

**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.)**

---

**THIS DOCUMENT RELATES TO:  
ALL ACTIONS**

---

:  
:  
: **(MDL No. 1402)**  
:  
:  
:

**AGREEMENT OF SETTLEMENT  
BETWEEN THE PLAINTIFF CLASSES AND  
DEFENDANT FMC 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, FMC denies the allegations of the Complaint, has asserted affirmative defenses against the claims alleged in the Class Actions, and denies any liability whatsoever;

---

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 FMC on the terms set forth herein is in the best interest of Class Plaintiffs and the classes;

---

WHEREAS, the Class Plaintiffs and FMC 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 FMC or of the truth of any of the claims or of any of the Class Plaintiffs' allegations; and

WHEREAS, FMC 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 FMC based on the allegations in the Complaint;

NOW, THEREFORE, in consideration of the agreement 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 FMC on the following terms and conditions:

1. This Agreement is entered into among the undersigned to compromise and settle with FMC 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 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 from January 1, 1984 through December 31, 1997. The Class excludes governmental entities, defendants, and defendants' parents, subsidiaries, and affiliates.

(ii) 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, and 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, and 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. Toward that end, as soon as possible and in no event later than ten (10) days after execution of this Agreement, Class Counsel shall submit to the Court a motion for preliminary approval of the settlement.

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 FMC 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 10, 15 and 16 *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, FMC will, within ten (10) days after the Court preliminarily approves the settlement, 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 A. The amount paid by FMC pursuant to this paragraph 5 and any and all interest thereon, shall be referred to hereinafter as the "Fund." FMC's transfer of the Settlement Amount to the Escrow Account shall satisfy FMC's obligation to make payments under this Agreement. FMC shall not have any liabilities, obligations or responsibilities with respect to the investment, payment, disposition or distribution of the Settlement Fund after such transfer.

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. FMC 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 FMC pursuant to paragraph 15 below. If amounts received by class members, or by FMC upon any refund or reversion, are construed to be income, it is the recipient's sole responsibility to pay taxes on the amount construed to be income, plus any penalties or interest.

8. (a) Upon the Final Settlement Date in consideration of payment of the Settlement Amount, as specified in paragraph 5 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, present and future 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 (“Releasors”), 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 FMC and its past, present and future 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 Releasors, 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, or which could have been alleged 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, civil conspiracy or other similar law, including, without limitation, the Sherman Antitrust Act, 15 U.S.C. § 1 et seq. (the “Released Claims”); provided, however, that the release does not release or discharge any indirect purchaser claims which may exist. 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 B.

(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 8.

9. As provided for in the Order Re: Preliminary Approval of Proposed Settlement, the form of which shall be substantially as attached hereto as Exhibit C, 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. FMC shall have no liability or

---

responsibility with respect to the allocation, disbursement, distribution or administration of the Fund.

10. FMC 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 14 and to pay fees and taxes required to be paid prior to the Final Settlement Date, shall be paid from the Fund before the Final Settlement Date. After the Final Settlement Date, FMC will not take any position with respect to Class Plaintiffs' application for attorneys' fees or for awards to the representative plaintiffs. FMC 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.

---

11. As soon as practicable after the Final Settlement Date, 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 9 or 10 above and 15 below.

12. 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 FMC considers it to be a material term of this Agreement that the provisions of this paragraph 12 and paragraph 8, among other paragraphs, will bind all members of the Classes who have not excluded themselves in a timely manner from the Classes.

13. FMC and the Class Plaintiffs agree that Class members need not be provided a further opportunity to opt out of the Class (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 FMC'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. FMC may, in its unfettered discretion, terminate the Agreement within 10 days after receipt of such list or, alternatively, elect to receive a pro-rata refund from the Settlement Fund based on the purchases of MCC by the opt outs relative to the purchases of the Class as a whole during the Class Period.

14. Notice shall be directed to the members of the Classes, the form of which shall be substantially as attached hereto as Exhibits D, E, and F and as provided for in paragraphs 3-4 of the Order Re: Preliminary Approval, Exhibit C hereto.

15. If this Agreement becomes null and void or is terminated by FMC pursuant to paragraph 4 or paragraph 13 above, the Fund shall be returned forthwith to FMC, less any Court-approved costs of giving notice and fees and taxes paid or owed on the earnings of the Fund made in accordance with paragraphs 7 and 9 of this Agreement. For purposes of paragraph 4, a modification or reversal on appeal of any amount of Class Plaintiffs' counsel fees and expenses or any awards to the representative Plaintiffs 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 FMC pursuant to paragraph 4 or paragraph 13 above, this Agreement and all negotiations and proceedings connected with it shall be without prejudice

to the rights of any party hereto and shall not be used in any way in these actions or in any related actions or proceedings.

16. 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.

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

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

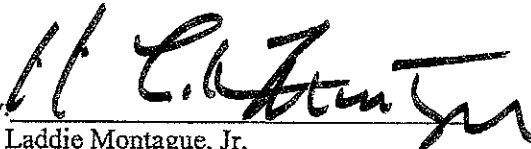
~~19. This Agreement constitutes the entire agreement among Class Plaintiffs and FMC pertaining to the settlement of the Class Actions against FMC and supersedes any and all prior and contemporaneous undertakings of Plaintiffs and FMC in connection therewith. This Agreement shall become effective upon its execution by all of the undersigned and will not be amended or modified without the agreement in writing of all of the undersigned.~~

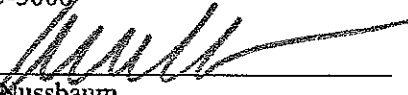
20. None of the parties hereto shall be considered to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause the provision to be construed against the drafter hereof.

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

22. 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 FMC represent that they are fully authorized to enter into this Agreement on behalf of FMC.

Dated: *September 5, 2006*

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 52<sup>nd</sup> Street, 30<sup>th</sup> Floor  
New York, NY 10022  
(212) 838-7797

*Co-Lead Counsel for Plaintiffs  
Class Counsel for the Pharmaceutical Class Plaintiffs*

By: \_\_\_\_\_  
Thomas P. Dove  
Kathleen S. Rogers  
THE FURTH FIRM LLP  
225 Bush Street, 15<sup>th</sup> Floor  
San Francisco, CA 94104  
(415) 433-2070

*Class Counsel for the Food Purchasers  
Class Plaintiffs*

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

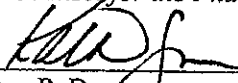
22. The undersigned counsel for the Class Plaintiffs represent that they are fully authorized to enter into this Agreement on behalf of the Classes, subject to approval of the Court as described herein; and the undersigned counsel for FMC represent that they are fully authorized to enter into this Agreement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

Dated:

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 52<sup>nd</sup> Street, 30<sup>th</sup> Floor  
New York, NY 10022  
(212) 838-7797

*Co-Lead Counsel for Plaintiffs*  
*Class Counsel for the Pharmaceutical Class Plaintiffs*

By:  \_\_\_\_\_  
Thomas P. Dove  
Kathleen S. Rogers  
THE FURTH FIRM LLP  
225 Bush Street, 15<sup>th</sup> 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: 

Joseph A. Tate  
Stephen D. Brown  
Christine C. Levin  
Dechert LLP  
Cira Centre  
2929 Arch Street  
Philadelphia, PA 19104  
(215) 994-4000

*Counsel for FMC Corporation*