

Appendix 1 in file.  
L023727



**In the Supreme Court of British Columbia**

Between:

Ritchie-Smith Feeds, Inc.,  
Wendy Weberg

Plaintiffs

and:

Degussa-Hüls AG, Degussa Corporation,  
Reilly Industries Inc., Reilly Chemicals S.A.,  
Vitachem Company, Alusuisse-Lonza Canada Inc.,  
Lonza A.G., Nepera, Incorporated, Roger Noack,  
David Purpi and Degussa Canada Inc.

Defendants

**BROUGHT UNDER THE  
CLASS PROCEEDINGS ACT, R.S.B.C. 1996**

(niacin)

No. L023727  
Vancouver Registry

**In the Supreme Court of British Columbia**

Between:

Ritchie-Smith Feeds, Inc. and  
Wendy Weberg

Plaintiffs

and:

UCB S.A., UCB Chemicals Corporation  
and UCB, Inc.

Defendants

**BROUGHT UNDER THE CLASS  
PROCEEDINGS ACT, R.S.B.C. 1996**

(choline chloride)

**ORDER**

BEFORE THE HONOURABLE)  
MR. JUSTICE MACZKO

FRIDAY, THE 8th DAY  
) OF APRIL, 2005

THE APPLICATION of the plaintiffs coming on for hearing on April 6, 2005, for an order pursuant to section 35 of the *Class Proceedings Act*, R.S.B.C. 1996, c.50 (the "Act") (the "BC Approval Hearing") and on hearing J.J. Camp, Q.C. for the plaintiffs Ritchie-Smith Feeds, Inc. and Wendy Weberg, counsel for the defendants, Andrew Epstein, the friend of the Court, and the objector Bayne Boyes,

AND ON READING:

1. the UCB/Reilly Settlement Agreement and the Amended Settlement Agreement, filed;
2. the Reasons for Judgment and Judgment of Mr. Justice Cumming of the Ontario Superior Court of Justice dated March 23, 2005;
3. the letter from the counsel to the Public Guardian and Trustee, filed;

4. the written objections; and
5. the affidavits of:
  - (a) Jane Tielker #3 sworn March 30, 2005,
  - (b) Jane Tielker #4 sworn March 31, 2005;
  - (c) Jane Tielker #5 sworn April 4, 2005;
  - (d) Charles Poelman, sworn March 3, 2005;
  - (e) Wendy Weberg, sworn March 2, 2005;
  - (f) Robert Davison, sworn March 2, 2005;
  - (g) Richard Reimer, sworn March 3, 2005; and
  - (h) Andrew Epstein, sworn March 17, 2005.

AND WITHOUT any admission of liability on the part of Reilly and UCB, Reilly and UCB having denied liability;

THIS COURT ORDERS THAT:

1. for the purposes of this Order, the definitions set out in the UCB/Reilly Settlement Agreement apply to and are incorporated into this Order 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 made in the Choline Chloride Actions, the Niacin Class Actions and other actions as of the 1<sup>st</sup> day of November, 2004 as amended by an agreement made as of the 6<sup>th</sup> day of January, 2005 which is annexed as Schedule 1 to the UCB/Reilly Settlement Agreement;

- (c) "**BC Actions**" means the following actions in the British Columbia Supreme Court: the BC Choline Chloride Action; the BC Biotin Action, Vancouver Registry, No. L003307; the BC Bulk Vitamins Action, Vancouver Registry, No. L003292; the BC Methionine Action, Vancouver Registry, No. L003124; and the BC Niacin Action;
- (d) "**BC Choline Chloride Action**" means action, Vancouver Registry, No. L002690;
- (e) "**BC Choline Chloride Settlement Class**" means: All persons resident in British Columbia 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;
- (f) "**BC Covenantors**" means, jointly and severally, the plaintiffs herein and the members of the BC Niacin Settlement Class and the BC Choline Chloride Settlement Class;
- (g) "**BC Niacin Action**" means Vancouver Registry Action No. L003045;
- (h) "**BC Niacin Settlement Class**" means: All persons resident in British Columbia 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;
- (i) "**Courts**" means the Supreme Court of British Columbia, the Ontario Superior Court of Justice and the Quebec Superior Court;
- (j) "**Reilly**" means Reilly Industries Inc.;
- (k) "**SCSD**" means Sutts, Strosberg LLP, Camp Fiorante Matthews, Siskind Cromarty Ivey & Dowler LLP and Siskinds, Desmeules;

(l) "*Settled BC 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 BC Covenantors, 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 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 BC Choline Chloride Action, the Supplemental BC Choline Chloride Action or the BC Niacin Action, 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 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);

(m) "*Supplemental BC Choline Chloride Action*" means Vancouver Registry Action No. L023727;

(n) "*UCB*" means UCB S.A.;

(o) "*UCB/Reilly Settlement Agreement*" means this settlement agreement between the plaintiffs and UCB and Reilly made as of the 23<sup>rd</sup> day of February 2005.

2. pursuant to s. 35 the *Act*, the court shall consider the fairness of the UCB/Reilly Settlement Agreement and 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. (a) the BC Niacin Action is hereby certified against Reilly;

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

All persons resident in British Columbia 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;

(c) Ritchie Smith Feeds, Inc. and Wendy Weberg 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. (a) the Supplemental BC Choline Chloride Action is hereby certified against UCB;

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

All persons resident in British Columbia 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;

(c) Ritchie Smith Feeds, Inc. and Wendy Weberg 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. for greater certainty, a person may be a member of the BC Choline Chloride Settlement Class and/or the BC Niacin Settlement Class pursuant to this Order and may also be a member of the Settlement Class(es) defined in the Amended Settlement Agreement in one, some or all of the BC Actions.
6. the proposed settlement of the BC Niacin Action against Reilly and the Supplemental BC Choline Chloride Action against UCB as particularized in this Order and the UCB/Reilly Settlement Agreement is fair, reasonable, adequate, and in the best interests of the members of the BC Niacin Settlement Class and the BC Choline Chloride Settlement Class.
7. the UCB/Reilly Settlement Agreement, annexed as Appendix 1, is incorporated by reference into this Order and is hereby approved and shall be implemented in accordance with its terms.
8. the use of the term "Releasee" and "Releasees" in the UCB/Reilly Settlement Agreement does not constitute a release of claims by any of the BC Covenantors.
9. each BC Covenantor in these actions shall not commence or continue any action or take any proceeding relating in any way to the Settled BC 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 Reilly Releasees or the UCB Releasees, provided that nothing in this Order affects the rights of a member of a BC Choline Chloride Settlement Class to claim or continue to claim against DCV Inc. and Ducoa L.P. in the BC Choline Chloride Action.
10. 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 Settled BC 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 BC 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 9(c) on UCB by service on counsel of record for UCB.
11. the members of the BC Niacin Settlement Class and the BC Choline Chloride Settlement Class in these actions shall be given notice of this Order, by the publication of the notice substantially in the form at Appendix 2 to this Order and substantially in the manner set out in Schedule J of the Amended Settlement Agreement and any other notice is dispensed with.
12. each member of the BC Niacin Settlement Class and/or the BC 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.
13. this Order, including the UCB/Reilly Settlement Agreement, is binding upon each member of the BC Niacin Settlement Class and/or of the BC Choline Chloride Settlement Class who does not opt out of these actions in accordance with the terms of this Order, including those persons who are minors or are mentally incapable and the requirements

of Rule 6(14) of the Rules of Court are dispensed with in respect to these actions. And, for greater certainty, this Order, 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 BC Niacin Settlement Class and upon each Direct Purchaser and each Distributor of choline chloride (Vitamin B4) who is a member of the BC Choline Chloride Settlement Class and who does not opt out in accordance with the terms of this Order, whether or not such person submits a claim to the Administrator, 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.

14. each member of the BC Choline Chloride Settlement Class who is a Direct Purchaser or a Distributor of choline chloride (Vitamin B4) and/or each member of the BC Niacin Settlement Class who is a Direct Purchaser or Distributor of niacin (Vitamin B3) 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 this court orders otherwise.
15. this Order does not affect any claims or causes of action that any member of the BC Choline Chloride Settlement Class has or may have against DCV, Inc. or Ducoa L.P. in the BC Choline Chloride Action.
16.
  - (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.

17. save as aforesaid, these actions be and are hereby dismissed against UCB, UCB Chemicals Corporation, UCB Inc. and Reilly without costs and with prejudice; and
18. the endorsement of this Order by counsel for the defendants be dispensed with.



BY THE COURT



DEPUTY DISTRICT REGISTRAR

**ENTERED**

APR 11 2005

VANCOUVER REGISTRY

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