

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

IN RE VITAMINS ANTITRUST LITIGATION

This filing relates to:

ANIMAL SCIENCE PRODUCTS, INC., et al.,

Plaintiffs,

- *against* -

CHINOOK GROUP, LTD. et al.,

Defendants.

Misc. No. 99-197 (TFH)
M.D.L. No. 1285

**NOTICE OF CHOLINE CHLORIDE SETTLEMENT WITH MITSUI & CO., LTD.,
MITSUI & CO. (U.S.A.), INC. AND BIOPRODUCTS INCORPORATED AND HEARING THEREON**

TO: ALL PERSONS AND ENTITIES WHO DIRECTLY PURCHASED CHOLINE CHLORIDE FROM A DEFENDANT HEREIN OR ITS ALLEGED CO-CONSPIRATORS DURING THE PERIOD FROM JANUARY 1, 1988 THROUGH SEPTEMBER 30, 1998 FOR DELIVERY IN THE UNITED STATES AND WHO HAVE NOT OPTED-OUT OF THE CLASS.

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY.

A FIFTH SETTLEMENT HAS BEEN PROPOSED THAT MAY AFFECT YOUR RIGHTS. IF YOU ARE A MEMBER OF THE CHOLINE CHLORIDE CLASS DESCRIBED BELOW, YOU MAY BE ENTITLED TO SHARE IN THE SETTLEMENT FUND.

NOTICE IS HEREBY GIVEN that by order dated January 10, 2005, 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 April 27, 2005 at 10:30 a.m. (the "Settlement Hearing"), to determine whether a proposed settlement in the above-captioned litigation as to defendants Mitsui & Co., Ltd., Mitsui & Co. (U.S.A.), Inc. and Bioproducts Incorporated ("Settling Defendants") as set forth in the Settlement Agreement dated as of October 14, 2003 (the "Settlement Agreement"), is fair, reasonable and adequate to the Choline Chloride Class.

The Settlement Agreement, if approved by the Court, will result in a cash payment of \$53,000,000.00 (Fifty-Three Million Dollars), less fees and expenses, to be made available to Choline Chloride Class Members (the "Settlement Fund") and the dismissal with prejudice as to Settling Defendants with respect to Choline Chloride asserted in the class actions brought on behalf of direct purchasers in which there have been coordinated or consolidated pretrial proceedings (the "Class Action"). The amounts paid in settlement of the Class Action will be distributed among the Choline Chloride Class Members who submit timely and valid Claim Forms based on the amount of their purchases of Choline Chloride during the relevant period, pursuant to the terms of the plan of allocation described below.

Notice of four prior settlements involving Choline Chloride was given previously. As described below, if you are a Choline Chloride Class Member, you have the right to object to the terms of this settlement and to file a claim form.

I. BACKGROUND OF THE CLASS ACTIONS

Class Plaintiffs and others have filed lawsuits in this Court and elsewhere in the United States against Settling 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, October 2002 and November 2004.

Class Plaintiffs allege that certain defendants unlawfully agreed to fix, raise, maintain and stabilize the prices of Choline Chloride sold in the United States and elsewhere 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 Choline Chloride Class Members paid more for Choline Chloride than they would have paid absent such conduct.

A trial of Class Plaintiffs' claims against Mitsui & Co., Ltd. and Mitsui & Co. (U.S.A.), Inc., as well as defendants DuCoa L.P. and DCV, Inc., concluded on June 13, 2003. The jury returned a verdict that Mitsui & Co., Ltd. and Mitsui & Co. (U.S.A.), Inc., as well as DuCoa and DCV, knowingly participated in a combination or conspiracy to fix, raise, maintain or stabilize the price of Choline Chloride (Vitamin B4). The jury found that Class Plaintiffs had been damaged in the amount of \$49,539,234.00. By federal statute, Class Plaintiffs may recover three times the amount of the jury's award of damages, plus attorneys' fees. Those Defendants have moved to set aside the jury verdict; that motion has not been ruled on. The Final Judgment that would be

entered upon Final Approval would result in the verdict of June 13, 2003, as to Mitsui & Co., Ltd. and Mitsui & Co. (U.S.A.), Inc., being vacated, set aside, null and void and having no force and effect.

II. THE CHOLINE CHLORIDE CLASS

By Order of February 25, 2002, the Court certified the Choline Chloride Class, and designated certain of the Class Plaintiffs in the Class Action (the "Class Plaintiffs") to be representatives of the Choline Chloride Class. The Choline Chloride Class is defined as:

All persons or entities who directly purchased choline chloride for delivery in the United States from any of the defendants or their co-conspirators from January 1, 1988 through September 30, 1998. Excluded from the class are all governmental entities, defendants, and other manufacturers of vitamins, vitamin premixes and bulk vitamin products, and their respective subsidiaries and affiliates.

III. THE PROPOSED SETTLEMENT

The following description of the Settlement Agreement is only a summary. The Settlement Agreement and its exhibits are on file with the Court and posted on Plaintiffs' Co-Lead Counsel's website (<http://www.cmht.com>).

1. The Settlement Amount

Subject to the terms of the Settlement Agreement, Settling Defendants paid \$53,000,000.00 (Fifty-Three Million Dollars) into an interest-bearing Escrow Account on October 14, 2003. These funds, and any interest earned thereon, are referred to in this Notice as the "Settlement Fund."

2. Investigation Leading to the 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 Settlement Agreement, Plaintiffs' Co-Lead Counsel also took into consideration guilty pleas and criminal fines paid by other defendants and members of the conspiracy.

Based upon their extensive investigation, their consultation with experts retained by them and their evaluation of the claims of Choline Chloride Class Members and defenses that might be asserted thereto, Plaintiffs Co-Lead Counsel believe that the settlement is fair, reasonable and adequate and in the best interests of the Choline Chloride Class Members.

3. Release of Claims against Settling Defendants and Releasees

In the event that the Court approves the Settlement Agreement after the Settlement Hearing, each Choline Chloride Class Member 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, shareholders (in their capacity as shareholders) and legal representatives of each of the foregoing, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing) (collectively, the "Releasers") completely release and forever

discharge Settling Defendants, their direct and indirect parents, subsidiaries and affiliates, the present and former officers, directors, employees, managers, agents, shareholders (in their capacity as shareholders) 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 Releaser, 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 Settlement Agreement concerning the purchase, sale or pricing of Choline Chloride 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 Releasers (i) to seek damages or other relief from any person with respect to any Choline Chloride 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 Choline Chloride.

In addition, each Choline Chloride Class Member 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 Choline Chloride Class Member 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 Choline Chloride Class Member as a Releaser shall expressly agree that, upon the approval of the 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 Choline Chloride Class Members will have no effect upon any claims you may have against persons other than the Releasees. This litigation is proceeding against other 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

The Settlement Agreement provides that attorneys' fees and expenses may be paid out of the Settlement Fund after Court approval. Plaintiffs' Co-Lead Counsel intend to apply to the Court for an award of: (1) attorneys' fees up to one third of the Settlement Fund and the interest on that fund, and (2) the reimbursement of litigation costs and expenses, in the amount of \$1,963,555.68 (subject to confirmation and correction by the Claims Administrator), from the Settlement Fund on behalf of all counsel for named plaintiffs in the Class Action.

IV. FILING AND PROCESSING OF CLAIM FORMS

If you are a Choline Chloride Class Member and the settlement becomes effective in accordance with the terms of the Settlement Agreement, you will be entitled to share in the Settlement Fund. Claim Forms **are included with this Notice and must be completed and postmarked by May 31, 2005, even if you previously filed a claim form in an earlier settlement.**

The Claim Form is included with this Notice. If you receive multiple copies of this mailing, complete only one Claim Form covering all the qualifying Choline Chloride purchases by each member of the Choline Chloride Class that wishes to participate in the Choline Chloride Settlement Fund ("Claimant").

The Claim Form asks for information concerning the amount, calculated in dollars, of each Claimant's qualified direct purchases of Choline Chloride for delivery in the United States, as well as reasonably available documentation (such as account statements and extracts of books and records) that evidence such purchases. In providing the dollar amount of the Claimant's Choline Chloride purchases, sales taxes and delivery or freight charges should be excluded (if ascertainable).

You should retain all documents that substantiate the purchases of Choline Chloride that you claim on your Claim Form. In the event a Claimant is dissatisfied with the decisions reached by the Claims Administrator, the Claimant may seek a determination by the Court of the amount of Claimant's allowed purchases.

The information submitted in these Claim Forms will be the basis for distributing the current proposed settlement, the settlement with Chinook Group Limited, Chinook Group, Inc., Cope Investments Limited, Peter Copland and William Patrick Stayner, and future Choline Chloride settlement funds to members of the Choline Chloride Class.

Any and all transferees or assignees of, or successors to, the claims or rights of any Choline Chloride Class Member, which claims are based on direct purchases of Choline Chloride from January 1, 1988 through September 30, 1998 for delivery in the United States from a defendant or co-conspirator alleged in the complaint herein (or any subsidiary or affiliate thereof), will be entitled to submit a Claim Form to share in the Settlement Fund and will be bound by the terms of the Settlement Agreement, if approved by the Court, and shall be required to exercise their rights under the Settlement Agreement in the same manner as the Choline Chloride Class Members.

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

V. PLAN OF ALLOCATION AND DISTRIBUTION OF THE SETTLEMENT FUND

The Settlement Fund will be distributed to the Choline Chloride Class Members at a later point in time together with other settlement funds. Choline Chloride 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 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 Settlement Fund will be based on Authorized Claimants' direct purchases of Choline Chloride for delivery to a destination in the United States from any defendant (or its subsidiary or affiliate) or their co-conspirators (or their subsidiaries or affiliates) herein during the period from January 1, 1988 through September 30, 1998. If you purchased Choline Chloride 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 Choline Chloride during the period for which Choline Chloride Class Members are entitled to recover, you are not a Choline Chloride Class Member and you are not entitled to any recovery under the 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 Choline Chloride Class or if there are legal or equitable grounds for rejecting such claim.

VI. SETTLEMENT HEARING

At the Settlement Hearing, the Court will consider whether the Settlement Agreement should be approved as fair, adequate and reasonable to the Choline Chloride Class Members; whether the claims of the Choline Chloride Class Members should be dismissed with prejudice as to the Releasees that are defendants therein, as provided in the Settlement Agreement; and whether Class Counsel's request for a reasonable award of attorneys' fees and reimbursement of litigation costs and expenses from the Settlement Fund should be granted. Any Choline Chloride Class Member is entitled to appear and be heard at the Settlement Hearing, in person or through duly authorized attorneys, and to show cause why the settlement and Plaintiffs' request for attorneys' fees and reimbursement of litigation costs and expenses 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 March 17, 2005 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.
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Washington, D.C. 20005-3964

David M. Balabanian, Esq.
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Three Embarcadero Center
San Francisco, CA 94111-4067

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Baker & Hostetler
3200 National City Center
1900 East 9th Street
Cleveland, Ohio 44114-3485

No class member shall be entitled to contest the terms and conditions of the 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 Settlement Agreement.

The Settlement Hearing is presently set for April 27, 2005 at 10:30 a.m. The time and date of the Settlement 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>.

VII. ADDITIONAL INFORMATION

THE ABOVE IS ONLY A SUMMARY OF THE SETTLEMENT AGREEMENT.

For more detailed information concerning the matters involved in the litigation, reference is made to the pleadings, to the 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 Settlement Agreement is posted on Plaintiffs' Co-Lead Counsel's website: <http://www.cmht.com>.

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

Michael D. Hausfeld, Esq.
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or

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1000 Louisiana, Suite 5100
Houston, Texas 77002

INQUIRIES SHOULD NOT BE MADE BY TELEPHONE AND SHOULD NOT BE DIRECTED TO THE COURT BY ORDER OF THE COURT:

*DATED: JANUARY 31, 2005
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 *Choline Chloride 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.