

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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IN RE VITAMIN ANTITRUST :
LITIGATION :
: Misc. No. 99-197 (TFH)
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This Document Relates to: : (M.D.L. No. 1285)
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ALL CLASS ACTIONS :
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ORDER CONDITIONALLY CERTIFYING SETTLEMENT CLASSES
AND PRELIMINARILY APPROVING PROPOSED SETTLEMENT

Upon review and consideration of the settlement agreement dated November 3, 1999, executed on behalf of plaintiffs and the purported Settlement Classes (as defined therein) by Plaintiffs' Co-Lead Counsel and on behalf of Settling Defendants by their respective counsel, and the schedules and exhibits attached thereto (the "Settlement Agreement"), it is hereby ORDERED as follows:

Preliminary Approval of Settlement and
Conditional Certification of the Settlement Classes

1. The terms of the Settlement Agreement are hereby preliminarily approved, subject to further consideration thereof at the Settlement Hearing provided for below. The

Court finds that said settlement is sufficiently within the range of reasonableness so that notice of the proposed settlement should be given as provided in paragraphs 3 and 4 of this Order.

2. The Court hereby conditionally certifies the following two settlement classes:

(a) All persons (excluding governmental entities, the entities identified on Schedule A hereto and their respective subsidiaries and affiliates and all Vitamin Products Released Parties) that directly purchased one or more Vitamin Products for delivery in the United States from any manufacturer identified with respect to such Vitamin Product(s) on Schedule A hereto, or any subsidiary or affiliate thereof, at any time during the periods specified therein for such Vitamin Product(s).

and

(b) All persons (excluding governmental entities, the Other Choline Chloride Defendants identified on Schedule B hereto and their subsidiaries and affiliates and all Choline Chloride Released Parties) that directly purchased Choline Chloride for delivery in the United States from any manufacturer of Choline Chloride, or any subsidiary or affiliate thereof, at any time during the period from 1992 through 1995.

and, further, hereby conditionally finds that Class Plaintiffs are adequate class representatives for the Vitamin Products Settlement Class and the Choline Chloride Settlement Class. If the Settlement Agreement is terminated or is not consummated for any reasons whatsoever, the certifications of the Vitamin Products Settlement Class and the Choline Chloride Settlement Class shall be void, and Settling Defendants shall have reserved all of their rights to oppose any and all class certification motions and to contest the adequacy of Class Plaintiffs as representatives of any putative plaintiff class.

Notice to Potential Settlement Class Members

3. As soon as practicable after entry of this Order, but no later than 30 days after the date of entry hereof, Plaintiffs' Co-Lead Counsel shall cause copies of each Notice of Pendency of Class Action, Proposed Settlement and Settlement Hearing, substantially in the forms attached as Exhibit 3 to the Settlement Agreement ("Mail Notice"), including the accompanying Proof of Claim forms ("Proofs of Claim"), to be mailed by first class mail, postage pre-paid, to all potential members of the Vitamin Products Settlement Class and/or the Choline Chloride Settlement Class, to the extent that they can be identified with reasonable diligence, at their last known addresses appearing in records of the Settling Defendants to be supplied by Settling Defendants to Plaintiffs' Co-Lead Counsel in machine-readable format no later than 20 days after the execution of the Settlement Agreement.

4. Plaintiffs' Co-Lead Counsel shall cause to be published the summary notices, substantially in the forms attached as Exhibit 3 to the Settlement Agreement ("Publication Notice"), one day a week for two consecutive weeks in the national edition of *THE WALL STREET JOURNAL* and once in FEEDSTUFFS and the CHEMICAL MARKET REPORTER, as soon as practicable after entry of this Order and, in all events, at least 30 days prior to the Settlement Hearing.

5. Prior to the Settlement Hearing, Plaintiffs' Co-Lead Counsel shall serve and file a sworn statement attesting to compliance with the provisions of paragraphs 3 and 4 of this Order.

6. The notice to be provided as set forth in paragraphs 3 and 4 of this Order is hereby found to be the best means of providing notice practicable under the circumstances and, when completed, shall constitute due and sufficient notice of the proposed settlement and the Settlement Hearing to all persons affected by and/or entitled to participate in the settlement, in full compliance with the notice requirements of Rule 23 of the Federal Rules of Civil Procedure.

Requests for Exclusion from
Either or Both of the Settlement Classes

7. Any member of the Vitamin Products Settlement Class and/or the Choline Chloride Settlement Class, or any assignee or transferee thereof, or successor thereto, that wishes to be excluded from either or both of the Settlement Classes shall mail a written request for exclusion (“Request for Exclusion”) to Heffler Radetich & Saitta, L.L.P., and Urbach, Kahn & Werlin (collectively, the “Settlement Claims Administrator”), by certified mail, return receipt requested, which must be postmarked by February 7, 2000 and clearly state (i) the name and address of the person or entity that wishes to be excluded from the Vitamin Products Settlement Class and/or the Choline Chloride Settlement Class, as the case may be, (ii) all trade names or business names or addresses used by such person or entity and any of its parents, subsidiaries or affiliates that (A) directly purchased Vitamin Products at any time during the respective relevant periods from any of the entities identified with respect to such Vitamin Products on Schedule A hereto (or any subsidiary or affiliate thereof) and/or directly purchased Choline Chloride at any time between 1992 and 1995 from any manufacturer thereof (or its

subsidiaries and affiliates) and (B) are also intended to be excluded from the Vitamin Products Settlement Class and/or the Choline Chloride Settlement Class, as the case may be and (iii) a person who, if necessary, may be contacted in connection with the Request for Exclusion and such person's telephone number. Upon receipt, the Settlement Claims Administrator shall promptly provide copies of each Request for Exclusion to Plaintiffs' Co-Lead Counsel and counsel for the Settling Defendants. On or before February 17, 2000, the Settlement Claims Administrator shall provide to the Clerk of the Court and to Plaintiffs' Co-Lead Counsel and the Settling Defendants a certified record of those members of the Vitamin Products Settlement Class and/or the Choline Chloride Settlement Class that have timely excluded themselves from the Vitamin Product Settlement and/or the Choline Chloride Settlement.

8. Any potential member of the Vitamin Products Settlement Class and/or the Choline Chloride Settlement Class that does not properly and timely request exclusion from the Vitamin Products Settlement Class and/or the Choline Chloride Settlement Class shall be included in such Class and shall be bound by all the terms and provisions of the Settlement Agreement, including but not limited to the releases, waivers and covenants described in paragraphs 18, 20 and 24 thereof, whether or not such person shall have objected to the settlement and whether or not such person makes a claim upon, or participates in, the Vitamin Products Settlement Fund and/or the Choline Chloride Settlement Fund.

Proofs of Claim

9. To effectuate the settlement and the notice provided for in paragraphs 3 and 4 hereof, Plaintiffs' Co-Lead Counsel have designated the Settlement Claims Administrator to be responsible for the receipt of all Proofs of Claim from the members of the Vitamin Products Settlement Class and/or Choline Chloride Settlement Class that have not timely and validly excluded themselves from the Vitamin Products Settlement Class and/or Choline Chloride Settlement Class. The Settlement Claims Administrator shall preserve all Proofs of Claim and any and all other written communications from members of the Vitamin Products Settlement Class and/or the Choline Chloride Settlement Class in response to said notices until January 1, 2005 or pursuant to further order of the Court. All written communications received by the Settlement Claims Administrator from members of the Vitamin Products Settlement Class and/or the Choline Chloride Settlement Class relating to the Settlement Agreement shall be available at all reasonable times for inspection and copying by plaintiffs' counsel and counsel for the Settling Defendants.

10. In order to be entitled to participate in the settlement if it is effected in accordance with all of the terms and conditions set forth in the Settlement Agreement, each member of the Vitamin Products Settlement Class and/or the Choline Chloride Settlement Class shall take the following actions and be subject to the following requirements:

(a) Each Settlement Class Member that wishes to receive a distribution from the Vitamin Products Settlement Fund and/or the Choline Chloride Settlement Fund must mail a properly executed and verified Proof of Claim to the Settlement Claims Administrator at the

address indicated in the appropriate Notice on or before May 8, 2000. Each Proof of Claim shall be deemed to have been submitted when actually postmarked for mailing to the Settlement Claims Administrator by certified mail, return receipt requested, postage prepaid.

(b) Each Proof of Claim filed by each member of the Vitamin Products Settlement Class and/or the Choline Chloride Settlement Class must satisfy the following conditions: (i) the Proof of Claim must be properly completed in accordance with this subparagraph and submitted in a timely manner in accordance with subparagraph (a) of this paragraph; (ii) the Proof of Claim for each member of the Vitamin Products Settlement Class must either (A) indicate that the Settlement Class Member agrees that the amounts of the Purchases by such Settlement Class Member of each Vitamin Product from the Settling Defendants (or the subsidiaries and affiliates thereof) (collectively, the “Released Manufacturers”) that are reflected in the records of the Released Manufacturers are true and accurate and shall be the sole basis used for determining the distribution to such Settlement Class Member from the Vitamin Products Settlement Fund with respect to Purchases from the Released Manufacturers; or (B) be accompanied by documentation supporting such Settlement Class Member’s claimed Purchases of each Vitamin Product from the Released Manufacturers, in the form of receipts for payment or other evidence satisfactory to the Settlement Claims Administrator; (iii) the Proof of Claim for each member of the Vitamin Products Settlement Class that claims Purchases of Vitamin C, Vitamin B6 (biotin) or Vitamin B9 (folic acid) from any manufacturer other than a Released Manufacturer must be accompanied by documentation

supporting such Settlement Class Member's claimed purchases of such Vitamin Product(s) from such other manufacturer(s), in the form of receipts for payment or other evidence satisfactory to the Settlement Claims Administrator; (iv) the Proof of Claim for each member of the Choline Chloride Settlement Class must be accompanied by documentation supporting such Settlement Class Member's claimed Purchases of Choline Chloride, in the form of receipts for payment or other evidence satisfactory to the Settlement Claims Administrator; (v) the Proof of Claim must be signed and include a sworn and duly notarized statement attesting to the authenticity of any records furnished in accordance with part (ii)(B), (iii) and/or (iv) of this subparagraph; (vi) if the person executing the Proof of Claim is acting in a representative capacity, proof of such person's authority to act on behalf of the claimant must be furnished with the Proof of Claim; and (vii) the Proof of Claim must be complete and contain no material deletions or modifications of any of the printed matter contained therein.

(c) Each Proof of Claim shall be submitted to and reviewed by the Settlement Claims Administrator, who shall make a recommendation to the Court, in accordance with paragraph 16 of the Settlement Agreement, as to the extent, if any, to which each claim shall be allowed. Any sales information received by the Settlement Claims Administrator and Plaintiffs' Co-Lead Counsel in connection with this settlement that pertains to a particular Claimant shall not be disclosed to any person other than such Claimant and the Released Manufacturer that reportedly made such sales to such Claimant.

(d) The Settlement Claims Administrator will notify each member of the Vitamin Products Settlement Class and/or the Choline Chloride Settlement Class of any recommendation of disallowance, in whole or in part, of the Proof of Claim submitted by such Settlement Class Member and will set forth the reasons for any such disallowance. Settlement Class Members shall be permitted a reasonable period of time to cure any deficiency with respect to their respective Proofs of Claim.

(e) All members of the Vitamin Products Settlement Class and/or the Choline Chloride Settlement Class that do not submit timely Proofs of Claim or that submit Proofs of Claim that are disallowed, shall be barred from participating in the Vitamin Products Settlement Fund and/or the Choline Chloride Settlement Fund (except to the extent that a Proof of Claim may be partially allowed) but otherwise shall be bound by all of the terms and provisions of the Settlement Agreement, including but not limited to the releases, waivers and covenants described in paragraphs 18, 20 and 24 thereof.

(f) Each member of the Vitamin Products Settlement Class and/or the Choline Chloride Settlement Class that submits a Proof of Claim shall thereby expressly submit to the jurisdiction of the Court with respect to the claim submitted and shall (subject to final approval of the settlement) be bound by all the terms and provisions of the Settlement Agreement including but not limited to the releases, waivers and covenants described in paragraphs 18, 20 and 24 thereof.

The Settlement Hearing

11. A hearing on final settlement approval (the "Settlement Hearing") is hereby scheduled to be held before the undersigned on March 28, 2000, at 10:00 a.m. in Courtroom No. 9, United States Courthouse, 333 Constitution Avenue, N.W., Washington, D.C. 20001 to consider the fairness, reasonableness and adequacy of the proposed settlement, the dismissal with prejudice of the Class Actions with respect to the Settling Defendants and all other Released Parties that are Defendants therein, and the entry of final judgment in the Class Actions.

12. Any member of the Vitamin Products Settlement Class and/or the Choline Chloride Settlement Class that has not previously filed a Request for Exclusion in the manner set forth above may appear at the Settlement Hearing in person or by counsel and may be heard, to the extent allowed by the Court, either in support of or in opposition to the fairness, reasonableness and adequacy of the proposed settlement and the dismissal with prejudice of the Class Actions as to the Settling Defendants and all other Released Parties that are defendants therein, and the entry of final judgment; provided, however, that no person shall be heard in opposition to such settlement, dismissal and/or entry of final judgment, and no papers or briefs submitted by or on behalf of any such person shall be accepted or considered by the Court, unless on or before February 7, 2000 such person: (a) files with the Clerk of the Court a notice of such person's intention to appear as well as a statement that indicates the basis for such person's opposition to the proposed settlement, the dismissal of claims and/or the entry of final judgment and any documentation in support of such opposition, and (b) serves copies of

such notice, statement and documentation, as well as any other papers or briefs that such person files with the Court, either in person or by mail, upon the following counsel:

Jonathan D. Schiller, Esq.
Boies & Schiller
5301 Wisconsin Avenue, N.W.
Washington, D.C. 20015

Bruce L. Montgomery, Esq.
Arnold & Porter
555 Twelfth St., N.W.
Washington, D.C. 20004-1202

13. The date and time of the Settlement Hearing shall be set forth in the Mail Notice and Publication Notice, but shall be subject to adjournment by the Court without further notice to the members of the Settlement Classes other than that which may be posted at the Court and on the Court's web site.

Other Provisions

14. Terms used in this Order that are defined in the Settlement Agreement are, unless otherwise defined herein, used in this Order as defined in the Settlement Agreement.

15. Upon approval of the settlement provided for in the Settlement Agreement, the Settlement Agreement and each and every term and provision thereof, shall be deemed incorporated herein as if expressly set forth and shall have the full force and effect of an Order of this Court.

16. In the event that the settlement is terminated in accordance with the provisions of the Settlement Agreement, the settlement and all proceedings had in connection therewith shall be null and void, except insofar as expressly provided to the contrary in the Settlement Agreement, and without prejudice to the status quo ante rights of the Settling

Defendants and the members of the Vitamin Products Settlement Class and/or the Choline Chloride Settlement Class.

17. All proceedings in the Class Actions against the Settling Defendants and all other Released Parties that are Defendants therein are hereby stayed until such time as the Court renders a final decision regarding the approval of the settlement and, if it approves the settlement, enters final judgment as provided in the Settlement Agreement.

SO ORDERED this ____ day of _____ 1999.

Hon. Thomas F. Hogan
United States District Judge

FOR SETTLEMENT PURPOSES ONLY

SCHEDULE A TO ORDER PRELIMINARILY APPROVING SETTLEMENT

VITAMIN PRODUCT	RELEVANT PERIOD	MANUFACTURERS*
VITAMIN A	January 1, 1990-December 31, 1998	BASF RHONE-POULENC ROCHE
VITAMIN B1 (THIAMIN)	January 1, 1991-December 31, 1994	ROCHE TAKEDA
VITAMIN B2 (RIBOFLAVIN)	January 1, 1991-December 31, 1995	BASF ROCHE TAKEDA
VITAMIN B5 (CALPAN)	January 1, 1991-December 31, 1998	BASF DAIICHI ROCHE
VITAMIN B6	January 1, 1991-December 31, 1994	DAIICHI ROCHE TAKEDA
VITAMIN B9 (FOLIC ACID)	January 1, 1991-December 31, 1994	KONGO ROCHE TAKEDA YODOGAWA/SUMIKA
VITAMIN B12 (Cyanocobalamine Pharma)	January 1, 1990-December 31, 1998	HOECHST RHONE-POULENC
VITAMIN C	January 1, 1991-December 31, 1995	BASF E-MERCK ROCHE TAKEDA
VITAMIN E	January 1, 1990-December 31, 1998	BASF EISAI (1991-1998 only) RHONE-POULENC ROCHE
VITAMIN H (BIOTIN)	January 1, 1991-December 31, 1995	E-MERCK LONZA ROCHE SUMITOMO TANABE
ASTAXANTHIN	January 1, 1992-December 31, 1997	BASF ROCHE
BETA-CAROTENE	January 1, 1991-December 31, 1998	BASF ROCHE

CANTHAXANTHIN	January 1, 1992-December 31, 1997	BASF ROCHE
PREMIX	January 1, 1990-December 31, 1998	BASF RHONE-POULENC ROCHE

*For purposes of the foregoing schedule:

- “BASF” means BASF Corporation and BASF AG
- “Daiichi” means Daiichi Pharmaceutical Co., Ltd., Daiichi Fine Chemicals, Inc. and Daiichi Pharmaceutical Corporation
- “Eisai” means Eisai Co., Ltd., Eisai U.S.A., Inc. and Eisai Inc.
- “E-Merck” means Merck KgaA, E. Merck and EM Industries, Inc.
- “Hoechst” means Hoechst Marion Roussel, S.A. and Roussel Corporation
- “Kongo” means Kongo Chemical Co., Ltd.
- “Lonza” means Al Suisse Lonza Group Ltd., Lonza AG and Lonza Inc.
- “Rhone-Poulenc” means Rhone-Poulenc Inc., Rhone-Poulenc Animal Nutrition Inc., Rhone-Poulenc Rorer Pharmaceuticals Inc., Rhone-Poulenc S.A. and Rhone-Poulenc Animal Nutrition S.A.
- “Roche” means Hoffmann-La Roche Inc., Roche Vitamins Inc. and F. Hoffmann-La Roche Ltd
- “Sumitomo” means Sumitomo Chemical Co., Ltd. and Sumitomo Chemical America, Inc.
- “Takeda” means Takeda Chemical Industries, Ltd., Takeda Vitamin & Food USA, Inc. and Takeda U.S.A.
- “Tanabe” means Tanabe Seitaku Company, Ltd. and Tanabe U.S.A., Inc.
- “Yodogawa/Sumika” means Yodogawa Pharmaceutical Co. and Sumika Fine Chemicals Co.

SCHEDULE B TO ORDER PRELIMINARILY APPROVING SETTLEMENT

Other Choline Chloride Defendants

Akzo Nobel Inc.

Akzo Nobel, N.V.

Bioproducts, Inc.

Chinook Group, Inc.

Chinook Group Ltd.

DCV, Inc.

DuCoa LP

UCB S.A.

UCB, Inc.