

00-CV-202030CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR JUSTICE CUMMING )

)

WEDNESDAY, THE 23<sup>RD</sup> DAY

)

OF MARCH, 2005

<p style="text-align: center;">ONTARIO SUPERIOR COURT OF JUSTICE</p> <p>Court File No. 00-CV-202080CP</p> <p>BETWEEN</p> <p>GLEN FORD VITAPHARM CANADA LTD FLEMING FEED MILL LTD and MARCY DAVID</p> <p style="text-align: right;">Plaintiffs</p> <p style="text-align: center;">and</p> <p>HOFFMANN LA ROCHE LTD HOFFMANN LA ROCHE LTD MERCK KGaA LONZA AG ALLSUISSE LONZA CANADA INC SUMITOMO CHEMICAL CO LTD SUMITOMO CANADA LIMITED/LIMITÉE and TANABE SEIYAKU CO LTD</p> <p style="text-align: right;">Defendants</p> <p>Proceeding under the <i>Class Proceedings Act 1997</i> (Biotin)</p>	<p style="text-align: center;">ONTARIO SUPERIOR COURT OF JUSTICE</p> <p>Court File No. 00-CV-200045CP</p> <p>BETWEEN</p> <p>GLEN FORD VITAPHARM CANADA LTD FLEMING FEED MILL LTD ALIMENTS BRETON INC ROGER AWAD and MARY HELEN AWAD</p> <p style="text-align: right;">Plaintiffs</p> <p style="text-align: center;">and</p> <p>HOFFMANN LA ROCHE LTD HOFFMANN LA ROCHE LIMITED/LIMITÉE RHÔNE-POULENC SA AVENTIS ANIMAL NUTRITION SA RHÔNE-POULENC CANADA INC RHÔNE-POULENC ANIMAL NUTRITION INC RHÔNE-POULENC INC BASF AKTIENGESELLSCHAFT BASF CORPORATION BASF CANADA INC EISAI CO LTD TAKEDA CHEMICAL INDUSTRIES LTD TAKEDA CANADA VITAMIN AND FOOD INC MERCK KGaA DAICHI PHARMACEUTICAL COMPANY LTD ROUSSEL CANADA INC REINHARD STEINMETZ DIETER SUTER HUGO STROTMANN ANDREAS HAURI KUNO SOMMER and ROLAND BRONNIMANN</p> <p style="text-align: right;">Defendants</p> <p>Proceeding under the <i>Class Proceedings Act 1997</i> (Bulk Vitamins)</p>
<p style="text-align: center;">ONTARIO SUPERIOR COURT OF JUSTICE</p> <p>Court File No. 00-CV-198647CP</p> <p>BETWEEN</p> <p>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>BASF AKTIENGESELLSCHAFT BASF CORPORATION BASF CANADA INC CHINOOK GROUP LTD DCV INC DLCOA LP AKZO NOBEL NV AKZO NOBEL CHEMICALS BV BIOPRODUCTS INC RUSSELL COSBURN JOHN KENNEDY ROBERT SAMUELSON LINDELL HILLING JOHN L (PÈTE) FISCHER and ANTONIO FELIX</p> <p style="text-align: right;">Defendants</p> <p>Proceeding under the <i>Class Proceedings Act 1997</i> (Choline Chloride)</p>	<p style="text-align: center;">ONTARIO SUPERIOR COURT OF JUSTICE</p> <p>Court File No. 00-CV-201723CP</p> <p>BETWEEN</p> <p>GLEN FORD 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>RHÔNE-POULENC SA RHÔNE-POULENC CANADA INC DEGUSSA HULS AG DEGUSSA CORPORATION DEGUSSA CANADA INC NOVUS INTERNATIONAL, INC and AVENTIS ANIMAL NUTRITION SA</p> <p style="text-align: right;">Defendants</p> <p>Proceeding under the <i>Class Proceedings Act 1997</i> (Methionine)</p>
<p style="text-align: center;">ONTARIO SUPERIOR COURT OF JUSTICE</p> <p>Court File No. 00-CV-200044CP</p> <p>BETWEEN</p> <p>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 HULS AG DEGUSSA CORPORATION DEGUSSA CANADA INC REILLY INDUSTRIES INC REILLY CHEMICALS SA VITACHEM COMPANY ALLSUISSE LONZA CANADA INC LONZA AG NEPERA INCORPORATED ROGER NOACK and DAVID PURI</p> <p style="text-align: right;">Defendants</p> <p>Proceeding under the <i>Class Proceedings Act 1992</i> (Niacin)</p>	

**JUDGMENT**

THIS MOTION, made by the Settling Plaintiffs for certification of the Ontario 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 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 Amended Settlement Agreement, the Akzo Settlement Agreement and the UCB/Reilly 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) Roger Awad, sworn February 17, 2005,
  - (xi) Mary Helen Awad, sworn February 17, 2005,
  - (xii) Marcy David, sworn February 16, 2005,

- (xiii) Jannick Desforges, sworn February 7, 2005,
- (xiv) Margaret Woltz, sworn February 17, 2005,
- (xv) Craig Flinn, sworn February 18, 2005,
- (xvi) Jennifer Bald, sworn February 22, 2005,
- (xvii) Joe Fiorante, sworn March 3, 2005,
- (xviii) David Jones, sworn March 3, 2005,
- (xix) William Dermody, sworn March 7, 2005,
- (f) the written objections, and
- (g) the orders dated December 10, 2004 and February 22 , 2005

AND ON HEARING the submissions of counsel for the Settling 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 ON BEING ADVISED that while Degussa Canada Inc is a Settling Defendant in the Ontario Nicotin Action, it is a Non-Settling Defendant in the Ontario Methionine Action,

AND ON BEING ADVISED that counsel for all Parties consent to the language found in paragraph 19 of this judgment and agree that, to the extent that the language varies from paragraph 19 of Schedule E1 of the Amended Settlement Agreement, the Parties waive their right of termination as a result of this variation that is provided by s 15 1(1) of the Amended Settlement Agreement

AND ON BEING FURTHER ADVISED that

- (a) the Settling Plaintiffs in the Ontario Actions consent to this judgment,
- (b) *the Settling Defendants in the Ontario Actions consent to this judgment,*
- (c) Deloitte & Touche LLP consents to being appointed Administrator,
- (d) Reva E Devins consents to being appointed Referee, and
- (e) Harvey T Strosberg, Q C , J J Camp, Q C , Claude Desmeules and William L Vanveen consent to being appointed to the Management Committee

AND without any admission of liability on the part of any of the Settling Defendants, all Settling Defendants having denied liability,

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

- (a) ***“Amended Settlement Agreement”*** means the Settlement Agreement made as of November 1, 2004 and amended as of January 6, 2005 in the form attached as Appendix 1 to this judgment,
- (b) ***“Akzo Settlement Agreement”*** means the settlement agreement between the plaintiffs in the Choline Chloride Actions and Akzo Nobel Chemicals BV made as of the 6<sup>th</sup> day of January, 2005,

- (c) **“Ontario Actions”** means the Ontario Biotin Action, the Ontario Bulk Vitamins Action, the Ontario Choline Chloride Action, the Ontario Methionine Action and the Ontario Niacin Action,
- (d) **“Ontario Biotin Action”** means Ontario Court File No 00-CV-202080CP,
- (e) **“Ontario Bulk Vitamins Action”** means Ontario Court File No 00-CV-200045CP,
- (f) **“Ontario Choline Chloride Action”** means Ontario Court File No 00-CV-198657CP,
- (g) **“Ontario Methionine Action”** means Ontario Court File No 00-CV-201723CP,
- (h) **“Ontario Niacin Action”** means Ontario Court File No 00-CV-200044CP,
- (i) **“Ontario Releasers”** means, jointly and severally, the Settling Plaintiffs and the Settlement Class Members in the Ontario Actions and 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,
- (j) **“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 of Vitamins Products in Canada, or relating to any conduct alleged (or which could have been alleged) in the Ontario Actions, 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,
- (k) **“SCSD”** means Sutts, Strosberg LLP, Camp Fiorante Matthews, Siskind Cromarty Ivey & Dowler LLP and Siskinds, Desmeules,

- (l) **“Supplemental Choline Chloride Actions”** means Ontario Court File No 40610/02 (London) and British Columbia Court File, Vancouver Registry, No L023727,
- (m) **“Supplemental Methionine Actions”** means Ontario Court File No 42267/CP (London) and British Columbia Court File, Vancouver Registry, No L032297, and
- (n) **“UCB/Reilly Settlement Agreement”** means the settlement agreement between the plaintiffs in the Niacin Actions and the Supplemental Choline Chloride Actions and Reilly Industries Inc and UCB S A made as of the 23<sup>rd</sup> day of February, 2005

2 THIS COURT ORDERS that

- (a) the Ontario Biotin Action is hereby certified as a class proceeding against F Hoffmann-La Roche Ltd , Lonza AG, Merck KGaA, Sumitomo Chemical Co Ltd and Tanabe Seiyaku Co Ltd , the Settling Defendants therein,
- (b) the Settlement Class in the Ontario Biotin Action is defined as  

All persons in Canada who purchased Class Vitamins in Canada from October 1, 1991 to September 30, 1995, except the Excluded Persons and persons who are included in British Columbia Court File, Vancouver Registry, No L003307 and in Quebec Court (District of Montreal) Action No 500-06-000083-994,
- (c) Marcy David, Fleming Feed Mill Ltd and Glen Ford are hereby appointed as the representative plaintiffs in the Ontario Biotin Action, and

- (d) the common issue in the Ontario Biotin Action is

Did the Settling Defendants and their Affiliated Defendants in the Ontario Biotin Action agree to fix, raise, maintain or stabilize the prices of, or allocate markets and customers for, biotin in Canada from October 1, 1991 to September 30, 1995?

3 THIS COURT ORDERS that

- (a) the Ontario Bulk Vitamins Action is hereby certified as a class proceeding against Aventis Animal Nutrition S A , BASF Aktiengesellschaft, Danchi Pharmaceutical Company, Ltd , Eisai Co Ltd , F Hoffmann-La Roche Ltd , Merck KGaA, Roussel Canada Inc and Takeda Pharmaceutical Company Limited (formerly Takeda Chemical Industries, Ltd ), the Settling Defendants therein,

- (b) the Settlement Class in the Ontario Bulk Vitamins Action is defined as

All persons in Canada who purchased Class Vitamins in Canada in the relevant Purchase Periods indicated, except the Excluded Persons and persons who are included in British Columbia Court File, Vancouver Registry, No L003292 and in Quebec Court (District of Montreal) Action No 500-06-000083-994

Class Vitamin	Purchase Period	Class Vitamin	Purchase Period
A	01/01/90 – 28/02/99	B12	01/01/90 – 31/12/97
B1 (thiamine)	01/01/91 – 31/12/94	Beta carotene	01/10/91 – 31/12/98
B2 (riboflavin)	01/07/91 – 31/10/95	C	01/01/91 – 31/12/95
B5 (calpan)	01/01/91 – 31/12/98	Canthaxanthin	01/01/92 – 31/12/97
B6 (pyridoxine)	01/01/91 – 30/09/94	E	01/01/90 – 28/02/99
B9 (folic acid)	01/01/91 – 31/12/94	Premix	01/01/91 – 31/12/97

- (c) Aliments Breton Inc , Mary Helen Awad, Roger Awad, Fleming Feed Mill Ltd and Glen Ford are hereby appointed as the representative plaintiffs in the Ontario Bulk Vitamins Action, and

- (d) the common issue in the Ontario Bulk Vitamins Action is

Did the Settling Defendants and their Affiliated Defendants in the Ontario Bulk Vitamins Action agree to fix, raise, maintain or stabilize the prices of, or allocate markets and customers for, any of the following Vitamins in Canada in the relevant Purchase Periods indicated

Vitamin	Purchase Period	Vitamin	Purchase Period
A	01/01/90 – 28/02/99	B12	01/01/90 – 31/12/97
B1 (thiamine)	01/01/91 – 31/12/94	Beta carotene	01/10/91 – 31/12/98
B2 (riboflavin)	01/07/91 – 31/10/95	C	01/01/91 – 31/12/95
B5 (calpan)	01/01/91 – 31/12/98	Canthaxanthin	01/01/92 – 31/12/97
B6 (pyridoxine)	01/01/91 – 30/09/94	E	01/01/90 – 28/02/99
B9 (folic acid)	01/01/91 – 31/12/94	Premix	01/01/91 – 31/12/97

4 THIS COURT ORDERS that

- (a) the Ontario Choline Chloride Action is hereby certified against Chinook Group Limited (incorrectly named Chinook Group, Ltd ), BASF Aktiengesellschaft and Bioproducts, Incorporated (incorrectly named Bioproducts, Inc ), the Settling Defendants therein,
- (b) the Settlement Class in the Ontario Choline Chloride Action is defined as  
All persons in Canada who purchased Class Vitamins in Canada from January 1, 1988 to December 31, 1998 except the Excluded Persons and persons who are included in British Columbia Court File, Vancouver Registry, No L002690 and in Quebec Court (District of Montreal) Action No 500-06-000083-994,
- (c) Aliments Breton Inc , Marcy David, Glen Ford and Fleming Feed Mill Ltd are hereby appointed as the representative plaintiffs in the Ontario Choline Chloride Action, and

- (d) the common issue in the Ontario Choline Chloride Action is

Did the Settling Defendants and their Affiliated Defendants in the Ontario Choline Chloride Action agree to fix, raise, maintain or stabilize the prices of, or allocate markets and customers for, choline chloride in Canada from January 1, 1988 to December 31, 1998?

5 THIS COURT ORDERS that

- (a) the Ontario Methionine Action is hereby certified against Aventis Animal Nutrition S A , the Settling Defendant therein,

- (b) the Settlement Class in the Ontario Methionine Action is defined as

All persons in Canada who purchased Class Vitamins in Canada from January 1, 1986 to December 31, 1998 except the Excluded Persons and persons who are included in British Columbia Court File, Vancouver Registry, No L003124 and in Quebec Court (District of Montreal) No 500-06-000233-045 (formerly Quebec Court (District of Quebec) No 200-06-000011-000),

- (c) Aliments Breton Inc , Kristi Cappa, Glen Ford and Fleming Feed Mill Ltd are hereby appointed as the representative plaintiffs in the Ontario Methionine Action, and

- (d) the common issue in the Ontario Methionine Action is

Did the Settling Defendant and its Affiliated Defendants in the Ontario Methionine Action agree to fix, raise, maintain or stabilize the prices of, or allocate markets and customers for, methionine in Canada from January 1, 1986 to December 1, 1998?

6 THIS COURT ORDERS that

(a) the Ontario Niacin Action is hereby certified against Degussa Canada Inc , Lonza AG and Nepera, Inc (incorrectly named Nepera, Incorporated), the Settling Defendants therein,

(b) the Settlement Class in the Ontario Niacin Action is defined as

All persons in Canada who purchased Class Vitamins in Canada 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 in the Ontario Niacin Action, and

(d) the common issue in the Ontario Niacin Action is

Did the Settling Defendants and their Affiliated Defendants in the Ontario Niacin Action agree to fix, raise, maintain or stabilize the prices of, or allocate markets and customers for niacin and/or niacinamide in Canada from January 1, 1992 to March 31, 1998?

7 THIS COURT DECLARES, for greater certainty, that a person may be a member of the Settlement Class in one, some or all of the Ontario Actions

8 THIS COURT ORDERS AND ADJUDGES that the proposed settlement of the Ontario Actions as particularized in this judgment and the Amended Settlement

Agreement is fair, reasonable, adequate, and in the best interests of the members of the Settlement Class in each of the Ontario Actions

9 THIS COURT ORDERS that the Amended 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

10 THIS COURT ORDERS that

- (a) Deloitte & Touche LLP be and is hereby appointed as the Administrator of the Amended Settlement Agreement, until further order of this court, on the terms and conditions and with the powers, rights, duties and responsibilities set out in the Amended Settlement Agreement,
- (b) in the event the Amended Settlement Agreement is terminated in accordance with any of the provisions therein, the total amount payable to the Administrator shall not exceed \$125,000 for fees, disbursements and GST,
- (c) the total amount payable to the Administrator for the administration of the Amended Settlement Agreement in its entirety is hereby fixed at \$725,000 for fees, disbursements and GST, and
- (d) if the Courts issue the orders contemplated by s 16 1 of the Amended Settlement Agreement, then, in addition to its fixed fee, the Administrator

shall pay to Deloitte & Touche LLP, \$27,000 for the supplementary work that it has done as Escrow Agent in relation to the Amended Settlement Agreement, the Akzo Settlement Agreement and the UCB/Reilly Settlement Agreement, such payment to be allocated as a charge of \$9,000 to each of the Direct Purchaser Fund, Intermediate Purchaser Fund and Consumer Fund

11 THIS COURT ORDERS that

- (a) Reva E Devins be and is hereby appointed as Referee, until further order of this court, with the duties and responsibilities set out in the Amended Settlement Agreement,
- (b) the fees, disbursements and GST of the Referee for her services shall be fixed by the judge hearing the Ontario Approval Hearing on notice to the Settling Plaintiffs and Settling Defendants, and
- (c) the total amount payable to the Referee for her services shall not exceed \$150,000 for fees, disbursements and GST

12 THIS COURT ORDERS that

- (a) Harvey T Strosberg, Q C , J J Camp, Q C and Claude Desmeules are appointed to the Management Committee on behalf of the Settlement Classes and William L Vanveen is appointed to the Management

*Committee as the Settling Defendants' representative, until further order of this court, with the duties and responsibilities of overseeing the implementation and administration of the Amended Settlement Agreement,*

- (b) *the fees, disbursements and GST of the members of the Management Committee for their services shall be fixed by the judge hearing the Ontario Approval Hearing on notice to the Settling Plaintiffs and Settling Defendants, and*
- (c) *the total amount payable to the members of the Management Committee for their services shall not exceed \$150,000 for fees, disbursements and GST*

13 THIS COURT ORDERS AND DECLARES that each Ontario Releasor in any of the Ontario Actions has released and shall be conclusively deemed to have fully, finally and forever released the Releasees in the Ontario Actions 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

14 THIS COURT ORDERS that each Ontario Releasor in any of the Ontario Actions shall not commence or continue any action or take any proceeding relating in any way to the Released Ontario Claims against any person or persons who will or could, in connection with any such action or proceeding, bring or commence or continue any claim, crossclaim, claim over or any claim for contribution, indemnity or any other relief against any one of the Releasees in any of the Ontario Actions, provided that nothing in this judgment affects the rights of a member of a Settlement Class in any of the Ontario Actions to claim or continue to claim against any Non-Settling Defendant in any of the Proceedings

15 THIS COURT ORDERS AND DECLARES that the Releasees in any of the Ontario Actions have released and shall be conclusively deemed to have fully, finally and forever released each other from any and all claims for contribution and indemnity that said Releasees, 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

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

17 THIS COURT ORDERS AND DECLARES that each member of a Settlement Class in the Ontario 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 Releasees in respect of or in relation to the Released Ontario Claims

18 THIS COURT ORDERS AND DECLARES that each member of a Settlement Class in the Ontario Actions who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors shall not commence or continue any action or take any proceeding relating in any way to the Released Ontario Claims against any person or persons who will or could, in connection with any such action or proceeding, bring or commence or continue any claim, crossclaim, claim over or any claim for contribution, indemnity or any other relief against any one of the Releasees in any of the Ontario Actions, provided that nothing in this judgment affects the rights of a member of a Settlement Class in any of the Ontario Actions to claim or continue to claim against any Non-Settling Defendant in any of the Proceedings

19 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 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 paragraph (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 claims against the Non-Settling Defendants such that the Settling Plaintiffs shall only be entitled to claim and to seek to recover from the Non-Settling Defendants, on a joint and several basis
  - (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) no part of this order is intended to prejudice nor does it prejudice the right and ability of any Non-Settling Defendant to assert in these or any other future proceedings related hereto that its liability, if any, is several only,
- (d) the Settling Plaintiffs shall not claim from any Non-Settling Defendant that portion of any damages arising from the sales of or allocable to the conduct of an insolvent Non-Settling Defendant which any solvent Non-Settling Defendant would but for this order be able to claim contribution for from one or more of the Settling Defendants,

- (e) a Non-Settling Defendant may seek an order from the court providing for discovery from some or all of the Settling Defendants and/or their Affiliated Defendants as deemed appropriate by the court, and
- (f) a Non-Settling Defendant may effect service of the motion(s) referred to in subparagraph (e) on a Settling Defendant by service on counsel of record for the Settling Defendant in the Settling Proceeding

20 THIS COURT ORDERS AND DECLARES that each member of a Settlement Class in any of the Ontario Actions who does not opt out in accordance with the terms of this judgment shall consent and shall be deemed to have consented to the dismissal of any Other Actions he, she or it has commenced against the Releasees in the Ontario Actions, without costs and with prejudice

21 THIS COURT ORDERS AND DECLARES that each Other Action commenced in Ontario by any member of a Settlement Class in any of the Ontario Actions who does not opt out in accordance with the terms of this judgment shall be and is hereby dismissed against the Releasees in the Ontario Actions, without costs and with prejudice

22 THIS COURT ORDERS that the members of the Settlement Classes in the Ontario Actions shall be given notice of this judgment, substantially in the form of the notice attached as Appendix 2 to this judgment instead of the notice at Schedule K of the Amended Settlement Agreement and substantially in the manner set out in Schedule J of the Amended Settlement Agreement within 30 days after the last of the Final Orders

23 THIS COURT ORDERS AND DECLARES that the notice at Appendix 2 of this judgment and its distribution as provided for in this judgment satisfies the requirements of section 17(6) of the *Class Proceedings Act, 1992* and is the best notice practicable under the circumstances

24 THIS COURT ORDERS that each member of a Settlement Class who elects to opt out of the Ontario 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

25 THIS COURT ORDERS AND DECLARES that this judgment, including the Amended Settlement Agreement, is binding upon each member of a Settlement Class who does not opt out of the Ontario 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 the Ontario Actions. And, for greater certainty, this judgment, including the Amended Settlement Agreement, is binding upon each Direct Purchaser and each Distributor of Vitamins (other than methionine) who does not opt out in accordance with the terms of this judgment whether or not such person submits a claim to the Administrator in accordance with the terms of this judgment, whether or not such person is determined to be eligible to receive a distribution or whether the claim is accepted in whole or in part.

26 THIS COURT ORDERS that the Administrator shall, on or before August 17, 2005, report to Mr Justice Cumming by motion and advise as to the names of those persons, if any, who have opted out of the Ontario Actions

27 THIS COURT ORDERS that each member of a Settlement Class in any one or more of the Ontario Actions who is a Direct Purchaser or a Distributor of Vitamins (other than methionine) shall submit a claim to the Administrator, in accordance with the provisions of the Amended Settlement Agreement, on or before November 5, 2005 at 5 00 p m eastern, and, any Direct Purchaser or Distributor who fails to do so, shall not share in any distribution made in accordance with the Amended Settlement Agreement unless the judge hearing the Ontario Approval Hearing orders otherwise

28 THIS COURT ORDERS AND DECLARES that any report by a Referee in respect of the claim of a member of a Settlement Class in an Ontario Action shall be confirmed on the expiration of 15 days after a copy of the report with proof of service on every party who appeared on the reference has been filed with this court unless confirmation of the Referee's report is opposed, by motion made to the judge hearing the Ontario Approval Hearing

29 THIS COURT ORDERS AND DECLARES that any report by the Referee in respect of Opt Out Refunds shall be confirmed on the expiration of 15 days after a copy of the report with proof of service on the parties who appeared on the reference has been filed with this court

30 THIS COURT ORDERS that the Administrator shall

- (a) distribute the Direct Purchaser Fund, Methionine Fund and Expense Fund in accordance with the Amended Settlement Agreement,
- (b) following payment of Class Counsel Fees and Administration Expenses from the Intermediate Purchaser Fund in accordance with the Amended Settlement Agreement, distribute the monies available for distribution in the Intermediate Purchaser Fund, cy-pres, substantially in accordance with Schedule F of the Amended Settlement Agreement, except that the Canadian Cervid Council shall not receive a cy-près distribution and the Canadian Goat Society and the Canadian Boer Goat Association shall equally share the cy-pres distribution allocated for the Canadian Goat Society at Schedule F, and
- (c) following payment of Class Counsel Fees and Administration Expenses from the Consumer Fund in accordance with the Amended Settlement Agreement, distribute the monies available for distribution in the Consumer Fund, cy-pres, substantially in accordance with Schedule G of the Amended Settlement Agreement

31 THIS COURT ORDERS AND DECLARES that any one or more of the representative plaintiffs in the Ontario Actions, the Settling Defendants in the Ontario Actions, the members of the Management Committee, the Escrow Agent, the Class

*Counsel Representative or the Administrator may apply to the judge hearing the Ontario Approval Hearing for directions in respect of the implementation or administration of the Amended Settlement Agreement*

32 THIS COURT ORDERS AND DECLARES that no person may bring any action or take any proceedings against the Administrator, the members of the Management Committee, the Referee, the Escrow Agent, the Class Counsel Representative or the friend of the court, their employees, agents, partners, associates, representatives, successors or assigns for any matter in any way relating to the Amended Settlement Agreement, the administration of the Amended Settlement Agreement or the implementation of this judgment except with leave of the judge hearing the Ontario Approval Hearing

33 THIS COURT ORDERS AND DECLARES that

- (a) \$18,000,000 for Class Counsel Fees and Administration Expenses relating to the Amended 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 SCSD their fees, disbursements and all applicable taxes in an amount equal to \$18,000,000 minus Administration Expenses minus Quebec Counsel Fees and minus disbursements and applicable taxes, as provided in subparagraph (c), provided that, if the Administrator pays Opt Out

Refunds to the Settling Defendants, then, SCSD's fees shall not exceed 15% of \$100,000,000 minus the Opt Out Refunds,

- (c) SCSD's disbursements are fixed in the amount of \$901,011 plus applicable taxes,
- (d) in addition to the fees, disbursements and applicable taxes, particularized above, SCSD shall be paid and shall retain for their own benefit
  - (i) all costs and interest, if any, recovered from Perry Borden, James W Curran, Mary P Webster and/or Lars Soderstrom, and
  - (ii) costs and interest if any are determined to be owing to a plaintiff in the Ontario Methionine Action by Degussa-Hulls A G or Degussa Corporation as defendants in the Ontario Methionine Action with respect to the jurisdiction motion brought by them in that action, provided that no part of this judgment is intended to prejudice nor does it prejudice the right and ability of Degussa-Hulls A G or Degussa Corporation to assert that it has no liability for costs as a result of the terms of this judgment and the terms of the Amended Settlement Agreement, or otherwise, and

any member of SCSD is authorized to receive any such costs and interest and to sign any release or such other document on behalf of the classes in relation to these costs and interest, and
- (e) if there is a future recovery in the Methionine Actions and/or Supplemental Methionine Actions, then, when determining Class Counsel Fees, the court will consider all of the work done for the classes in all of the Proceedings and the awards of Class Counsel Fees made in the Proceedings