

# NOTICE OF PROPOSED NATIONAL SETTLEMENT OF THE VITAMINS CLASS ACTIONS

## THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ CAREFULLY.

### PURPOSE OF THIS NOTICE

Class action lawsuits were commenced in Ontario, British Columbia and Quebec against Akzo, Aventis, BASF, Bioproducts, Chinook, Daiichi, Degussa, DuCoa, Eisai, Lonza, Merck, Mitsui, Nepera, Nippon, Novus, Reilly, Rhône-Poulenc, Roche, Roussel, Sumitomo, Takeda, Tanabe and UCB and some of their subsidiary and/or affiliated companies and/or officers and directors ("defendants") alleging that they had conspired to fix prices and markets for the following vitamins ("Vitamins") in Canada during the following relevant purchase periods:

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
B3 (niacin and niacinamide)	01/01/92 – 31/03/98	canthaxanthin	01/01/92 – 31/12/97
B4 (choline chloride)	01/01/88 – 31/12/98	E	01/01/90 – 28/02/99
B5 (calpan)	01/01/91 – 31/12/98	H (biotin) premix	01/10/91 – 30/09/95
B6 (pyridoxine)	01/01/91 – 30/09/94	methionine	01/01/86 – 31/12/98
B8 (biotin)	01/10/91 – 30/09/95		
B9 (folic acid)	01/01/91 – 31/12/94		

A national Vitamins settlement has been reached with some of the defendants in some of the actions, subject to obtaining the necessary court approvals. This notice is to inform all persons in Canada who purchased any of the Vitamins, or products containing the Vitamins, or products derived from animals that consumed the Vitamins ("Vitamin Products") in Canada during the relevant purchase periods, of the proposed settlement and their rights as potential settlement class members. Complete information on the proposed settlement is found at [www.vitaminsclassaction.com](http://www.vitaminsclassaction.com).

The settling defendants do not admit any wrongdoing or liability on their part. The proposed settlement is a compromise of disputed claims.

### PROPOSED CERTIFICATION AND APPROVAL ORDERS

The courts will be asked to certify some of the class actions against some of the defendants, appoint class representatives, approve the Settlement Agreement and describe the settlement classes generally as: All persons in Canada who purchased any of the Vitamins or Vitamin Products in Canada during the relevant purchase periods.

If the Settlement Agreement is approved, the class action lawsuits will continue to be prosecuted against those defendants who did not participate in the settlement. If the Settlement Agreement is not approved, the class action lawsuits will continue to be prosecuted against all defendants.

### TERMS OF THE PROPOSED SETTLEMENT

The class action lawsuits will be certified as class proceedings on consent against the settling defendants.

The settling defendants will pay the sum of approximately \$132.2 million in full and final settlement of all claims against them including interest and costs. The settlement monies will be distributed in accordance with the terms of the Settlement Agreement. The courts will appoint an Administrator to distribute the settlement monies. The courts will supervise the administration and operation of the distribution.

The Settlement Agreement provides for the following types of purchasers:

- **Distributors:** persons in Canada who purchased any of the Vitamins in Canada during the relevant purchase periods directly from a defendant and only resold all Vitamins without processing them or including them in any other product.
- **Direct Purchasers:** persons in Canada who purchased any of the Vitamins in Canada during the relevant purchase periods directly from a defendant or from a Distributor.
- **Intermediate Purchasers:** persons in Canada other than Direct Purchasers, Distributors or Consumers, who purchased any of the Vitamins or Vitamin Products in Canada during the relevant purchase periods.
- **Consumers:** natural persons in Canada who purchased for personal consumption or use any of the Vitamins or Vitamin Products in Canada during the relevant purchase periods.

The settlement monies will be divided into separate funds for distribution for the direct or indirect benefit of the different types of purchasers as follows:

#### Direct Purchasers and Distributors of Vitamins (other than Methionine)

At least \$87.8 million will be allocated to the Direct Purchaser Fund. Settlement class members who are Direct Purchasers and Distributors of Vitamins (other than methionine) may be eligible to receive a direct distribution of settlement monies.

- **Direct Purchasers** who purchased any of the Vitamins (other than methionine or premix) in Canada directly from a defendant during the relevant purchase periods may receive up to 12% of the net purchase price. Direct Purchasers who purchased premix in Canada directly from a defendant during the relevant purchase period may receive up to 4.2% of the net purchase price.
- **Direct Purchasers** who purchased any of the Vitamins (other than methionine or premix) in Canada directly from a Distributor during the relevant purchase periods may receive up to 10% of the net purchase price. Direct Purchasers who purchased premix in Canada directly from a Distributor during the relevant purchase period may receive up to 3.5% of the net purchase price.
- **Distributors** who purchased any of the Vitamins (other than methionine or premix) in Canada directly from a defendant during the relevant purchase periods may receive up to 1% of the net purchase price. Distributors who purchased premix in Canada directly from a defendant during the relevant purchase period may receive up to .35% of the net purchase price.

The % of the net purchase price of Vitamins (other than methionine) that Direct Purchasers and Distributors will actually receive will depend on how many Direct Purchasers and Distributors apply for and are determined to be eligible for compensation. The estimated %'s are not intended to be and should not be interpreted as guarantees.

To be eligible for compensation, Direct Purchasers and Distributors of Vitamins (other than methionine) will be required to apply to the Administrator that will be appointed.

#### Direct Purchasers and Distributors of Methionine

At least \$5.6 million will be allocated to the Methionine Fund. Settlement class members who are Direct Purchasers and Distributors of methionine may be eligible to receive a direct distribution of settlement monies however, the distribution will not be made at this time. Aventis is the only defendant in the methionine class actions participating in the settlement. Degussa, Novus, Nippon and Mitsui are not. The calculation and timing of the methionine distribution will be determined by

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further order of the courts. An explanation concerning the methionine settlement and the continued prosecution of the methionine class actions is provided on the website: [www.vitaminsclassaction.com](http://www.vitaminsclassaction.com).

### Intermediate Purchasers and Consumers

Recognizing the difficulty of determining the actual damage suffered by any given Intermediate Purchaser or Consumer, and recognizing the related difficulties and costs associated with a direct distribution to Intermediate Purchasers and Consumers, no direct distribution of settlement monies will be made to them.

- At least \$10 million will be allocated to the Intermediate Purchaser Fund to be distributed to industry organizations for the indirect benefit of Intermediate Purchasers.
- At least \$10 million will be allocated to the Consumer Fund to be distributed to community organizations for activities related to Vitamin Products such as food and nutritional research or education and food programs or consumer services or consumer protection activities for the indirect benefit of Consumers.

The Intermediate Purchaser Fund and Consumer Fund will be allocated either to national organizations or to organizations in each province or region according to population. The industry and consumer organizations that may be eligible to receive a distribution are listed at the website <http://www.vitaminsclassaction.com>.

### Class Counsel Fees and Administration Expenses

The fees, disbursements and taxes of class counsel and the costs of the administration will be fixed by the courts and will be paid out of the \$132.2 million. The amounts sought for class counsel fees, disbursements and taxes and for administration costs will not exceed \$18 million. The costs of administration are estimated at \$1.55 million.

### THE SETTLEMENT APPROVAL HEARINGS/MOTION FOR AUTHORIZATION

The Ontario class actions include the claims of all corporations and other legal entities in Canada except those resident in British Columbia as well as the claims of all natural persons who reside anywhere in Canada except the provinces of British Columbia and Quebec.

Each court will decide whether it should approve the proposed settlement as recommended by the plaintiffs and class counsel. The hearings to decide whether to approve the Settlement Agreement will be held:

- in Ontario, on March 8 and 9, 2005 at 10:00 a.m. eastern at the Courthouse, 361 University Avenue, Toronto;
- in British Columbia, on April 6 and 7, 2005 at 10:00 a.m. pacific at the Courthouse, 800 Smithe Street, Vancouver; and
- in Quebec, on April 21, 2005 at 9:00 a.m. eastern at the Courthouse, 1 Rue Notre Dame East, Montreal.

**Settlement class members who do not oppose the proposed settlement need not appear at a hearing or take any other action at this time to indicate their desire to participate in the settlement. At each hearing, the court will consider objections to the proposed settlement by potential settlement class members, but only if these objections are sent in written form on or before February 15, 2005 at 5:00 p.m. eastern:**

### For all Direct and Intermediate Purchasers, Distributors and Consumers resident in British Columbia:

Andrew Epstein, Watson Goepel Maledy, 1700-1075 West Georgia Street, Vancouver, British Columbia, V6E 3C9, telephone: 604-688-1301, fax: 604-688-8193, email: [aepstein@wgmlaw.com](mailto:aepstein@wgmlaw.com).

### For Consumers in Quebec:

Helene Guay, 200 avenue Laurier West, Bur. 475, Montreal, Quebec, H2T 2N8, telephone: 514-272-1164 extn. 3, fax: 514-272-5447, email: [helene.guay@biz.videotron.ca](mailto:helene.guay@biz.videotron.ca).

### For all Direct and Intermediate Purchasers and Distributors in Canada except those in British Columbia, and for Consumers in all provinces and territories except British Columbia and Quebec:

William Dermody, 550 Concession Street, Hamilton, Ontario L8V 1E9, telephone: 905-383-3331, fax: 905-574-3299, email: [bill@inhouselawyers.com](mailto:bill@inhouselawyers.com).

**Settlement class members who object to the proposed settlement shall include in their written objection the following information:**

- the person's name, address, telephone number, fax number and email address;**
- a brief statement of the nature of and reasons for the objection; and**
- whether the person or a representative intends to appear at the appropriate court hearing in person or by counsel, and if by counsel, the name, address, telephone number, fax number and email address of counsel.**

### ADDITIONAL INFORMATION

If you believe you are a potential settlement class member, please review or obtain complete copies of the material for the approval hearing, including the Settlement Agreement at the website <http://www.vitaminsclassaction.com>.

### QUESTIONS

Questions for class counsel should be directed by telephone or in writing to one of the following class counsel:

### For all Direct and Intermediate Purchasers, Distributors and Consumers resident in British Columbia:

J. J. Camp, Q.C., Camp Fiorante Matthews, telephone: 604-331-9520, fax: 604-689-7554, email: [jjcamp@cfmlawyers.ca](mailto:jjcamp@cfmlawyers.ca)

### For Consumers of Vitamins (other than methionine) in Quebec:

Jean-Pierre Fafard, Sylvestre Charbonneau & Fafard, telephone: 514-937-2881, fax: 514-937-6529, email: [jp.fafard@scf.qc.ca](mailto:jp.fafard@scf.qc.ca) or Paul Unterberg, Unterberg Labelle LeBeau & Morgan, telephone: 514-934-0841, fax: 514-937-6547, email: [contact@ullnet.com](mailto:contact@ullnet.com)

### For Consumers of methionine in Quebec:

Claude Desmeules, Siskinds, Desmeules, telephone: 418-694-2009, fax: 418-694-0281, email: [claudio.desmeules@siskindsdesmeules.com](mailto:claudio.desmeules@siskindsdesmeules.com)

### For all Direct and Intermediate Purchasers and Distributors in Canada except those resident in British Columbia, and for all Consumers in all provinces and territories except British Columbia and Quebec:

Harvey T. Strosberg, Q.C., Sutts, Strosberg LLP, telephone: 800-229-5323, fax: 519-561-6203, email: [vitamins@strosbergco.com](mailto:vitamins@strosbergco.com) or C. Scott Ritchie, Q.C., Siskind, Cromarty, Ivey & Dowler LLP, telephone: 519-672-2121, fax: 519-672-6065, email: [scott.ritchie@siskinds.com](mailto:scott.ritchie@siskinds.com)

Settlement class members who consider it desirable or necessary to seek the advice and guidance of their own lawyers may do so at their own expense.

### INTERPRETATION

This notice is a summary of some of the terms of the Settlement Agreement. If there is a conflict between the provisions of this notice and the terms of the Settlement Agreement, the Settlement Agreement shall prevail.

### This notice is approved by the Superior Court of Justice for Ontario, the Supreme Court of British Columbia and the Superior Court of Quebec.

**Any questions about the substantive matters in this notice should not be directed to the courts as their administrative structures are not designed to address this type of inquiry.**