

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

REIN MINNEMA AND MINNEMA FARMS LTD.

Plaintiffs

- and -

**ARCHER DANIELS MIDLAND COMPANY,
AJINOMOTO HEARTLAND, INC.,
SEWON AMERICA INC., and BIOKYOWA INC.**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

No. SO24333
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

B E T W E E N:

PETER MURA

Plaintiff

AND:

**ARCHER DANIELS MIDLAND COMPANY
AJINOMOTO HEARTLAND, INC., SEWON AMERICA INC., and
BIOKYOWA INC.**

Defendants

Brought under the *Class Proceedings Act*

CANADA
PROVINCE DE QUEBEC
DISTRICT DE MONTREAL
No. 500-06-000089-991

COUR SUPERIEURE
(Recours collectif)

OPTION CONSOMMATEURS et ROGER FORTIER

Requérants

c.

**ARCHER DANIELS MIDLAND COMPANY,
AJINOMOTO COMPANY INC., SEWON AMERICA INC.,
and KYOWA HAKKO KOGYO COMPANY, LTD.**

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SETTLEMENT AGREEMENT

The Plaintiffs, Rein Minnema, Minnema Farms Ltd., Peter Mura, Option Consommateurs and Roger Fortier, in their capacity as class representatives and for themselves personally, and Archer Daniels Midland Company, Ajinomoto Heartland, Inc. (f/k/a Heartland Lysine Inc.), Kyowa Hakko Kogyo Company Ltd., and Biokyowa Inc., (the “Settling Defendants”), hereby enter into this agreement pursuant to the terms set out below (the “Settlement Agreement”) and subject to the approval of the Ontario Court, the British Columbia Court and the Quebec Court.

WHEREAS Rein Minnema and Minnema Farms Ltd. commenced Action No. G2349599CP in Ontario on February 11, 1999 (amended March 5, 1999 and further amended on April 16, 2002) on its own behalf and on behalf of the proposed Ontario Class Members ;

WHEREAS Peter Mura commenced Action No. SO24333 in British Columbia on August 1, 2002 on his own behalf and on behalf of the proposed British Columbia Class Members;

WHEREAS Option Consommateurs and Roger Fortier commenced Action No. 500-06-000089-991 in Quebec on August 17, 1999, on their own behalf and on behalf of the proposed Quebec Class Members;

WHEREAS the Plaintiffs in the Ontario, British Columbia and Quebec class actions alleged that the defendants were involved in a conspiracy to fix, raise, maintain or

stabilize the prices of, and allocate markets or customers for lysine in Canada, and sought damages for their respective Class Members (as defined herein);

WHEREAS the Settling Defendants deny the allegations and claims that the Plaintiffs have made in the actions herein and deny that damages are payable for any violation of the *Competition Act* or otherwise and have defences to the actions herein;

WHEREAS the Plaintiffs' counsel and counsel for the Settling Defendants have conducted settlement negotiations, which resulted in this Settlement Agreement;

WHEREAS based on the analyses of the facts and law applicable to the claims of the Plaintiffs, and having regard to the burdens and expense in conducting litigation of the actions referred to herein, including the risks and uncertainties associated with trials and appeals, the Plaintiffs and the Plaintiffs' counsel have concluded that this Settlement Agreement provides substantial benefits to the Class Members and that it is fair, reasonable and in the best interests of the Class Members;

WHEREAS the Plaintiffs' counsel negotiated this Settlement Agreement on the premise of measuring damages for all Class Members, and subsequently sought expert advice with respect to devising the Distribution Protocol (as defined herein);

WHEREAS the Plaintiffs and the Settling Defendants intend that this Settlement Agreement be binding on all purchasers of Lysine (as defined herein) and that certification of a national class, save and except in respect of the Quebec and British

Columbia Classes, shall be sought in the Ontario class action based on the substantial connections to Ontario which exist in the actions referred to herein;

WHEREAS the Settling Defendants enter this Settlement Agreement on the basis that there will be a valid and binding national class for all purchasers of Lysine and that all claims by all possible claimants for sales in or from Canada are included and will be satisfied by this Settlement Agreement, subject to those who opt out in a timely manner in compliance with the procedures for doing so and it is acknowledged that the Settling Defendants would not have entered into this Settlement Agreement were it not for the foregoing;

WHEREAS despite the consent of the Settling Defendants to this Settlement Agreement, the Settling Defendants continue to deny any wrongdoing or legal liability arising out of any claims alleged against them in the actions herein;

WHEREAS while for the purpose only of this Settlement Agreement, each of the Settling Defendants consents to the certification of the actions as provided below, the Settling Defendants expressly reserve their right to contest certification of other related or unrelated proceedings and assert that the actions herein would not be appropriately certified in the absence of the within Settlement Agreement;

WHEREAS the Plaintiffs, in their capacity as class representatives and for themselves personally, have entered into a separate settlement agreement with the

defendant Sewon America Inc., subject to the approval of the Ontario Court, the British Columbia Court and the Quebec Court (the "Sewon Settlement Agreement");

AND WHEREAS the Settling Defendants intend that this Settlement Agreement is to resolve all claims and potential claims for, or relating in any way to any alleged conspiracy relating to the sale of Lysine in or from Canada, in accordance with the terms of this Settlement Agreement.

NOW THEREFORE it is hereby agreed as follows:

DEFINITIONS

1. The following words and phrases shall have the following meanings in this Settlement Agreement, including all of the appendices hereto:
 - (a) **"Approval Orders"** means the orders or judgments of the Ontario Court, the British Columbia Court, and the Quebec Court, which certify or authorize the Ontario, British Columbia and Quebec actions described herein as class proceedings and approve this Settlement Agreement and the Sewon Settlement Agreement;
 - (b) **"British Columbia Class"** means all persons other than the Settling Defendants, who purchased Lysine in or from British Columbia between June 1, 1992 and June 27, 1995;
 - (c) **"British Columbia Court"** means the Supreme Court of British Columbia;

- (d) **“Claims Deadline”** shall be the date 120 days following the date on which the last of the three Approval Orders is issued and entered or, if applicable, rendered;
- (e) **“Claims Administrator”** shall mean the person(s) or entities agreed upon by the Parties (as defined herein), and appointed by the Ontario and British Columbia Courts, as provided in paragraph 9 below, and any employees of such person(s) or entities;
- (f) **“Class Counsel”** shall mean Siskind, Cromarty, Ivey & Dowler LLP , and Oatley Vigmond in Ontario; Poyner Baxter in British Columbia; and Unterberg, Labelle, Lebeau, and Sylvestre, Charbonneau, Fafard in Quebec;
- (g) **“Class Members”** shall mean members of the Ontario Class, British Columbia Class or Quebec Class, or any of them, or shall mean members of those Classes collectively as the context requires;
- (h) **“Distribution Protocol”** shall mean the mechanisms for paying compensation to Class Members as provided for in Appendix “D”;
- (i) **“Effective Date”** shall mean the earliest date by which all of the following have occurred; (1) this Agreement has been executed by all of the Parties hereto, (2) the Sewon Settlement Agreement has been executed by the parties thereto, (3) the Ontario, British Columbia and Quebec Approval Orders have been issued and entered, or if applicable, rendered, and (4) the

time to appeal the Approval Orders, if appeals lie, has expired, and all appeals, if any, from such Approval Orders have been exhausted;

- (j) **“Lysine”** shall mean lysine in any form whatsoever and for any use whatsoever, including, without limitation, feed-grade lysine (whether in unmixed form, as part of a feed mix, or otherwise), or any other grade or form of lysine, whether intended for resale or otherwise, and including products containing or derived from lysine, or products derived from animals that consumed lysine;
- (k) **“Ontario Class”** means all persons other than the Settling Defendants who purchased Lysine in or from Canada, excluding Quebec and British Columbia Class Members, between June 1, 1992 and June 27, 1995;
- (l) **“Ontario Court”** means the Superior Court of Justice and the Honourable Mr. Justice MacKinnon, or his successor;
- (m) **“Opt Out Deadline”** shall, for the Ontario Class and British Columbia Class, be the date 60 days following the date on which the last of the three Approval Orders is granted, and for the Quebec Class shall be the date 30 days following the date on which the Notice of Approval Hearing is published;
- (n) **“Opt Out Reduction”** shall be the amount to be paid from the Settlement Benefits to the Settling Defendants in respect of the purchases made by

Class Members who opt out from the Settlement Agreement in accordance with paragraph 13 of this Settlement Agreement;

- (o) **“Parties”** shall mean collectively the Plaintiffs and the Settling Defendants;
- (p) **“Quebec Class”** shall mean all physical persons who, in or from Quebec, purchased Lysine between June 1, 1992 and June 27, 1995, for their personal use (excluding purchases for marketing, distribution or reselling purposes);
- (q) **“Quebec Court”** shall mean the Quebec (Cour Superieure) Superior Court;
- (r) **“Released Parties”** shall mean all those entities or individuals referred to or falling within the provisions of paragraph 19 herein;
- (s) **“Settlement Benefits”** shall mean the benefits as set out in paragraph 4;
and
- (t) **“Settling Defendants”** shall mean Archer Daniels Midland Company, Ajinomoto Heartland, Inc. (f/k/a Heartland Lysine Inc.), Kyowa Hakko Kogyo Company Ltd., and Biokyowa Inc.

APPROVAL ORDERS

2. The Parties shall take all steps necessary to ensure that the Court approval of this Settlement Agreement is sought in an expedited manner. The Parties shall seek

Approval Orders from the Ontario, British Columbia and Quebec Courts in forms agreed upon by the Parties and by Sewon America Inc.. Each such Approval Order will be conditional until each Court has approved the settlement herein and the settlement set out in the Sewon Settlement Agreement and only after all Courts have approved the settlement herein and the settlement set out in the Sewon Settlement Agreement shall this Settlement Agreement be binding and effective and each Approval Order become binding and effective.

NOTICE OF CERTIFICATION AND COURT APPROVAL

3. The Notice of Certification and Settlement Agreement Approval shall be disseminated in the form and pursuant to the protocol outlined in Appendices "A" and "B" hereto. The Notice shall be published in the newspapers listed in Appendix "B" and in the industry publications and by the other methods set out in Appendix "B" at the earliest possible date following the Effective Date.

SETTLEMENT BENEFITS

4. The Settlement Benefits shall be paid by the Settling Defendants in the total amount of \$5,250,000.00 (Cdn.), inclusive of interest and all legal costs. In or before September, 2002, the Settling Defendants transferred into interest-bearing trust accounts in Canada their agreed portion of the Settlement Benefits and provided written verification confirming the transfer of funds to Class Counsel. Interest earned in such interest-bearing trust accounts shall be added to, and become part of, the Settlement Benefits and shall be transferred to the Claims

Administrator, in trust, in accordance with the provisions of this Settlement Agreement.

5. The agreed portion of the Settlement Benefits for each of the Settling Defendants is as follows:
 - a. Archer Daniels Midland Company - \$4,500,000.00
 - b. Ajinomoto Heartland, Inc. - \$500,000.00
 - c. Biokyowa Inc and Kyowa Hakko Kogyo Company Ltd - \$250,000.00
6. Within 10 business days of the expiry of all appeal periods in respect of the three Approval Orders or within 10 business days of the disposition of any appeals from any of the Approval Orders, whichever is later, the Settling Defendants shall each pay to the Claims Administrator, their portion of all of the amount provided for in paragraph 4.
7. The Settlement Benefits shall be paid to the Class Members pursuant to the Distribution Protocol provided for in Appendix "D".

SETTLING DEFENDANT OBLIGATIONS SEVERAL AND NOT JOINT

8. All obligations assumed by each of the Settling Defendants pursuant to this Settlement Agreement are intended to be, and shall remain, several (individual) and not joint. No Settling Defendant shall have any liability for the default of any other Settling Defendant pursuant to this Settlement Agreement.

CLAIMS ADMINISTRATOR

9. Class Counsel in Ontario and British Columbia shall propose a Claims Administrator to be agreed upon by the Settling Defendants, and whose appointment shall be subject to approval of the Ontario and British Columbia Courts, for the purpose of implementing the Distribution Protocol provided for at Appendix "D".
10. The Claims Administrator shall be required to administer the Settlement Benefits and process claims in accordance with this Settlement Agreement, including the provisions and procedures set forth in the Distribution Protocol provided in Appendix "D".
11. The Claims Administrator shall be bilingual.
12. The Claims Administrator shall report to, and be subject to the direction of, or removal by, the Ontario Court.

OPTING OUT

13. Class Members shall have the right to exclude themselves from this Settlement Agreement ("opt out"). British Columbia Class Members and Ontario Class Members who elect to opt out of this Settlement Agreement shall complete the opt out form attached as Appendix "C" and file it with the Claims Administrator by the Opt Out Deadline. Quebec Class Members shall opt out by the Opt Out Deadline by giving notice to the Clerk of the Superior Court of Quebec in the

manner prescribed under the laws of Quebec. Class Members who opt out shall be excluded from the actions herein, as applicable, and from any and all rights and obligations under this Settlement Agreement. Where a Class Member is a member of more than one class opting out of one class results in opting out of the entire proceedings and the entire settlement. Class Members who do not opt out in the manner and time prescribed above shall be deemed to have elected to participate in this Settlement Agreement and all related Court orders, regardless of whether they participate in the dispute resolution process or receive any Settlement Benefits.

14. In the event that a Class Member opts out, the Settling Defendants shall be entitled to claim an Opt Out Reduction. The Claims Administrator shall provide a list including addresses and contact information on all Class Members who have opted out to the Parties within 10 days of the Opt Out Deadline. The Settling Defendants shall then have 45 days to provide to the Claims Administrator with a copy to Ontario Class Counsel their individual computation of their respective entitlement to their Opt Out Reduction which shall be calculated on the following basis:

If a Class Member timely and properly opts out, the Settling Defendant(s) who sold Lysine to that Class Member shall be entitled to assert a Proxy Claim with respect to such Class Member by filing such Proxy Claim with the Claims Administrator. The assertion of a Proxy Claim shall entitle Settling Defendants to receive from the Claims Administrator a sum equal to the payment for which such Class Member would have qualified under the terms of this Settlement Agreement.

15. No claim shall be allowed and no payment shall be made to any Class Member in respect of sales made by any of the Settling Defendants to the Class Members which have been the subject of a compromise or settlement between the Class Member and any such Settling Defendant anywhere in the world. Documentation regarding such compromises or settlements shall be provided to the Claims Administrator by the Settling Defendants.
16. Any Class Member who previously received monies in respect of the alleged Lysine price-fixing conspiracy, but did not actually receive those monies from a class action settlement or from a defendant in these proceedings, and therefore did not execute a release and did not otherwise compromise their claim, must account for and give credit for any and all monies previously received. Those monies will be subtracted from any entitlement under this settlement prior to payment. Any Class Member who has received a previous payment as described above, and fails to account for such payment, shall be ineligible for any Settlement Benefits.
17. Quebec Class Members who commenced proceedings and fail to discontinue such proceedings by the Opt Out Deadline shall be deemed to have opted out.

EFFECT OF NON-APPROVAL BY THE COURTS

18. If either this Settlement Agreement or the Sewon Settlement Agreement, or both, is or are not approved by each of the Ontario Court, the British Columbia Court and the Quebec Court,

- (a) this Settlement Agreement shall be null and void and shall have no force or effect, and no party to the Settlement Agreement shall be bound by any of its terms, except the terms of this paragraph and paragraph 1;
- (b) this Settlement Agreement and all of its provisions and all negotiations, statements and proceedings relating to it shall be without prejudice to the rights of the Settling Defendants, the British Columbia Class, the Ontario Class and the Quebec Class, all of whom shall be restored to their respective positions existing immediately before the completion of this Settlement Agreement;
- (c) this Settlement Agreement, the fact of its negotiation and execution, the certification of the British Columbia Class and/or Ontario Class and/or Quebec Class Actions, and any approval of the Settlement Agreement by any Court shall not constitute any admission by the Settling Defendants and shall not be used against any of the Settling Defendants for any purpose in this or in any other proceeding and without limiting the generality of the foregoing, this Settlement Agreement and the fact of its negotiation and execution and certification by a Court shall not constitute any admission or be used by anyone (whether or not a party to these proceedings) in an effort to establish any of the alleged facts, the jurisdiction of the Canadian Courts over any foreign party or the certification of these or any other proceedings

in any province and the Parties will enter a Consent Order of the Courts in British Columbia, Ontario and Quebec to that effect.

RELEASE

19. In consideration of the payment of the Settlement Benefits set out in this Settlement Agreement, the Plaintiffs and all Class Members (the “Releasing Parties”) hereby release and forever discharge the Settling Defendants and each of their parents, subsidiaries, affiliates, related entities, successors and assigns and all of their past, present and future directors, officers, attorneys, employees, agents, consultants, advisors and other representatives of any type and their heirs, executors and administrators (collectively the “Released Parties”) from any and all claims, lawsuits, demands and causes of action, whether class, individual or otherwise in nature, damages whenever incurred, liabilities of any nature whatsoever, anywhere in Canada, including costs, expenses, legal fees, known or unknown, suspected or unsuspected, asserted or unasserted, in law or equity, including without limitation those based on any statute or any law of Canada or elsewhere providing any remedy or relief in respect of any claim or matter asserted or that could have been asserted in the actions herein, that any Releasing Party, 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 of the Released Parties, and all other defendants and/or respondents in the actions referred to herein, prior to the date of this Settlement Agreement, including

without limitation any conduct related to the manufacture, sale, purchase, distribution or pricing of Lysine, that was asserted or could have been asserted by or on behalf of or through the Releasing Parties individually, collectively or otherwise in any of the actions referred to herein, or in any other possible action anywhere else in Canada.

20. The Approval Orders shall forever bar the claims of the Plaintiffs and of all Class Members which were asserted or could have been asserted in the proceedings referred to in the preambles herein and shall forever bar claims for contribution and indemnity which the Settling Defendants may have had against any other party in these proceedings.
21. Nothing in this Settlement Agreement shall prejudice or in any way interfere with the rights of Class Members to pursue all of their other rights and remedies against persons and/or entities other than the Settling Defendants and Released Parties, but the Plaintiffs or Class Members shall not commence or maintain any proceedings against anyone who may, or does, claim over or seek contribution or indemnity from any of the Settling Defendants or Released Parties.
22. Neither this Settlement Agreement nor any step taken to carry out the Settlement Agreement nor any document relating to it is, may be construed as, or may be used as, an admission by or against any of the Settling Defendants of the truth of any allegations or of liability or of jurisdiction of the Canadian Courts over any of the

Settling Defendants who are non-Canadians or of the certifiability of the actions herein as class actions or as a waiver of any applicable legal right or benefit other than as expressly stated in this Settlement Agreement and, likewise, this Settlement Agreement may not be construed or used as an admission by or against the Plaintiffs or the Class Members or as a waiver of any applicable legal right or benefit of the Plaintiffs or the Class Members other than as expressly stated in this Settlement Agreement. Further, neither this Settlement Agreement nor any document relating to, or action taken to carry out this Settlement Agreement, shall be offered or received in evidence in any action or proceeding against the Settling Defendants, the Plaintiffs or the Class Members, or any of them, in any Court, administrative agency or other tribunal for any purpose whatsoever other than to enforce the provisions of the Settlement Agreement or to seek Court approval of the Settlement Agreement in the manner as described below.

CLASS COUNSEL LEGAL FEES

23. Following the issuing and entering or, if applicable, the rendering, of the Approval Orders, or at the occasion thereof, Class Counsel shall bring motions before their respective Courts for payment of any legal fees or disbursements which the Court may deem are payable by Class Members. The Settling Defendants shall have no obligation or responsibility to pay any legal fees or disbursements to Class Counsel.

24. No Class Counsel, or anyone employed with Class Counsel, may, directly or indirectly, participate in or be involved in or in any way assist with respect to any action commenced by a Class Member who has opted out or with respect to any other action related to the claims asserted in the proceedings referred to in the preambles herein. Moreover, no Class Counsel or anyone employed with Class Counsel may divulge any information obtained in the course of the proceedings referred to in the preamble herein or in the preparation thereof or related to the proceedings referred to in the preambles, to anyone for any purpose.

ENTIRE AGREEMENT

25. This Settlement Agreement, together with the preambles and the attached appendices, constitutes the entire agreement between the Parties pertaining to the subject matter hereof, and supersedes all prior understandings, representations, negotiations, discussions, and agreements, whether oral or written, which may have occurred prior hereto. There are no other warranties or representations between the Parties in connection with the subject matter of this Settlement Agreement except as specifically set forth herein and none have been relied upon by the Parties in entering into this Settlement Agreement.

ONGOING AUTHORITY

26. The Parties agree that the Ontario, British Columbia and Quebec Courts will retain exclusive jurisdiction over the actions referred to herein, and over all Parties named or described therein, including, but not limited to, all Class Members and

the Settling Defendants. Further, the Parties agree that the Ontario, British Columbia and Quebec Courts will retain exclusive jurisdiction over this Settlement Agreement to ensure that all payments and disbursements are properly made, and to interpret and enforce the terms, conditions and obligations of this Settlement Agreement. Notwithstanding the foregoing, none of the Parties will seek or consent to any order or direction from any of the Courts mentioned herein which may affect the rights of Class Members, other than those Class Members within the jurisdiction of such Courts, unless such orders or directions are made or to be made by the Court or Courts with jurisdiction over such other Class Members that may be affected thereby.

27. The Distribution Protocol provided for in Appendix "D" governs the claims of Class Members. The Parties intend that this process be efficient, rapid, and cost effective, but the Parties have agreed that these claims be administered on a national basis through a single Claims Administrator and single protocol. It is the intention of the Parties that the Ontario Court, with the concurrence of the British Columbia Court and the Quebec Court, shall adjudicate any matters arising from the implementation of the Protocol provided for in Appendix "D" including, but not limited to, the supervision of the Claims Administrator.

APPLICABLE LAW

28. Except for the Quebec Class to which the law of Quebec shall apply, the law of the Province of Ontario shall apply to this Settlement Agreement. The present

Settlement Agreement constitutes a “transaction” within the meaning of Article 2631 of the Civil Code of Quebec.

NOTICES

29. All communications to be provided pursuant to or in connection with this Settlement Agreement shall be in writing and shall be delivered personally or sent by registered mail or overnight delivery service, costs prepaid, to the Parties at the addresses set forth below, or to such other individuals and addresses as the Plaintiffs or the Settling Defendants may designate in writing from time to time.

SISKIND, CROMARTY, IVEY & DOWLER LLP

Barristers & Solicitors
680 Waterloo Street
London, Ontario
N6A 3V8

Counsel for the Ontario Class Members

UNTERBERG, LABELLE, LEBEAU

Barristers & Solicitors
700-1980 rue Sherbrooke
Montreal, Quebec
H3H 1E8

Counsel for the Quebec Class Members

SYLVESTRE, CHARBONNEAU, FAFARD

740 av. Atwater
Montreal Quebec
H4C 2G9

Counsel for the Quebec Class Members

POYNER BAXTER

Barristers & Solicitors
408-145 Chadwick Court
North Vancouver, British Columbia
V7M 3K1

Counsel for the British Columbia Class Members

OGILVY RENAULT
Barristers & Solicitors
Suite 1100, Box 11
Merrill Lynch Canada Tower
200 King Street West
Toronto, ON M5H 3T4

Counsel for Archer Daniels Midland Company

STIKEMAN, ELLIOTT LLP
Barrister & Solicitors
5300 Commerce Court West
199 Bay Street Toronto, ON
M5L 1B9

Counsel for the Defendant Ajinomoto Heartland, Inc. (f/k/a Heartland Lysine Inc.)

BLAKE CASSELS AND GRAYDON LLP
Barristers & Solicitors
Box 25, Commerce Court West
Suite 2800, 199 Bay Street
Toronto, ON
M5L 1A9

Counsel for Solicitors for the Defendants Kyowa Hakko Koygo Company Ltd.
and Biokyowa Inc.

EXECUTION AND PROCESSING OF SETTLEMENT AGREEMENT

30. The Parties and their respective counsel shall expeditiously do all things as may be reasonably required to give effect to this Settlement Agreement.
31. The Parties agree that this Settlement Agreement may be executed by their respective counsel.
32. The Parties further agree that this Settlement Agreement may be executed by facsimile and in counterparts, each of which shall be deemed to be an original for

all purposes and all executed counterparts taken together shall constitute the complete Settlement Agreement.

FRENCH TRANSLATION

33. A French translation of this Settlement Agreement and all Appendices attached hereto shall be prepared by and at the sole expense of the Plaintiffs. In the event of any dispute as to the meaning or interpretation, the English version shall prevail.

FRENCH LANGUAGE CLAUSE

34. Les Parties ont convenu que cette entente soit rédigée en anglais.

Dated this _____ day of _____, 2002.

SISKIND, CROMARTY, IVEY & DOWER ^{LLP}
Solicitors for the Ontario Class Members

Date

Feb 28/03

Per:


Name
Title

UNTERBERG, LABELLE, LEBEAU ^{LLP}
Solicitors for the Quebec Class Members

Date

Per:

Name
Title

SYLVESTRE, CHARBONNEAU, FAFARD ^{LLP}
Solicitors for the Quebec Class Members

Date

Per:

Name
Title

all purposes and all executed counterparts taken together shall constitute the complete Settlement Agreement.

FRENCH TRANSLATION

33. A French translation of this Settlement Agreement and all Appendices attached hereto shall be prepared by and at the sole expense of the Plaintiffs. In the event of any dispute as to the meaning or interpretation, the English version shall prevail.

FRENCH LANGUAGE CLAUSE

34. Les Parties ont convenu que cette entente soit rédigée en anglais.

Dated this _____ day of _____, 2002.

SISKIND, CROMARTY, IVEY & DOWER LLP
Solicitors for the Ontario Class Members

Date _____

Per: _____
Name
Title

UNTERBERG, LABELLE, LEBEAU LLP
Solicitors for the Quebec Class Members

Date 15-01-03

Per: [Signature]
Name
Title

SYLVESTRE, CHARBONNEAU, FAFARD LLP
Solicitors for the Quebec Class Members

Date 15-01-03

Per: [Signature]
Name
Title

POYNER BAXTER
Barristers & Solicitors for the British Columbia
Class Members

Date Feb 28/03

Per: CWB per K. Baxter
Name
Title

STIKEMAN, ELLIOTT ^{LLP}
Solicitors for the Defendant Ajinomoto Heartland,
Inc.

Date February 28, 2003

Per: Stikeman Elliott ^{LLP} per [Signature]
Name
Title

OGILVY RENAULT
Solicitors for the Defendant Archer Daniels
Midland Company

Date Feb 28, 2003

Per: Ogilvy Renault ^{LLP} per [Signature]
Name
Title

BLAKE, CASSELS & GRAYDON ^{LLP}
Solicitors for the Defendants Kyowa Hakko Kogyo
Company Ltd. & Biokyowa Inc.

Date Feb 28, 2003

Per: Blake, Cassels & Graydon LLP per [Signature]
Name
Title

APPENDIX "A"

Notice of Certification and Settlement Agreement Approval

IN THE MATTER OF LYSINE CLASS ACTION LITIGATION

PLEASE READ THIS NOTICE CAREFULLY. IT MAY AFFECT YOUR LEGAL RIGHTS.

TO: All persons in or from Canada who purchased lysine in any form and for any use, including, feed-grade lysine (whether in unmixed form, as part of a feed mix, or otherwise), or any other grade or form of lysine, whether intended for resale or otherwise (hereafter referred to as "Lysine"), and products containing or derived from Lysine, or products derived from animals that consumed Lysine, between June 1, 1992 and June 27, 1995

1 Purpose of this Notice

Class Proceeding lawsuits have been initiated in Ontario, British Columbia, and Quebec in which it is alleged that the Defendants conspired to fix prices and allocate markets for Lysine in Canada.

A Settlement Agreement has been reached between the Plaintiffs (the parties who brought the lawsuit) and some of the Defendants, Archer Daniels Midland Company, Ajinomoto Heartland Inc., Kyowa Hakko Kogyo Company Ltd., and Biokyowa Inc. (the "Settling Defendants"). The proceeding was certified and the Settlement Agreement approved by the Courts in Ontario on February 28, 2003, in British Columbia on X, and in Quebec on X.

A separate settlement was reached with Sewon America Inc., and approved by the Courts on dates referenced above.

This Notice is to advise you of the Settlement Agreement and to inform you of your rights as a Class Member under the Agreement.

2 Class Member Categories

If you purchased Lysine or products containing or derived from Lysine or products derived from animals that consumed Lysine in or from Canada between June 1, 1992 and June 27, 1995 you are a Class Member. Class Members fall into 8 categories:

- | | |
|--------------------|-------------------|
| 1. Distributors | 5. Turkey Farmers |
| 2. Feed Mills | 6. Other Farmers |
| 3. Hog Farmers | 7. Consumers |
| 4. Chicken Farmers | 8. Intermediaries |
-

- 3 Claim Program - Distributors, Feed Mills, and Farmers** Distributors, Feed Mills, and Farmers will be eligible to receive direct compensation under the Settlement Agreement. The maximum amount of compensation available to all Distributors, Feed Mills, and Farmers, is \$4,725,000 plus accrued interest.
- Compensation will be paid out to eligible Distributors and Feed Mills based on the dollar value of Lysine purchases made between June 1, 1992 and June 27, 1995. A maximum of \$185,000 is available to compensate Distributors. A maximum of \$1,184,000 is available to compensate Feed Mills.
- Compensation will be paid out to eligible Farmers based on the dollar value of feed purchased between June 1, 1992 and June 27, 1995, multiplied by a fixed percentage for each of hog feed, chicken feed, turkey feed, and other feed (collectively "feed"). Farmers must establish that the feed purchased contained Lysine.
- Hog Farmers will receive a minimum of \$1,200,000 and a maximum of \$1,563,000 in compensation. If the minimum level of compensation is not required to pay all eligible claims of Hog Farmers, the Canadian Pork Council will receive a payment equal to \$1,200,000 less the value of Hog Farmers' eligible claims.
- Chicken Farmers will receive a minimum of \$600,000 and a maximum of \$857,000 in compensation. If the minimum level of compensation is not required to pay all eligible claims of Chicken Farmers, the Poultry Institute of Canada will receive a payment equal to \$600,000 less the value of Chicken Farmers' eligible claims.
- The compensation paid to Distributors, Feed Mills, and Farmers will depend, in part, on the number of claims that are made.
- Distributors, Feed Mills, and Farmers must complete a Claim Form, and submit certain required supporting documentation outlined in the Claim Form. To be eligible for compensation, the Claim Form together with the required supporting documentation must be submitted to the Claims Administrator by X, 2002. Claim Forms are available by telephoning the Claims Administrator at X.
-
- 4 Compensation Plan - Consumers and Intermediaries** A Settlement Fund of at least \$525,000 plus accrued interest, shall be available to compensate Consumers and Intermediaries.
- Recognizing the difficulty of determining the damage suffered by any given Consumer or Intermediary, and recognizing the related difficulties in directly compensating Consumers and Intermediaries, it has been determined that compensation will be paid to the following organizations for the general benefit of Consumers and Intermediaries:
- a. Options Consommateurs - \$45,000
 - b. Quebec Fonds d'Aide - \$65,000
 - c. Boys and Girls Clubs of Canada – 50% of the Remaining Funds
 - d. Santropol Roulant – 8.33% of the Remaining Funds
 - e. Le Regroupement des magasins Partage de l'Île de Montréal – 8.33% of the Remaining Funds
 - f. Moisson Montréal - 8.33% of the Remaining Funds
 - g. Breakfast for Learning – 25% of the Remaining Funds
-

-
- 5 Release of claims and the effect on other proceedings** You will be bound by the terms of the Settlement Agreement, unless you “opt out”, a process that is described in the next section.
- This means that you will not be able to bring or maintain any other claim or legal proceeding against any of the Settling Defendants in connection with Lysine or products containing or derived from Lysine or products derived from animals that consumed Lysine unless you “opt out”.
-
- 6 Opting out of the Settlement Agreement** If you would like to exclude yourself from the Settlement Agreement, you can opt out by obtaining an “Opt Out Form” (available from the Claims Administrator), and filing it with the Claims Administrator no later than X.
- If you opt out you will not be eligible for any of the benefits of the Settlement Agreement.
-
- 7 Class Counsel** The law firms of *Siskind, Cromarty, Ivey & Dowler*^{ALP} and *Oatley, Vigmond* represent the Class in Ontario, along with all class members in provinces other than British Columbia and Quebec, and Quebec corporations. Ontario Class Counsel can be reached toll-free at 1-800-461-6166 ext. 455.
- The law firm of *Poyner, Baxter* represent the Class in British Columbia. *Poyner Baxter* can be reached at 604-988-6321.
- The law firms of *Sylvestre, Charbonneau, Fafard* and *Unterberg, Labelle, Lebeau* represent the Quebec consumers. Quebec Class Counsel can be reached at 514-934-0841.
-
- 8 Legal Fees** Class Counsel in all jurisdictions will seek legal fees from their respective courts in an amount not to exceed 25% of the settlement attributable to their jurisdiction, plus disbursements and taxes.
-
- 9 Questions About the Settlement Agreement** If you would like a copy of the Settlement Agreement or have questions, you can call the Claims Administrator’s Information Line at X. A copy of the Settlement Agreement can be sent to you at a cost of \$20.00 per copy, which amount represents the cost of photocopying and mailing the Settlement Agreement.
-
- 10 Interpretation** If there is a conflict between the provisions of this Notice and the Settlement Agreement and any of its appendices, the terms of the Settlement Agreement shall prevail.
-

DISTRIBUTION OF THIS NOTICE HAS BEEN AUTHORIZED BY THE ONTARIO SUPERIOR COURT OF JUSTICE, THE SUPREME COURT OF BRITISH COLUMBIA AND THE QUEBEC (COUR SUPERIEURE) SUPERIOR COURT.

APPENDIX "B"

METHOD OF DISSEMINATING THE

NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL

The Notice of Certification and Settlement Approval shall be distributed in the following manner:

- a. published once in the following newspapers;
 - i. Globe and Mail (National Edition)
 - ii. National Post
 - iii. La Presse

- b. published once in the following industry magazines;
 - i. Canada Poultryman
 - ii. Better Pork
 - iii. Western Hog Journal
 - iv. La Terre de Chez-Nous

- c. sent to the following organizations for distribution to their membership;
 - i. Canadian Federation of Agriculture
 - ii. Chicken Farmers of Canada
 - iii. Canadian Pork Council

- d. posted on Class Counsel's website at www.classaction.ca;

- e. sent by direct mail to each of the Settling Defendants' customers where possible. To the extent possible, the Settling Defendants will provide contact information respecting their Lysine customers to the Claims Administrator, and the Claims Administrator will mail the Notice by direct mail to each of the Settling Defendants' customers; and

- f. sent by first class mail to the counsel for individuals pursuing independent litigation where those individuals are known to Class Counsel.

APPENDIX "C"
OPT OUT FORM
LYSINE LITIGATION SETTLEMENT

This is NOT a Claim Form.
It EXCLUDES you from the Settlement Class.
Do NOT use this Form if you want to receive benefits under the Settlement.

Name: _____
Name of Class Member (full legal name)

Contact Person (If Class Member is a corporation)

Address: _____
No./Apt. /Street City Province Postal Code

Telephone : _____
Area code / phone no. (Ext. if applicable)

Please provide the following additional information.

1. Identification of person signing this Claim (check one only):

- I am a Class Member, or an authorized employee, officer or director of the above-identified Class Member. I am signing this Form to opt-out of the settlement.
- I am the trustee, receiver or other representative of the above-identified Class Member. I am signing this Form to opt-out the Class Member from the Settlement

(Attach copy of court order or other official document appointing you as representative and state your name, title, mailing address and telephone number).

I understand that by opting out I will never be eligible to receive any compensation pursuant to the Lysine Litigation Settlement.

Date Signed

Signature (Class Member or Personal Representative)

To be effective as an election to opt-out of this Settlement, this Form must be completed, signed and sent by registered mail, postmarked no later than XXX, to the address listed below.

The consequences of returning this Opt Out Form are explained in paragraph 6 of the Notice of Certification and Settlement Agreement Approval. If you have questions about using or completing this Form, contact your lawyer or call 1-800-461-6166.

THE INFORMATION PROVIDED IN THIS FORM WILL REMAIN CONFIDENTIAL
AS PROVIDED IN THE LYSINE SETTLEMENT AGREEMENT.
Please mail this Form to the CLAIMS ADMINISTRATOR at :

XXX

APPENDIX "D"

DISTRIBUTION PROTOCOL

The procedures set forth herein are intended to govern the administration of the settlement funds paid in accordance with the Settlement Agreement. The procedures shall be implemented by the Claims Administrator, subject to the ongoing authority and supervision of the Ontario Court. This Distribution Protocol operates with respect to Lysine as defined in the Settlement Agreement.

1. QUALIFICATION CATEGORIES

1.1 Class Members shall qualify for benefits under this Settlement Agreement in one or more of the following eight categories:

- Distributors - Class Members who purchased Lysine between June 1, 1992 and June 27, 1995 and who resold the Lysine to a further purchaser.
- Feed Mills - Class Members who purchased Lysine between June 1, 1992 and June 27, 1995, and sold Lysine to further purchasers as a component of animal feed and/or animal nutrition products or used such Lysine or Lysine enriched products for their own purposes.
- Hog Farmers - Class Members who purchased Lysine, animal feed containing Lysine and/or nutrition products containing Lysine between June 1, 1992 and June 27, 1995, and used such Lysine or Lysine enriched products in the production of hogs.
- Chicken Farmers - Class Members who purchased Lysine, animal feed containing Lysine and/or nutrition products containing Lysine between June 1, 1992 and June 27, 1995, and used such Lysine or Lysine enriched products in the production of chickens.
- Turkey Farmers - Class Members who purchased Lysine, animal feed containing Lysine and/or nutrition products containing Lysine between June 1, 1992 and June 27, 1995, and used such Lysine or Lysine enriched products in the production of turkeys.
- Other Farmers - Class Members who purchased Lysine, animal feed containing Lysine and/or nutrition products containing Lysine between June 1, 1992 and June 27, 1995, and used such Lysine or Lysine enriched products in the production of animals other than hogs, chickens and turkeys.

Consumers /
Intermediaries

- Class Members who purchased pork, chicken, turkey or other product which contained Lysine or were derived from animals that consumed Lysine as a component part between June 1, 1992 and June 27, 1995.

2. LYSINE SETTLEMENT FUND

- 2.1. A Settlement Fund equal to \$4,725,000.00 plus accrued interest less (a) proportionate applicable class counsel fees and disbursements, (b) proportionate costs of Notice, (c) all administration, and (d) applicable refunds, shall be available to compensate Distributors, Feed Mills, and Farmers.

2.2 ELIGIBILITY

Eligibility requires proper completion of a Claim Form which will be provided by the Claims Administrator. The Claim Form must be submitted to the Claims Administrator within four (4) months of the date of the Approval Order to make a claim ("Claim Deadline").

Subject to the approval of the Claims Administrator, a Claimant shall be eligible for compensation out of the Lysine Settlement Fund upon filing a properly completed Claim Form postmarked before the Claim Deadline, and upon establishing its Qualified Purchases during the time period.

Distributors, Feed Mills, or Farmers may establish their Qualified Purchases through any of the following methods:

- a. Proof of purchase confirming the purchase of Lysine between June 1, 1992 and June 27, 1995, and confirming the dollar value of the Lysine purchased; or
- b. Suppliers' sales records verifying the sale of Lysine to the Feed Mill between June 1, 1992 and June 27, 1995, verifying the dollar value of the sale; or
- c. If unable to provide any of the documentation as specified above in subparagraphs a and b above, a Claimant may submit to the Claims Administrator such other objective verification as may be acceptable to the Claims Administrator. Such other objective verification must be accompanied by an Affidavit from the Claimant stating the steps taken by the Claimant to obtain the Product Purchase Verification outlined in subparagraph a and b above and the responses, if any, to those steps.

Farmers who purchased Feed may establish their Qualified Purchases by providing acceptable documentation which establishes Feed purchases and multiplying that amount by the following percentages:

Hog Feed:	2%
Chicken Feed:	1%
Turkey Feed:	1.5%
Other Feed:	2%

Feed Purchases may be established through any of the following methods:

- a. Proof of purchase confirming the purchase of animal feed and/or nutrition products between June 1, 1992 and June 27, 1995, and confirming the dollar value of such products purchased; and
- b. Documentation or other evidence to establish that the animal feed and/or nutrition products purchased pursuant to subparagraph a above, contained Lysine; and
- c. If unable to provide any of the documentation as specified above in subparagraphs a and b above, a Claimant may submit to the Claims Administrator such other objective verification as may be acceptable to the Claims Administrator. Such other objective verification must be accompanied by an Affidavit from the Claimant stating the steps taken by the Claimant to obtain the Product Purchase Verification outlined in subparagraph a and b above and the responses, if any, to those steps.

3. ENTITLEMENT TO COMPENSATION

3.1 Payment Calculation

Distributors, Feed Mills, or Farmers who satisfy the eligibility requirements outlined in section 2.2 of this Distribution Protocol shall be entitled to compensation, calculated in accordance with the guidelines below.

The compensation calculations for Claimants have been apportioned with the expectation of benefiting those class members who suffered damages as a consequence of the actions alleged in this proceeding. Class Counsel has sought expert advice to create a method of compensation that will most accurately reflect the damage suffered by the Class Members in each qualification category. Class Members shall be entitled to the lesser of the following:

- a.
 - (i) \$.0035 per dollar spent on Qualified Purchases for Distributors;
 - (ii) \$.07 per dollar spent on Qualified Purchases for Feed Mills;
 - (iii) \$.14 per dollar spent on Qualified Purchases for Hog Farmers;
 - (iv) \$.094 per dollar spent on Qualified Purchases for Chicken Farmers;
 - (v) \$.014 per dollar spent on Qualified Purchases for Turkey Farmers;
 - (vi) \$.14 per dollar spent on Qualified Purchases for Other Farmers; and
- b. a pro-rata share of the Lysine Settlement Fund with such share to be based upon a value equal to:
 - (i) 2.5% of a Distributor's Qualified purchases;
 - (ii) 50% of a Feed Mill's Qualified Purchases;
 - (iii) 100% of a Hog Farmer's Qualified Purchases;
 - (iv) 67% of the Chicken Farmer's Qualified Purchases;
 - (v) 10% of the Turkey Farmer's Qualified Purchases;
 - (vi) 100% of the Other Farmer's Qualified Purchases.

3.2 Multiple Claims

Recognizing that certain Class Members may qualify under one or more Qualification Categories, and that membership in multiple categories would have the effect of increasing the damages suffered, the Claims Administrator shall allow such Class Members to claim benefits pursuant to multiple categories.

3.3 Minimum and Maximum Payments to Class Member Groups

- a. Notwithstanding the provisions of section 3.1 above, the maximum which may be paid to the following Class Members in each of the Qualification Categories in the aggregate are:

Distributors	-	\$185,000
Feed Mills	-	\$1,184,000
Hog Farmers	-	\$1,563,000
Chicken Farmers	-	\$857,000

- b. Further, the minimum amount which shall be paid in respect of the Claims of the following Class Members are:

Hog Farmers	-	\$1,200,000
Chicken Farmers	-	\$600,000

- c. To the extent that the total value of Eligible Claims for any particular group of Class Members is less than the minimum listed above, remaining monies shall be paid to organizations affiliated with, and for the benefit of, the particular Qualification Category whose members claims total less than the minimum amount designated for those Class Members. The following organizations have been selected to receive monies paid to satisfy the minimum amounts required by subparagraph b above:

- (i) the Poultry Institute of Canada shall receive any monies required to satisfy the minimum amount in the Chicken Farmers Category;
- (ii) the Canadian Pork Council shall receive any monies required to satisfy the minimum amount in the Hog Farmers Category; and
- (iii) the Poultry Institute of Canada and the Canadian Pork Council shall receive 29% and 71% respectively of any monies remaining in the settlement fund after payment of all claims including the minimum amounts for the Hog Farmers and Chicken Farmers Categories.

4.0 LIMITATIONS AND EXCLUSIONS TO COMPENSATION

4.1 Participants in the United States Class Action Settlements

Any Class Member who has previously participated in a settlement of their claim is not eligible to participate in this class action with respect to such purchases as were compensated in that settlement.

4.2 Recipients of Monies in Respect of Lysine Purchases

Any Class Member who previously received monies in respect of the alleged Lysine price-fixing conspiracy, but did not actually receive those monies from a class action settlement or from a defendant in these proceedings, and therefore did not execute a release and did not otherwise compromise their claim, must account for and give credit for any and all monies previously received. Those monies will be subtracted from any entitlement under this settlement prior to payment.

Notwithstanding any of the provisions of the Settlement Agreement, any Class Member who has received a previous payment as described above, and fails to account for such payment, shall be ineligible for any Settlement Benefits.

5. COMPENSATION FOR CONSUMERS/INTERMEDIARIES

Recognizing that a portion of the Lysine overcharge is borne by Consumers and Intermediaries, and recognizing the difficulty of accurately identifying the amount of the overcharge actually borne by any given Consumer or Intermediary, and recognizing the related difficulties in directly compensating Consumers and Intermediaries, compensation for Consumers and Intermediaries will be paid out through a distribution to organizations which operate for the general benefit of Consumers and Intermediaries. To the extent that monies are paid out pursuant to section 3.3(c), such monies will also be paid for research initiatives which will generally benefit Consumers and Intermediaries.

The compensation to these Class Members shall consist of \$525,000 plus accrued interest less (a) applicable class counsel fees and disbursements, and (b) proportionate share of the costs of Notice.

The organizations specified below have been identified as appropriate recipients of settlement funds:

- a. Options Consommateurs shall be entitled to a payment of \$45,000.00;
- b. The Quebec Fonds d'Aide shall be entitled to a payment of \$65,000.00;
- c. The Boys and Girls Clubs of Canada shall be entitled to 50% of funds remaining after the payment of (a) and (b);
- d. Santropol Roulant, Le Regroupement des magasins Partage de l'Île de Montreal, and Moisson Montreal shall each be entitled to 8.33% of funds remaining after the payment of (a) and (b);
- d. Breakfast for Learning shall be entitled to 25% of funds remaining after the payment of (a) and (b).

6.0 GENERAL CLAIMS PROCESSING GUIDELINES

6.1 Efficiency

The Claims Administrator shall process all claims in a cost-effective and timely manner.

6.2 Technical Difficulties

If during claims processing, the Claims Administrator finds that technical deficiencies exist in a Claimant's Claims Form, or the Product Purchase Verification, the Claims Administrator shall notify the Claimant of the deficiencies via registered mail and shall allow the Claimant thirty days from the date of mailing of such notice to correct the deficiencies. If the deficiencies are not corrected within the thirty day period, the Claims Administrator shall reject the claim without prejudice to the right of the Claimant to resubmit the claim provided the Claimant is able to meet the filing deadlines and other requirements set forth in this Protocol.

Technical deficiencies shall not include missing the deadline for filing the Claim Form. In no event shall the Claims Administrator accept Claim Forms postmarked after the Claim Deadline.

6.3 Notification and Payment of Claims

The Claims Administrator shall notify via registered mail all Claimant Distributors, Feed Mills and Farmers as to the approval or rejection of their claims under this Protocol.

The Claims Administrator shall promptly make arrangements to pay approved claims as expeditiously as possible.

6.4 Appeal of Claims

All Claimants shall be granted thirty (30) days from the date it receives notice pursuant to paragraph 6.3 of this Protocol, to appeal the rejection of its claim. Such appeal will be on the basis of written submissions, supported only by the documentation originally provided to the Claims Administrator. The Appeals will be determined by the Ontario Court.

The judgment of the Ontario Court respecting any appeal from the Claims Administrator's decision is final and binding and shall not be subject to any further appeal or review whatsoever.

6.5 Disposition of Residue of the Lysine Settlement Fund

Following the expiration of all appeals periods or disposition of appeals pursuant to paragraph 6.4, whichever is later, the Claims Administrator shall transfer any residue of the Lysine Settlement Fund to the Consumers and Intermediaries Settlement Fund. The monies shall be paid out to those organizations identified in paragraphs 5(c), (d), and (e) in the proportions provided for.