

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)
<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
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APR - 5 2005
... NO.:
AS DEPOSED
A 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;