

00-CV-200041CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

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

| Court File No. 00-CV-200044CP | Court File No. 40610/02 (London) |
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| <p style="text-align: center;">ONTARIO SUPERIOR COURT OF JUSTICE</p> <p>BETWEEN:</p> <p style="text-align: center;">VITAPHARM CANADA LTD., FLEMING FEED MILL LTD., ALIMENTS BRETON INC., and KRISTI CAPP</p> <p style="text-align: right;">Plaintiffs</p> <p style="text-align: center;">- and -</p> <p>DEGUSSA-HÜLS AG, DEGUSSA CORPORATION, DEGUSSA CANADA INC., REILLY INDUSTRIES INC., REILLY CHEMICALS S.A., VITACHEM COMPANY, ALUSUISSE-LONZA CANADA INC., LONZA AG, NEPERA INCORPORATED, ROGER NOACK and DAVID PURFI</p> <p style="text-align: right;">Defendants</p> <p style="text-align: center;">Proceeding under the <i>Class Proceedings Act, 1992</i> (niacin)</p> | <p style="text-align: center;">ONTARIO SUPERIOR COURT OF JUSTICE</p> <p>BETWEEN:</p> <p style="text-align: center;">FLEMING FEED MILL LTD., ALIMENTS BRETON INC., GLEN FORD and MARCY DAVID</p> <p style="text-align: right;">Plaintiffs</p> <p style="text-align: center;">- and -</p> <p>UCB S.A. and UCB CHEMICALS CORPORATION</p> <p style="text-align: right;">Defendants</p> <p style="text-align: center;">Proceedings under the <i>class Proceedings Act, 1992</i> (choline chloride)</p> |

JUDGMENT

THIS MOTION, made by the plaintiffs for certification of these actions as class proceedings and for judgment pursuant to subsection 29(2) of the *Class Proceedings Act, 1992* in accordance with the terms of the UCB/Reilly 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 UCB/Reilly 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) Kristi Cappa, sworn February 15, 2005;
 - (vii) Christian Breton of Aliments Breton Ltd., sworn February 18, 2005;
 - (viii) Glen Ford, sworn February 15, 2005;
 - (ix) Bill Fleming of Fleming Feed Mill Ltd., sworn February 15, 2005;
 - (x) Marcy David, sworn February 16, 2005;
 - (xi) Jannick Desforges, sworn February 7, 2005;
 - (xii) Margaret Woltz, sworn February 17, 2005;
 - (xiii) Craig Flinn, sworn February 18, 2005;
 - (xiv) Jennifer Bald, sworn February 22, 2005;
 - (xv) Joe Fiorante, sworn March 3, 2005;
 - (xvi) David Jones, sworn March 3, 2005;
 - (xvii) 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 UCB or Reilly, UCB and Reilly having denied liability,

1. THIS COURT ORDERS AND DECLARES that for the purposes of this judgment, the definitions set out in the UCB/Reilly 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) **“Amended Settlement Agreement”** means the settlement agreement in the Choline Chloride Actions, the Niacin 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 UCB/Reilly Settlement Agreement;
- (c) **“Courts”** means the Supreme Court of British Columbia, the Ontario Superior Court of Justice and the Quebec Superior Court;
- (d) **“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;
- (e) **“Ontario Choline Chloride Action”** means action, File No. 00-CV-198647CP;
- (f) **“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, British Columbia Court File, Vancouver Registry No. L023727 and in Quebec Court (District of Montreal) Action No. 500-06-000083-994;

- (g) **“Ontario Niacin Action”** means action File No. 00-CV-200044CP;
- (h) **“Ontario Niacin Settlement Class”** means: All persons in Canada who purchased in Canada niacin (Vitamin B3) and products that directly or indirectly contain or are derived from niacin (Vitamin B3) or from animals which had consumed niacin (Vitamin B3) from January 1, 1992 to March 31, 1998 except the Excluded Persons and persons who are included in British Columbia Court File, Vancouver Registry, No. L003045 and in Quebec Court (District of Montreal) Action No. 500-06-000083-994;
- (i) **“Ontario Releasers”** means, jointly and severally, the plaintiffs herein and the members of the Ontario Niacin Settlement Class and the members of the Ontario Choline Chloride Settlement Class;
- (j) **“Reilly”** means Reilly Industries Inc.;
- (k) **“Released Ontario 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 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) or niacin (Vitamin B3) or products that directly or indirectly contain or are derived from choline chloride (Vitamin B4) or niacin (Vitamin B3) or from animals which had consumed choline chloride (Vitamin B4) or niacin (Vitamin B3), or relating to any conduct alleged (or which could have been alleged) in the Ontario Niacin Action, the Ontario Choline Chloride Action or the Supplemental 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) or niacin (Vitamin B3) or products that directly or indirectly contain or are derived from choline chloride (Vitamin B4) or niacin (Vitamin B3) or from animals which had consumed choline chloride (Vitamin B4) or niacin (Vitamin B3);
- (l) **“SCSD”** means Sutts, Strosberg LLP, Camp Fiorante Matthews, Siskind Cromarty Ivey & Dowler LLP and Siskinds, Desmeules;

- (m) **“Supplemental Ontario Choline Chloride Action”** means action File No. 40610/02 (London);
- (n) **“UCB”** means UCB S.A.; and
- (o) **“UCB/Reilly Settlement Agreement”** means the settlement agreement between the plaintiffs and UCB and Reilly made as of the 23rd day of February, 2005.

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 UCB/Reilly 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) the Ontario Niacin Action is hereby certified against Reilly;

(b) the Ontario Niacin Settlement Class is defined as:

All persons in Canada who purchased in Canada niacin (Vitamin B3) and products that directly or indirectly contain or are derived from niacin (Vitamin B3) or from animals which had consumed niacin (Vitamin B3) from January 1, 1992 to March 31, 1998 except the Excluded Persons and persons who are included in British Columbia Court File, Vancouver Registry, No. L003045 and in Quebec Court (District of Montreal) Action No. 500-06-000083-994;

(c) Aliments Breton Inc., Kristi Cappa and Fleming Feed Mill Ltd. are hereby appointed as the representative plaintiffs; and

(d) the common issue is:

Did Reilly agree to fix, raise, maintain or stabilize the prices of, or allocate markets and customers for niacin (Vitamin B3) in Canada from January 1, 1992 to March 31, 1998?

4. THIS COURT ORDERS that:

(a) the Supplemental Ontario Choline Chloride Action is hereby certified against UCB;

(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, British Columbia Court File, Vancouver Registry No. L023727 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 UCB 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?

5. THIS COURT DECLARES, for greater certainty, that a person may be a member of the Ontario Choline Chloride Settlement Class and/or the Ontario Niacin 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.

6. THIS COURT ORDERS AND ADJUDGES that the proposed settlement of the Ontario Niacin Action against Reilly and the Supplemental Ontario Choline Chloride Action against UCB as particularized in this judgment and the UCB/Reilly Settlement Agreement is fair, reasonable, adequate, and in the best interests of the members of the Ontario Niacin Settlement Class and the Ontario Choline Chloride Settlement Class.

7. THIS COURT ORDERS that the UCB/Reilly 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.

8. THIS COURT ORDERS AND DECLARES that each Ontario Releasor in these actions has released and shall be conclusively deemed to have fully, finally and forever released the Reilly Releasees and the UCB 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 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 Claims.

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

10. THIS COURT ORDERS AND DECLARES that each member of the Ontario Niacin Settlement Class and the Ontario Choline Chloride Settlement Class in these actions 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 Reilly Releasees or the UCB Releasees in respect of or in relation to the Released Ontario Claims.

11. THIS COURT ORDERS that:

- (a) all claims for contribution, indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Ontario Claims, which were or could have been brought against a UCB Releasee by DCV Inc. or Ducoa L.P. or any other person or party, or by any UCB Releasee against DCV Inc. or Ducoa L.P., are barred, prohibited and enjoined in accordance with the terms of this paragraph (unless such claim is made in respect of a claim by a person who has validly opted out of the Ontario Choline Chloride Settlement Class);

- (b) the plaintiffs shall restrict their joint and several claims against DCV Inc. and Ducoa L.P. such that they shall be entitled to claim and recover from DCV Inc. and Ducoa L.P., on a joint and several basis, only:
 - (i) those damages, if any, arising from their sales; or
 - (ii) those damages, if any, allocable to their conduct (but not necessarily their sales); and
 - (iii) those punitive damages, if any, allocable to their conduct;

- (c) DCV Inc. and Ducoa L.P. may seek an order from the court providing for discovery from UCB as deemed appropriate by the court; and

- (d) DCV and Ducoa L.P. may effect service of the motion(s) referred to in paragraph 10(c) on UCB by service on counsel of record for UCB.

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

13. THIS COURT ORDERS that each member of the Ontario Niacin Settlement Class and/or the Ontario Choline Chloride Settlement Class who elects to opt out of these actions 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.

14. THIS COURT ORDERS AND DECLARES that this judgment, including the UCB/Reilly Settlement Agreement, is binding upon each member of the Ontario Niacin Settlement Class and/or the Ontario Choline Chloride Settlement Class who does not opt out of these actions 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 these actions. And, for greater certainty, this judgment, including the UCB/Reilly Settlement Agreement, is binding upon each Direct Purchaser and each Distributor of niacin (Vitamin B3) who is a member of the Ontario Niacin Settlement Class and 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 whether or not such person submits a claim to the Administrator, whether or not such person is determine to be eligible to receive a distribution or whether the claim is accepted in whole or in part.

15. 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) and/or each member of the Ontario Niacin Settlement Class who is a Direct Purchaser or Distributor of niacin (Vitamin B3) shall submit a claim to the Administrator, 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.

16. 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. or Ducoa L.P. in the Ontario, Choline Chloride Action.

17. THIS COURT ORDERS AND DECLARES that:

- (a) \$37,500 for SCSD's fees relating to the UCB/Reilly 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 Direct Purchaser Fund, Intermediate Purchaser Fund and Consumer Fund.

18. THIS COURT ORDERS AND ADJUDGES that, save as aforesaid, these actions be and are hereby dismissed against UCB, UCB Chemicals Corporation and Reilly without costs and with prejudice.

ENTERED AT TORONTO
CIVIL
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... NO.:
APR - 5 2005
... NO.:
AS DEPOSED
À TITRE DE DOCUMENT NO.:
PER/PAR:

April 5, 2005

Peter A. Cumming J.
JUSTICE

APPENDIX 1

UCB/REILLY SETTLEMENT AGREEMENT

Made as of the 23rd day of February, 2005

Between

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

and

**UCB S.A.
Reilly Industries Inc.**

RECITALS

- A. Proceedings have been commenced in British Columbia, Ontario and Quebec under each province's respective class proceedings legislation which allege that UCB 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. Proceedings have been commenced in British Columbia, Ontario and Quebec under each province's respective class proceedings legislation which allege that Reilly 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 niacin (Vitamin B3), in Canada.
- C. And whereas an Amended Settlement Agreement has been entered into by the plaintiffs and others relating to the Choline Chloride Actions, the Niacin Actions and other actions in respect of choline chloride (Vitamin B4), niacin (Vitamin B3) and other Vitamins.
- D. And whereas an Akzo Settlement Agreement has been entered into by some of the plaintiffs relating to the Choline Chloride Actions.

E. And whereas UCB wishes to settle all claims made against it in the Quebec Action and the Supplemental Choline Chloride Actions.

F. And whereas Reilly also wishes to settle all claims made against it in the Niacin Actions.

G. And whereas the members of the Choline Chloride Settlement Class and of the Niacin Settlement Class are Releasors under the Amended Settlement Agreement and are entitled to claim thereunder or will benefit from the cy prés distributions thereunder.

SECTION 1 – DEFINITIONS

In this agreement, including the Recitals and Schedules hereto:

- (1) ***Akzo Settlement Agreement*** means the settlement agreement made in the Choline Chloride Actions as of the 6th day of January, 2005 by some of these plaintiffs and Akzo Nobel Chemicals BV.
- (2) ***Amended Settlement Agreement*** means the settlement agreement made in the Choline Chloride Actions, the Niacin 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.
- (3) ***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.
- (4) ***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.
- (5) ***Courts*** means the Supreme Court of British Columbia, the Ontario Superior Court of Justice and the Quebec Superior Court.
- (6) ***Excluded Persons*** means, in respect of the Supplemental Choline Chloride Actions and the Niacin 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.

- (7) **Final Order** means a final judgment entered by any of the Courts in respect of the certification of the Supplemental Choline Chloride Actions or the Niacin Actions as a class proceeding and the approval of this UCB/Reilly 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.
- (8) **Niacin Actions** means British Columbia Court File, Vancouver Registry, No. L003045, Ontario Court File No. 00-CV-200044CP and Quebec Court (District of Montreal) Action No. 500-06-000083-994.
- (9) **Niacin Settlement Class Members** means all persons in Canada who purchased in Canada niacin (Vitamin B3) and products that directly or indirectly contain or are derived from niacin (Vitamin B3) or from animals which had consumed niacin (Vitamin B3) from January 1, 1992 to March 31, 1998 except the Excluded Persons.
- (10) **Parties** means the UCB/Reilly Settling Plaintiffs, UCB and Reilly.
- (11) **Quebec Action** means Quebec Court (District of Montreal) Action No. 500-06-000083-994.
- (12) **Reilly** means Reilly Industries Inc..
- (13) **Reilly Releasees** means Reilly, 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.
- (14) **Reilly Settlement Amount** means \$32,728.
- (15) **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 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) or niacin (Vitamin B3) or products that directly or indirectly contain or are derived from choline chloride (Vitamin B4) or niacin (Vitamin B3) or from animals which

had consumed choline chloride (Vitamin B4) or niacin (Vitamin B3), or relating to any conduct alleged (or which could have been alleged) in the Choline Chloride Actions, the Supplemental Choline Chloride Actions or the Niacin 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) or niacin (Vitamin B3) or products that directly or indirectly contain or are derived from choline chloride (Vitamin B4) or niacin (Vitamin B3) or from animals which had consumed choline chloride (Vitamin B4) or niacin (Vitamin B3).

(16) **Releasers** means jointly and severally, the UCB/Reilly Settling Plaintiffs, the Choline Chloride Settlement Class Members and the Niacin Settlement Class Members.

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

(18) **UCB** means UCB S.A.

(19) **UCB Releasees** means UCB S.A., UCB Chemicals Corporation and UCB Inc., their 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.

(20) **UCB/Reilly Settlement Agreement** means this agreement.

(21) **UCB Settlement Amount** means \$250,000.

(22) **UCB/Reilly Settling Plaintiffs** means the plaintiffs in the Choline Chloride Actions, the Supplemental Choline Chloride Actions and the Niacin Actions.

SECTION 2 – RECITALS

The Recitals hereto are true and form part of this UCB/Reilly Settlement Agreement.

SECTION 3 – SETTLEMENT APPROVAL

3.1 Motion for Approval

Contemporaneous with the motions to approve the Amended Settlement Agreement and the Akzo Settlement Agreement in British Columbia, Ontario and Quebec the UCB/Reilly

Settling Plaintiffs shall bring motions before the Courts to approve the UCB/Reilly 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 UCB/Reilly Settlement Agreement, then it shall be null and void and of no force and effect.

SECTION 4 – PAYMENT OF THE SETTLEMENT AMOUNTS

4.1 UCB Settlement Amount

UCB shall pay the UCB Settlement Amount in full satisfaction of the Released Claims to the Escrow Agent appointed under the Amended Settlement Agreement for payment into the Account by the date that is 5 business days after the execution of this UCB/Reilly Settlement Agreement by or on behalf of all Parties.

4.2 Reilly Settlement Amount

Reilly shall pay the Reilly Settlement Amount in full satisfaction of the Released Claims to the Escrow Agent appointed under the Amended Settlement Agreement for payment into the Account by the date that is 5 business days after the execution of this UCB/Reilly Settlement Agreement by or on behalf of all Parties.

4.3 Obligations Several Only

The obligations of UCB and Reilly to each pay its respective Settlement Amount are several only, and not joint and several, and neither shall for any reason be responsible for or the subject of a claim regarding any deficiency in payment by the other.

SECTION 5 – NOTIFICATION OF THIS UCB/REILLY SETTLEMENT AGREEMENT

5.1 Notice

- (1) The Parties intend that:
 - (a) the notification of the motions for approval of the Amended Settlement Agreement as provided therein be notice of the motions for approval of the UCB/Reilly Settlement Agreement;

- (b) any notification of the approval of the Amended Settlement Agreement be notice of any approval of the UCB/Reilly Settlement Agreement; and
- (c) the UCB/Reilly Settlement Agreement and any UCB/Reilly Settlement Agreement approval orders be posted on the website at www.vitaminsclassaction.com.

(2) If any one of the Courts requires further or other notification of the UCB/Reilly Settlement Agreement and/or of any approval of the UCB/Reilly Settlement Agreement, then UCB and Reilly shall pay all the costs of any such advertising.

SECTION 6 – DISTRIBUTION OF THE SETTLEMENT AMOUNTS

UCB and Reilly shall each pay their respective Settlement Amount to the Administrator appointed under the Amended Settlement Agreement to be added:

- (a) \$141,364 to the Intermediate Purchaser Fund; and
- (b) \$141,364 to the Consumer Fund;

and distributed in accordance with the Amended Settlement Agreement.

SECTION 7 – RELEASES

7.1 UCB Releases

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

7.2 Reilly Releases

Upon receipt by the Administrator of the Reilly Settlement Amount, the Releasers forever and absolutely release the Reilly 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 of the Niacin Settlement Class Members and the 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 Niacin Releasees or the UCB 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 Niacin Releasees or the UCB Releasees in respect of or in relation to the Released Claims.

SECTION 9 –BAR ORDER

The Courts shall grant a bar order in favour of UCB as follows:

- (a) all claims for contribution, indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought against a UCB Releasee by DCV Inc. or Ducoa L.P. or any other person or party, or by any UCB Releasee against DCV Inc. or Ducoa L.P., are barred, prohibited and enjoined in accordance with the terms of this paragraph (unless such claim is made in respect of a claim by a person who has validly opted out of the Choline Chloride Settlement Class);
- (b) the plaintiffs in the Choline Chloride Actions and the Quebec Action shall restrict their joint and several claims against DCV Inc. and Ducoa L.P. such that they shall be entitled to claim and recover from DCV Inc. and Ducoa L.P., on a joint and several basis, only:
 - (i) those damages, if any, arising from their sales; or
 - (ii) those damages, if any, allocable to their conduct (but not necessarily their sales); and
 - (iii) those punitive damages, if any, allocable to their conduct;
- (c) DCV Inc. and Ducoa L.P. may seek an order from the Court(s) providing for such discovery from UCB as deemed appropriate by the Court(s); and
- (d) DCV Inc. and Ducoa L.P. may effect service of the motion(s) referred to in paragraph 9(c) on UCB by service on counsel of record for UCB.

SECTION 10 – CLAIMS AGAINST OTHER ENTITIES RESERVED

Except as provided herein, this UCB/Reilly 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 UCB Releasees. And, UCB specifically acknowledges that the plaintiffs and the members of the Choline Chloride Settlement Class intend to continue the Choline Chloride Actions against DCV, Inc. and Ducoa L.P..

SECTION 11 – NO ADMISSION OF LIABILITY

Neither this UCB/Reilly 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 Supplemental Choline Chloride Actions, the Quebec Action or the Niacin Actions. Neither this UCB/Reilly Settlement Agreement, nor anything contained herein, shall be used or construed as an admission of any fault, omission, liability or wrongdoing in any statement, release or written document or financial report.

SECTION 12 – CERTIFICATION FOR SETTLEMENT ONLY

The Parties agree that the Supplemental Choline Chloride Actions, the Quebec Action and the Niacin Actions shall be certified as class proceedings solely for purposes of settlement and the approval of this UCB/Reilly Settlement Agreement by the Courts.

SECTION 13 – MISCELLANEOUS

13.1 Headings, etc.

In this UCB/Reilly Settlement Agreement:

- (a) the division of this UCB/Reilly Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this UCB/Reilly Settlement Agreement;
- (b) the terms “this UCB/Reilly Settlement Agreement”, “hereof”, “hereunder” and similar expressions refer to this UCB/Reilly Settlement Agreement and not to any particular section or other portion of this UCB/Reilly Settlement Agreement;

- (c) all amounts referred to are in lawful money of Canada; and
- (d) “person” means any legal entity including, but not limited to, individuals, corporations, sole proprietorships, general or limited partnerships, limited liability partnerships, limited liability companies, or governmental or quasi-governmental entities, except when person is used in the phrase “natural persons” in which case it shall mean only individuals.

13.2 Governing Law

This UCB/Reilly Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.

13.3 Entire Agreement

This UCB/Reilly Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this UCB/Reilly Settlement Agreement, unless expressly incorporated herein. This UCB/Reilly Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto and any such modification or amendment must be approved by the Courts with jurisdiction over the matter to which the amendment relates.

13.4 Survival

The representations and warranties contained in this UCB/Reilly Settlement Agreement shall survive its execution and implementation.

13.5 Counterparts

This UCB/Reilly Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile signature shall be deemed an original signature for purposes of executing this UCB/Reilly Settlement Agreement.

13.6 Negotiated Agreement

This UCB/Reilly Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this UCB/Reilly Settlement Agreement shall have no force and effect. The Parties agree that the language contained in or not contained in previous drafts of this UCB/Reilly Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this UCB/Reilly Settlement Agreement.

13.7 Schedules

The Schedules annexed hereto form part of this UCB/Reilly Settlement Agreement.

13.8 Acknowledgements

Each of the Parties hereby affirms and acknowledges that:

- (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood this UCB/Reilly Settlement Agreement;
- (b) the terms of this UCB/Reilly Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
- (c) he, she or the Party's representative fully understands each term of this UCB/Reilly Settlement Agreement and its effect; and
- (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party with respect to the first Party's decision to execute this UCB/Reilly Settlement Agreement.

13.9 Authorized Signatures

Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this UCB/Reilly Settlement Agreement.

13.10 Notice

Where this UCB/Reilly Settlement Agreement requires a notice or any other communication or document to be given, such notice, communication or document shall be provided by email, facsimile or letter by overnight delivery to the representative of the person to whom notice is being provided, as identified below:

For UCB/Reilly Settling Plaintiffs:

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Barristers and Solicitors
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Windsor ON N9A 6V1

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Facsimile: 519-561-6203
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London ON N6A 3V8

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For Reilly:

Jennifer Badley
Barrister and Solicitor
3388 Ingram Road
Mississauga ON L5L 4M9

Phone: 905-607-0468
Fax: 905-607-4736
Email: osbad@on.aibn.com

The Parties have executed this UCB/Reilly Settlement Agreement as of the 23rd day of February, 2005.

Glen Ford

“Charles Wright for Glen Ford”

Fleming Feed Mill Ltd.

By:

“Charles Wright for Fleming Feed”

Name:

Title:

Marcy David

“H. Rumble Peterson”
Counsel

Aliments Breton Inc.

By:

“H. Rumble Peterson”
Name: H. Rumble Peterson
Title: Counsel

Kristi Cappa

“Charles Wright for Kristi
Cappa”

Wendy Weberg

“J.J. Camp for Wendy Weberg”

Ritchie Smith Feeds, Inc.

By:

“J.J. Camp for Ritchie Smith
Feeds, Inc.”

Name:
Title:

André Bernard Guévin

“Charles Wright for André Bernard
Guévin for Jean-Pierre Fafard”

Option Consommateurs

By:

“Charles Wright for Jean-Pierre
Fafard for Option
Consommateurs”

Name:
Title:

UCB S.A.

By:

“Don Houston”

Name: Donald B. Houston
Title: Canadian Counsel

Reilly Industries Inc.

By:

“J.K. Badley”

Name: J.K. Badley
Title: Counsel for Reilly
Industries Inc.

SCHEDULE 1

amended January 6, 2005

AMENDED
CANADIAN
VITAMINS CLASS ACTIONS
NATIONAL SETTLEMENT AGREEMENT

Made as of the 1st day of November, 2004

Amended as of the 6th day of January, 2005

Between

Glen Ford
Fleming Feed Mill Ltd.
Marcy David
Aliments Breton Inc.
Roger Awad
Mary Helen Awad
Kristi Cappa
Ritchie Smith Feeds, Inc.
Wendy Weberg
Option Consommateurs
André Bernard Guévin
Yves Laferrière
Top Shelf Feeds Inc.

and

Aventis Animal Nutrition S.A.
BASF Aktiengesellschaft
Bioproducts, Incorporated
Chinook Group Limited
Degussa Canada Inc.
Daiichi Pharmaceutical Company, Ltd.
Eisai Co., Ltd.
F. Hoffmann-La Roche Ltd.
Lonza AG
Merck KGaA
Nepera, Inc.
Roussel Canada Inc.
Sumitomo Chemical Co. Ltd.
Takeda Pharmaceutical Company Limited
Tanabe Seiyaku Co. Ltd.

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**CANADIAN
VITAMINS CLASS ACTIONS
NATIONAL SETTLEMENT AGREEMENT**

RECITALS

- A. Proceedings have been commenced in British Columbia, Ontario and Quebec under each province's respective class proceedings legislation which allege that the Defendants named in each Proceeding 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, Vitamins in Canada.
- B. The Dismissed Actions, which were commenced in British Columbia, Ontario and Quebec, have been dismissed or discontinued by earlier orders of the Courts.
- C. The Settling Defendants, using their best efforts, have estimated the Purchase Price of all Vitamins sold in Canada during the Purchase Periods to be \$950 million.
- D. During the pendency of some of the Proceedings, counsel for some of the Parties discussed the merits of the claims and the defences thereto, and reached an agreement in principle on settlement payment and scope in April 2002. Thereafter, counsel for some of the Parties continued with discussions that resulted in this Settlement Agreement.
- E. The Settling Plaintiffs have reviewed the terms of this Settlement Agreement. Class Counsel have fully explained the terms of this Settlement Agreement to them. Based on the analyses of the facts and law applicable to the claims of the Settling Plaintiffs, and having regard to the burdens and expense in prosecuting the Settling Proceedings, including the risks and uncertainties associated with trials and appeals, the Settling Plaintiffs and Class Counsel have concluded that this Settlement Agreement is fair, reasonable and in the best interests of the Settling Plaintiffs and the classes they seek to represent.
- F. Despite their belief that they are not liable for the claims asserted in the Settling Proceedings and have defences thereto, the Settling Defendants are entering into this Settlement Agreement in order to achieve a final resolution of all claims asserted or which could have been asserted against them or their Affiliated Defendants by the Settling Plaintiffs, to avoid the expense, inconvenience and burden of litigation, and the related distraction and diversion of their

personnel and resources, to put to rest this controversy and to avoid the risks inherent in uncertain litigation.

G. The Parties therefore wish to, and hereby do, finally resolve on a national basis, without prejudice or admission of liability, all of the Settling Proceedings as against the Settling Defendants and their Affiliated Defendants.

H. For the purposes of settlement only and contingent on approvals by the Courts, as provided for in this Settlement Agreement, the Parties have consented to certification of the Settling Proceedings as class proceedings and have consented to a Settlement Class and a Common Issue in each of the Settling Proceedings.

I. The Settling Plaintiffs assert that they are adequate class representatives for the Settlement Classes and will seek to be appointed representative plaintiffs in their respective Settling Proceedings.

FOR VALUE RECEIVED, the Parties agree as follows:

SECTION 1 – INTERPRETATION

1.1 Definitions

In this Settlement Agreement, including the Recitals and Schedules hereto:

- (1) ***Account*** means an interest bearing trust account at a Canadian bank in Ontario under the control of the Escrow Agent.
- (2) ***Administration Expenses*** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Settling Plaintiffs, the Administrator, the Escrow Agent, the Referee, the Management Committee or otherwise, for the approval, implementation and operation of this Settlement Agreement, including Non-Refundable Expenses, but excluding Class Counsel Fees.
- (3) ***Administration Expenses Reserve*** means the sum of \$250,000 which will be held by the Administrator for payment of final Administration Expenses.
- (4) ***Administrator*** means Deloitte & Touche, LLP and its successor appointed, from time to time, by the Courts.
- (5) ***Affiliated Defendants*** means the entities listed and defined for the purposes of this Settlement Agreement in column 2 of Schedule C.

- (6) ***Biotin Actions*** means Ontario Court File No. 00-CV-202080CP and British Columbia Court File, Vancouver Registry, No. L003307.
- (7) ***British Columbia Counsel*** means Camp Fiorante Matthews.
- (8) ***British Columbia Court*** means the Supreme Court of British Columbia.
- (9) ***Bulk Vitamins Actions*** means Ontario Court File No. 00-CV-200045CP and British Columbia Court File, Vancouver Registry, No. L003292.
- (10) ***Choline Chloride Actions*** means Ontario Court File No. 00-CV-198647CP and British Columbia Court File, Vancouver Registry, No. L002690.
- (11) ***Choline Chloride Contribution*** means, for any Settling Defendant, the amount (if any) set out in column 2 of Schedule B.
- (12) ***Class Counsel*** means British Columbia Counsel, Ontario Counsel, Quebec Counsel and Desmeules.
- (13) ***Class Counsel Fees*** means the fees, disbursements, costs, GST and other applicable taxes or charges of Class Counsel, including any obligations for contributions that any Settling Plaintiff, Settlement Class or Class Counsel may have to the Fonds for any advances made to them in any Settling Proceeding.
- (14) ***Class Counsel Representative*** means Harvey T. Strosberg, Q.C..
- (15) ***Class Vitamins*** means, in respect of each Settlement Class, the Vitamin(s) listed in Schedule A and products that directly or indirectly contain or are derived from such Vitamins or from animals which had consumed such Vitamins, in respect of the Settling Proceeding to which the Settlement Class relates.
- (16) ***Common Issue*** in each Settling Proceeding means: Did the Settling Defendant(s) and its/their Affiliated Defendant(s) in the Settling Proceeding agree to fix, raise, maintain or stabilize the prices of, or allocate markets and customers for, the Vitamin(s) in Canada in the Purchase Period(s)?
- (17) ***Consumer*** means any natural person who purchased Vitamin Product(s) during the Purchase Period(s) for personal consumption or use.
- (18) ***Consumer Fund*** means a fund described in section 6.
- (19) ***Courts*** means the British Columbia Court, the Ontario Court and the Quebec Court.

- (20) **Defaulting Settling Defendant** means any Settling Defendant who fails to pay its Settlement Share to the Escrow Agent for deposit into the Account on or before the Deposit Date or to remedy such default to the sole satisfaction of the Settling Plaintiffs.
- (21) **Defendants** means, in respect of each Proceeding, the individuals and entities named as defendants in that Proceeding as set out in Schedule A.
- (22) **Deposit Date** means the date which is 30 days after the execution of this Settlement Agreement by or on behalf of all Parties other than Lonza AG and for Lonza AG means the date which is 2 business days after the execution of the January 6, 2005 amendment to this Settlement Agreement by or on behalf of all Parties.
- (23) **Desmeules** means Siskinds, Desmeules, counsel for the Settling Plaintiffs in Quebec Court (District of Montreal) Action No. 500-06-000233-045 (formerly Quebec Court (District of Quebec) Action No. 200-06-000011-000) (methionine).
- (24) **Direct Purchaser** means a person, other than a Distributor, who purchased Vitamins in Canada during the Purchase Periods directly from a Defendant or from a Distributor.
- (25) **Direct Purchaser Fund** means a fund described in section 6.
- (26) **Dismissed Actions** means Ontario Court File No. 99-GD-46719 (Windsor) and No. 771/99 (Chatham), British Columbia Court File, Vancouver Registry, No. C994010 and Quebec Court (District of Quebec) Action No. 200-06-000009-004, No. 200-06-000010-002, No. 200-06-000012-016, No. 200-06-000014-012 and No. 200-06-000015-019.
- (27) **Distributor** means a person who purchased Vitamins in Canada during the Purchase Periods directly from a Defendant and only resold all of the purchased Vitamins without either further processing them or including them in any other product.
- (28) **Escrow Agent** means Deloitte & Touche, LLP and its successor appointed, from time to time, by the Courts, which shall act as holder of the Account.
- (29) **Excluded Customer** means any person who is the beneficiary of a settlement of a claim, relating to some or all Vitamins, by a Direct Purchaser or Distributor with a Settling Defendant or its Affiliated Defendants prior to or separate from this Settlement Agreement.
- (30) **Excluded Person** means, in respect of each Proceeding, 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.
- (31) **Expense Fund** means a fund described in section 6.

- (32) **Final Order** means a final judgment entered by a Court in respect of the certification of a Settling Proceeding as a class proceeding and the approval of this 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.
- (33) **Fonds** means the Fonds d'aide aux recours collectifs in Quebec.
- (34) **Intermediate Purchaser** means a person, other than a Direct Purchaser, a Distributor or a Consumer, who purchased Vitamin Products during the Purchase Periods.
- (35) **Intermediate Purchaser Fund** means a fund described in section 6.
- (36) **Investment Directive** means that such monies as are to be held pursuant to this Settlement Agreement shall be held in trust in an interest bearing account with one of the Schedule I banks and the interest earned thereon shall be equivalent to or greater than interest earned on Treasury Bills.
- (37) **Management Committee** means William L. Vanveen, appointed as the Settling Defendants' representative, and J.J. Camp, Q.C., Harvey T. Strosberg, Q.C. and Claude Desmeules, appointed on behalf of the Settlement Classes, and their successors appointed, from time to time, by the Courts.
- (38) **Methionine Actions** means Ontario Court File No. 00-CV-201723CP, British Columbia Court File, Vancouver Registry, No. L003124 and Quebec Court (District of Montreal) Action No. 500-06-000233-045 (formerly Quebec Court (District of Quebec) Action No. 200-06-000011-000).
- (39) **Methionine Fund** means a fund described in section 6.
- (40) **Niacin Actions** means Ontario Court File No. 00-CV-200044CP and British Columbia Court File, Vancouver Registry, No. L003045.
- (41) **Non-Refundable Expenses** means certain preliminary expenses to be paid from the Settlement Amount as provided in this Settlement Agreement.
- (42) **Non-Settling Defendant** means a Defendant who is not a Settling Defendant and who is not an Affiliated Defendant of a Settling Defendant and, for greater certainty, includes Degussa Canada Inc. and its Affiliated Defendants with respect to the Methionine Actions and any Defaulting Settling Defendant against whom this Settlement Agreement is terminated by the Settling Plaintiffs.
- (43) **Notice Plan** means the plan for notification outlined in Schedule J.

- (44) **Ontario Counsel** means Sutts, Strosberg LLP; Siskind, Cromarty, Ivey & Dowler LLP; and Allen Cooper.
- (45) **Ontario Court** means the Ontario Superior Court of Justice.
- (46) **Opt Out Date** means a date and time to be fixed by the Courts.
- (47) **Opt Out Refund** means a refund of part of the Settlement Amount in respect of Direct Purchasers or Distributors who purchased Vitamins in Canada from a Settling Defendant or its Affiliated Defendants and who validly opt out in accordance with this Settlement Agreement.
- (48) **Opt Out Threshold** means an amount agreed upon by the Parties in a separate document which will be executed by the Parties, delivered to the Courts under seal and kept confidential by the Parties and the Courts.
- (49) **Other Actions** means actions or proceedings (other than the Proceedings) relating to Released Claims commenced by a Settlement Class Member, including Ontario Court File No. 52492/99 (Newmarket), No. 52537/99 (Newmarket), No. 53736/99 (Newmarket), No. 99-CV-172401 (Toronto); Quebec Court (District of Montreal) Action No. 500-06-000090-999; and any other proposed class actions.
- (50) **Parties** means the Settling Plaintiffs and the Settling Defendants.
- (51) **Pre-Deposit Interest** means, for each Settling Defendant other than Merck KGaA, interest on its proportion of the Settlement Amount less its Settlement Credits as set out in Schedule B, if any, from and after March 1, 2003 at the rate of 3.86% per year calculated daily plus interest on those Settlement Credits, if any, from and after March 1, 2003 at the rate of 1.93% per year calculated daily and means, for Merck KGaA, the interest actually earned in its solicitors' trust account on the principal amount of \$700,000 from and after November 11, 2001.
- (52) **Premix** means any product containing one or more Vitamins in combination with any other substances (such as other active ingredients or dilution agents) sold as a premixed formulation.
- (53) **Proceeding** means any of the Settling Proceedings or Ontario Court File No. 40610/02 (London) or No. 42267CP (London) or British Columbia Court File, Vancouver Registry, No. L023727 or No. L032297.
- (54) **Purchase Price** means the aggregate amount paid by the Direct Purchaser or Distributor for Vitamins purchased and delivered in Canada during the Purchase Periods, excluding all other charges such as delivery charges and taxes except that, with respect to Premix, it means 35% of the

aggregate amount paid by the Direct Purchaser or Distributor for Premix purchased and delivered in Canada during the Purchase Period, excluding all other charges such as delivery charges and taxes and except that, with respect to an Excluded Customer, it means the unsettled portion, if any, of the aggregate amount paid for Vitamins (or 35% of the aggregate amount paid for Premix) purchased and delivered in Canada during the Purchase Periods, excluding all other charges such as delivery charges and taxes.

(55) **Purchase Period** means, in respect of each Vitamin, the period indicated for that Vitamin in Schedule A.

(56) **Quebec Action** means Quebec Court (District of Montreal) Action No. 500-06-000083-994, being an action on behalf of Consumers only.

(57) **Quebec Counsel** means Sylvestre Charbonneau Fafard and Unterberg Labelle LeBeau & Morgan.

(58) **Quebec Court** means the Quebec Superior Court.

(59) **Referee** means Reva E. Devins and her successor appointed, from time to time, by the Courts.

(60) **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 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 of Vitamin Products in Canada, or relating to any conduct alleged (or which could have been alleged) in the Proceedings, including, without limitation, any such claims which have been asserted (whether by way of a Proceeding, Dismissed Action, Other Action or otherwise), would have been asserted or could have been asserted, whether in Canada or elsewhere, as a result of the purchase of Vitamin Products in Canada.

(61) **Releasees** means, jointly and severally, those Settling Defendants that make the contribution required of them under the terms of this Settlement Agreement, their Affiliated Defendants and all of the Settling Defendants' and Affiliated Defendants' respective present and

former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives; and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.

(62) **Releasors** means, jointly and severally, the Settling Plaintiffs and the Settlement Class Members and all of their respective present and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives; and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing.

(63) **Reporting Date** means a date to be fixed by the Courts.

(64) **Settlement Agreement** means this agreement, including the Recitals and Schedules.

(65) **Settlement Amount** means \$~~132.2~~132.2~~132.45~~ million, including an amount of \$10 million on account of Class Counsel Fees and Administration Expenses.

(66) **Settlement Class** means, in respect of each Settling Proceeding, the class described for that Settling Proceeding in Schedule A.

(67) **Settlement Class Member** means a member of a Settlement Class who does not validly opt out of that Settlement Class under this Settlement Agreement.

(68) **Settlement Credit** means a credit in respect of a settlement with an Excluded Customer.

(69) **Settlement Share** means, for each Settling Defendant, the amount set out in column 1 of Schedule B, less any applicable Settlement Credits, plus Pre-Deposit Interest.

(70) **Settling Defendants** means the Defendants listed and defined for the purposes of this Settlement Agreement in column 1 of Schedule C but, for greater certainty, does not include Degussa Canada Inc. with respect to the Methionine Actions and any Defaulting Settling Defendant against whom this Settlement Agreement is terminated by the Settling Plaintiffs.

(71) **Settling Plaintiffs** means the plaintiffs in the Settling Proceedings, except for VitaPharm Canada Ltd., in Ontario Court File No. 00-CV-202080CP (biotin), No. 00-CV-200045CP (bulk vitamins) and No. 00-CV-200044CP (niacin); and except for Ritchie Smith Feeds Inc. in British Columbia Court File, Vancouver Registry, No. L003124 (methionine).

(72) **Settling Proceedings** means the Biotin Actions, Bulk Vitamins Actions, Choline Chloride Actions, Methionine Actions, Niacin Actions and the Quebec Action.

(73) **Vitamin Products** means Vitamins and products that directly or indirectly contain or are derived from Vitamins or from animals which had consumed Vitamins.

(74) **Vitamins** means any and all products of the Defendants listed in Schedule A, as well as all blends and forms of these products, and includes Premix.

SECTION 2 – CONDITION PRECEDENT: ONTARIO COURT APPROVAL

Except as provided in section 15, this Settlement Agreement shall be null and void and of no force and effect unless the Ontario Court approves this Settlement Agreement in each of the Settling Proceedings commenced in Ontario and the order so given becomes a Final Order.

SECTION 3 – SETTLEMENT APPROVAL

3.1 Motions for Approval

As soon as practicable after execution of this Settlement Agreement, the Settling Plaintiffs shall bring motions before the Courts:

- (d) for orders substantially in the form set out in Schedules D1, D2, D3 and D4 scheduling an approval hearing in each of the Settling Proceedings commenced in their respective jurisdictions; and
- (e) for orders in the forms set out in Schedules E1, E2, E3 and E4 certifying each of the Settling Proceedings commenced in their respective jurisdictions as a class proceeding and approving this Settlement Agreement provided, however, that the clauses set out below need only be substantially in the form set out at the relevant schedule:
 - (i) Schedule E1—clauses 8, 10, 11, 12, 22, 23, 26, 27, 28, 29, 30(b), 30(c), 31, 33, 34, 35 and 37;
 - (ii) Schedule E2—clauses 8, 10, 11, 12, 19, 20, 23, 24, 25, 26, 27(b), 27(c), 28, 30, 31, 32 and 34;
 - (iii) Schedule E3—clauses 3, 5, 6, 7, 12, 13, 16, 17(b), 17(c), 18 and 20; and
 - (iv) Schedule E4—clauses 3, 5, 6, 7, 12, 13, 16, 17, 18(b), 18(c), 19, 21, 22 and 23.

3.2 Sequence of Motions

The Settling Plaintiffs in British Columbia and Quebec shall not proceed with motions to approve this Settlement Agreement in the Settling Proceedings commenced in their respective jurisdictions unless and until the Ontario Court approves this Settlement Agreement. The approval motions may be filed in British Columbia and Quebec, but British Columbia Counsel, Quebec Counsel and Desmeules agree to seek an adjournment of their approval hearings until after the Ontario Court renders its decisions on the motions for approval brought before it.

3.3 Effect of Non-Approval

Notwithstanding any other terms of this Settlement Agreement, the Settling Defendants may, in their sole and unfettered discretion, elect to terminate this Settlement Agreement in accordance with section 15 if either the British Columbia Court or the Quebec Court fails to approve this Settlement Agreement or any part thereof.

SECTION 4 – SETTLEMENT PAYMENT

4.1 Payment of Settlement Amount

(1) The Settling Defendants agree to pay the Settlement Amount plus Pre-Deposit Interest less any Settlement Credits in accordance with this Settlement Agreement, in full satisfaction of all of the Released Claims against the Releasees.

(2) Each Settling Defendant shall pay Pre-Deposit Interest on its proportion of the Settlement Amount to the date of deposit of its Settlement Share with the Escrow Agent.

4.2 Payment of Settlement Shares

Each Settling Defendant shall pay its Settlement Share to the Escrow Agent for deposit into the Account on or before the Deposit Date. The Escrow Agent shall advise Class Counsel and the Settling Defendants within 7 days after the Deposit Date of the Settlement Shares deposited by each Settling Defendant.

4.3 Obligations Several Only

The Settling Defendants' obligations to pay their respective Settlement Shares are several only, and not joint and several, and no Settling Defendant shall for any reason be responsible for or the subject of a claim regarding any deficiency by another Settling Defendant in paying that other Settling Defendant's Settlement Share.

4.4 Directions, Termination, Waiver or Motion for Judgment

- (1) The Settling Plaintiffs may, in their sole and unfettered discretion, bring a motion to the Courts for directions, unilaterally terminate this Settlement Agreement as against any Defaulting Settling Defendant, agree to waive the default, or move for judgment against any Defaulting Settling Defendant.
- (2) Notwithstanding any other terms of this Settlement Agreement, the Settling Plaintiffs may, in their sole and unfettered discretion, elect to terminate this Settlement Agreement as against all Settling Defendants if the monies owing by all Defaulting Defendants pursuant to Schedule B amount in the aggregate to more than \$5 million.
- (3) If the Settling Plaintiffs elect to exercise their right to terminate this Settlement Agreement, then Class Counsel shall give written notice of termination to the Settling Defendants and the Escrow Agent no later than 21 days after Class Counsel are provided with the information required pursuant to section 4.2.

4.5 Investment of Account

Subject to the payment of Non-Refundable Expenses as authorized by this Settlement Agreement, the Escrow Agent shall maintain the balance of the monies paid into the Account and shall invest the monies in accordance with the Investment Directive. The Escrow Agent shall not pay out any of the monies in the Account, except in accordance with the provisions of this Settlement Agreement, without an order of the Ontario Court made on notice to or on consent of the Parties. Provided however, that the Escrow Agent shall pay out of the monies in the Account any overpayments plus post-deposit interest.

4.6 Timing of Payment

The Escrow Agent shall, within 10 days after the date by which the Settling Defendants may terminate this Settlement Agreement without a termination having occurred, pay the principal amount and all accrued interest in the Account and/or transfer any assets in the Account to the Administrator and such payment or transfer shall constitute payment by the Settling Defendants of the Settlement Amount. The Escrow Agent shall give at least 7 days prior written notice to the Settling Defendants of any such payment or transfer.

4.7 Taxes on Interest

- (1) Subject to section 4.7(3), all taxes payable on any interest which accrues in the Account or otherwise in relation to the Settlement Amount, including any interest that accrued in Merck KGaA's solicitors' trust account on amounts held in respect of its proportion of the Settlement

Amount, shall be the responsibility of the Settlement Classes and shall be paid by the Escrow Agent or the Administrator from the Settlement Amount or by the Settlement Class Members as the Administrator shall deem appropriate.

(2) If, following the transfer of the monies in the Account to the Administrator, the Escrow Agent becomes liable to pay any tax on any interest earned on the Settlement Shares while deposited in the Account, the Administrator shall pay such taxes.

(3) If the Escrow Agent pays any portion of a Settlement Share to a Settling Defendant from the Account, the taxes payable on any interest on that portion that is returned to a Settling Defendant shall be the responsibility of that Settling Defendant.

SECTION 5 – NON-REFUNDABLE EXPENSES

5.1 Payments

(1) On behalf of the Settling Defendants, the Escrow Agent shall pay, out of the Account, the following Non-Refundable Expenses which shall constitute non-refundable advances against the Settlement Amount, net of Settlement Credits:

- (a) the cost of the first notice given in accordance with section 13.1 to a maximum of \$150,000;
- (b) the cost of the second notice given in accordance with section 13.2 to a maximum of \$150,000;
- (c) if necessary, the cost of the termination notice given in accordance with section 13.3 to a maximum of \$50,000;
- (d) the reasonable costs for the appointment of a friend of the Court in each jurisdiction to act as objectors' counsel to a maximum of \$15,000;
- (e) if the Courts appoint an Administrator and, thereafter, declare this Settlement Agreement null and void, the reasonable costs for the fees, disbursements and GST of the Administrator, as fixed by the Courts, to a maximum of \$125,000;
- (f) the reasonable costs for the creation of and software support for a settlement website for Settlement Class Members by Class Counsel and the Administrator to a maximum of \$50,000. For greater certainty any amount the Administrator may become eligible for under this section shall be in addition to the fees provided for in sections 5.1(1)(e) or 17.1(3);

- (g) the fees and expenses of economists retained as experts by Class Counsel to assess the fairness of this Settlement Agreement for the purposes of the approval hearings before the Courts to a maximum of \$250,000, as and when invoices are rendered by the economists, provided however that the economists shall not be paid more than \$50,000 for fees and expenses incurred from December 1, 2002, being the date the economists began working on the fairness of the draft Settlement Agreement, to the date this Settlement Agreement is executed by or on behalf of all Parties; and
 - (h) the costs to translate this Settlement Agreement into French to a maximum of ~~\$15,000~~15,000~~20,000~~.
- (2) The Escrow Agent shall give 7 days prior written notice to the Settling Defendants of any proposed payment pursuant to section 5.1(1), together with any document or other material available to support such payment. The Escrow Agent shall then make such payment unless F. Hoffmann-LaRoche Ltd., together with either one of Aventis Animal Nutrition S.A. or BASF Aktiengesellschaft, objects in writing within 7 days.
- (3) If there is a dispute concerning any payment proposed pursuant to section 5.1(1), the Class Counsel Representative may apply to Reva E. Devins as arbitrator for a determination of the dispute, in a summary manner pursuant to a procedure to be determined by the arbitrator without a right of appeal, on notice to the Settling Defendants.
- (4) In no event shall the Escrow Agent or the Settling Defendants be required to pay more than the maximum amounts set out in section 5.1(1) on account of Non-Refundable Expenses prior to the transfer of the Account to the Administrator.

SECTION 6 – DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST

6.1 Division Into Five Funds

- (1) Subject to the adjustments specified below, the Settlement Amount will be notionally allocated into five funds as follows:
- (a) a Direct Purchaser Fund of \$94.~~2245~~ million;
 - (b) a Methionine Fund of \$6 million;
 - (c) an Intermediate Purchaser Fund of \$11 million;

- (d) a Consumer Fund of \$11 million; and
 - (e) an Expense Fund of \$10 million.
- (2) The Settlement Amount allocated to the Direct Purchaser Fund and the Methionine Fund shall be reduced by the amount of the Settlement Credits and the Opt Out Refunds applicable to each. The Intermediate Purchaser Fund, the Consumer Fund and the Expense Fund shall not be reduced by reason of any Settlement Credits or Opt Out Refunds.
- (3) The Non-Refundable Expenses shall be charged and allocated to the Expense Fund.
- (4) The Administration Expenses and Class Counsel Fees shall be charged and allocated as provided in sections 6.6 and 18.

6.2 Direct Purchaser Fund

- (1) Settlement Class Members who are Direct Purchasers or Distributors of Vitamins (other than methionine) may claim compensation from the Direct Purchaser Fund.
- (2) Direct Purchasers and Distributors of Vitamins (other than methionine) shall apply to the Administrator for compensation in accordance with the process set out at Schedule M.
- (3) After 90 days from the date fixed by the Courts for persons to opt out of the Settling Proceedings, no Direct Purchaser or Distributor of Vitamins (other than methionine) may apply for compensation from the Direct Purchaser Fund without leave of the Court in the Settling Proceeding in which the Direct Purchaser or Distributor is a Settlement Class Member.
- (4) A Direct Purchaser or Distributor of Vitamins (other than methionine) may, within 30 days after receiving the Administrator's rejection of eligibility or the Administrator's calculation of the Purchase Price of Vitamins (other than methionine), refer that decision for review by the Referee in accordance with the provisions at Schedule H.
- (5) Subject to section 6.2(6), a Settlement Class Member:
- (a) who is a Direct Purchaser shall be paid 12% of the Purchase Price of Vitamins (other than methionine) purchased directly from a Defendant;
 - (b) who is a Direct Purchaser shall be paid 10% of the Purchase Price of Vitamins (other than methionine) purchased directly from a Distributor; and
 - (c) who is a Distributor shall be paid 1% of the Purchase Price of Vitamins (other than methionine) purchased directly from a Defendant.

(6) If the total amount of valid claims on the Direct Purchaser Fund exceeds the amount available for distribution from the Direct Purchaser Fund, the payments to eligible Direct Purchasers and Distributors shall be reduced pro rata.

(7) If there remains a balance in the Direct Purchaser Fund, after payment of Class Counsel Fees, Administration Expenses, Opt Out Refunds and all valid claims in accordance with this section, the balance, less the Administration Expenses Reserve, shall be transferred to and become part of the Consumer Fund to be distributed in accordance with the provisions of this Settlement Agreement.

6.3 Methionine Fund

(1) The balance of the Methionine Fund, after payment of Class Counsel Fees and Administration Expenses, shall be held for the benefit of the Settlement Class Members in the Methionine Actions who are Direct Purchasers or Distributors of methionine and shall be paid as the Courts direct, on motions brought by Class Counsel.

(2) The procedure for applying for compensation from the Methionine Fund shall be determined in such manner and at such time as the Courts direct, on motions brought by Class Counsel.

(3) After such payments as are ordered by the Courts in the Methionine Actions, any remaining balance of the Methionine Fund shall be transferred to and become part of the Consumer Fund to be distributed in accordance with the provisions of this Settlement Agreement.

6.4 Intermediate Purchaser Fund

The balance of the Intermediate Purchaser Fund, after payment of Class Counsel Fees and Administration Expenses, shall be allocated and distributed for the benefit of the Intermediate Purchasers who are Settlement Class Members, cy-près, to the recipients and in the proportions or amounts set out in Schedule F.

6.5 Consumer Fund

The balance of the Consumer Fund, after payment of Class Counsel Fees and Administration Expenses, including any amounts that are transferred to it from the Direct Purchaser Fund, the Methionine Fund or the Expense Fund, shall be allocated and distributed for the benefit of the Consumers who are Settlement Class Members, cy-près, to the recipients and in the proportions or amounts set out in Schedule G.

6.6 Expense Fund

- (1) The Expense Fund shall be used to pay Class Counsel Fees and Administration Expenses.
- (2) If the Expense Fund is insufficient to pay Class Counsel Fees and Administration Expenses, they shall be paid from the other funds in the manner provided in section 18.
- (3) If a balance remains in the Expense Fund after payment of Class Counsel Fees and Administration Expenses, the balance shall be transferred to and become part of the Consumer Fund to be distributed in accordance with the provisions of this Settlement Agreement.

6.7 Holding and Investment of the Settlement Amount

The Administrator shall hold the monies received from the Account in one fund and invest the monies in accordance with the Investment Directive as if they were one fund but keep accounting records and account as if the monies were five separate funds.

6.8 Interest

- (1) Immediately upon the Administrator receiving the monies in the Account, the Administrator shall allocate any Pre-Deposit Interest and any interest that had accrued in the Account pro rata to the amounts allocated to each fund after the reductions for Settlement Credits and Non-Refundable Expenses provided in sections 6.1(2) and (3).
- (2) Any interest accruing on the monies in the hands of the Administrator shall be allocated by the Administrator monthly to each of the five funds pro rata to the balance notionally held in each fund on the last business day of each month.

SECTION 7 – SETTLEMENT CREDITS

7.1 Entitlement

Each Settling Defendant who, up to 30 days prior to the commencement of the approval hearing in Ontario, settles or is the beneficiary of the settlement of Released Claims by an Excluded Customer is entitled to a Settlement Credit. A Settling Defendant is not entitled to a Settlement Credit for a settlement reached less than 30 days before the commencement of the approval hearing in Ontario but may instead claim an Opt Out Refund. For greater certainty, Degussa Canada Inc. is not entitled to a Settlement Credit in respect of any methionine sales made by it or its Affiliated Defendants.

7.2 Calculation

A Settlement Credit shall be calculated as follows:

- (a) 12% of the Purchase Price of Vitamins purchased by a Direct Purchaser directly from the Settling Defendant or its Affiliated Defendants;
- (b) 10% of the Purchase Price of Vitamins purchased by a Direct Purchaser from a Distributor who purchased such Vitamins directly from the Settling Defendant or its Affiliated Defendants;
- (c) 1% of the Purchase Price of Vitamins purchased by a Distributor directly from the Settling Defendant or its Affiliated Defendants;
- (d) if there is a settlement in respect of both the Vitamins purchased by a Distributor and the same Vitamins purchased by a Direct Purchaser from that Distributor, 12% of the Purchase Price of those Vitamins as purchased by the Distributor from the Settling Defendant or its Affiliated Defendants; and
- (e) a Settlement Credit pursuant to section 7.2(c) in respect of Vitamins purchased by a Distributor, together with a Settlement Credit pursuant to section 7.2(b) in respect of the same Vitamins purchased by a Direct Purchaser from that Distributor, shall not exceed 12% of the Purchase Price of those Vitamins as purchased by the Distributor from the Settling Defendant or its Affiliated Defendants.

7.3 Application and Verification

- (1) Each Settling Defendant is entitled to a Settlement Credit in the amount set out for it in column 3 of Schedule B.
- (2) Each Settling Defendant who claims any additional Settlement Credit in the period up to 30 days before the commencement of the approval hearing in Ontario shall, through its counsel, advise the Class Counsel Representative, in confidence, in writing, of the name and address of each Excluded Customer whose settled claim(s) is the basis for the additional Settlement Credit, the date of the settlement with the Excluded Customer and the Purchase Price of the Vitamins for which there was a settlement.

- (3) The information required by section 7.3(2) shall be delivered to the Class Counsel Representative no later than 20 days before the commencement of the approval hearing in Ontario.
- (4) If a Settling Defendant is in any way prohibited from disclosing the information in respect of a Settlement Credit required by this Settlement Agreement by virtue of the terms of the settlement with its Excluded Customer, then it may make an application to one of the Courts on notice to the Excluded Customer for an order authorizing the release of the information.
- (5) If a Settling Defendant claims an additional Settlement Credit in the period up to 30 days before the commencement of the approval hearing in Ontario, and if the Settling Defendant has deposited its full Settlement Share, the Settling Defendant may in writing, with a copy to the Class Counsel Representative, direct the Escrow Agent to pay to it the Settlement Credit plus post-deposit accrued interest, if any. The Escrow Agent shall make the payment if the Class Counsel Representative does not object in writing within 14 days of Class Counsel Representative's receipt of the Settling Defendant's direction to the Escrow Agent.
- (6) If there is a dispute concerning any Settlement Credit which is not listed in Schedule B, the Settling Defendant may apply to Reva E. Devins as arbitrator for:
 - (a) a determination of the dispute, in a summary manner, pursuant to a procedure to be determined by the arbitrator, without a right of appeal, on notice to the Class Counsel Representative; and
 - (b) an order directing the Escrow Agent to pay to it the Settlement Credit plus post-deposit accrued interest, if any. For the purposes of any dispute about the Purchase Price, the types of records listed in section 8.4 shall constitute sufficient proof of the Purchase Price.

7.4 Information to Administrator

- (1) Each Settling Defendant who claims a Settlement Credit shall, through its counsel, advise the Administrator, in confidence, in writing, of the name and address of each Excluded Customer whose settled claim(s) was the basis for the Settlement Credit and the Purchase Price of the Vitamins for which there was a settlement.
- (2) The information required by section 7.4(1) shall be delivered to the Administrator forthwith following its appointment by the Courts.

SECTION 8 – OPT OUT REFUNDS

8.1 Entitlement

A Settling Defendant shall be entitled to an Opt Out Refund to a maximum of its Settlement Share for any of its or its Affiliated Defendants' Direct Purchaser or Distributor customers who opt out in accordance with this Settlement Agreement, provided that no Settling Defendant shall be entitled to an Opt Out Refund in addition to a Settlement Credit for any Excluded Customer. For greater certainty, Degussa Canada Inc. is not entitled to an Opt Out Refund in respect of any methionine sales made by it or its Affiliated Defendants.

8.2 Calculation

- (1) An Opt Out Refund in respect of Vitamins (other than choline chloride) shall be calculated in the same manner as a Settlement Credit under section 7.2.
- (2) An Opt Out Refund in respect of the Purchase Price of choline chloride shall be discounted by multiplying the amount calculated according to section 7.2 by the fraction that has the total of all Choline Chloride Contributions as its numerator and 11 million as its denominator. The Settling Defendants shall be entitled to share the aggregate of all such discounted Opt Out Refunds in respect of the Purchase Price of choline chloride pro rata to their respective Choline Chloride Contributions without regard to their actual choline chloride sales (if any) and shall be paid in accordance with section 8.3 below.

8.3 Application and Payment

- (1) A Settling Defendant may in writing, with a copy to the Class Counsel Representative, direct the Administrator to pay to it the Opt Out Refund in respect of Vitamins plus post-deposit accrued interest, if any. The Administrator shall pay the Opt Out Refund in respect of Vitamins from the Direct Purchaser Fund within 60 days of receiving an application for an Opt Out Refund if the Class Counsel Representative does not object in writing within 14 days of Class Counsel Representative's receipt of the Settling Defendant's direction to the Administrator.
- (2) If there is any dispute concerning any Opt Out Refund, the Settling Defendant may apply to the Referee for:
 - (a) a determination of the dispute, in a summary manner, pursuant to a procedure to be determined by the Referee, without a right of appeal, on notice to the Class Counsel Representative; and

- (b) an order directing the Administrator to pay to it the Opt Out Refund plus post deposit accrued interest, if any. For the purposes of any dispute about the Purchase Price, the types of records listed in section 8.4 shall constitute sufficient proof of the Purchase Price.

8.4 Verification

(1) The following types of records shall constitute sufficient proof of the Purchase Price for the purpose of the calculation of the Opt Out Refund:

- (a) the Settling Defendant's or its Affiliated Defendants' summary of sales to the Direct Purchaser or Distributor who has opted out (as opposed to original documents);
- (b) the Settling Defendant's or its Affiliated Defendants' original records of sales to the Direct Purchaser or Distributor who opts out, maintained in the usual and ordinary course of business;
- (c) if there are no business records of purchases available from the Settling Defendant or its Affiliated Defendants, the records of the Direct Purchaser or Distributor who has opted out, maintained in the usual and ordinary course of business; or
- (d) such other records from which the required information may be determined.

SECTION 9 – RELEASES AND DISMISSALS

9.1 Release of Releasees

Upon receipt by the Administrator of the monies in the Account, the Releasers forever and absolutely release the Releasees from the Released Claims.

9.2 Release by Releasees

Upon receipt by the Administrator of the monies in the Account, each Releasee forever and absolutely releases each of the other Releasees from any and all claims for contribution or indemnity with respect to the Released Claims.

9.3 Covenant Not To Sue

Notwithstanding section 9.1, for the purposes of the Settling Proceedings commenced in the British Columbia Court and for any 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 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 Releasees in respect of or in relation to the Released Claims.

9.4 No Further Claims

The Releasers shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasees or any other person who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any matter related thereto, except for the continuation of the Proceedings against the Non-Settling Defendants.

9.5 Dismissal of Settling Proceedings

Except as otherwise provided in this Settlement Agreement, the Settling Proceedings shall be dismissed as against the Releasees, without costs and with prejudice.

9.6 Dismissal of Other Actions

(1) Each Settlement Class Member shall be deemed to consent to the dismissal, without costs and with prejudice, of his, her or its Other Actions against the Releasees.

(2) All Other Actions commenced by any Settlement Class Member in British Columbia, Ontario or Quebec relating to the Released Claims shall be dismissed against the Releasees, without costs and with prejudice.

(3) Each Direct Purchaser or Distributor who has commenced any Other Actions in Canada other than in British Columbia, Ontario and Quebec must expressly consent to a dismissal of its Other Actions against the Releasees, without costs and with prejudice, and execute a release of the Released Claims against the Releasees before receiving a payment pursuant to this Settlement Agreement.

SECTION 10 – BAR ORDER AND OTHER CLAIMS

10.1 Bar Order

A bar order shall be granted by each of the Courts providing for the following:

- (a) all claims for contribution, indemnity or other claims over, whether asserted or unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought against a Releasee by any Non-Settling Defendant or any other person or party, or

- by any Releasee against a Non-Settling Defendant, are barred, prohibited and enjoined in accordance with the terms of this section (unless such claim is made in respect of a claim by a person who has validly opted out of a Settlement Class);
- (b) the Settling Plaintiffs shall restrict their joint and several claims against the Non-Settling Defendants such that the Settling Plaintiffs shall be entitled to claim and recover from the Non-Settling Defendants, on a joint and several basis, only:
- (i) those damages, if any, arising from the sales of the Non-Settling Defendants; or
 - (ii) those damages, if any, allocable to the conduct (but not necessarily the sales) of the Non-Settling Defendants in the Choline Chloride Actions, the Quebec Action (insofar as it relates to choline chloride), Ontario Court File No. 40610/02 (London) and British Columbia Court File, Vancouver Registry, No. L023727; and
 - (iii) those punitive damages, if any, allocable to the conduct of any of the Non-Settling Defendants;
- (c) a Non-Settling Defendant may seek an order from a Court providing for discovery from some or all of the Settling Defendants and/or their Affiliated Defendants as deemed appropriate by the Court; and
- (d) a Non-Settling Defendant may effect service of the motion(s) referred to in section 10.1(c) on a Settling Defendant by service on counsel of record for the Settling Defendant in the Settling Proceeding.

10.2 Claims Against Other Entities Reserved

Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by Settlement Class Members against any person other than the Releasees.

SECTION 11 – EFFECT OF SETTLEMENT

11.1 No Admission of Liability

Neither this 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 Proceedings. Neither this Settlement

Agreement, nor anything contained herein, shall be used or construed as an admission of any fault, omission, liability or wrongdoing in any statement, release or written document or financial report.

11.2 Agreement Not Evidence

Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, nor any related document, nor any other action taken to carry out this Settlement Agreement shall be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to enforce this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law.

11.3 Purchase Period Not Admission

Each Settling Defendant accepts the Purchase Period asserted in respect of its Vitamins in the Settling Proceedings in which it or its Affiliated Defendants is a party solely for the purpose of this Settlement Agreement and without any admission that the Purchase Period is correct or that, in fact, any conspiracy occurred in respect of any Vitamin at any time.

11.4 No Further Litigation

- (1) Except as provided in this section, no Class Counsel, nor anyone currently or hereafter employed by, associated with, or a partner with Class Counsel, may directly or indirectly participate or be involved in or in any way assist with respect to any claim made or action commenced by any person which relates to or arises from the Released Claims.
- (2) Section 11.4(1) does not apply to the involvement of any person in the continued prosecution of the Proceedings against any Non-Settling Defendants.
- (3) The information that the Parties disclose or disseminate in connection with the administration of the Settlement Agreement shall not contradict or be inconsistent with the terms of this Settlement Agreement.

SECTION 12 – CERTIFICATION FOR SETTLEMENT ONLY

12.1 Settlement Class and Common Issue

- (1) The Parties agree that the Settling Proceedings shall be certified as class proceedings solely for purposes of settlement of the Settling Proceedings and the approval of this Settlement Agreement by the Courts.

(2) The Settling Plaintiffs agree that, in the motions for certification of the Settling Proceedings as class proceedings and for the approval of this Settlement Agreement, the only common issue that they will seek to define is the Common Issue and the only classes that they will assert are the Settlement Classes.

12.2 Certification Without Prejudice

In the event this Settlement Agreement is not approved or is terminated in accordance with its terms, the Parties agree that any prior certification of a Settling Proceeding as a class proceeding, including the definition of the Settlement Class and the statement of the Common Issue, shall be without prejudice to any position that any of the Parties may later take on any issue in the Proceedings or any other litigation.

SECTION 13 – NOTICE TO SETTLEMENT CLASSES

13.1 First Notice

The proposed Settlement Classes shall be notified of hearings at which the Courts will be asked to approve the Settlement Agreement, by way of a notice substantially in the form set out in Schedule I. Class Counsel shall cause the notice to be published and distributed, substantially in accordance with the Notice Plan set out in Schedule J, by a date to be set by the Courts.

13.2 Second Notice

The Settlement Classes shall be notified of the certification of each of the Settling Proceedings as a class proceeding and the approval of this Settlement Agreement by a notice, substantially in the form set out in Schedule K. The Administrator shall cause the notice to be published and distributed, substantially in accordance with the Notice Plan set out in Schedule J. In the event this Settlement Agreement is approved by the Courts, the notice shall be published and distributed no later than 30 days after the last such order becomes a Final Order.

13.3 Termination Notice

If this Settlement Agreement is terminated for any reason after the second notice provided for in this section has been published and distributed, a notice of the termination shall be given to the Settlement Classes. The Administrator shall cause the notice, substantially in the form set out in Schedule L, to be published and distributed, substantially in accordance with the Notice Plan set out in Schedule J, by a date to be set by the Courts.

13.4 Advising the Courts

Forthwith after publication and distribution of the notices required by sections 13.1, 13.2 and 13.3, if applicable, the Class Counsel Representative and the Administrator shall file with the Courts affidavits confirming publication and distribution of the notices.

SECTION 14 – OPTING OUT

14.1 Opt Out Mechanism

- (1) A person who wishes to opt out of the Settlement Class in one of the Settling Proceedings must opt out of the Settlement Class in all Settling Proceedings.
- (2) A person may only opt out of the Settling Proceedings by sending a written election to opt out, signed by the person or that person's designee, by prepaid mail, courier or fax to the Administrator at an address to be identified in the Final Orders and the notice set out in Schedule K.
- (3) An election to opt out will only be effective if it is actually received by the Administrator on or before the Opt Out Date.
- (4) A Direct Purchaser's or a Distributor's written election to opt out will have no force and effect unless and until the Direct Purchaser or Distributor also provides to the Administrator, on or before the Opt Out Date:
 - (a) its full name, current address and telephone number;
 - (b) to the extent applicable, the previous name(s) under which it purchased Vitamins from the Settling Defendants, their Affiliated Defendants or from Distributors;
 - (c) the name(s) of each entity from whom it purchased Vitamins;
 - (d) if the Direct Purchaser or Distributor agrees with any Purchase Price information that the Administrator has provided, its written confirmation of agreement; and
 - (e) if the Direct Purchaser or Distributor does not agree with any Purchase Price information that the Administrator has provided, or if no Purchase Price information has been provided by the Administrator:
 - (i) the Purchase Price and the names of all Vitamins it purchased; and
 - (ii) documentation evidencing its Purchase Price of Vitamins, or, if such documentation is unavailable, its written certification to that effect.

14.2 Excluded Customers

- (1) An Excluded Customer shall not be required to comply with the provisions of section 14.1. An Excluded Customer shall be deemed to have opted out of the Settlement Class of each Settlement Proceeding in fulfillment of its earlier settlement(s) with a Settling Defendant(s) or its Affiliated Defendants.
- (2) Notwithstanding section 14.2(1), an Excluded Customer may remain in any Settlement Class of any Settling Proceeding to the extent permitted by its earlier settlement(s) with a Settling Defendant or its Affiliated Defendants.

14.3 Notification of Number of Opt Outs

On or before the Reporting Date, the Administrator shall report to the Settling Defendants and the Class Counsel Representative and advise as to the names of those persons, if any, who have opted out of the Settling Proceedings, the reasons for the opt out, if known, its best estimate of the total Purchase Price of Vitamins purchased by each person who opted out and a summary of information delivered by each of them pursuant to section 14.1(4).

14.4 Effect of Exceeding Opt Out Threshold

- (1) Notwithstanding anything else in this Settlement Agreement, the Settling Defendants may, in their sole and unfettered discretion, subject to section 15.1(1), terminate this Settlement Agreement if the Opt Out Threshold is exceeded.
- (2) The following shall not be included in the determination of whether the Opt Out Threshold is exceeded:
 - (a) the Purchase Price of Vitamins sales from a Non-Settling Defendant to a person who opts out; and
 - (b) the Purchase Price of Vitamins sales from a Settling Defendant to an Excluded Customer deemed to opt out in accordance with section 14.2.

SECTION 15 – TERMINATION OF SETTLEMENT AGREEMENT

15.1 Exercise of Termination Right

- (1) Any right of the Settling Defendants to terminate this Settlement Agreement shall be exercised, and any determination of whether any order complies with (or is deemed to comply with) section 3 shall be made, on behalf of all Settling Defendants, only by F. Hoffmann-

LaRoche Ltd. together with either one of Aventis Animal Nutrition S.A. or BASF Aktiengesellschaft.

(2) No Releasee shall make or advance any claim of any kind against F. Hoffmann-LaRoche Ltd., Aventis Animal Nutrition S.A. or BASF Aktiengesellschaft in connection with or arising out of:

- (a) any decision they make or fail to make to exercise or not to exercise a right to terminate this Settlement Agreement; or
- (b) any determination they make or fail to make as to whether any order is or is not in compliance or in deemed compliance with section 3.

15.2 Manner of Termination

(1) If either the British Columbia Court or the Quebec Court fails to approve this Settlement Agreement, and if the Settling Defendants elect to exercise their right to terminate this Settlement Agreement, then F. Hoffmann-LaRoche Ltd. on behalf of the Settling Defendants shall give written notice of termination to the Class Counsel Representative and the Escrow Agent no later than 21 days after such Court's judgment failing to approve this Settlement Agreement and the disposal of all appeals (if any) therefrom or the expiry of the time for taking such appeals.

(2) If the total Purchase Price of Vitamins by Direct Purchasers and Distributors who opt out of the Settling Proceedings exceeds the Opt Out Threshold, and if the Settling Defendants elect to exercise their right to terminate this Settlement Agreement, then F. Hoffmann-LaRoche Ltd. on behalf of the Settling Defendants shall give written notice of termination to the Class Counsel Representative and the Escrow Agent no later than 21 days after the Settling Defendants are provided with the information required pursuant to section 14.3.

15.3 Effect of Termination Generally

(1) Except as provided in sections 15.6 and 16.3, if this Settlement Agreement is terminated for any reason, it shall have no further force and effect, shall not be binding on the Parties and shall not be used as evidence or otherwise in any litigation.

(2) If this Settlement Agreement is terminated for any reason:

- (a) no motion to certify any of the Settling Proceedings as a class action on the basis of this Settlement Agreement or to approve this Settlement Agreement shall proceed; and

- (b) any order certifying a Settling Proceeding as a class action on the basis of the Settlement Agreement and approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and anyone shall be estopped from asserting otherwise.

15.4 Payment of Non-Refundable Expenses Following Termination

- (1) If this Settlement Agreement is terminated for any reason, the Escrow Agent shall hold back in the Account an amount equal to the maximum total Non-Refundable Expenses less all Non-Refundable Expenses already paid.
- (2) The Escrow Agent shall thereafter pay all remaining Non-Refundable Expenses that are not in dispute from the monies held back in the Account.
- (3) Any dispute concerning Non-Refundable Expenses shall be dealt with as provided in section 16.3.

15.5 Allocation of Monies in the Account Following Termination

- (1) If the Settlement Agreement is terminated for any reason, the Escrow Agent shall:
 - (a) retain the holdback in the Account for Non-Refundable Expenses;
 - (b) give the Class Counsel Representative and the Settling Defendants 14 days' written notice of its intention to return the monies in the Account, less the holdback for Non-Refundable Expenses; and
 - (c) provide to the Class Counsel Representative and the Settling Defendants a list of all Non-Refundable Expenses paid and any invoices received by the Escrow Agent but not paid.
- (2) If the Settlement Agreement is terminated by the Settling Defendants or is null and void pursuant to section 2, the Escrow Agent shall return to the contributing Settling Defendants, in the proportions they contributed, all monies in the Account other than the holdback for Non-Refundable Expenses.
- (3) If the Settlement Agreement is terminated by the Settling Plaintiffs, then:
 - (a) as among the Settling Defendants, the Defaulting Settling Defendant(s) shall be solely liable for all Non-Refundable Expenses;
 - (b) if the Defaulting Settling Defendant(s) made a partial payment into the Account sufficient to pay the full amount of all Non-Refundable Expenses, the Escrow Agent shall:

- (i) return to each contributing Settling Defendant the monies it contributed plus any post-deposit accrued interest; and
 - (ii) return to the Defaulting Settling Defendant(s) who made a partial payment into the Account any monies it (they) contributed that remain after payment of Non-Refundable Expenses plus any post-deposit accrued interest;
- (c) if the Defaulting Settling Defendant(s) has not made a partial payment into the Account sufficient to pay all Non-Refundable Expenses, the Escrow Agent shall return to the contributing Settling Defendants, in the proportions they contributed, all monies in the Account other than the holdback for Non-Refundable Expenses; and
- (d) the contributing Settling Defendants may move for judgment against the Defaulting Settling Defendant(s) for the full amount of any Non-Refundable Expenses paid by the contributing Settling Defendants.
- (4) Once all Non-Refundable Expenses have been paid in full, the Escrow Agent shall give the Class Counsel Representative and the Settling Defendants 14 days' written notice of its intention to return any remaining holdback for Non-Refundable Expenses in the Account and, at the same time, provide to the Class Counsel Representative and the Settling Defendants a list of the additional Non-Refundable Expenses paid since the prior payment pursuant to section 15.5(1).
- (5) The Escrow Agent shall return the balance of the holdback for Non-Refundable Expenses to the contributing Settling Defendants, in the proportions they contributed, if the Class Counsel Representative does not object in writing within 14 days of Class Counsel Representative's receipt of the Escrow Agent's written notice pursuant to section 15.5(4).
- (6) The Escrow Agent shall give the Settling Defendants 14 days written notice of the amounts of any payments it proposes to make under section 15.5.
- (7) If there is any dispute concerning any Non-Refundable Expense or any other payment under section 15.5, the Escrow Agent or any Party may apply to Reva E. Devins as arbitrator for:
- (a) a determination of the dispute, in a summary manner, pursuant to a procedure to be determined by the arbitrator, without a right of appeal, on notice to the Class Counsel Representative; and

- (b) an order directing the Escrow Agent to make any payment necessitated by the arbitrator's decision.

15.6 Survival of Provisions After Termination

If this Settlement Agreement is terminated for any reason, the provisions of sections 4.5, 4.7, 5.1, 11.1, 11.2, 11.3, 12.2, 13.3, 13.4, 15, 16.3, 17.2(9), 19 and the recitals, definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect.

SECTION 16 – SUMMARY ORDERS AND CONSEQUENCES

16.1 If Settlement Agreement is Not Terminated

If all periods within which the Settling Defendants may terminate this Settlement Agreement expire, with no notice of termination having been delivered, the Settling Plaintiffs shall bring motions before each of their respective Courts which shall issue orders declaring that the Final Orders are operative and binding upon the Parties according to their terms.

16.2 Consequences of a Decision not to Terminate following a Refusal to Approve the Settlement Agreement

If the Settling Defendants do not exercise their election to terminate this Settlement Agreement following the British Columbia Court or the Quebec Court's failure to approve the Settlement Agreement, then, each definition, section and Schedule shall be deemed to be herewith amended so as to delete all references and provisions relating to such jurisdiction(s) which declines to approve this Settlement Agreement. No Class Counsel Fees shall be payable from the Settlement Amount in any jurisdiction which declines to approve this Settlement Agreement.

16.3 If Settlement Agreement is Terminated

- (1) If the Settlement Agreement is terminated for any reason, the Parties who delivered the notice of termination shall bring motions before each of the Courts which shall issue orders in accordance with section 15.3:
 - (a) declaring the Settlement Agreement to be null and void and of no force or effect (except for the provisions set out in section 15.6);
 - (b) setting aside any order certifying a Settling Proceeding as a class action on the basis of the Settlement Agreement; and

(c) determining any dispute relating to unpaid Non-Refundable Expenses and directing that any balance thereafter in the Account be returned to the contributing Settling Defendants.

(2) If there is any dispute about whether the Parties who delivered the notice of termination have given a valid notice of termination in accordance with the provisions of this Settlement Agreement, then the Courts shall determine that dispute on the motions brought pursuant to section 16.3(1).

SECTION 17 – ADMINISTRATION AND IMPLEMENTATION

17.1 Appointment of Administrator

(1) The Courts shall appoint the Administrator, to serve until further orders of the Courts, to implement this Settlement Agreement in accordance with its terms, including Schedule M,

(2) If the Settlement Agreement is terminated for any reason, the Administrator's fees, disbursements and GST for the costs particularized in section 5.1(1)(e) shall not exceed \$125,000.

(3) If the Courts make a declaration that the Final Orders are operative and binding upon the Parties, the Administrator may pay to itself an amount on account of fees, disbursements and GST not to exceed \$50,000 per month until such time as it has been paid a fixed fee in the amount of \$725,000 (inclusive of the payment it received from the Escrow Agent on account of the section 5.1(1)(e) Non-Refundable Expenses) on account of the administration of this Settlement Agreement in its entirety.

17.2 Information and Assistance

(1) Each Settling Defendant will make reasonable efforts to compile a list of the names and addresses of Direct Purchasers and Distributors in Canada who purchased Vitamins in Canada from it or its Affiliated Defendants during the Purchase Periods.

(2) The information required by section 17.2(1) shall be delivered to the Class Counsel Representative within 10 days of the execution of this Settlement Agreement by the Parties.

(3) The Class Counsel Representative shall use the information provided under section 17.2(2) to advise Direct Purchasers and Distributors of this Settlement Agreement and the date of the approval hearings before the Courts. The Class Counsel Representative shall also provide this information to the Administrator following its appointment by the Courts.

- (4) Each Settling Defendant shall make reasonable efforts to also provide the Purchase Price for each Direct Purchaser or Distributor (other than Excluded Customers) whose total purchases from it or its Affiliated Defendants during the Purchase Periods exceeded \$50,000.
- (5) The information required by section 17.2(4) shall be delivered to the Administrator following its appointment by the Courts.
- (6) Each Settling Defendant shall appoint a person to whom the Administrator may address any requests for information. The Settling Defendants agree to make reasonable efforts to answer any reasonable inquiry from the Administrator.
- (7) Any information obtained or created in the administration of this Settlement Agreement is confidential and, except as required by law, shall be used and disclosed only for the purpose of administering the Settlement Agreement.
- (8) The Administrator may use the information provided under this section to advise Direct Purchasers and Distributors of the approval of the Settlement Agreement, the Opt Out Date and, where available, to provide the Settling Defendants' information on the Purchase Price paid by each Direct Purchaser or Distributor and an estimate of the compensation those Direct Purchasers and Distributors might receive from the Direct Purchaser Fund.
- (9) If this Settlement Agreement is terminated for any reason, all information provided by the Settling Defendants pursuant to this Settlement Agreement shall be returned to them forthwith and no record of the information so provided shall be retained by the Administrator and the Class Counsel Representative in any form whatsoever. Moreover, Class Counsel, and anyone currently or hereafter employed by, associated with or a partner with Class Counsel, may not divulge to anyone for any purpose any information obtained in the course of the negotiations and preparation of this Settlement Agreement, except to the extent such information is otherwise publicly available or otherwise ordered by a court.

17.3 Conclusion of Administration

- (1) Once all of the payments of Administration Expenses contemplated in this Settlement Agreement have been made, the Administrator shall distribute any balance remaining in the Administration Expenses Reserve as the Courts have directed in any order as to Class Counsel Fees or, in the absence of the Courts' direction, to the recipients and in the proportions set out in Schedule G.

(2) Upon the conclusion of the administration, the Administrator shall report by motion to the Courts on the administration and accounting and obtain a discharge from the Courts.

**SECTION 18 – CLASS COUNSEL FEES AND DISBURSEMENTS AND
ADMINISTRATION EXPENSES**

18.1 Class Counsel Fees and Administration Expenses

- (1) The \$10 million allocated to the Expense Fund is a payment by the Settling Defendants on account of Class Counsel Fees and Administration Expenses.
- (2) The maximum amount the Courts shall allocate for Class Counsel Fees and Administration Expenses is \$18 million.
- (3) The maximum amount which Quebec Counsel may seek for their share of Class Counsel Fees is \$2.18 million, inclusive of disbursements and taxes and any advances to them or their Settling Plaintiffs from the Fonds.
- (4) Class Counsel Fees and Administration Expenses shall first be paid from the Expense Fund.
- (5) If the Courts approve Class Counsel Fees and Administration Expenses which, in total, exceed the \$10 million in the Expense Fund, the excess to a maximum of \$8 million shall be paid from the following funds in the proportions indicated:
 - (a) the Direct Purchaser Fund – 80%;
 - (b) the Methionine Fund – 4%;
 - (c) the Intermediate Purchaser Fund – 8%; and
 - (d) the Consumer Fund – 8%.
- (6) Class Counsel Fees and Administration Expenses shall constitute a first charge upon and shall be paid as the first payments from each fund.
- (7) The payment of Class Counsel Fees and Administration Expenses from the Direct Purchaser Fund shall not be reduced pro rata in the event that valid claims on the Direct Purchaser Fund exceed the amounts available for distribution and are therefore paid on a pro rata basis as provided in section 6.2(6).

- (8) Class Counsel Fees for British Columbia Counsel, Ontario Counsel, and Quebec Counsel shall be paid out of the Settlement Amount, as provided in sections 18.1(4) – (7), after approval by the Court with jurisdiction in each Settling Proceeding. The Class Counsel Fees of Desmeules, an affiliate of Siskind, Cromarty, Ivey & Dowler LLP – one of the Ontario Counsel, shall be included in the request for approval of Class Counsel Fees filed with the Ontario Court and paid out of the Settlement Amount, as provided in sections 18.1(4) – (7), after approval by the Ontario Court.
- (9) Class Counsel’s motions for approval of their Class Counsel Fees to their respective Courts shall be returnable together with the motions for approval of this Settlement Agreement. Any subsequent motions for approval of any further disbursements incurred by Class Counsel shall be made as each respective Court directs.
- (10) As Class Counsel have agreed not to seek an amount in excess of \$18 million for Class Counsel Fees and Administration Expenses, the Settling Defendants will not oppose the approval of Class Counsel Fees and Administration Expenses.
- (11) Sections 18.1(9) and (10) are not acknowledgements by Class Counsel that the Settling Defendants have standing on the issue of the reasonableness of Class Counsel Fees and Administration Expenses.

SECTION 19 – MISCELLANEOUS

19.1 Motions for Directions

- (1) Any one or more of Class Counsel, a Settling Defendant, the Administrator, the Escrow Agent, the Management Committee or the Class Counsel Representative may apply to the Courts for directions in respect of the implementation and administration of this Settlement Agreement.
- (2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

19.2 Releasees Have No Liability for Administration

Except as provided in sections 17.2 (4) and (6), the Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement, including the processing and payment of claims by the Administrator and the acts or omissions of the Escrow Agent.

19.3 Headings, etc.

In this Settlement Agreement:

- (e) the division of the Settlement Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement;
- (f) the terms “this Settlement Agreement”, “hereof”, “hereunder” and similar expressions refer to this Settlement Agreement and not to any particular section or other portion of this Settlement Agreement;
- (g) all amounts referred to are in lawful money of Canada; and
- (h) “person” means any legal entity including, but not limited to, individuals, corporations, sole proprietorships, general or limited partnerships, limited liability partnerships, limited liability companies, or governmental or quasi-governmental entities, except when person is used in the phrase “natural persons” in which case it shall mean only individuals.

19.4 Ongoing Jurisdiction

- (1) Each of the Courts shall retain exclusive jurisdiction over each Settling Proceeding commenced in its jurisdiction, the parties thereto and, except as provided in section 18.1(8), the Class Counsel Fees in those Settling Proceedings.
- (2) The Courts shall retain joint jurisdiction over the Methionine Fund and the Expense Fund.
- (3) The British Columbia Court and Ontario Court shall retain joint exclusive jurisdiction over the distribution of the Direct Purchaser Fund, the Intermediate Purchaser Fund and that portion of the Consumer Fund allocated by this Settlement Agreement to all provinces and territories except Quebec. The Quebec Court shall retain exclusive jurisdiction over the distribution of that portion of the Consumer Fund allocated by this Settlement Agreement to Quebec.
- (4) Each Court shall not make any order or give any direction in respect of any matter of joint jurisdiction unless that order or direction is conditional upon a complimentary order or direction being made or given by the other Court(s) with which it shares jurisdiction over that matter.

19.5 Governing Law

This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.

19.6 Entire Agreement

This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein. This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto and any such modification or amendment must be approved by the Courts with jurisdiction over the matter to which the amendment relates.

19.7 Binding Effect

This Settlement Agreement shall be binding upon, and enure to the benefit of, the Settling Plaintiffs, the Settling Defendants and their Affiliated Defendants, the Releasees and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Settling Plaintiffs shall be binding upon all Releasers and each and every covenant and agreement made herein by the Settling Defendants shall be binding upon all of the Releasees.

19.8 Survival

The representations and warranties contained in this Settlement Agreement shall survive its execution and implementation.

19.9 Counterparts

This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

19.10 Negotiated Agreement

This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force

and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

19.11 Recitals

The recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

19.12 Schedules

The Schedules annexed hereto form part of this Settlement Agreement.

19.13 Acknowledgements

Each of the Parties hereby affirms and acknowledges that:

- (e) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
- (f) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;
- (g) he, she or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
- (h) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party with respect to the first Party's decision to execute this Settlement Agreement.

19.14 Authorized Signatures

Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement.

19.15 Notice

Where this Settlement Agreement requires a notice or any other communication or document to be given, such notice, communication or document shall be provided by email, facsimile or letter by overnight delivery to the representative of the person to whom notice is being provided, as identified below: