

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR. JUSTICE) WEDNESDAY, THE 23RD DAY
)
CUMMING) OF MARCH, 2005

B E T W E E N:

FLEMING FEED MILL LTD., ALIMENTS BRETON INC.,
GLEN FORD and MARCY DAVID

Plaintiffs

and

BASF AKTIENGESELLSCHAFT, BASF CORPORATION, BASF CANADA INC.,
CHINOOK GROUP, LTD., DCV, INC., DUCOA L.P., AKZO NOBEL NV,
AKZO NOBEL CHEMICALS BV, BIOPRODUCTS, INC.,
RUSSELL COSBURN, JOHN KENNEDY, ROBERT SAMUELSON,
LINDELL HILLING, JOHN L. ("PETE") FISCHER and ANTONIO FELIX
(choline chloride)

Defendants

Proceeding under the *Class Proceedings Act, 1992*

JUDGMENT

THIS MOTION, made by the plaintiffs for certification of this action as a class proceeding and for judgment pursuant to subsection 29(2) of the *Class Proceedings Act, 1992* in accordance with the terms of the Akzo Settlement Agreement, was heard on March 8 and 9, 2005 at Toronto, Ontario (the "Ontario Approval Hearing").

ON READING the following:

- (a) the notice of motion and record returnable March 8, 2005;
- (b) the Akzo Settlement Agreement and the Amended Settlement Agreement, filed;
- (c) the letter from the counsel to the Public Guardian and Trustee, filed;
- (d) the letter from the counsel to the Children's Lawyer, filed; and
- (e) the affidavits of :
 - (i) Charles M. Wright, sworn February 17, 2005 and March 3, 2005;
 - (ii) Andrea DeKay, sworn February 16, 2005 and March 3, 2005;
 - (iii) Heather Rumble Peterson, sworn February 28, 2005, March 5, 2005 and March 6, 2005;
 - (iv) Patricia A. Speight, sworn February 28, 2005;
 - (v) Thomas Ross, sworn February 8, 2005;
 - (vi) Christian Breton of Aliments Breton Ltd., sworn February 18, 2005;
 - (vii) Glen Ford, sworn February 15, 2005;
 - (viii) Bill Fleming of Fleming Feed Mill Ltd., sworn February 15, 2005;
 - (ix) Marcy David, sworn February 16, 2005;
 - (x) Jannick Desforges, sworn February 7, 2005;
 - (xi) Margaret Woltz, sworn February 17, 2005;
 - (xii) Craig Flinn, sworn February 18, 2005;

- (xiii) Jennifer Bald, sworn February 22, 2005;
- (xiv) Joe Fiorante, sworn March 3, 2005;
- (xv) David Jones, sworn March 3, 2005;
- (xvi) William Dermody, sworn March 7, 2005; and

(f) the written objections,

AND ON HEARING the submissions of counsel for the plaintiffs, some of the Defendants, William Dermody, the friend of the court, and the objectors, Lars Soderstrom, Milton Bowling, Phil G. Anderson and David Rowland,

AND without any admission of liability on the part of Akzo, Akzo having denied liability,

1. THIS COURT ORDERS AND DECLARES that for the purposes of this judgment, the definitions set out in the Akzo Settlement Agreement apply to and are incorporated into this judgment and, in addition, the following definitions also apply:

- (a) “**Administrator**” means the administrator appointed under the Amended Settlement Agreement;
- (b) “**Akzo**” means Akzo Nobel Chemicals BV;
- (c) “**Akzo Settlement Agreement**” means the settlement agreement between the plaintiffs in the Choline Chloride Actions and Akzo made as of the 6th day of January, 2005;
- (d) “**Amended Settlement Agreement**” means the Settlement Agreement made in the Choline Chloride Actions and other actions made as of the 1st day of November, 2004 and amended as of the 6th day of January, 2005 which is annexed as Schedule 1 to the Akzo Settlement Agreement;

- (e) **“Courts”** means the Supreme Court of British Columbia, the Ontario Superior Court of Justice and the Quebec Superior Court;
- (f) **“Ontario Actions”** means the Ontario Choline Chloride Action; the Ontario Biotin Action, File No. 00-CV-202080CP; the Ontario Bulk Vitamins Action, File No. 00-CV-200045CP; the Ontario Methionine Action, File No. 00-CV-201723CP; and, the Ontario Niacin Action, File No. 00-CV-200044CP;
- (g) **“Ontario Choline Chloride Action”** means this action, File No. 00-CV-198647CP;
- (h) **“Ontario Choline Chloride Settlement Class”** means: All persons in Canada who purchased in Canada choline chloride (Vitamin B4) and products that directly or indirectly contain or are derived from choline chloride (Vitamin B4) or from animals which had consumed choline chloride (Vitamin B4) from January 1, 1988 to December 31, 1998 except the Excluded Persons and persons who are included in British Columbia Court File, Vancouver Registry, No. L002690 and in Quebec Court (District of Montreal) Action No. 500-06-000083-994;
- (i) **“Ontario Choline Chloride Releasers”** means, jointly and severally, the plaintiffs herein and the members of the Ontario Choline Chloride Settlement Class;
- (j) **“Released Ontario Choline Chloride Claims”** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses, penalties and lawyers’ fees, known or unknown, suspected or unsuspected, in law, under statute or in equity, that Ontario Choline Chloride Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct from the beginning of time to the date hereof in respect of the purchase, sale, pricing, discounting, marketing or distributing in Canada of choline chloride (Vitamin B4) and products that directly or indirectly contain or are derived from choline chloride (Vitamin B4) or from animals which had consumed choline chloride (Vitamin B4), or relating to any conduct alleged (or which could have been alleged) in the Ontario Choline Chloride Action, including, without limitation, any such claims which have been asserted, would have been asserted or could have been asserted, whether in Canada or elsewhere, as a result of the purchase in Canada of choline chloride (Vitamin B4) and products that directly or indirectly contain or are derived from choline chloride (Vitamin B4) or from animals which had consumed choline chloride (Vitamin B4); and

- (k) “**SCSD**” means Sutts, Strosberg LLP, Camp Fiorante Matthews, Siskind Cromarty Ivey & Dowler LLP and Siskinds, Desmeules.

2. THIS COURT ORDERS AND DECLARES, pursuant to s. 12 of the *Class Proceedings Act, 1992*, that the court shall consider the fairness of the Akzo Settlement Agreement and that no further notice to the classes is necessary because of the notice of the fairness hearing given to the classes relating to the Amended Settlement Agreement.

3. THIS COURT ORDERS that:

- (a) this action is hereby certified against Akzo;

- (b) the Ontario Choline Chloride Settlement Class is defined as:

All persons in Canada who purchased in Canada choline chloride (Vitamin B4) and products that directly or indirectly contain or are derived from choline chloride (Vitamin B4) or from animals which had consumed choline chloride (Vitamin B4) from January 1, 1988 to December 31, 1998 except the Excluded Persons and persons who are included in British Columbia Court File, Vancouver Registry, No. L002690 and in Quebec Court (District of Montreal) Action No. 500-06-000083-994;

- (c) Aliments Breton Inc., Marcy David, Glen Ford and Fleming Feed Mill Ltd. are hereby appointed as the representative plaintiffs; and

- (d) the common issue is:

Did Akzo agree to fix, raise, maintain or stabilize the prices of, or allocate markets and customers for choline chloride (Vitamin B4) in Canada from January 1, 1988 to December 31, 1998?

4. THIS COURT DECLARES, for greater certainty, that a person may be a member of the Ontario Choline Chloride Settlement Class pursuant to this judgment and may also be a member of the Settlement Class(es) defined in the Amended Settlement Agreement in one, some or all of the Ontario Actions.

5. THIS COURT ORDERS AND ADJUDGES that the proposed settlement of this action against Akzo as particularized in this judgment and the Akzo Settlement Agreement is fair, reasonable, adequate, and in the best interests of the members of the Ontario Choline Chloride Settlement Class.

6. THIS COURT ORDERS that the Akzo Settlement Agreement, attached as Appendix 1, is incorporated by reference into this judgment and is hereby approved and shall be implemented in accordance with its terms.

7. THIS COURT ORDERS AND DECLARES that each Ontario Choline Chloride Releasor in this action has released and shall be conclusively deemed to have fully, finally and forever released the Akzo Releasees from any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, penalties and lawyers' fees, known or unknown, suspected or unsuspected, in law, under statute or in equity, that said Ontario Choline Chloride Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to the Released Ontario Choline Chloride Claims.

8. THIS COURT ORDERS AND DECLARES that the use of the terms “Ontario Choline Chloride Releasors” and “Released Ontario Choline Chloride Claims” in this judgment does not constitute a release of claims by those members of the Ontario Choline Chloride Settlement Class in this action who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.

9. THIS COURT ORDERS AND DECLARES that each member of the Ontario Choline Chloride Settlement Class in this action who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to make any claim in any way nor to threaten, commence, or continue any proceeding in any jurisdiction against the Akzo Releasees in respect of or in relation to the Released Ontario Choline Chloride Claims.

10. THIS COURT ORDERS that the members of the Ontario Choline Chloride Settlement Class in this action shall be given notice of this judgment, by the publication of the notice substantially in the form at Appendix 2 to this judgment in the manner set out in Schedule J of the Amended Settlement Agreement and that any other notice is dispensed with.

11. THIS COURT ORDERS that each member of the Ontario Choline Chloride Settlement Class who elects to opt out of this action must do so in the manner provided in sections 14.1 and 14.2 of the Amended Settlement Agreement on or before August 5, 2005 at 5:00 p.m. eastern.

12. THIS COURT ORDERS AND DECLARES that this judgment, including the Akzo Settlement Agreement, is binding upon each member of the Ontario Choline Chloride Settlement Class who does not opt out of this action in accordance with the terms of this judgment, including those persons who are minors or are mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the Rules of Civil Procedure are dispensed with in respect to this action. And, for greater certainty, this judgment, including the Akzo Settlement Agreement, is binding upon each Direct Purchaser and each Distributor of choline chloride (Vitamin B4) who is a member of the Ontario Choline Chloride Settlement Class and who does not opt out in accordance with the terms of this judgment.

13. THIS COURT ORDERS that each member of the Ontario Choline Chloride Settlement Class who is a Direct Purchaser or a Distributor of choline chloride (Vitamin B4) shall submit a claim to the Administrator, in accordance with the provisions of the Amended Settlement Agreement, on or before November 5, 2005 at 5:00 p.m. eastern, and, any Direct Purchaser or Distributor who fails to do so, shall not share in any distribution made in accordance with the Amended Settlement Agreement unless the judge hearing the Ontario Approval Hearing orders otherwise.

14. THIS COURT ORDERS AND DECLARES that this judgment does not affect any claims or causes of action that any member of the Ontario Choline Chloride Settlement Class has or may have against DCV, Inc., Ducoa L.P. in this action and against UCB S.A. and UCB Chemicals Corporation in Ontario Court File No. 40610/02 (London).

15. THIS COURT ORDERS AND DECLARES that:

- (a) \$37,500 for SCSD's fees relating to the Akzo Settlement Agreement is fair and reasonable;
- (b) if the Courts issue the orders contemplated in s. 16.1 of the Amended Settlement Agreement, then, the Administrator shall forthwith pay to Sutts, Strosberg LLP, in trust, for SCSD these fees plus applicable taxes; and
- (c) such payment be allocated as an equal charge to each of the Director Purchaser Fund, Intermediate Purchaser Fund and Consumer Fund.

16. THIS COURT ORDERS AND ADJUDGES that, save as aforesaid, this action be and is hereby dismissed against Akzo without costs and with prejudice.

April 5, 2005

Peter A. Cumming J.

JUSTICE

281410

ENTERED AT/INSCRIT À TORONTO
ON/BOOK NO:
LEAD/FILE NO:
APR 5 2005
AS FOR
À TITRE DE DOCUMENT NO:
PERSONNEL

APPENDIX 1

AKZO SETTLEMENT AGREEMENT

Made as of the 6th day of January, 2005

Between

**Fleming Feed Mill Ltd.
Aliments Breton Inc.
Glen Ford
Marcy David
Ritchie-Smith Feeds, Inc.
Wendy Weberg
Option Consommateurs
André Bernard Guévin**

and

Akzo Nobel Chemicals BV

RECITALS

- A. Proceedings have been commenced in British Columbia, Ontario and Quebec under each province's respective class proceedings legislation which allege that Akzo and others committed violations of law including, but not limited to, conspiring to fix, raise, maintain or stabilize the prices of, and allocating markets and customers for choline chloride (Vitamin B4) in Canada.
- B. And whereas a Settlement Agreement has been entered into by the plaintiffs and others relating to the Choline Chloride Actions and other actions in respect of choline chloride (Vitamin B4) and other vitamins.
- C. And whereas Akzo also wishes to settle all claims made against it in the Choline Chloride Actions.
- D. And whereas the members of the Choline Chloride Settlement Class are Releasers under the Settlement Agreement and are entitled to claim thereunder or will benefit from the cy prés distribution thereunder.

SECTION 1 – DEFINITIONS

In this agreement, including the Recitals and Schedules hereto:

- (1) **Akzo** means Akzo Nobel Chemicals BV.
- (2) **Akzo Releasees** means Akzo, its direct and indirect parents, subsidiaries and affiliates, the present and former officers, directors, members of any supervisory board or board of management, employees, agents, and legal representatives of each of the foregoing, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing.
- (3) **Akzo Settlement Agreement** means this agreement.
- (4) **Akzo Settlement Amount** means \$250,000.
- (5) **Akzo Settling Plaintiffs** means the plaintiffs in the Choline Chloride Actions.
- (6) **Choline Chloride Actions** means British Columbia Court File, Vancouver Registry, No. L002690, Ontario Court File No. 00-CV-198647CP and Quebec Court (District of Montreal) Action No. 500-06-000083-994.
- (7) **Choline Chloride Settlement Class** means all persons in Canada who purchased in Canada choline chloride (Vitamin B4) and products that directly or indirectly contain or are derived from choline chloride (Vitamin B4) or from animals which had consumed choline chloride (Vitamin B4) from January 1, 1988 to December 31, 1998 except the Excluded Persons.
- (8) **Courts** means the Supreme Court of British Columbia, the Ontario Superior Court of Justice and the Quebec Superior Court.
- (9) **Excluded Persons** means, in respect of the Choline Chloride Actions, each defendant, the directors and officers of each defendant, the subsidiaries or affiliates of each defendant, the entities in which each defendant or any of that defendant's subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of any Excluded Person.
- (10) **Final Order** means a final judgment entered by any of the Courts in respect of the certification of a Choline Chloride Action as a class proceeding and the approval of this Akzo Settlement Agreement, once the time to appeal such judgment has expired without any appeal being taken, if an appeal lies, or once there has been a final disposition of all appeals.
- (11) **Parties** means the Akzo Settling Plaintiffs and Akzo.
- (12) **Released Claims** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses, penalties and lawyers' fees, known or unknown, suspected or

unsuspected, in law, under statute or in equity, that Releasors, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct from the beginning of time to the date hereof in respect of the purchase, sale, pricing, discounting, marketing or distributing in Canada of choline chloride (Vitamin B4) and products that directly or indirectly contain or are derived from choline chloride (Vitamin B4) or from animals which had consumed choline chloride (Vitamin B4), or relating to any conduct alleged (or which could have been alleged) in the Choline Chloride Actions, including, without limitation, any such claims which have been asserted, would have been asserted or could have been asserted, whether in Canada or elsewhere, as a result of the purchase in Canada of choline chloride (Vitamin B4) and products that directly or indirectly contain or are derived from choline chloride (Vitamin B4) or from animals which had consumed choline chloride (Vitamin B4).

(13) **Releasors** means jointly and severally, the Akzo Settling Plaintiffs and the Choline Chloride Settlement Class Members.

(14) **Settlement Agreement** means the settlement agreement made in the Choline Chloride Actions and other actions as of the 1st day of November, 2004 as amended by an agreement made as of the 6th day of January, 2005 which is annexed hereto as Schedule 1.

(15) **Supplementary Choline Chloride Actions** means British Columbia Court File, Vancouver Registry, No. L023727 and Ontario Court File No. 40610/02 (London).

SECTION 2 – RECITALS

The Recitals hereto are true and form part of the Akzo Settlement Agreement.

SECTION 3 – SETTLEMENT APPROVAL

3.1 Motion for Approval

Contemporaneous with the motions to approve the Settlement Agreement in British Columbia, Ontario and Quebec the Akzo Settling Plaintiffs shall bring motions before the Courts to approve the Akzo Settlement Agreement and shall seek an order:

- (a) in Ontario, substantially in the form attached as Schedule 2;
- (b) in British Columbia, substantially in the form attached as Schedule 3; and
- (c) in Quebec, substantially in the form attached as Schedule 4.

3.2 Effect of Non-Approval

If any one of the Courts does not approve the Akzo Settlement Agreement then, it shall be null and void and of no force and effect.

SECTION 4 – PAYMENT OF THE AKZO SETTLEMENT AMOUNT

Akzo shall pay the Akzo Settlement Amount in full satisfaction of the Released Claims upon the orders of the Courts approving the Akzo Settlement Agreement becoming Final Orders.

SECTION 5 – NOTIFICATION OF THE AKZO SETTLEMENT AGREEMENT

5.1 Notice

- (1) Akzo and the Akzo Settling Plaintiffs intend that:
 - a) the notification of the motions for approval of the Settlement Agreement as provided therein be notice of the motions for approval of the Akzo Settlement Agreement;
 - b) any notification of the approval of the Settlement Agreement be notice of any approval of the Akzo Settlement Agreement; and
 - c) the Akzo Settlement Agreement and any Akzo Settlement Agreement approval orders be posted on the website www.vitaminsclassaction.com.
- (2) If any one of the Courts requires further or other notification of the Akzo Settlement Agreement and/or of any approval of the Akzo Settlement Agreement, then Akzo shall pay all the costs of any such advertising.

SECTION 6 – DISTRIBUTION OF THE SETTLEMENT AMOUNT

Akzo shall pay the Akzo Settlement Amount to the Administrator appointed under the Settlement Agreement to be added to the Direct Purchaser Fund and distributed in accordance with the Settlement Agreement.

SECTION 7 – RELEASES

Upon receipt by the Administrator of the Akzo Settlement Amount, the Releasers forever and absolutely release the Akzo Releasees from the Released Claims.

SECTION 8 – COVENANT NOT TO SUE

Notwithstanding section 7, for the purposes of the action commenced as British Columbia Court File, Vancouver Registry, No. L002690 and for any Choline Chloride Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasers do not release the Akzo Releasees but instead covenant and undertake not to make any claim in any way or to threaten, commence, or continue any proceeding in any jurisdiction against the Akzo Releasees in respect of or in relation to the Released Claims, it being expressly understood that the Akzo Settling Plaintiffs and the members of the Choline Chloride Settlement Class intend to continue the Choline Chloride Actions and/or the Supplementary Choline Chloride Actions against DCV, Inc., Ducoa L.P., UCB S.A., UCB Chemicals Corporation and UCB, Inc..

SECTION 9 – NO BAR ORDER

The Courts shall not grant a bar order in favour of Akzo.

SECTION 10 – CLAIMS AGAINST OTHER ENTITIES RESERVED

Except as provided herein, this Akzo Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by members of the Choline Chloride Settlement Class against any person other than the Akzo Releasees. And, Akzo specifically acknowledges that the Akzo Settling Plaintiffs and the members of the Choline Chloride Settlement Class intend to continue the Choline Chloride Actions and/or the Supplementary Choline Chloride Actions against DCV, Inc., Ducoa L.P., UCB S.A., UCB Chemicals Corporation and UCB, Inc. and that Akzo is not receiving a bar order.

SECTION 11 – NO ADMISSION OF LIABILITY

Neither this Akzo Settlement Agreement, nor anything contained herein, shall be interpreted as concessions or admissions of wrongdoing or liability, or as concessions or admissions of the truthfulness of any claim or allegation asserted in the Choline Chloride Actions. Neither this Akzo Settlement Agreement, nor anything contained herein, shall be used