

**FILED**

**JUL 25 2001**

**NANCY MAYER WHITTINGTON, CLERK  
U.S. DISTRICT COURT**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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<b>IN RE VITAMIN ANTITRUST LITIGATION</b>	:
	:
	Misc. No. 99-197 (TFH)
	:
<b>This document relates to:</b>	:
	:
	(M.D.L. NO. 1285)
	:
<b>ANIMAL SCIENCE PRODUCTS, INC., et al.</b>	:
	:
<b>Plaintiffs,</b>	:
	:
<b>- against -</b>	:
	:
	<b>NOTICE OF CLASS ACTION SETTLEMENT WITH UCB CHEMICALS CORPORATION AND HEARING THEREON</b>
	:
<b>CHINOOK GROUP, LTD., et al.,</b>	:
<b>Defendants.</b>	:
	:
	X

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**TO: ALL PERSONS AND ENTITIES WHO DIRECTLY PURCHASED CHOLINE CHLORIDE FROM A DEFENDANT HEREIN DURING THE PERIOD FROM 1988 THROUGH 1998 IN THE UNITED STATES OR FOR DELIVERY IN THE UNITED STATES.**

**PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY.**

**A *THIRD SETTLEMENT* HAS BEEN PROPOSED IN PENDING CLASS ACTION LITIGATION THAT MAY AFFECT YOUR RIGHTS. IF YOU ARE A MEMBER OF THE UCB SETTLEMENT CLASS DESCRIBED BELOW, YOU MAY BE ENTITLED TO SHARE IN THE SETTLEMENT FUND.**

**IF YOU HAVE FILED YOUR OWN LAWSUIT, YOU STILL NEED TO TAKE ACTION TO EXCLUDE YOURSELF FROM THIS LITIGATION.**

**IF YOU HAVE EXCLUDED YOURSELF FROM THE FIRST TWO SETTLEMENTS, YOU MUST STILL TAKE ACTION TO EXCLUDE YOURSELF FROM THIS SETTLEMENT.**

**NOTICE IS HEREBY GIVEN**, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the District of Columbia ("the Court"), dated \_\_\_\_\_, 2001, that a settlement class (the "UCB Settlement Class") has been certified by the Court and that a hearing will be held before the Honorable Thomas F. Hogan, United States District Judge, in Courtroom No. 9, United States Courthouse, 333 Constitution Avenue, N.W., Washington, D.C. 20001, on Nov. 30, 2001 at ~~2:00~~<sup>3:00</sup> p.m. (the "Settlement Hearing"), to determine whether a proposed settlement in the above-captioned litigation as to defendant UCB Chemicals Corporation ("UCB Chemicals") as set forth in the Settlement Agreement dated as of July 16, 2001 (the "UCB Settlement Agreement"), is fair, reasonable and adequate to the UCB Settlement Class.

#### **THE UCB SETTLEMENT CLASS**

The UCB Settlement Class includes all persons and entities who directly purchased choline chloride in the United States or for delivery in the United States from any Defendants or their co-conspirators (or any subsidiary or affiliate thereof), at any time during the period from January 1, 1988 through December 31, 1998 (excluding all governmental entities, any Defendants, their co-conspirators, and their respective subsidiaries and affiliates).

**IF YOU PURCHASED CHOLINE CHLORIDE DIRECTLY FROM A DEFENDANT HEREIN AT ANY TIME DURING THE PERIOD FROM JANUARY 1, 1988 THROUGH DECEMBER 31, 1998 IN THE UNITED STATES OR FOR DELIVERY IN THE UNITED STATES, YOU ARE A MEMBER OF THE UCB SETTLEMENT CLASS AND YOU NEED NOT TAKE ANY ACTION TO REMAIN IN THE UCB SETTLEMENT CLASS.**

**IF YOU REMAIN IN THE UCB SETTLEMENT CLASS, YOUR RIGHTS UNDER THE SETTLEMENT WILL BE REPRESENTED BY THE CLASS PLAINTIFFS AND PLAINTIFFS' CO-LEAD COUNSEL, AND YOU WILL BE ENTITLED, AT A LATER POINT IN TIME, TO SUBMIT A CLAIM FORM TO SHARE IN THE UCB SETTLEMENT FUND.**

**YOU ARE A MEMBER OF THE UCB SETTLEMENT CLASS EVEN IF YOU PREVIOUSLY EXCLUDED YOURSELF FROM THE EARLIER SETTLEMENTS.**

Any and all transferees or assignees of, or successors to, the claims or rights of any member of the UCB Settlement Class, which claims are based on direct purchases of choline chloride from January 1, 1988 through December 31, 1998 in the United States or for delivery in the United States from a defendant herein (or any subsidiary or affiliate thereof), will be entitled to submit a Claim Form to share in the UCB Settlement Fund and will be bound by the terms of the Settlement Agreement, if approved by the Court, and shall be required to exercise their rights under the Settlement Agreement in the same manner as members of the UCB Settlement Class.

**SUMMARY OF THE UCB SETTLEMENT**

The Settlement Agreement, if approved by the Court, will result in a cash payment of \$9.0 million to be made available to the members of the UCB Settlement Class (the "UCB Settlement Fund") and the dismissal with prejudice of all claims against UCB Chemicals and Releasees with respect to choline chloride asserted in the class actions brought on behalf of direct purchasers that have been consolidated in this litigation (the "Class Action"). The amounts paid in settlement of the Class Action will be distributed among the members of the UCB Settlement Class who submit timely and valid Claim Forms based on the amount of their purchases of choline chloride during the relevant period, pursuant to the terms of the plan of allocation described below.

The Settlement Agreement also provides that, subject to the approval of the Court, an award of attorneys' fees for plaintiffs' counsel will be sought at a later point in time, to be paid from the UCB Settlement Fund.

**BACKGROUND OF THE CLASS ACTIONS**

Class Plaintiffs and others have filed lawsuits in this Court and elsewhere in the United States against UCB Chemicals and others. The lawsuits have been consolidated in the Court for pretrial purposes before the Honorable Thomas F. Hogan, United States District Judge. The class actions were described in previous Notices mailed on December 23, 1999 and April 4, 2001.

Class Plaintiffs allege that certain defendants unlawfully agreed to fix, raise, maintain and stabilize the prices of choline chloride sold in the United States in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. Class Plaintiffs claim that, as a result of this alleged price-fixing and other unlawful collusive conduct, they and other members of the UCB Settlement Class paid more for choline chloride than they would have paid absent such conduct. Class Plaintiffs have now reached a negotiated settlement of the Class Action as to UCB Chemicals and Releasees and, as of July 16, 2001 entered into the Settlement Agreement individually and on behalf of the UCB Settlement Class. The Settlement Agreement is subject to approval by the Court following the Settlement Hearing. On July 25, 2001 the Court certified the UCB Settlement Class, conditionally designated certain of the class plaintiffs in the Class Action (the "Class Plaintiffs") to be representatives of the UCB Settlement Class, preliminarily approved the Settlement Agreement, and ordered that this Notice be provided to the members of the UCB Settlement Class.

**THE COURT HAS NOT RULED ON ANY OF THE CLAIMS OR DEFENSES OF THE PARTIES. THIS NOTICE IS NOT TO BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION FROM THE COURT AS TO THE MERITS OF ANY OF THE CLAIMS OR DEFENSES ASSERTED BY PLAINTIFFS OR DEFENDANTS.**

**INVESTIGATION OF PLAINTIFFS' CO-LEAD COUNSEL  
LEADING TO THE UCB SETTLEMENT**

Before and following the filing of the Class Action, Class Plaintiffs conducted extensive investigation and formal discovery of the facts relating to the claims alleged in the Class Action, and retained and consulted with economists and other experts. In recommending that Class Plaintiffs enter into the Settlement Agreement, Plaintiffs' Co-Lead Counsel also took into consideration guilty pleas entered into or agreed to by John Kennedy (formerly employed by defendants Chinook Group, Inc. and BioProducts, Inc.), Robert Samuelson (formerly employed by defendant Chinook Group, Inc.), Lindell Hilling (formerly employed by defendant DuCoa L.P.), "Pete" Fischer (formerly employed by defendant DuCoa L.P.) and Antonio Felix (formerly employed by defendant DuCoa L.P.), to federal charges that, beginning in 1988, these individuals and their former conspirators participated in an unlawful agreement to suppress and eliminate competition by fixing the price and by allocating the volume of choline chloride sold in the United States, in violation of the federal antitrust laws. Other companies, including BASF and defendant Chinook, and individuals, including Russell Cosburn of Chinook, were the subject of fines and penalties in Canada related to the sale of choline chloride. Class Plaintiffs have reached cooperation agreements with certain individuals as well.

Class plaintiffs have also taken into account that, as was the case with BASF and Akzo Nobel in prior settlements, UCB Chemicals and Releasees had few, if any, sales into the United States during the period in question

Based upon their extensive investigation, their consultation with experts retained by them and their evaluation of the claims of the members of the UCB Settlement Class and defenses that might be asserted thereto, Plaintiffs Co-Lead Counsel believe that the settlement is fair, reasonable and adequate and in the best interests of the UCB Settlement Class.

## THE PROPOSED SETTLEMENT

The following description of the proposed settlement on behalf of the UCB Settlement Class (the "UCB Settlement") is only a summary. The Settlement Agreement, and the exhibits thereto, are on file with the Court and posted on the Court's website (<http://www.dcd.uscourts.gov/99ms197.html>)

### 1. The UCB Settlement

Subject to the terms of the Settlement Agreement, UCB Chemicals has paid \$9.0 million into an interest-bearing Escrow Account. These funds, and any interest earned thereon, are referred to in this Notice as the "UCB Settlement Fund."

UCB Chemicals has also agreed to provide a measure of cooperation to class plaintiffs in terms of cooperation from current employees and provision of non-privileged documents.

### 2. Release of Claims against UCB Chemicals and Releasees

**IF YOU DO NOT EXCLUDE YOURSELF FROM THE UCB SETTLEMENT CLASS AND THE SETTLEMENT AGREEMENT IS APPROVED BY THE COURT, YOU WILL BE BOUND BY ALL OF THE COURT'S ORDERS AND JUDGMENTS ENTERED PURSUANT TO THE UCB SETTLEMENT AGREEMENT, INCLUDING THE DISMISSAL AND RELEASE OF YOUR CLAIMS, AS PROVIDED BELOW, REGARDLESS OF WHETHER YOU FILE A CLAIM FORM OR PARTICIPATE IN THE UCB SETTLEMENT FUND.**

In the event that the Court approves the Settlement Agreement after the Settlement Hearing, each member of the UCB Settlement Class that did not timely and validly exclude itself from the UCB Settlement Class shall (on its own behalf and on behalf of its direct and indirect parents, subsidiaries and affiliates, the present and former officers, directors, employees, agents and legal representatives of each of the foregoing, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing) (collectively,

the "Releasers") completely release and forever discharge UCB Chemicals, its direct and indirect parents, subsidiaries and affiliates (including, without limitation UCB S.A., UCB Pharma, Inc., and UCB Films, Inc.), the present and former officers, directors, employees, managers, agents and legal representatives of each of the foregoing, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing (with respect to any conduct of any of the above entities) (collectively, the "Releasees") from all manner of claims, demands, actions, suits, causes of action, whether class, individual, or otherwise in nature, damages whenever incurred, and liabilities of any nature whatsoever, including without limitation costs, expenses, penalties and attorneys' fees, known or unknown, suspected or unsuspected, asserted or unasserted, in law or in equity, that such Releaser, whether directly, representatively, derivatively or in any other capacity, ever had, now has or hereafter can, shall or may have, relating in any way to any conduct prior to the date of the Settlement Agreement concerning the purchase, sale or pricing of Vitamin Products and any or all other vitamins or relating to any conduct alleged in the Class Action, including, without limitation, any such claims which have been asserted or could have been asserted in the Class Action against the Releasees or any of them (the "Released Claims"), except that this release shall not affect the rights of any Releasers (i) to seek damages or other relief from any person with respect to any Vitamin Products or vitamins purchased directly from the manufacturer (or any subsidiary or affiliate thereof) outside the United States for delivery to a destination outside the United States; or (ii) to participate in or benefit from any relief or other recovery as part of a settlement or judgment on behalf of a class of indirect purchasers of Vitamin Products.

In addition, each member of the UCB Settlement Class shall waive and release with respect to the Released Claims, any and all provisions, rights and benefits conferred by (a) § 1542 of the California Civil Code, which reads:

“Section 1542. General release; extent. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor,”

and (b) any similar state, federal, or other law, rule or regulation, or principle of common law, which is similar, comparable or equivalent to § 1542 of the California Civil Code. Each member of the UCB Settlement Class may hereafter discover facts other than or different from those that it knows or believes to be true with respect to the subject matter of the Released Claims, but each member of the UCB Settlement Class as a Releasor shall expressly agree that, upon the approval of the Settlement Agreement by the Court after the Settlement Hearing, it shall have waived and fully, finally and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, contingent or non-contingent claim with respect to the Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such other or different facts.

The release and dismissal of the claims of the UCB Settlement Class will have no effect upon any claims you may have against persons other than the Releasees. This litigation is proceeding against a number of defendants. In addition, the release shall not release any product liability or breach of contract claims unrelated to the subject matter of the Class Action.

### 3. **Attorneys' Fees and Expenses**

Plaintiffs' counsel do not intend to file at this time a petition for payment of attorneys' fees and expenses. The Settlement Agreement provides that such fees and expenses may be paid out of the Settlement Fund after Court approval.

When Plaintiffs' Co-Lead Counsel request attorneys' fees and reimbursement of litigation costs and expenses on behalf of all counsel for named plaintiffs in the Class Actions ("Class Counsel"), you will be given notice of the request.

**4. Filing and Processing of Claim Forms**

If you are a member of the UCB Settlement Class and do not exclude yourself from the Class and the settlement becomes effective in accordance with the terms of the Settlement Agreement, you will be entitled to share in the UCB Settlement Fund. Claim Forms will be provided to you at a later point in time.

You should retain all documents that substantiate the purchases of choline chloride that you will claim on your Claim Form.

To the extent that you have previously entered into an agreement with any Releasee that settles or compromises antitrust claims based on purchases of choline chloride during the period identified above, you may not claim or recover under the Settlement Agreement with respect to any purchases of choline chloride covered by the previous settlement.

**5. Plan of Allocation and Distribution of the UCB Settlement Fund**

The UCB Settlement Fund will be distributed to members of the UCB Settlement Class at a later point in time. UCB Settlement Class members that submit timely and valid Claim Forms and whose Claims are allowed by the Court ("Authorized Claimants") will receive a distribution. The distribution will take place after the following: (1) final approval of the settlement by the

Court and the expiration of any period for further review or appeal of the Court's order of approval or the resolution of any such review or appeal; (2) distribution of the Claim Forms and their receipt by the Claims Administrator; (3) review of the Claim Forms by the Claims Administrator and the determination of the amounts recommended to be paid to Claimants; and (4) approval by the Court of the Claims Administrator's recommendations as to the amounts to be paid to Authorized Claimants.

Distribution of the UCB Settlement Fund will be based on Authorized Claimants' direct purchases of choline chloride in the United States or for delivery to a destination in the United States from any defendant herein (or its subsidiary or affiliate) during the period from January 1, 1988 through December 31, 1998. If you purchased choline chloride in years other than those for which compensation may be had, you will not be entitled to recover with respect to those purchases. If you did not purchase any choline chloride during the period for which UCB Settlement Class members are entitled to recover, you are not a member of the UCB Settlement Class, and you are not entitled to any recovery under the Settlement Agreement.

Please note that submission of a Claim Form does not necessarily assure the right to payment thereunder. The Court may deny, in whole or in part, any claim if it determines that the Claimant is excluded from the definition of the UCB Settlement Class or if there are legal or equitable grounds for rejecting such claim.

#### **REQUESTS FOR EXCLUSION**

If you wish to exclude yourself from the UCB Settlement Class, you must do so by sending a written request for exclusion, by certified mail, return receipt requested, postage prepaid, postmarked on or before Sept. 25, 2001 to the following address.

Vitamin Antitrust Litigation Re:  
UCB Antitrust Litigation  
P. O. Box 58520  
Philadelphia, PA 19102-5852

The request for exclusion must clearly state the name and address of the person or entity who wishes to be excluded from the UCB Settlement Class, as well as all trade names or business names and addresses used by such person or entity and any of its parents, subsidiaries or affiliates that purchased choline chloride during the period from January 1, 1988 through December 31, 1998 and are also intended to be excluded from the UCB Settlement Class.

**IN ORDER TO BE EXCLUDED FROM THE UCB SETTLEMENT CLASS, YOU MUST TIMELY REQUEST EXCLUSION IN THE MANNER SET FORTH ABOVE EVEN IF YOU HAVE FILED OR HEREAFTER FILE YOUR OWN LAWSUIT AGAINST ANY OF THE DEFENDANTS BASED ON CLAIMS THAT ARISE OUT OF THE CONDUCT AT ISSUE IN THIS LITIGATION.**

If you properly and timely submit a request for exclusion from the UCB Settlement Class, you will not be bound by the Settlement Agreement or any judgment or orders entered pursuant thereto, and you will not be entitled to share in the UCB Settlement Fund and will not receive any of the other benefits of the UCB Settlement. You will be free to pursue whatever legal rights you may have against any of the Releasees at your own cost and expense.

#### **SETTLEMENT HEARING**

At the Settlement Hearing, the Court will consider whether the UCB Settlement Agreement should be approved as fair, adequate and reasonable to the UCB Settlement Class and whether the claims of the UCB Settlement Class should be dismissed with prejudice as to the Releasees that are defendants therein, as provided in the Settlement Agreement. Any member of the UCB Settlement Class that has not requested to be excluded from the UCB Settlement Class is entitled to appear and be heard at the Settlement Hearing, in person or through duly authorized

attorneys, and to show cause why the settlement should not be approved as fair, reasonable and adequate, *provided, however*, that no such person shall be heard in opposition to any of the foregoing, and no paper or brief submitted by such person shall be received or considered by the Court unless, on or before Sept. 28, 2001 such person files a notice of intention to appear, and a statement of the position to be asserted, and the grounds therefor, together with copies of any supporting papers or brief with the Clerk, United States District Court for the District of Columbia, 333 Constitution Avenue, N.W., Washington, D.C., 20001, with proof of service upon the counsel identified below:

Michael D. Hausfeld, Esq.  
Cohen, Milstein, Hausfeld  
& Toll, P.L.L.C.  
1100 New York Avenue  
West Tower, Suite 500  
Washington, D.C. 20005-3964

Kevin R. Sullivan, Esq.  
King & Spalding  
1730 Pennsylvania Ave., NW  
Washington, D.C. 20006

No person shall be entitled to contest the terms and conditions of the UCB Settlement Agreement, unless the procedures set forth above are complied with, and persons who fail to object as provided herein shall be deemed to have waived and shall be foreclosed forever from raising any such objections or appealing from any orders or judgments entered with respect to the Settlement Agreement.

The Settlement Hearing is presently set for Nov. 30, 2001 at 3pm. The time and date of the hearing may be continued from time to time. Notice of any such continuance shall be posted at the United States Courthouse and on the Court's website,

<http://www.dcd.uscourts.gov/99ms197.html>.

#### **ADDITIONAL INFORMATION**

**THE ABOVE IS ONLY A SUMMARY OF THE SETTLEMENT**

**AGREEMENT AND RELATED MATTERS.**

For more detailed information concerning the matters involved in the litigation, reference is made to the pleadings, to the Settlement Agreement, to the Orders entered by the Court and to the other papers filed in the Class Action, which may be inspected at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, N.W., Washington, D.C. 20001 during regular business hours. In addition, the Settlement Agreement is posted at the Court's website: <http://www.dcd.uscourts.gov/99ms197.html>.

**ALL INQUIRIES CONCERNING THIS NOTICE AND THE SETTLEMENT AGREEMENT SHOULD BE DIRECTED TO ONE OF PLAINTIFFS' CO-LEAD COUNSEL, *IN WRITING*, AT THE ADDRESSES SET FORTH BELOW.**

Michael D. Hausfeld, Esq.  
Cohen, Milstein, Hausfeld & Toll, P.L.L.C.  
West Tower, Suite 500  
1100 New York Avenue, N.W.  
Washington, D.C. 20005-3964

or

David Boies  
Jonathan D. Schiller  
Boies, Schiller & Flexner, LLP  
5301 Wisconsin Avenue, N.W.  
8<sup>th</sup> Floor  
Washington, D.C. 20015

or

Steve Susman  
Susman Godfrey LLP  
1000 Louisiana, Suite 5100  
Houston, Texas 77002

**INQUIRIES SHOULD NOT BE MADE BY TELEPHONE AND SHOULD NOT BE DIRECTED TO THE COURT**

*BY ORDER OF THE COURT:*

*DATED: \_\_\_\_\_, 2001*

*UNITED STATES DISTRICT JUDGE  
UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA*

**If you change your address, or if this Notice was not mailed to your correct address, you should immediately provide your correct address to *UCB Antitrust Litigation*, P. O. Box 58500, Philadelphia, Pennsylvania 19102. If the Claims Administrator does not have your correct address, you may not receive notice of important developments in this litigation.**