

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE VITAMINS ANTITRUST LITIGATION

This document relates to:

LIVENGOOD FEEDS, INC., et al.,

Plaintiffs,

- *against* -

MERCK KGaA., et al.,

Defendants.

Misc. No. 99-197 (TFH)
MDL No. 1285

**NOTICE OF VITAMIN PRODUCTS CLASS DETERMINATION AND SETTLEMENT
WITH E. MERCK, MERCK KGaA, AND EM INDUSTRIES, INC. AND HEARING THEREON**

TO: ALL PERSONS AND ENTITIES WHO DIRECTLY PURCHASED VITAMIN PRODUCTS FROM A DEFENDANT HEREIN OR A CO-CONSPIRATOR DURING THE PERIOD FROM JANUARY 1, 1990 THROUGH SEPTEMBER 30, 1998 FOR DELIVERY IN THE UNITED STATES.

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY.

THE COURT HAS CERTIFIED A CLASS OF PURCHASERS OF VITAMIN PRODUCTS. THIS NOTICE DESCRIBES YOUR RIGHT TO EXCLUDE YOURSELF FROM THE CLASS AND NOT PARTICIPATE FURTHER IN THIS LITIGATION.

A *FOURTH SETTLEMENT* HAS BEEN PROPOSED THAT MAY AFFECT YOUR RIGHTS. IF YOU ARE A MEMBER OF THE VITAMIN PRODUCTS CLASS DESCRIBED BELOW, YOU MAY BE ENTITLED TO SHARE IN THE SETTLEMENT FUND.

IF YOU HAVE FILED YOUR OWN LAWSUIT, YOU STILL NEED TO TAKE ACTION TO EXCLUDE YOURSELF FROM THIS LITIGATION.

IF YOU EXCLUDED YOURSELF FROM SOME OR ALL OF THE FIRST THREE SETTLEMENTS, YOU MUST STILL TAKE ACTION TO EXCLUDE YOURSELF FROM THE CLASS AND THEREBY THIS SETTLEMENT.

NOTICE IS HEREBY GIVEN: (i) that pursuant to Rule 23 of the Federal Rules of Civil Procedure, by Orders of the United States District Court for the District of Columbia (“the Court”), dated February 25, 2002 and September 16, 2002, a class (the “Vitamin Products Class”) has been certified by the Court, and (ii) that by order dated September 25, 2002, a hearing will be held before the Honorable Thomas F. Hogan, Chief Judge, United States District Court, in Courtroom No. 8, United States Courthouse, 333 Constitution Avenue, N.W., Washington, D.C. 20001, on January 15, 2003 at 10:00 a.m. (the “Settlement Hearing”), to determine whether a proposed settlement in the above-captioned litigation as to defendants E. Merck, Merck KGaA, and EM Industries, Inc. (“Merck Defendants”) as set forth in the Settlement Agreement dated as of August 9, 2002 (the “Merck Settlement Agreement”), is fair, reasonable and adequate to the Vitamin Products Class.

The Merck Settlement Agreement, if approved by the Court, will result in a cash payment of \$50.0 million, with interest accruing from March 8, 2002, to be made available to the members of the Vitamin Products Class (the “Merck Settlement Fund”) and the dismissal with prejudice of all claims against E. Merck, Merck KGaA, EM Industries, Inc. and Releasees with respect to Vitamin Products asserted in the class actions brought on behalf of direct purchasers that have been consolidated in this litigation (the “Class Action”). The amounts paid in settlement of the Class Action will be distributed among the members of the Vitamin Products Class who submit timely and valid Claim Forms based on the amount of their purchases of Vitamin Products during the relevant period, pursuant to the terms of the plan of allocation described below.

The Merck Settlement Agreement also provides that, subject to the approval of the Court, an award of attorneys’ fees for plaintiffs’ counsel will be sought at a later point in time, to be paid from the Merck Settlement Fund.

Notice of one prior settlement involving both Vitamin Products and Choline Chloride and two prior settlements involving only Choline Chloride was given previously. Your possible choices are described later in this Notice.

IF YOU PURCHASED CHOLINE CHLORIDE, YOU SHOULD RECEIVE A SEPARATE NOTICE ABOUT CERTIFICATION OF A CHOLINE CHLORIDE CLASS. IF YOU DID NOT, YOU MAY REQUEST THAT NOTICE FROM THE CLAIMS ADMINISTRATOR IDENTIFIED BELOW.

I. BACKGROUND OF THE CLASS ACTIONS

Class Plaintiffs and others have filed lawsuits in this Court and elsewhere in the United States against the Merck Defendants and others. The lawsuits have been consolidated in this Court for pretrial purposes before the Honorable Thomas F. Hogan, Chief Judge, United States District Court. The class actions were described in previous Notices mailed in December, 1999, April, 2001, and July, 2001.

Class Plaintiffs allege that certain defendants unlawfully agreed to fix, raise, maintain and stabilize the prices of Vitamin Products sold in the United States in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. Class Plaintiffs claim that, as a result of this alleged price-fixing and other unlawful collusive conduct, they and other members of the Vitamin Products Class paid more for Vitamin Products than they would have paid absent such conduct.

If the Merck Settlement Agreement is approved by the Court, the remaining defendants in these actions will be Lonza Inc., Lonza AG, Degussa AG, Degussa Corp., Nepera, Inc., Reilly Industries, Inc., Reilly Chemicals, S.A., Sumitomo Chemical America, Inc., Tanabe Seiyaku Co., Ltd. and Tanabe USA, Inc.

Certain defendants have pleaded guilty to government (both United States and Canadian) charges of fixing the prices of Vitamin Products. All the remaining defendants, however, deny that they engaged in the unlawful conspiracy affecting the Vitamin Products market as alleged by Class Plaintiffs and others. Further, defendants deny that they have injured or damaged any direct purchasers of Vitamin Products to the extent alleged by Class Plaintiffs and others.

THE COURT HAS NOT RULED ON ANY OF THE CLAIMS OR DEFENSES OF THE PARTIES. THIS NOTICE IS NOT TO BE UNDERSTOOD AS AN EXPRESSION OF ANY OPINION FROM THE COURT AS TO THE MERITS OF ANY OF THE CLAIMS OR DEFENSES ASSERTED BY PLAINTIFFS OR DEFENDANTS.

II. THE VITAMIN PRODUCTS CLASS

By Orders of February 25, 2002 and September 16, 2002, the Court certified the Vitamin Products Class, and designated certain of the class plaintiffs in the Class Action (the "Class Plaintiffs") to be representatives of the Vitamin Products Class. The Vitamin Products Class is defined as:

All persons or entities who directly purchased vitamins A, C, E, B1, B2, B3, B5, B6, B9, B12, H, beta carotene, astaxanthin, canthaxanthin and/or vitamin premixes for delivery in the United States from any of the defendants or their co-conspirators from January 1, 1990 through September 30, 1998. Excluded from the class are all governmental entities, defendants, their co-conspirators, and all their respective subsidiaries and affiliates.

HOW TO REMAIN IN THE CLASS

IF YOU PURCHASED VITAMIN PRODUCTS DIRECTLY FROM A DEFENDANT HEREIN OR A CO-CONSPIRATOR AT ANY TIME DURING THE PERIOD FROM JANUARY 1, 1990 THROUGH SEPTEMBER 30, 1998 FOR DELIVERY IN THE UNITED STATES, YOU ARE A MEMBER OF THE VITAMIN PRODUCTS CLASS AND YOU NEED NOT TAKE ANY ACTION TO REMAIN IN THE VITAMIN PRODUCTS CLASS.

IF YOU REMAIN IN THE VITAMIN PRODUCTS CLASS, YOUR RIGHTS UNDER THE SETTLEMENT WILL BE REPRESENTED BY THE CLASS PLAINTIFFS AND PLAINTIFFS' CO-LEAD COUNSEL, AND YOU WILL BE ENTITLED, AT A LATER POINT IN TIME, TO SUBMIT A CLAIM FORM TO SHARE IN THE MERCK SETTLEMENT FUND.

YOU ARE A MEMBER OF THE VITAMIN PRODUCTS CLASS EVEN IF YOU PREVIOUSLY EXCLUDED YOURSELF FROM ALL OR SOME OF THE EARLIER SETTLEMENTS.

HOW TO EXCLUDE YOURSELF FROM THE CLASS

If you wish to exclude yourself from the Vitamin Products Class, you must do so by sending a written request for exclusion, by certified mail, return receipt requested, postage prepaid, **postmarked on or before December 9, 2002** to the following address:

Vitamin Products Antitrust Litigation
(Class Certification)
P.O. Box 58520
Philadelphia, PA 19102-5852

The request for exclusion must clearly state the name and address of the person or entity who wishes to be excluded from the Vitamin Products Class, as well as all trade names or business names and addresses used by such person or entity and any of its parents, subsidiaries or affiliates that purchased Vitamin Products during the period from January 1, 1990 through September 30, 1998 and are also intended to be excluded from the Vitamin Products Class.

IN ORDER TO BE EXCLUDED FROM THE VITAMIN PRODUCTS CLASS, YOU MUST TIMELY REQUEST EXCLUSION IN THE MANNER SET FORTH ABOVE EVEN IF YOU HAVE FILED OR HEREAFTER FILE YOUR OWN LAWSUIT AGAINST ANY OF THE DEFENDANTS BASED ON CLAIMS THAT ARISE OUT OF THE CONDUCT AT ISSUE IN THIS LITIGATION.

If you properly and timely submit a request for exclusion from the Vitamin Products Class, you will not be bound by or receive the benefits, if any, of any future judgment or settlement entered in these actions. You also will not be bound by the Merck Settlement Agreement or any judgment or orders entered pursuant thereto, and you will not be entitled to share in the Merck Settlement Fund or receive any of the other benefits of the Merck Settlement. You will be free to pursue whatever legal rights you may have against any of the remaining defendants, including the Merck Defendants, at your own cost and expense. You cannot choose to opt out of the Merck Settlement and remain in the Vitamin Products Class.

III. THE PROPOSED SETTLEMENT

The following description of the proposed settlement on behalf of the Vitamin Products Class (the "Merck Settlement") is only a summary. The Merck Settlement Agreement, and the exhibits, are on file with the Court and posted on the Court's website: <http://www.dcd.uscourts.gov/99ms197.html>.

1. The Merck Settlement

Subject to the terms of the Merck Settlement Agreement, the Merck Defendants paid \$50.0 million into an interest-bearing Escrow Account on March 8, 2002. These funds, and any interest earned thereon, are referred to in this Notice as the "Merck Settlement Fund."

The Merck Defendants have also agreed to provide a measure of cooperation to Class Plaintiffs in the prosecution of the Class Action against non-settling defendants.

2. Investigation Leading to the Merck Settlement

Before and following the filing of the Class Action, Class Plaintiffs conducted extensive investigation and formal discovery of the facts relating to the claims alleged in the Class Action, and retained and consulted with economists and other experts. In recommending that Class Plaintiffs enter into the Merck Settlement Agreement, Plaintiffs' Co-Lead Counsel also took into consideration a guilty plea entered into or agreed to by Merck KGaA, which was fined \$14 million for participating in the conspiracy. Plaintiffs' Co-Lead Counsel also took into consideration guilty pleas and criminal fines paid by other members of the conspiracy.

Class Plaintiffs have also taken into account that, as was the case with other defendants in some previous settlements, the sales of the Merck Defendants and Releasees into the United States during the period in question were limited. The total Merck Defendants sales into the United States in the period in question were less than \$100 million, out of total Vitamin Product sales in excess of \$5 billion.

Based upon their extensive investigation, their consultation with experts retained by them and their evaluation of the claims of the members of the Vitamin Products Class and defenses that might be asserted thereto, Plaintiffs' Co-Lead Counsel believe that the Merck Settlement is fair, reasonable and adequate and in the best interests of the Vitamin Products Class.

3. Release of Claims against the Merck Defendants and Releasees

IF YOU DO NOT EXCLUDE YOURSELF FROM THE VITAMIN PRODUCTS CLASS AND THE SETTLEMENT AGREEMENT IS APPROVED BY THE COURT, YOU WILL BE BOUND BY ALL OF THE COURT'S ORDERS AND JUDGMENTS ENTERED PURSUANT TO THE MERCK SETTLEMENT AGREEMENT, INCLUDING THE DISMISSAL AND RELEASE OF YOUR CLAIMS, AS PROVIDED BELOW, REGARDLESS OF WHETHER YOU FILE A CLAIM FORM OR PARTICIPATE IN THE MERCK SETTLEMENT FUND.

In the event that the Court approves the Merck Settlement Agreement after the Settlement Hearing, each member of the Vitamin Products Class that did not timely and validly exclude itself from the Vitamin Products Class shall (on its own behalf and on behalf of its direct and indirect parents, subsidiaries and affiliates, the present and former officers, directors, employees, agents and legal representatives of each of the foregoing, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing) (collectively, the "Releasees") completely release and forever discharge the Merck Defendants, their direct and indirect parents, subsidiaries and affiliates, the present and former officers, directors, employees, managers, agents and legal representatives of each of the foregoing, and the predecessors, successors, heirs, executors, administrators

and assigns of each of the foregoing (with respect to any conduct of any of the above entities) (collectively, the "Releasees") from all manner of claims, demands, actions, suits, causes of action, whether class, individual, or otherwise in nature, damages whenever incurred, and liabilities of any nature whatsoever, including without limitation costs, expenses, penalties and attorneys' fees, known or unknown, suspected or unsuspected, asserted or unasserted, in law or in equity, that such Releasor, whether directly, representatively, derivatively or in any other capacity, ever had, now has or hereafter can, shall or may have, relating in any way to any conduct prior to the date of the Merck Settlement Agreement concerning the purchase, sale or pricing of Vitamin Products and any or all other vitamins or relating to any conduct alleged in the Class Action, including, without limitation, any such claims which have been asserted or could have been asserted in the Class Action against the Releasees or any of them (the "Released Claims"), except that this release shall not affect the rights of any Releasors (i) to seek damages or other relief from any person with respect to any Vitamin Products or vitamins purchased directly from the manufacturer (or any subsidiary or affiliate thereof) outside the United States for delivery to a destination outside the United States; or (ii) to participate in or benefit from any relief or other recovery as part of a settlement or judgment on behalf of a class of indirect purchasers of Vitamin Products.

In addition, each member of the Vitamin Products Class shall waive and release with respect to the Released Claims, any and all provisions, rights and benefits conferred by (a) § 1542 of the California Civil Code, which reads:

"Section 1542. General release; extent. 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,"

and (b) any similar state, federal, or other law, rule or regulation, or principle of common law, which is similar, comparable or equivalent to § 1542 of the California Civil Code. Each member of the Vitamin Products Class may hereafter discover facts other than or different from those that it knows or believes to be true with respect to the subject matter of the Released Claims, but each member of the Vitamin Products Class as a Releasor shall expressly agree that, upon the approval of the Merck Settlement Agreement by the Court after the Settlement Hearing, it shall have waived and fully, finally and forever settled and released any known or unknown, suspected or unsuspected, asserted or unasserted, contingent or non-contingent claim with respect to the Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such other or different facts.

The release and dismissal of the claims of the Vitamin Products Class will have no effect upon any claims you may have against persons other than the Releasees. This litigation is proceeding against a number of defendants. In addition, the release shall not release any product liability or breach of contract claims unrelated to the subject matter of the Class Action.

4. Attorneys' Fees and Expenses

Plaintiffs' Counsel do not intend to file at this time a petition for payment of attorneys' fees and expenses. The Merck Settlement Agreement provides that such fees and expenses may be paid out of the Merck Settlement Fund after Court approval.

When Plaintiffs' Co-Lead Counsel request attorneys' fees and reimbursement of litigation costs and expenses on behalf of all counsel for named plaintiffs in the Class Actions ("Class Counsel"), you will be given notice of the request.

5. Filing and Processing of Claim Forms

If you are a member of the Vitamin Products Class and do not exclude yourself from the Class and the Merck Settlement becomes effective in accordance with the terms of the Merck Settlement Agreement, you will be entitled to share in the Merck Settlement Fund. Claim Forms will be provided to you at a later point in time.

You should retain all documents that substantiate the purchases of Vitamin Products that you will claim on your Claim Form.

Any and all transferees or assignees of, or successors to, the claims or rights of any member of the Vitamin Products Class, which claims are based on direct purchases of Vitamin Products from January 1, 1990 through September 30, 1998 for delivery in the United States from a defendant herein (or any subsidiary or affiliate thereof) or a co-conspirator, will be entitled to submit a Claim Form to share in the Merck Settlement Fund and will be bound by the terms of the Merck Settlement Agreement, if approved by the Court, and shall be required to exercise their rights under the Merck Settlement Agree-

ment in the same manner as members of the Vitamin Products Class.

To the extent that you have previously entered into an agreement with any Releasee that settles or compromises antitrust claims based on purchases of Vitamin Products during the period identified above, you may not claim or recover under the Merck Settlement Agreement with respect to any purchases of Vitamin Products covered by the previous settlement.

6. Plan of Allocation and Distribution of the Merck Settlement Fund

The Merck Settlement Fund will be distributed to members of the Vitamin Products Class at a later point in time. Vitamin Products Class members that submit timely and valid Claim Forms and whose Claims are allowed by the Court ("Authorized Claimants") will receive a distribution. The distribution will take place after the following: (1) final approval of the Merck Settlement by the Court and the expiration of any period for further review or appeal of the Court's order of approval or the resolution of any such review or appeal; (2) distribution of the Claim Forms and their receipt by the Claims Administrator; (3) review of the Claim Forms by the Claims Administrator and the determination of the amounts recommended to be paid to Claimants; and (4) approval by the Court of the Claims Administrator's recommendations as to the amounts to be paid to Authorized Claimants.

Distribution of the Merck Settlement Fund will be based on Authorized Claimants' direct purchases of Vitamin Products for delivery to a destination in the United States from any defendant herein (or its subsidiary or affiliate) or a co-conspirator during the period from January 1, 1990 through September 30, 1998. If you purchased Vitamin Products in years other than those for which compensation may be had, you will not be entitled to recover with respect to those purchases. If you did not purchase any Vitamin Products during the period for which Vitamin Products Class members are entitled to recover, you are not a member of the Vitamin Products Class, and you are not entitled to any recovery under the Merck Settlement Agreement.

Please note that submission of a Claim Form does not necessarily assure the right to payment thereunder. The Court may deny, in whole or in part, any claim if it determines that the Claimant is excluded from the definition of the Vitamin Products Class or if there are legal or equitable grounds for rejecting such claim.

IV. SETTLEMENT HEARING

At the Settlement Hearing, the Court will consider whether the Merck Settlement Agreement should be approved as fair, adequate and reasonable to the Vitamin Products Class and whether the claims of the Vitamin Products Class should be dismissed with prejudice as to the Releasees that are defendants therein, as provided in the Merck Settlement Agreement. Any member of the Vitamin Products Class that has not requested to be excluded from the Vitamin Products Class is entitled to appear and be heard at the Settlement Hearing, in person or through duly authorized attorneys, and to show cause why the Merck Settlement should not be approved as fair, reasonable and adequate, *provided, however*, that no such person shall be heard in opposition to any of the foregoing, and no paper or brief submitted by such person shall be received or considered by the Court unless, on or before December 9, 2002 such person files a notice of intention to appear, and a statement of the position to be asserted, and the grounds therefor, together with copies of any supporting papers or brief with the Clerk, United States District Court for the District of Columbia, 333 Constitution Avenue, N.W., Washington, D.C., 20001, with proof of service upon the counsel identified below:

Michael D. Hausfeld, Esq.
**Cohen, Milstein, Hausfeld
& Toll, P.L.L.C.**
West Tower, Suite 500
1100 New York Avenue
Washington, D.C. 20005-3964

James B. Weidner, Esq.
Klaus H. Jander, Esq.
Craig M. Walker, Esq.
**Clifford, Chance Rogers
& Wells, LLP**
200 Park Ave.
New York, NY 10166-0153

No person shall be entitled to contest the terms and conditions of the Merck Settlement Agreement unless the procedures set forth above are complied with, and persons who fail to object as provided herein shall be deemed to have waived and shall be foreclosed forever from raising any such objections or appealing from any orders or judgments entered with respect to the Merck Settlement Agreement.

The Settlement Hearing is presently set for January 15, 2003 at 10:00 a.m. The time and date of the hearing may be continued from time to time. Notice of any such continuance shall be posted at the United States Courthouse or on the Court's website: <http://www.dcd.uscourts.gov/99ms197.html>.

V. ADDITIONAL INFORMATION

THE ABOVE IS ONLY A SUMMARY OF CLASS CERTIFICATION, THE MERCK SETTLEMENT AGREEMENT AND RELATED MATTERS.

For more detailed information concerning the matters involved in the litigation, reference is made to the pleadings, to the Merck Settlement Agreement, to the Orders entered by the Court and to the other papers filed in the Class Action, which may be inspected at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, N.W., Washington, D.C. 20001 during regular business hours. In addition, the Merck Settlement Agreement is posted at the Court website: <http://www.dcd.uscourts.gov/99ms197.html>.

ALL INQUIRIES CONCERNING THIS NOTICE AND THE MERCK SETTLEMENT AGREEMENT SHOULD BE DIRECTED TO ONE OF PLAINTIFFS' CO-LEAD COUNSEL, *IN WRITING*, AT THE ADDRESSES SET FORTH BELOW.

Michael D. Hausfeld, Esq.
Cohen, Milstein, Hausfeld & Toll, P.L.L.C.
West Tower, Suite 500
1100 New York Avenue, N.W.
Washington, D.C. 20005-3964

or

David Boies, Esq.
Jonathan D. Schiller, Esq.
Boies, Schiller & Flexner, LLP
5301 Wisconsin Avenue, N.W.
8th Floor
Washington, D.C. 20015

or

Stephen D. Susman, Esq.
Susman Godfrey LLP
1000 Louisiana, Suite 5100
Houston, TX 77002

INQUIRIES SHOULD NOT BE MADE BY TELEPHONE AND SHOULD NOT BE DIRECTED TO THE COURT.

BY ORDER OF THE COURT:

DATED: October 23, 2002

UNITED STATES DISTRICT JUDGE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

If you change your address, or if this Notice was not mailed to your correct address, you should immediately provide your correct address to *Vitamin Products Antitrust Litigation*, P.O. Box 58520, Philadelphia, Pennsylvania 19102-5852. If the Claims Administrator does not have your correct address, you may not receive notice of important developments in this litigation.