

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**IN RE: MICROCRYSTALLINE
CELLULOSE ANTITRUST LITIGATION**

Master File No. 01-CV-111 (O'Neill, J.)

MDL NO. 1402

**This Document Relates To:
ALL ACTIONS**

**AGREEMENT OF SETTLEMENT BETWEEN
THE PLAINTIFF CLASSES AND DEFENDANT ASAHI KASEI
CORPORATION, FORMERLY KNOWN AS ASAHI CHEMICAL
INDUSTRY CO., LTD., AND ASAHI KASEI CHEMICALS CORPORATION**

WHEREAS, certain plaintiffs (the "Class Plaintiffs") are maintaining civil actions currently pending in the United States District Court for the Eastern District of Pennsylvania ("the Court"), as class actions on behalf of themselves and all other persons who were direct purchasers of microcrystalline cellulose ("MCC") from defendant FMC Corporation (the "Class Actions") for pharmaceutical, food or vitamin uses:

WHEREAS, the Consolidated Amended Class Action Complaint (the "Complaint") in the Class Actions alleges that defendants Asahi Kasei Corporation, formerly known as Asahi Chemical Industry Co., Ltd., and Asahi Kasei Chemicals Corporation ("Asahi"), entered into an unlawful agreement with FMC Corporation ("FMC"), to divide the world market for non-Avicel MCC products, during the time period beginning at least as early as January 1, 1984 and continuing until at least December 31, 1997 (the "Class Period");

WHEREAS, by Order of the Court dated August 13, 2003, three plaintiff classes were certified as described in paragraph 2 below;

WHEREAS, commencing on February 19, 2004, notice was disseminated to all members of all classes by mail, and by publication in The Pink Sheet and The Tan Sheet (both on March 1, 2004) and in the March issue of Food Technology, advising them of their right to exclude themselves from the class (the "Notice");

WHEREAS, pursuant to this Notice those members of each of the three classes listed on Exhibit A hereto elected to exclude themselves from the classes;

WHEREAS, the Class Plaintiffs and their attorneys, based upon discovery conducted by them to date into the facts and issues raised by the Class Actions, have concluded that settlement with Asahi on the terms set forth herein is in the best interest of Class Plaintiffs and the classes;

WHEREAS, Asahi denies the allegations of the Complaint, has asserted affirmative defenses against the claims alleged in the Class Actions, and denies any liability whatsoever;

WHEREAS, the Class Plaintiffs and Asahi agree that this Agreement of Settlement ("Agreement") shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing by Asahi or of the truth of any of the claims or of any of the Class Plaintiffs' allegations; and

WHEREAS, Asahi has agreed to enter into this Agreement in order to avoid the expense, risk, and burden of litigation, to obtain the releases, orders and judgment contemplated by this Agreement, and to put to rest with finality all claims that have been or could have been asserted against Asahi based on the allegations in the Complaint;

NOW, THEREFORE, in consideration of the agreements herein set forth, it is agreed by and among the undersigned that the claims of the Class Plaintiffs and the classes be settled and compromised with Asahi on the following terms and conditions:

1. This Agreement is entered into among the undersigned to compromise and settle with Asahi all of the claims of the classes as defined in paragraph 2 below.

2. This Agreement is entered into by Class Plaintiffs on behalf of the three classes identified below certified by the Court pursuant to Fed. R. Civ. P. 23 (the "Classes") (Order of August 13, 2003).

(i) The Vitamins Class is defined as: All persons or entities in the United States who purchased microcrystalline cellulose directly from defendant FMC Corporation in the United States for use in connection with the manufacture or preparation of vitamin products at any time during the period from January 1, 1984 through December 31, 1997. The Class excludes governmental entities, defendants, defendants' parents, subsidiaries, and affiliates.

(ii) The Pharmaceutical Class is defined as: All persons or entities in the United States who purchased microcrystalline cellulose directly from defendant FMC Corporation in the United States for use in connection with the manufacture or preparation of prescription and/or over-the-counter pharmaceutical products at any time during the period January 1, 1984 through December 31, 1997. The Class excludes governmental entities, defendants, defendants' parents, subsidiaries, and affiliates.

(iii) The Food Purchasers Class is defined as: All persons or entities in the United States who purchased microcrystalline cellulose directly from defendant FMC Corporation in the United States for use as a food additive at any time during the period from January 1, 1984 through December 31, 1997. The Class excludes governmental entities, defendants, defendants' parents, subsidiaries, and affiliates.

3. The undersigned agree to seek approval of this Agreement by the Court and entry of a final judgment order by the Court approving the settlement and to undertake their best efforts,

including all steps and efforts contemplated by this Agreement and any other steps and efforts, which may become necessary by order of the Court or otherwise, to carry out this Agreement.

4. This Agreement shall become final upon the occurrence of all of the following events: (a) it is approved in all respects by the Court as required by Fed. R. Civ. P. 23(e) and entry is made of a final judgment of dismissal with prejudice as to Asahi pursuant to Fed. R. Civ. P. 54(b) against all Class Plaintiffs and members of the Classes, who have not timely excluded themselves from the Classes; and (b) the time for appeal from the Court's approval of this Agreement as described in subpart (a) of this paragraph has expired or, if appealed, the final judgment has been affirmed in its entirety by the court of last resort to which such an appeal has been taken and such affirmance has become no longer subject to further appeal or review (the date on which this Agreement shall become final pursuant to the foregoing provision shall be referred to hereinafter as "Final Settlement Date"). It is agreed that in determining the times for appeal, further appeal, or review, the provisions of Fed. R. Civ. P. 60 and of the All Writs Act, 28 U.S.C. § 1651, shall not be taken into account. In the event that the Court refuses to approve this Agreement or any material part hereof, the final judgment described in subpart (a) of this paragraph is not entered, or the Court's approval of this Agreement or such final judgment is set aside on appeal, the entire Agreement except for paragraphs 11, 18, 19, and 20 *infra*, shall become null and void unless the parties hereto promptly agree in writing to proceed with the Agreement as modified by the Court.

5. In full, complete and final settlement with the Class Plaintiffs and the members of the Classes in accordance with the terms of this Agreement, Asahi will, on or before March 9, 2005, place an order to a first class bank in Japan to deliver by wire transfer the sum of \$25,000,000.00 (the "Settlement Amount") into an account established at Citizens Bank of Pennsylvania pursuant to the Escrow Agreement, the form of which shall be substantially as attached hereto as Exhibit B,

and provide the Plaintiffs' Classes certain cooperation, as set forth in paragraph 8 below. The amount paid by Asahi pursuant to this paragraph 5 and any and all interest thereon, shall be referred to hereinafter as the "Fund."

6. The parties to this Agreement, their counsel, and the Court shall treat, and shall cause the Escrow Agent to treat, the Escrow Account as being at all times a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1 for all periods on and after the later of: (i) the date of initial funding of the Escrow Accounts and (ii) the date of the Court order approving this Agreement. The parties, their counsel, the Escrow Agent, and the Court agree to take no action inconsistent with the treatment of the Escrow Account in such manner. In addition, the Escrow Agent and, as required, the parties shall timely make such elections as necessary or advisable to carry out the provisions of this paragraph, including, if appropriate, the "relation-back election" (as defined in Treas. Reg. § 1.468B-1(j)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent timely and properly to prepare and deliver the necessary documentation for signature by all necessary parties and thereafter to cause the appropriate filing to occur. All provisions of this Agreement shall be interpreted in a manner that is consistent with the Escrow Account being a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1.

7. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the "Administrators" of the Escrow Account shall be Heffler, Radetich & Saitta, LLP ("Heffler"). Heffler shall timely and properly file or cause to be filed on a timely basis, all tax returns and tax payments necessary or advisable with respect to the Escrow Account (including without limitation all income tax returns, all informational returns, and

all returns described in Treas. Reg. § 1.468B-2(1)). All taxes (including any interest and penalties) due with respect to the income earned by the Fund shall be paid from the Fund. Asahi shall have no responsibility to make any filings relating to the Fund and will have no responsibility to pay tax on any income earned by the Fund or to pay any taxes on the Fund unless the settlement is not consummated and the Fund is returned to Asahi pursuant to paragraph 18 below. In the event the Fund is returned to Asahi, Asahi shall be responsible for the payment of all taxes (including any interest or penalties), if any, on said income.

8. After the Final Settlement Date, should it become necessary with respect to Plaintiffs' continued litigation against the nonsettling defendant to authenticate and lay a business records foundation for admissibility of documents produced by Asahi during the course of the litigation, Asahi shall provide the assistance specifically described below in this paragraph 8. In the event that it becomes necessary for Class Plaintiffs to request this assistance, Class Plaintiffs will make every effort to obtain the necessary authentication/foundation through an affidavit or declaration; however, Asahi agrees to provide a knowledgeable witness to be available, if necessary, for deposition. Specifically, after the Final Settlement Date, within two weeks of a request from Class Plaintiffs, Asahi shall provide a written declaration pursuant to Federal Rule of Evidence 902(11) - (12) certifying, if true, that the requested documents are authentic documents from the files of Asahi, and that the documents were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of these matters; were kept in the course of a regularly conducted activity; and were made by the regularly conducted activity as a regular practice. If the nonsettling defendant refuses to consent to the admission of Asahi documents at trial without objection, and if Class Plaintiffs are unable to obtain a timely ruling from the Court which deems the documents admissible at trial, then Asahi shall make an appropriate witness available to

testify at a deposition to be held at the Hong Kong office of Cleary Gottlieb Steen & Hamilton LLP or some other location in Hong Kong that is acceptable to plaintiffs, Asahi and the nonsettling defendant.

9. (a) Upon the Final Settlement Date in consideration of payment of the Settlement Amount, as specified in paragraph 5 of this Agreement, and Asahi's compliance with the provisions set forth in paragraph 8 of this Agreement, Class Plaintiffs and members of the three Classes who have not excluded themselves in a timely manner from the Classes and their respective past and present parents, subsidiaries and affiliates ("Releasers"), or any one of them, whether or not they object to the settlement and whether or not they make a claim or participate in the Fund, completely release, acquit, and forever discharge Asahi and its past and present officers, directors, employees, attorneys, parents, subsidiaries, affiliates, divisions and any of their legal representatives, and the predecessors, successors, heirs, executors, administrators, and assigns of each of the foregoing ("Releasees") from any and all claims, demands, actions, suits, and causes of action, damages whenever incurred, liabilities of any nature, including costs, expenses, penalties and attorneys' fees, known or unknown, suspected or unsuspected, in law or equity, whether class, individual, or otherwise in nature that Releasers, or any one of them, ever had, now has, or hereafter can, shall, or may have directly, representatively, derivatively or in any other capacity against the Releasees or any of them, on account of, arising out of, relating to, or resulting from the purchase of MCC in the United States during the Class Period based in whole or in part on the facts, occurrences, transactions or other matters alleged in the Complaint or otherwise the subject of this litigation, which arise under any federal or state antitrust, unfair competition, unfair practices, price discrimination, unitary pricing, trade practice, or civil conspiracy law, including, without limitation, the Sherman Antitrust Act, 15 U.S.C. §.1 et seq. (the "Released Claims"). The Class Actions shall

be dismissed against the Releasees with prejudice and without costs to the Releasees, in accordance with the Final Judgment Order, the form of which shall be substantially as attached hereto as Exhibit C.

(b) Each Releasor waives California Civil Code Section 1542 and similar provisions in other states. Class Plaintiffs hereby certify that they are aware of and have read and reviewed the following provision of California Civil Code Section 1542 ("Section 1542"): "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor." The provisions of the release set forth above shall apply, regardless of the provisions of Section 1542 or any equivalent, similar, or comparable present or future law or principle of law of any jurisdiction. Each Releasor may hereafter discover facts other than or different from those which he, she or it knows or believes to be true with respect to the claims that are the subject matter of this paragraph, but each Releasor hereby expressly and fully, finally and forever waives, relinquishes, and forever settles and releases any and all rights and benefits existing under (i) Section 1542 or any equivalent, similar or comparable present or future law or principle of law of any jurisdiction and (ii) any law or principle of law of any jurisdiction that would limit or restrict the effect or scope of the provisions of the release set forth above. Each Releasor also expressly waives and fully, finally and forever settles any claims it may have against Releasees or any of them under California Business and Professions Code § 17200 et seq., which claims are expressly incorporated into this paragraph 9.

(c) Nothing in this release shall be deemed to settle or compromise any claim against Defendant FMC Corporation or its affiliates. All rights against Defendant FMC Corporation or its affiliates are specifically reserved.

10. As provided for in the Order Re: Preliminary Approval of Proposed Settlement, the form of which shall be substantially as attached hereto as Exhibit D, the Class Plaintiffs and their counsel will be reimbursed and indemnified solely out of the Fund for all expenses and costs of notice of this Agreement to Class members. Asahi shall have no liability or responsibility with respect to the disbursement, distribution and Administration of the Fund.

11. Asahi shall not be liable for any costs or attorneys' fees of Class Plaintiffs. Such costs and attorneys' fees as approved by the Court shall be paid out of the Fund; provided, however, that no such costs and attorneys' fees, other than those costs necessary to provide notice to the Classes as described below in paragraph 17, shall be paid from the Fund before the Final Settlement Date. After the Final Settlement Date, Asahi will not take any position with respect to Class Plaintiffs' application for attorneys' fees. Asahi further shall not be liable for any of the expenses of notice to the Classes or Administration of the Fund, except that all such expenses shall be paid out of the Fund. Asahi shall promptly provide the consents necessary pursuant to the Escrow Agreement for release of monies from the Fund to meet these expenses.

12. Class Plaintiffs may seek, and Asahi agrees not to oppose, approval of the Court to use the Fund to pay from time to time after the Final Settlement Date such expenses as may reasonably be incurred in the prosecution of the Class Actions, subject to an accounting to the Court at the time of the final resolution of the Class Actions, in an amount not to exceed \$2.5 million, subject to further application to the Court.

13. At the time of the final resolution of the Class Actions, the Fund shall be distributed to the Classes in accordance with a plan of allocation and distribution to be approved by the Court, subject to any amounts paid from the Fund pursuant to paragraphs 10, 11, 12 above and 17 below.

14. The Releasors shall not, after the Final Settlement Date, seek to institute, maintain, prosecute or continue to maintain or prosecute any suit or action, or collect from or proceed against the Releasees, based on the Released Claims. Class Plaintiffs and their counsel acknowledge that Asahi considers it to be a material term of this Agreement that the provisions of this paragraph 14 and paragraph 9, among other paragraphs, will bind all members of the Classes who have not excluded themselves in a timely manner from the Classes.

15. Asahi and the Class Plaintiffs agree that Class members should not be provided a further opportunity to opt out of the Class. If the Court accepts the Agreement but nevertheless orders that class members may opt out of the Class, Asahi may terminate the Agreement within 10 days after the end of the period to request exclusion from the Class established by the Court (the "second opt-out period"). In the event that the Court orders a second opt-out period, within five (5) business days after the end of the second opt-out period, Class Plaintiffs' counsel shall provide Asahi's counsel with a written list of all Class members who have timely exercised their rights to be excluded from the Classes during the second opt-out period, and class Plaintiffs' counsel and Asahi's counsel will ascertain the total dollar amount of FMC sales of MCC made during the Class Period to the entities requiring exclusion from the Class as a result of exercising their rights to be excluded during the second opt-out period.

16. This Agreement does not settle or compromise any claim by Class Plaintiffs or the Classes asserted in the Complaint against Defendant FMC Corporation or its affiliates or other persons or entities other than the Releasees, and all rights against Defendant FMC Corporation or its affiliates or other persons or entities are specifically reserved.

17. Notice shall be directed to the members of the Classes, the form of which shall be substantially as attached hereto as Exhibits E and F, and as provided for in paragraphs 3-4 of the

Order Re: Preliminary Approval, Exhibit D hereto. Asahi agrees that the costs of notice of this Agreement to Class members pursuant to Fed. R. Civ. P. 23(e) shall be paid out of the Fund, prior to the Final Settlement Date at the discretion of Co-Lead Counsel for Plaintiffs, subject to the approval of the Court at the time of the final resolution of the Class Action.

18. If this Agreement becomes null and void or is terminated by Asahi pursuant to paragraph 4 or paragraph 15 above, the Fund shall be returned forthwith to Asahi, less any Court-approved costs of giving notice and escrow costs and fees and taxes paid or owed on the earnings of the Fund made in accordance with paragraphs 10 and 17 of this Agreement. A modification or reversal on appeal of any amount of Class Plaintiffs' counsel's fees and expenses awarded by the Court from the Fund or any plan of allocation or distribution of the Fund shall not be deemed a modification or rejection of all or a part of the terms of this Agreement or such final judgment order. If this Agreement becomes null and void or is terminated by Asahi pursuant to paragraph 4 or paragraph 15 above, this Agreement and all negotiations and proceedings connected with it shall be without prejudice to the rights of any party hereto by any party of any fact or matter, and shall not be used in any way in these actions or in any related actions or proceedings.

19. Neither this Agreement nor any negotiations or proceedings connected with it shall be deemed or construed to be an admission by any party of any fact or matter in this action or in any related actions or proceedings.

20. This Agreement may be executed in counterparts by counsel for the Class Plaintiffs and counsel for Asahi and a facsimile signature shall be deemed an original signature for purposes of executing this Agreement.

21. The Court shall retain jurisdiction over the interpretation, effectuation and implementation of this Agreement.

22. This Agreement constitutes the entire agreement among Class Plaintiffs and Asahi pertaining to the settlement of the Class Actions against Asahi and supersedes any and all prior and contemporaneous undertakings of Plaintiffs and Asahi in connection therewith. This Agreement shall become effective upon its execution by all of the undersigned and will not be amended or modified without the agreement in writing of all of the undersigned.

23. None of the parties hereto shall be considered to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause the provision to be construed against the drafter hereof.

24. All terms of this Agreement shall be governed by and interpreted according to the substantive laws of Pennsylvania without regard to its choice of law or conflict of laws principles.

25. The undersigned counsel for the Class Plaintiffs represent that they are fully authorized to enter into this Agreement on behalf of the Classes, subject to approval of the Court as described herein; and the undersigned counsel for Asahi represent that they are fully authorized to enter into this Agreement on behalf of Asahi.

Dated: March 8, 2005

By: 

H. Laddie Montague, Jr.


Ruthanne Gordon

BERGER & MONTAGUE, P.C.

1622 Locust Street

Philadelphia, PA 19103

(215) 875-3000

By: 

Linda P. Nussbaum
COHEN, MILSTEIN, HAUSFELD & TOLL, P.L.L.C.
150 East 52nd Street, 30th Floor
New York, NY 10022
(212) 838-7797

Co-Lead Counsel for Plaintiffs

By: _____

Frederick P. Furth
Kathleen S. Rogers
THE FURTH FIRM LLP
225 Bush Street, 15th Floor
San Francisco, CA 94104
(415) 433-2070

*Class Counsel for the Food Purchasers
Class Plaintiffs*

By: _____

W. Joseph Bruckner
LOCKRIDGE GRINDAL NAUEN, P.L.L.P.
100 Washington Avenue South, Suite 2200
Minneapolis, MN 55401
(612) 339-6900

Class Counsel for the Vitamins Class Plaintiffs

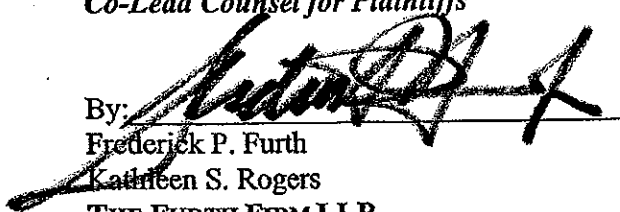
By: _____

Mark Leddy
David I. Gelfand
Jeremy Calsyn
CLEARY GOTTLIEB STEEN & HAMILTON LLP
2000 Pennsylvania Avenue, N.W., Suite 9000
Washington, DC 20006
(202) 974-1500

*Counsel for Defendants Asahi Kasei Corporation,
formerly known as Asahi Chemical Industry Co.,
Ltd., and Asahi Kasei Chemicals Corporation*

By: _____
Linda P. Nussbaum
COHEN, MILSTEIN, HAUSFELD & TOLL, P.L.L.C.
150 East 52nd Street, 30th Floor
New York, NY 10022
(212) 838-7797

Co-Lead Counsel for Plaintiffs

By: 
Frederick P. Furth
Kathleen S. Rogers
THE FURTH FIRM LLP
225 Bush Street, 15th Floor
San Francisco, CA 94104
(415) 433-2070

*Class Counsel for the Food Purchasers
Class Plaintiffs*

By: _____
W. Joseph Bruckner
LOCKRIDGE GRINDAL NAUEN, P.L.L.P.
100 Washington Avenue South, Suite 2200
Minneapolis, MN 55401
(612) 339-6900

Class Counsel for the Vitamins Class Plaintiffs

By: _____
Mark Leddy
David I. Gelfand
Jeremy Calsyn
CLEARY GOTTlieb STEEN & HAMILTON LLP
2000 Pennsylvania Avenue, N.W., Suite 9000
Washington, DC 20006
(202) 974-1500


*Counsel for Defendants Asahi Kasei Corporation,
formerly known as Asahi Chemical Industry Co.,
Ltd., and Asahi Kasei Chemicals Corporation*

By: _____
Linda P. Nussbaum
COHEN, MILSTEIN, HAUSFELD & TOLL, P.L.L.C.
150 East 52nd Street, 30th Floor
New York, NY 10022
(212) 838-7797

Co-Lead Counsel for Plaintiffs

By: _____
Frederick P. Furth
Kathleen S. Rogers
THE FURTH FIRM LLP
225 Bush Street, 15th Floor
San Francisco, CA 94104
(415) 433-2070

***Class Counsel for the Food Purchasers
Class Plaintiffs***

By: 
W. Joseph Bruckner
LOCKRIDGE GRINDAL NAUEN, P.L.L.P.
100 Washington Avenue South, Suite 2200
Minneapolis, MN 55401
(612) 339-6900

Class Counsel for the Vitamins Class Plaintiffs

By: _____
Mark Leddy
David I. Gelfand
Jeremy Calsyn
CLEARY GOTTlieb STEEN & HAMILTON LLP
2000 Pennsylvania Avenue, N.W., Suite 9000
Washington, DC 20006
(202) 974-1500

***Counsel for Defendants Asahi Kasei Corporation,
formerly known as Asahi Chemical Industry Co.,
Ltd., and Asahi Kasei Chemicals Corporation***

By: _____
Linda P. Nussbaum
COHEN, MILSTEIN, HAUSFELD & TOLL, P.L.L.C.
150 East 52nd Street, 30th Floor
New York, NY 10022
(212) 838-7797

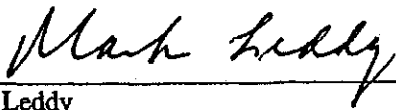
Co-Lead Counsel for Plaintiffs

By: _____
Frederick P. Furth
Kathleen S. Rogers
THE FURTH FIRM LLP
225 Bush Street, 15th Floor
San Francisco, CA 94104
(415) 433-2070

*Class Counsel for the Food Purchasers
Class Plaintiffs*

By: _____
W. Joseph Bruckner
LOCKRIDGE GRINDAL NAUEN, P.L.L.P.
100 Washington Avenue South, Suite 2200
Minneapolis, MN 55401
(612) 339-6900

Class Counsel for the Vitamins Class Plaintiffs

By: 
Mark Leddy
David I. Gelfand
Jeremy Calsyn
CLEARY GOTTLEB STEEN & HAMILTON LLP
2000 Pennsylvania Avenue, N.W., Suite 9000
Washington, DC 20006
(202) 974-1500

*Counsel for Defendants Asahi Kasei Corporation,
formerly known as Asahi Chemical Industry Co.,
Ltd., and Asahi Kasei Chemicals Corporation*