submit their respective written arbitration briefs to the Panel. The submission of the written brief
8 may include any expert reports that the Parties previously have exchanged, witness statements or
9 declarations, and/or any other evidence upon which the Parties intend to rely in support of their
10 claims or defenses. The written briefs shall not exceed fifty (50) pages (excluding any exhibits
11 thereto).

12 B. Bandag and Chemtura shall have thirty (30) calendar days following the
13 receipt of the arbitration briefs to exchange and submit written reply briefs. The submission of the
14 written replies may include any expert reports that the Parties previously have exchanged, witness
15 statements or declarations, and/or any other evidence upon which the Parties intend to rely in
16 support of their claims or defenses. The written reply briefs shall not exceed thirty (30) pages
17 (excluding any exhibits thereto). To the extent the Parties intend to rely on any evidence during
18 the arbitration hearings that is not currently part of the record, the Parties shall identify and (if
19 necessary) produce all such evidence no later than the date on which they submit their written
20 reply briefs.

21 C. Bandag and Chemtura shall have thirty (30) calendar days from the last day
22 of the arbitration hearings to submit separate written findings of fact and conclusions of law, not to
23 exceed fifty (50) pages.

24 D. At least ten (10) calendar days prior to the commencement of the hearings,
25 the Parties shall identify all evidence they intend to rely on during the arbitration hearings and
26 shall exchange copies of all exhibits, including any demonstrative evidence, they intend to submit
27 at the hearing.

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1 IV. **Conduct of Arbitration Hearings**

2 A. The oral arbitration hearings shall be limited to opening and closing
3 statements of counsel, presentations of each party's case-in-chief, along with cross-examination,
4 re-examination and re-cross examination of expert witnesses as described herein.

5 B. The oral arbitration hearings will be limited to three (3) days.

6 C. Bandag and Chemtura will each have one (1) hour to make their opening
7 statements. Bandag and Chemtura will then each have three (3) hours to present their case-in-
8 chief.

9 D. Chemtura will have three (3) hours to conduct a cross-examination of
10 Bandag's expert, Dr. Halbert L. White, Jr. Bandag will then have three (3) hours to conduct a re-
11 direct examination of Dr. White. Chemtura will then have thirty (30) minutes to conduct a re-
12 cross examination of Dr. White.

13 E. Bandag will have three (3) hours to conduct a cross-examination of
14 Chemtura's expert, Dr. Janusz A. Ordover. Chemtura will then have three (3) hours to conduct a
15 re-direct examination of Dr. Ordover. Bandag will then have thirty (30) minutes to conduct a re-
16 cross examination of Dr. Ordover.

17 F. Bandag and Chemtura will each have one (1) hour to make their closing
18 statements. Any portion of that hour may be reserved for rebuttal closing statements.

19 G. The oral arbitration hearings shall be stenographically recorded by a
20 certified court reporter.

21 V. **Stipulated Facts and Legal Propositions**

22 A. The following facts and legal propositions are hereby stipulated to be true,
23 undisputed, and binding in the arbitration proceedings:

24 1. Chemtura participated in a combination and conspiracy to suppress
25 and eliminate competition by maintaining and increasing the price of certain rubber chemicals sold
26 in the United States and elsewhere, beginning in or about July 1995 and continuing until in or
27 about December 2001, in violation of Section One of the Sherman Act, 15 U.S.C. § 1 (the
28 "Rubber Chemicals Conspiracy"). In furtherance of the Rubber Chemicals Conspiracy, Chemtura,

1 through its officers and employees, engaged in discussions and attended meetings with
2 representatives of other major rubber chemical producers. During these discussions and meetings,
3 agreements were reached to maintain and increase the price of certain rubber chemicals to be sold
4 in the United States and elsewhere. There is no stipulation as to the effect, if any, of this
5 conspiracy or that this conspiracy or these meetings had any effect on rubber chemicals prices paid
6 by Bandag or any other purchaser.

7 2. Chemtura pled guilty to participating in the Rubber Chemicals
8 Conspiracy in criminal proceedings brought against it in *United States of America in United States*
9 *of America v. Crompton Corporation*, No. CR 04-0079 MJJ (the “Guilty Plea”). The Guilty Plea
10 says nothing as to the effect, if any, that any agreement(s) concerning rubber chemicals had on
11 rubber chemicals prices paid by Bandag or any other purchaser.

12 3. In addition to Chemtura, the other major rubber chemical producers
13 participating in the Rubber Chemicals Conspiracy included Bayer AG (“Bayer”) and Flexsys N.V.
14 (“Flexsys”).

15 4. The rubber chemicals that were the subject of the Rubber Chemicals
16 Conspiracy and Guilty Plea included 6PPD solid, TBBS and TMQ, including Flexzone 7P, 7F, 7L,
17 Delac NS, and Naugard Q.

18 **VI. Scope and Powers of the Panel**

19 A. The Panel shall only decide the following issues:

20 1. Whether the Rubber Chemicals Conspiracy existed as of January of
21 1995.

22 2. If the Rubber Chemicals Conspiracy existed as of January of 1995,
23 whether Chemtura was a participant in the Rubber Chemicals Conspiracy during that time.

24 3. Whether Bandag was injured in its business or property as a result of
25 the Rubber Chemicals Conspiracy under 15 U.S.C. § 15(a).

26 4. If Bandag was injured in its business or property as a result of the
27 Rubber Chemicals Conspiracy, the amount of single damages to Bandag under 15 U.S.C. § 15(a).

28 Any such award of single damages shall be trebled by the arbitrators as provided in 15 U.S.C. §

1 15. Additionally, any such award shall be reduced by any settlement amounts Bandag has
2 received from Bayer and Flexsys.

3 5. What amount of reasonable attorneys' fees and costs under
4 15 U.S.C. § 15 shall be awarded to Bandag?

5 **VII. Governing Law**

6 A. The Panel shall resolve the Dispute in accordance with the substantive law
7 of the Ninth Circuit, applying Ninth Circuit substantive law to all material elements and defenses
8 including damages, attorneys' fees and costs, and offsets and mitigation, if available.

9 B. The Federal Rules of Evidence and Federal Model Jury Instructions are not
10 binding, but shall be persuasive authority in guiding the Panel's assessment of the reliability,
11 relevance, and probative value of the evidence.

12 **VIII. Procedural Issues**

13 A. There shall be no additional discovery, except that any party may request
14 the Panel, or the Panel may at its own discretion, order production of documents and information
15 relating to attorneys' fees and costs from any party, and there shall be no additional expert reports
16 other than those previously served in the Federal Court proceedings, except that Chemtura may
17 submit a rebuttal report limited solely to addressing any witness statements or declarations
18 submitted by Bandag rebutting the declaration of Nicholas Romano.

19 B. The Parties continue to be bound by the terms of the October 5, 2004
20 Stipulation and Order Concerning Confidentiality of Documents and Materials (the
21 "Confidentiality Order"). Any and all materials designated as "Confidential" or "Highly
22 Confidential" pursuant to the Confidentiality Order, including the Parties' arbitration and reply
23 briefs, shall retain the full protections set forth in that Order, except that the Parties agree that the
24 Panel shall be granted access to materials so designated.

25 C. The Federal Court proceedings in this Action shall be stayed pending
26 completion of the arbitration.

27 D. This Court shall have continuing jurisdiction to enforce the terms of this
28 Stipulation and Order and to confirm and enter the arbitration award.

1 IT IS SO STIPULATED.

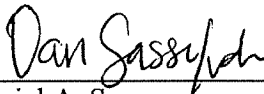
2 DATED: September 19, 2008

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16 DATED: September 19, 2008

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Company, Inc.

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1 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

2 Further, the parties shall file a joint status report no later than March 20, 2009, and every six
3 months thereafter.

4 DATED: September 23, 2008

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6 HONORABLE MAXINE M. CHENEY
7 UNITED STATES DISTRICT COURT FOR THE
8 NORTHERN DISTRICT OF CALIFORNIA

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