

---

**SETTLEMENT AGREEMENT**

---

Court File No. 32562/99

**ONTARIO SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

**ALFRESH BEVERAGES CANADA CORP.**

**Plaintiff**

**- and -**

**ARCHER DANIELS MIDLAND COMPANY, ADM BIOPRODUCTS,  
F. HOFFMAN-LA ROCHE LTD., HOFFMAN-LA ROCHE LTD.,  
JUNGBUNZLAUER INTERNATIONAL AG, JUNGBUNZLAUER  
INCORPORATED,  
HAARMANN & REIMER CORPORATION, BAYER INC.**

**Defendants**

Court File No. L003223

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**B E T W E E N:**

**SUN-RYPE PRODUCTS LTD.**

**Plaintiff**

**and:**

**ARCHER DANIELS MIDLAND COMPANY, ADM BIOPRODUCTS, F.  
HOFFMANN-LA ROCHE LTD., HOFFMANN-LA ROCHE LTD.,  
JUNGBUNZLAUER INTERNATIONAL AG, JUNGBUNZLAUER  
INCORPORATED, HAARMANN & REIMER CORPORATION, BAYER INC.**

**Defendants**

**BROUGHT UNDER THE *CLASS PROCEEDINGS ACT*, R.S.B.C. 1996, c. 50**

CANADA  
PROVINCE DE QUÉBEC  
DISTRICT DE MONTRÉAL

**COUR SUPÉRIEURE  
(Recours collectif)**

---

No.: 500-06-000094-991

**OPTION CONSOMMATEURS**, nom utilisé par l'Association coopérative d'économie familiale du Centre de Montréal, personne morale constituée en vertu de la *Loi sur les coopératives du Québec*, ayant son siège social au 2120, rue Sherbrooke Est, bureau 604, dans les cité et district de Montréal, H2K 1C3

***REQUÉRANTE***

- et -

**ANDRÉ-BERNARD GUÉVIN**, domicilié et résident au 5099, rue Garnier, dans les cité et district de Montréal, province de Québec, H2J 3T1

***PERSONNE DÉSIGNÉE***

c.

**ARCHER DANIELS MIDLAND COMPANY**, personne morale don't le siège social est situé au 4666, Faries Pkwy, Decatur, ILLINOIS, 62526, États-Unis.

- et -

**JUNGBUNZLAUER INTERNATIONAL A.G.**, personne morale don't le siège social est situé au St. Alban-Vorstadt 90, CH-4002 Basel, Suisse.

- et -

**JUNGBUNZLAUER A.G.**, personne morale don't le siège social est situé au St. Alban-Vorstadt 90, CH-4002 Basel, Suisse.

- et -

**HAARMANN & REIMER CORPORATION**, personne morale don't le siège social est situé au 300 North Street, Teterboro, NEW JERSEY, 07608, États-Unis.

- et -

**BAYER CORPORATION**, personne morale don't le siège social est situé au 100, Bayer Road, Pittsburgh, Pennsylvanie, 15205-9741, É.-U.

- et -

**BAYER A.G.**, personne morale don't le siège social est situé au Bayer - D51368, Leverkusen, Bayerwerk, Allemagne

- et -

**F. HOFFMANN-LA ROCHE, LTD.**, personne morale don't le siège social est situé au Grenzacherstrasse 124. CH-4070 Basel, Suisse.

- et -

**ROCHE HOLDING LTD.**, personne morale don't le siège social est situé au Grenzacherstrasse 124, CH-4070 Basel, Suisse

- et -

**HOFFMANN-LA ROCHE LIMITED**, personne morale don't le siège social est situé au 2455 Meadowpine Blvd., Mississauga, Ontario L5N 6L7

**INTIMÉES**

## SETTLEMENT AGREEMENT

The plaintiffs, Alfresh Beverages Canada Corp., Option Consommateurs, André-Bernard Guévin and Sun-Rype Products Ltd. in their capacity as class representatives, and the Settling Defendants, Archer Daniels Midland Company, Hoffmann-La Roche Limited, Jungbunzlauer International AG, Haarmann & Reimer Corporation, hereby enter into this Settlement 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**, Alfresh Beverages Canada Corp. commenced Action No. 32562/99 in Ontario on October 12, 1999, on its own behalf and on behalf of the proposed Ontario Class (the Ontario action);

**WHEREAS**, E.D. Smith & Sons Limited commenced Action No. 99-B673 in Ontario on October 20, 1999, and Jonathan Ashworth commenced Action No. 53510/99 in Ontario on October 4, 1999, and counsel in those actions have worked cooperatively with counsel in Action No. 32562/99, and have agreed that orders seeking the discontinuance of those actions without costs will be sought at the motion to approve this Settlement Agreement and to certify Action No. 32562/99 as a class action;

**WHEREAS**, Sun-Rype Products Ltd. commenced Action No. L003223 in British Columbia on November 27<sup>th</sup>, 2000, on its own behalf and on behalf of the proposed British Columbia Class (the British Columbia action);

**WHEREAS**, Option Consommateurs and André-Bernard Guévin commenced Action No. 500-06-000094-991 in Quebec on October 1, 1999, on behalf of the proposed Quebec Class (the Quebec action);

**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 Citric Acid in Canada, and sought damages for their respective Class Members;

**WHEREAS**, the defendants variously deny the allegations and claims which 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 extensive 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 protracted 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 and input from plaintiffs' counsel who represented various plaintiff interests with respect to devising the Distribution Protocol;

**WHEREAS**, the plaintiffs and Settling Defendants intend that this Settlement Agreement be binding on all purchasers of Citric Acid and products containing or derived from Citric Acid in or from Canada, and, save and except for the Quebec and British Columbia classes, that certification of a national class shall be sought 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 Citric Acid and products containing or derived from Citric Acid in or from Canada 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**, the Settling Defendants, despite their belief that they are not liable and have valid defences to the actions herein, have concluded that this Settlement Agreement is desirable in order to avoid the time, risk and expense of defending against repetitive and protracted litigation, and to resolve completely the pending and potential claims of the Class Members;

**WHEREAS**, despite the consent of the Settling Defendants to this Settlement Agreement, the defendants variously 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 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; in particular with respect to indirect claimants (those not purchasing Citric Acid directly from the defendants in raw form);

**WHEREAS**, 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 defendants of the truth of any allegations or of liability or of jurisdiction by Canadian courts over any of the foreign defendants 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 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 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;

**NOW THEREFORE**, 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 Citric Acid or products containing or derived from Citric Acid in accordance with the terms of this Settlement Agreement.



## 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;
  - b. **"British Columbia Class"** means all persons other than the defendants, who purchased Citric Acid or products containing or derived from Citric Acid in or from British Columbia between July 1, 1991 and June 27, 1995;
  - c. **"British Columbia Court"** means the Supreme Court of British Columbia and the Honourable Mr. Justice Lowry, or his successor;
  - d. **"Citric Acid"** means all citric products, including all types of Citric Acid (dry and liquid), sodium citrate, potassium citrate, and zinc citrate;

- e. **"Claim 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;
- f. **"Claims Administrator"** shall mean the persons or entity agreed upon by the Parties, and appointed by the Ontario and British Columbia Courts, as provided in paragraph 15 below, and any employees of such person or entity;
- g. **"Class Counsel"** shall mean Siskind, Cromarty, Ivey & Dowler LLP, Oatley Purser and Heifetz, Crozier Law, in Ontario; Camp, Fiorante, Matthews in British Columbia; and Unterberg, Sylvestre, Fafard in Quebec;
- h. **"Class Members"** shall mean either members of the Ontario, British Columbia or Quebec classes or shall mean members of those classes collectively as the context requires;
- i. **"Distributor"** shall mean a class member who purchased Citric Acid in raw form and who resold the Citric Acid in raw form to a further purchaser;
- j. **"Distribution Protocol"** shall mean the mechanisms for paying damages to Class Members as provided for in Appendices "D" and "E";

- k. **"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 Ontario, British Columbia and Quebec Approval Orders have been issued and entered, and (3) the time to appeal the Approval Orders, if appeals lie, has expired, and all appeals, if any from such Approval Orders have been exhausted;
- l. **"Manufacturer"** shall mean a class member who purchased Citric Acid in raw form and manufactured a product of which the Citric Acid was a component part;
- m. **"Ontario Class"** means all persons other than the defendants who purchased Citric Acid or products containing or derived from Citric Acid in or from Canada, excluding Quebec and British Columbia Class Members between July 1, 1991 and June 27, 1995;
- n. **"Ontario Court"** means the Superior Court of Justice and the Honourable Mr. Justice Winkler, or his successor;

- o. **"Opt Out Deadline"** shall, for the Ontario and British Columbia Class, be the date 60 days following the date on which the last of the three Approval Orders is issued and entered or, if applicable, rendered and for the Quebec Class shall be the date 30 days following the date on which the last of the three Approval Orders is issued and entered or, if applicable, rendered;
  
- p. **"Opt Out Reduction"** shall mean, in the case of a Distributor, an amount equal to 7% of the dollar value of Relevant Opt Out Sales made to the Distributor plus interest of 75.71% and the total of these two figures to be multiplied by 10%, and in the case of a Manufacturer who purchased Citric Acid from a Distributor, shall mean an amount equal to 7% of the dollar value of Relevant Opt Out Sales made to the Manufacturer plus interest of 75.71% and the total of these two figures to be multiplied by 60%, and in the case of a Manufacturer who purchased Citric Acid directly from a defendant, shall mean an amount equal to 7% of the dollar value of Relevant Opt Out Sales made to the Manufacturer plus interest of 75.71% and the total of these two figures to be multiplied by 70% ;
  
- q. **"Parties"** mean collectively the plaintiffs and the Settling Defendants;

- r. **"Quebec Class"** shall mean all physical persons who, in Quebec, purchased Citric Acid or products containing a derivative from Citric Acid between July 1, 1991 and June 27, 1995, for their personal use (excluding purchases made for manufacturing, distribution or reselling purposes);
- s. **"Quebec Court"** shall mean the Superior Court (Cour Supérieure) of Quebec;
- t. **"Released Parties"** shall mean all those entities or individuals referred to or falling within the provisions of paragraph 25 herein;
- u. **"Relevant Opt Out Sales"** shall mean sales to a Manufacturer or Distributor between July 1, 1991 and June 27, 1995 from a defendant or a person or entity to whom the defendant sold Citric Acid;
- v. **"Settling Defendants"** shall mean Archer Daniels Midland Company, Hoffmann-La Roche Limited, Jungbunzlauer International AG, and Haarmann & Reimer Corporation.

## **APPROVAL ORDERS**

2. The parties shall take all steps necessary to ensure that 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 the forms attached as Appendix "A" hereto. Each such Approval Order will be conditional until each Court has approved the settlement herein and only after all Courts have approved the settlement herein shall the 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 within 15 days of the Effective Date in the form and pursuant to the protocol outlined in Appendices "B" and "C" hereto.

## **SETTLEMENT BENEFITS**

4. The settlement benefits shall be paid by the Settling Defendants based on a damages rate of 7% of the sales in or from Canada of each respective Settling Defendant (subject to adjustment for opt out reductions and previous settlements) for the applicable time period plus agreed upon interest and costs. Each Settling Defendant shall pay its share of the damage claims portion of the settlement benefits (subject to adjustment for any Opt Out Reduction) as follows:
  - a. Archer Daniels Midland Company - \$2,031,937.93

- b. Haarmann & Reimer Corporation - \$2,303,270.30
- c. Hoffmann-La Roche Limited - \$1,352,999.88
- d. Jungbunzlauer International AG - \$1,229,999.89

In addition, each Settling Defendant shall pay 1/4 of the party and party legal costs (inclusive of GST), interest and other expenses as provided for herein.

- 5. The settlement benefits (inclusive of GST and PST where applicable), consist of the following (subject to any Opt Out Reduction):
  - a. \$6,318,208.00 in respect of the damage claims of Ontario and British Columbia Class Members;
  - b. \$600,000.00 in respect of the damage claims of Quebec Class Members;
  - c. \$800,000.00 in respect of party and party costs (inclusive of GST and PST where applicable) for all Class Counsel, of which \$125,000.00 is in respect of all judicial and extra-judicial fees and costs of Quebec class counsel. Each Settling Defendant shall pay 1/4 of the \$800,000.00 party and party costs.
  
- 6. The Settling Defendants shall pay interest upon the amount provided for in respect of each Settling Defendant in paragraph 4(a) to (d) (subject to Opt Out Reductions) and upon the \$200,000.00 that each will pay for costs, such interest to be calculated at a rate of 5% per annum from April 1, 2001 and to accrue on each such amount

until that amount is paid as provided for in this Settlement Agreement. Interest which accrues with respect to the amount of Opt Out Reduction shall be credited to the Settling Defendants which receive credit for Opt Out Reduction. Each Settling Defendant shall have the option of paying the principal amount provided for in respect of each Settling Defendant in paragraph 4(a) to (d) plus the \$200,000.00 for costs in advance of the payment schedule referred to below, thus terminating the accrual of the 5% interest as of the date of such payment ("Advance Payment"). If Advance Payment is made it shall include the interest which has accrued at the rate of 5% per annum from April 1, 2001 until the date of Advance Payment. If Advance Payment is made, it shall be deposited in a trust account held jointly between counsel for the Settling Defendant making the payment and Siskind, Cromarty, Ivey & Dowler LLP. The funds shall be held in trust pending payment in accordance with the schedule referred to below and the funds shall remain subject to Opt Out Reduction. Interest earned on the funds while being held in trust shall accrue to the benefit of the Ontario and British Columbia class members, subject to Opt Out Reduction as set out below, and interest which accrues on the amount of the Opt Out Reduction shall accrue to the benefit of the Settling Defendant making the Advance Payment. Once all required payments have been made, any remaining funds in the joint trust accounts shall be returned to the appropriate Settling Defendant.



7. The Settling Defendants shall each be responsible for 1/4 of the cost of distributing all notices provided for in this Settlement Agreement or agreed to by the Parties, and 1/4 of all costs and expenses incurred by the Claims Administrator in implementing the Distribution Protocol provided for in Appendix "D".
8. No further payment or other consideration shall be provided by the Settling Defendants except as expressly provided for in paragraphs 5, 6 and 7.
9. By a date no later than the date of the first settlement approval hearing, each Settling Defendant or its counsel shall advise Siskind, Cromarty, Ivey & Dowler LLP that there is deposited in trust with that Settling Defendant's counsel sufficient funds to pay its share of the amounts provided for in paragraphs 5, 6, and 7, unless Advance Payment has already been made.
10. Within 5 business days of the expiry of all appeal periods in respect of the three Approval Orders or within 5 business days of the completion of any appeals from any of the Approval Orders, the Settling Defendants shall each pay to Siskind, Cromarty, Ivey & Dowler LLP, In Trust, their portion of all of the amounts provided for in paragraphs 5 and 6 hereof and their share of the costs and expenses provided for in paragraph 7 hereof that have been incurred by Siskind, Cromarty, Ivey & Dowler LLP to that date with the exception of the distributors and manufacturers' fund as

provided for in the Distribution Protocol in Appendix "D." If Advance Payment has already been made, the payments referred to in this paragraph will be made from the funds held in trust pursuant to paragraph 6.

11. Each Settling Defendant shall pay to the Claims Administrator, its portion of the distributors and manufacturers' fund provided for in the Distribution Protocol at Appendix "D" within 15 business days of the final resolution of any Opt Out Reductions. Any interest which accrued from April 1, 2001 (at the rate of 5%) on amounts forming Opt Out Reduction, shall also be deducted to the credit of each Settling Defendant as applicable. If Advance Payment has already been made, the payment will be made from the funds held in trust pursuant to paragraph 6 after first deducting and returning to the Settling Defendant's counsel any amounts for Opt Out Reduction plus interest which accrued on such amounts from April 1, 2001 until Advance Payment was made (at the rate of 5%) plus interest which accrued while the Advance Payment was held in trust pursuant to paragraph 6 at the rate earned in the trust deposit.
12. Settlement benefits shall be paid to Ontario and British Columbia Class Members pursuant to the Distribution Protocol provided for in Appendix "D".

13. Settlement benefits shall be paid to Quebec Class Members pursuant to the Distribution Protocol provided for in Appendix "E".

**DEFENDANT OBLIGATIONS SEVERAL AND NOT JOINT**

14. 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**

15. 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 Court approval, for the purpose of implementing the Distribution Protocol provided for at Appendix "D".
16. 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".
17. The Claims Administrator shall be bilingual.

18. The Claims Administrator shall report to and be subject to the direction of, or removal by, the Ontario Court.

#### **OPTING OUT**

19. Class Members shall have the right to exclude themselves from this Settlement Agreement ("opt out"). British Columbia and Ontario Class Members who elect to opt out of this Settlement Agreement shall file an Opt Out Form 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 in Quebec. Class Members who opt out shall be excluded from the class actions 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 thus shall be bound by this Settlement Agreement and all related court orders, regardless of whether they participate in the dispute resolution process or receive any consideration.

20. In the event that a Manufacturer or Distributor opts out, the Settling Defendants shall be entitled to an Opt Out Reduction upon demonstrating reasonable evidence to the Claims Administrator of the Relevant Opt Out Sales made to the opting out Distributor or Manufacturer, or upon demonstrating reasonable evidence indicating from whom the Manufacturer purchased Citric Acid if the Manufacturer did not purchase directly from the Settling Defendant. Such evidence must be received by the Claims Administrator within 30 days of receipt of notice of the opting out Distributor or Manufacturer in accordance with paragraph 23 herein. For the purposes of this paragraph, it will be sufficient for the defendants to provide the Claims Administrator with computer records of sales figures from existing data banks to establish Opt Out Sales, so long as such computer records are accompanied by a sworn declaration as to their origin, method of production and authenticity. Any disputes related to Opt Out Reductions shall be resolved by the Ontario Court on notice to all Parties.
21. No claim shall be allowed and no payment shall be made to any Class Member in respect of sales made by any of the defendants to the Class Member which have been the subject of a compromise or settlement between the Class Member and any such defendant anywhere in the world. Documentation regarding such compromises or settlements shall be provided to the Claims Administrator.

22. Quebec Class Members who commence proceedings and fail to discontinue such proceedings by the Opt Out Deadline shall be deemed to have opted out.
  
23. The Claims Administrator shall provide a list, including addresses and contact information, of all British Columbia and Ontario Class Members who have opted out in accordance with paragraph 19 to each of the Parties within ten days of the Opt Out Deadline.

**EFFECT OF NON-APPROVAL BY THE COURTS**

24. If this Settlement Agreement is 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 for 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 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 negotiations and execution, the certification of the British Columbia, and/or Ontario, and/or Quebec Class Actions, and any approval of the Settlement Agreement by any court shall not constitute any admission by any of the defendants and shall not be used against any of the 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 any 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 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**

25. In consideration for the settlement benefits set out in this Settlement Agreement, the Class Members hereby release the Settling Defendants, Archer Daniels Midland Company, Hoffmann-La Roche Limited, Jungbunzlauer International AG, Haarmann & Reimer Corporation, and all other defendants and/or respondents in the actions referred to herein and each of their parents, successors, subsidiaries, assigns,

affiliates, and past, present and future directors, officers, attorneys, employees, agents, consultants, advisors and other representatives of any type from any and all claims, lawsuits, demands and causes of action arising from the beginning of time to the date of this Settlement Agreement that were asserted or could have been asserted by or on behalf of or through the class plaintiffs or any Class Member individually, collectively or otherwise, based upon the conduct of the Settling Defendants, and all other defendants and/or respondents in the actions referred to herein, and each of their parents, successors, subsidiaries, assigns, affiliates, and past, present and future directors, officers, attorneys, employees, agents, consultants, advisors and other representatives of any type whatsoever in relation to the matters which were asserted or could have been asserted in any of the court proceedings referred to in the preambles herein.

26. The Approval Orders shall forever bar the claims of the class representative plaintiffs and of all Class Members which were asserted or could have been asserted in the proceedings referred to in the preambles herein.
  
27. 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 defendants and Released Parties but the class representative 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 defendants or Released Parties.

#### **CLASS COUNSEL LEGAL FEES**

28. Following 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 on notice to the Settling Defendants for payment of any legal fees or disbursements which the court may deem are payable by Class Members.
  
29. 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**

30. 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**

31. 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 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 Courts mentioned herein will make any Order or give any direction which may affect the rights of Class Members other than those within the jurisdiction of such

court unless like Orders or directions are made by the court or courts with jurisdiction over such other Class Members that may be affected thereby.

32. The Distribution Protocol provided for in Appendix "D" governs the claims of Ontario and British Columbia Class Members only. Whereas the Parties intend that this process be efficient, rapid, and cost effective, 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, shall adjudicate any matters arising from the implementation of the Protocol provided for in Appendix "D" including but not limited to supervision of the Claims Administrator.
33. The Distribution Protocol provided for in Appendix "E" governs the claims of Quebec Class Members only. Matters which arise from the implementation of that Protocol will be the exclusive jurisdiction of the Quebec Court.

#### **APPLICABLE LAW**

34. 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 and following of the *Civil Code of Quebec*.

## NOTICES

35. 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, ON N6A 3V8  
Counsel for the Ontario Class Members

**Unterberg, Sylvestre, Fafard**  
740, Avenue Atwater  
Montreal, Quebec, H4C 2G9  
Counsel for the Quebec Class Members

**Camp, Fiorante, Matthews**  
4<sup>th</sup> Floor, Randal Bldg  
555 Georgia St. W.  
Vancouver, BC V6B 1Z5  
Counsel for the British Columbia Class Members

**Ogilvy Renault**  
Barristers & Solicitors  
Suite 2100, P.O. Box 141  
21<sup>st</sup> Floor, Royal Trust Tower  
Toronto Dominion Centre  
Toronto, ON M5K 1H1  
Counsel for Archer Daniels Midland Company

**Kelly Affleck Greene**  
Barristers & Solicitors  
One First Canadian Place, Suite 840  
P.O. Box 489  
Toronto, ON M5X 1E5  
Counsel for Jungbunzlauer International AG

**Fraser Milner Casgrain LLP**  
Barristers & Solicitors  
P.O. Box 100  
1 First Canadian Place  
Toronto, ON M5X 1B2  
Counsel for Haarmann & Reimer Corporation

**Gowling Lafleur Henderson LLP**  
Barristers & Solicitors  
160 Elgin Street, Suite 2600  
Ottawa, ON K1P 1C3  
Counsel for Hoffmann-La Roche Limited

#### **EXECUTION AND PROCESSING OF SETTLEMENT AGREEMENT**

36. The Parties and their respective counsel shall expeditiously do all things as may be reasonably required to give effect to this Settlement Agreement.
  
37. The Parties agree that this Settlement Agreement may be executed by their respective counsel.
  
38. 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**

39. A French translation of this Settlement Agreement and all Appendices attached hereto shall be prepared by the Settling Defendants. In the event of any dispute as to meaning or interpretation, the English version shall prevail.

**FRENCH LANGUAGE CLAUSE**

40. Les parties ont convenu que cette entente soit rédigée en anglais.

Dated as of this 20<sup>th</sup> day of September, 2001.

Date:

October 1/01

**SISKIND, CROMARTY, IVEY & DOWLER LLP**

Per: [Signature]

Solicitors for the Ontario Class Members

Date:

\_\_\_\_\_

**UNTERBERG, SYLVESTRE, FAFARD**

Per: \_\_\_\_\_

Solicitors for the Quebec Class Members

Date:

**CAMP, FIORANTE, MATTHEWS**

\_\_\_\_\_

Per: \_\_\_\_\_

Solicitors for the British Columbia Class Members

Date:

**OGILVY RENAULT**

\_\_\_\_\_

Per: \_\_\_\_\_

Solicitors for the Defendant, Archer Daniels Midland Company

Date:

**KELLY AFFLECK GREENE**

\_\_\_\_\_

Per: \_\_\_\_\_

Solicitors for the Defendant, Jungbunzlauer International AG

Date:

**FRASER MILNER CASGRAIN LLP**

\_\_\_\_\_

Per: \_\_\_\_\_

Solicitors for the Defendant, Haarmann & Reimer Corporation

Date:

**GOWLING LAFLEUR HENDERSON LLP**

*Sept 28/01*  
\_\_\_\_\_

Per:  \_\_\_\_\_

Solicitors for the Defendant Hoffmann-La Roche Limited

Appendix "A"

London Court File No. 322562/99

ONTARIO  
SUPERIOR COURT OF JUSTICE

The Honourable Mr. ) \_\_\_\_\_ day, the \_\_\_\_ day  
Justice Winkler )  
) of \_\_\_\_\_, 2001

**B E T W E E N:**

ALFRESH BEVERAGES CANADA CORP.

Plaintiff

-and-

ARCHER DANIELS MIDLAND COMPANY, ADM BIOPRODUCTS,  
F. HOFFMAN-LA ROCHE LTD., HOFFMAN-LA ROCHE LTD.,  
JUNGBUNZLAUER INTERNATIONAL AG, JUNGBUNZLAUER INCORPORATED,  
HAARMANN & REIMER CORPORATION, BAYER INC.

Defendants

**Proceeding under *Class Proceedings Act*, 1992**

**ORDER**

THIS MOTION made by the representative Plaintiff, Alfresh Beverages Canada Corp. for an Order that the within proceeding be certified as a class proceeding, and that the settlement of this action as against the defendants (terms defined in the Settlement Agreement are capitalized herein), Archer Daniels Midland Company, Hoffmann-La Roche Limited, Jungbunzlauer International AG, and Haarmann & Reimer Corporation (the "Settling Defendants") be approved, and that KPMG Inc. be appointed as Claims Administrator, was heard this day.



ON READING the materials filed and on hearing submissions of counsel for the representative plaintiff and counsel for the Settling Defendants:

1. **THIS COURT ORDERS** that the within proceeding be certified as a class proceeding pursuant to the Class Proceedings Act, 1992, S.O. 1992, c.6, ss.2 and 5;
  
2. **THIS COURT ORDERS** that the class be defined as:

All persons other than the defendants who purchased Citric Acid or products containing or derived from Citric Acid in or from Canada, excluding Quebec and British Columbia Class Members, between July 1, 1991 and June 27, 1995;
  
3. **THIS COURT ORDERS** that Alfresh Beverages Canada Corp. be appointed as the representative plaintiff for the class;
  
4. **THIS COURT ORDERS** that the within proceeding is certified on the basis of the following common issues:
  - (1) Did the defendants or any of them engage in conduct which is contrary to s. 45 of the *Competition Act*, R.S.C. 1985, Chap. C-34 or is otherwise actionable?
  
  - (2) What damages, if any, are payable?
  
5. **THIS COURT DECLARES** that the Settlement Agreement together with its attached appendices, annexed hereto as Schedule "A" to this Order, is fair, reasonable, and in the best interest of the members of the class;

6. **THIS COURT ORDERS** that the Settlement Agreement is approved pursuant to s. 29 of the *Class Proceedings Act, 1992*;
7. **THIS COURT DECLARES** that the Settlement Agreement in its entirety (including its preamble and appendices) forms part of this Order and is binding upon the representative plaintiff, upon all members of the class who do not opt out of the class in accordance with the notice within 60 days following the date on which the last of the three Approval Orders is issued and entered, and upon the Settling Defendants;
8. **THIS COURT ORDERS** that the representative plaintiff, all members of the class, and the Settling Defendants comply with the terms of the Settlement Agreement;
9. **THIS COURT ORDERS** that KPMG Inc. be appointed as Claims Administrator in accordance with paragraph 15 of the Settlement Agreement;
10. **THIS COURT ORDERS** that a notice of certification and settlement approval be published in accordance with paragraph 3 of the Settlement Agreement, and appendices "B" and "C" of the Settlement Agreement;
11. **THIS COURT ORDERS** that this action be dismissed as against the Defendants, ADM Bioproducts, F. Hoffmann-La Roche Ltd., Jungbunzlauer Incorporated and Bayer Inc. without costs; and

12. **THIS COURT ORDERS** that approval of this Order and the Settlement Agreement is contingent upon the approval of the British Columbia and Quebec Courts of the same Settlement Agreement and this Order shall be of no force and effect if such approval is not secured in both British Columbia and Quebec.

---

Winkler J.

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**B E T W E E N:**

**SUN-RYPE PRODUCTS LTD.**

**Plaintiff**

and:

**ARCHER DANIELS MIDLAND COMPANY, ADM BIOPRODUCTS,  
F.HOFFMANN-LA ROCHE LTD., HOFFMANN-LA ROCHE LTD.,  
JUNGBUNZLAUER INTERNATIONAL AG, JUNGBUNZLAUER INCORPORATED,  
HARRMANN & REIMER CORPORATION, BAYER INC.**

**Defendants**

**BROUGHT UNDER THE CLASS PROCEEDINGS ACT, R.S.B.C. c..50**

**ORDER**

The Honourable ) \_\_\_\_\_ day, the \_\_\_\_ day  
Justice )  
) of \_\_\_\_\_, 2001

**THIS MOTION** made by the representative plaintiff, Sun-Rype Products Ltd. for an Order that the within proceeding be certified as a class proceeding, and that the settlement of this action as against the defendants (terms defined in the Settlement Agreement are capitalized herein), Archer Daniels Midland Company, Hoffmann-La Roche Limited, Jungbunzlauer International AG, and Haarmann & Reimer Corporation (the "Settling Defendants") be approved, and that KPMG Inc. be appointed as Claims Administrator, was heard this day.

**ON READING** the materials filed and on hearing submissions of counsel for the representative plaintiff and counsel for the Settling Defendants:

1. **THIS COURT ORDERS** that the within proceeding be certified as a class proceeding pursuant to the *Class Proceedings Act*, R.S.B.C. c. 50;
2. **THIS COURT ORDERS** that the class be defined as:

All British Columbia companies or persons other than the defendants who purchased Citric Acid or products containing or derived from Citric Acid in or from British Columbia, between July 1, 1991 and June 27, 1995;
3. **THIS COURT ORDERS** that Sun-Rype Products Ltd. be appointed as the representative plaintiff for the class;
4. **THIS COURT ORDERS** that the following questions be certified as common issues in the class proceeding:
  - a. Did the defendants or any of them engage in conduct which is contrary to s.45 of the *Competition Act*, R.S.C. 1985, Chap.C-34 or is otherwise actionable?
  - b. What damages, if any, are payable?
5. **THIS COURT DECLARES** that the Settlement Agreement together with its attached appendices, annexed as Schedule "A" to this Order is fair, reasonable and in the best interest of the members of the class;
6. **THIS COURT ORDERS** that the Settlement Agreement be approved;

7. **THIS COURT DECLARES** that the Settlement Agreement in its entirety (including its preamble and appendices) forms part of this Order and is binding upon the representative plaintiff, upon all members of the class who do not opt out of the class in accordance with the notice within 60 days following the date on which the last of the three Approval Orders are issued and entered, and upon the Settling Defendants;
8. **THIS COURT ORDERS** that the representative plaintiff, all members of the class, and the Settling Defendants shall comply with the terms of the Settlement Agreement;
9. **THIS COURT ORDERS** that KPMG Inc. be appointed as Claims Administrator in accordance with section 15 of the Settlement Agreement;
10. **THIS COURT ORDERS** that a notice of certification and settlement approval be published in accordance with paragraph 3 of the Settlement Agreement, and appendices "B" and "C" of the Settlement Agreement;
11. **THIS COURT ORDERS** that this action be dismissed against the defendants, ADM Bioproducts, F.Hoffmann-La Roche Ltd., Jungbunzlauer Incorporated and Bayer Inc. without costs;
12. **THIS COURT ORDERS** that the approval of this Order and the Settlement Agreement is contingent upon the approval of the Ontario and Quebec courts of the same Settlement

Agreement and this Order shall be of no force and effect if such approval is not obtained in both Ontario and Quebec.

BY THE COURT

DISTRICT REGISTRAR

Appendix "B"

**Notice of Certification and Settlement Agreement Approval**

**IN THE MATTER OF CITRIC ACID  
CLASS ACTION LITIGATION**

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

**TO:** All persons or entities in Canada who purchased any type of citric product including all types of Citric Acid (dry or liquid), sodium citrate, potassium citrate and zinc citrate, in or from Canada between July 1, 1991 and June 27, 1995.

**1 Purpose of this  
Notice**

---

Class Proceeding lawsuits have been initiated in Ontario, British Columbia, and Quebec against Archer Daniels Midland Company, ADM Bioproducts, F. Hoffmann-LaRoche Ltd., Hoffmann-La Roche Limited, Roche Holding Ltd., Jungbunzlauer International AG, Jungbunzlauer Incorporated, Jungbunzlauer A.G., Haarmann & Reimer Corporation, Bayer Inc., Bayer Corporation, and Bayer A.G. in which it is alleged that the Defendants breached the *Competition Act*, R.S. 1985, c. 19 (2<sup>nd</sup> Supp.).

An Agreement has been reached between the Plaintiffs (the parties who brought the lawsuit) and the Settling Defendants (Archer Daniels Midland Company, Hoffmann-LaRoche Limited, Jungbunzlauer International AG, and Haarmann & Reimer Corporation). The Agreement has been approved and the lawsuit has been certified as against the Settling Defendants as a Class Action by the Courts in Ontario, British Columbia and Quebec. The action is dismissed against the remaining defendants.

This Notice is to advise you of the Agreement and inform you of your rights as a Class Member under the Agreement. You will be bound by the terms of the Agreement unless you decide to exclude yourself by opting out of the Agreement. Opting out is explained in Section 6 of this Notice.

The proceeding was certified and the Settlement Agreement approved by the Courts in Ontario on \_\_\_\_\_, in British Columbia on \_\_\_\_\_, and in Quebec on \_\_\_\_\_.

---



---

**2 Class Member Categories**

Class Members fall into four categories:

1. Distributors - Class Members who purchased citric acid in raw form and who resold the citric acid in raw form to a further purchaser. Distributors should review Section 3 of this Notice which outlines the Claim Program.
2. Manufacturers - Class Members who purchased citric acid in raw form and manufactured a product of which the citric acid was a component part. Manufacturers should review Section 3 of this Notice, which outlines the Claim Program.
3. Intermediaries - Class Members who purchased products containing citric acid as a component part, and who resold the same product as purchased to a further purchaser. Intermediaries should review Section 4 of this Notice which outlines the Compensation Plan.
4. Consumers - Class Members who purchased products which contained citric acid as a component part, and consumed that product. Consumers should review Section 4 of this Notice which outlines the Compensation Plan.

---

**3 Claim Program - Distributors and Manufacturers**

Distributors and Manufacturers will be eligible to receive direct compensation from the Claim Program. The maximum amount of compensation available to all Distributors and Manufacturers is \$5,055,000.00 plus interest accrued from April 1, 2001. Compensation will be paid out based on the dollar value of purchases made and will depend on the total number of claims made, and whether the purchase was made from a defendant or a non-party.

A Distributor or Manufacturer 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 date (insert Claim Deadline when known). Claim Forms are available by telephoning the Claims Administration at 1-800-\_\_\_\_\_-\_\_\_\_\_.

---

- 
- 4 Compensation Plan - Intermediaries and Consumers** A Settlement Fund of at least \$1,263,208.00 plus interest accrued from April 1, 2001, shall be available to compensate intermediaries and consumers. 50% of this Settlement Fund will be available to compensate intermediaries, and 50% of this Settlement Fund will be available to compensate consumers. Recognizing the difficulty of determining the damage suffered by any given intermediary or consumer, and recognizing the related difficulties in directly compensating intermediaries and consumers it has been determined that compensation will be paid to the following organizations for the general benefit of intermediaries and consumers:

Intermediaries

1. The Canadian Federation of Independent Grocers will receive 50% of the funds available to compensate intermediaries; and
2. The Canadian Council of Grocery Distributors will receive 50% of the funds available to compensate intermediaries.

Consumers

1. The Consumers Association of Canada shall receive 33.3% of the funds available to compensate consumers;
2. The Canadian Association of Food Banks shall receive 33.3% of the funds available to compensate consumers; and
3. The University of Guelph, Ontario Agricultural College, shall receive 33.3% of the funds available to compensate consumers.

- 
- 5 Release of claims and the effect on other proceedings** You will be bound by the terms of the 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 original or Settling Defendants in connection with Citric Acid, unless you "opt out".

- 
- 6 Opting out of the Agreement** If you would like to exclude yourself from the 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 [60 days following the date on which the last of the three Approval Orders has been issued and entered - actual date to be inserted prior to publication].

If you opt out you will not be eligible for any of the benefits of the Agreement.

---

---

**7 Class Counsel** The law firms of *Siskind, Cromarty, Ivey & Dowler<sup>rs</sup>*, *Oatley, Purser, and Heifetz*, *Crozier Law*, 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 **XX**.

The law firm of *Camp Fiorante Mathews* represent the Class in British Columbia. *Camp Fiorante Mathews* can be reached at **XX**.

The law firm of *Sylvestre, Unterberg* represent the Quebec consumers. Quebec Class Counsel can be reached at **XX**.

---

**8 Legal Fees** As part of the Agreement, the Settling Defendants will pay party and party legal costs in the amount of \$800,000.00. In addition, the British Columbia Court has awarded legal fees in the amount of \$ XX, and the Ontario Court has awarded legal fees in the amount of \$ XX. Legal fees awarded by the Ontario and British Columbia Courts in excess of the party and party costs agreed to by the Settling Defendants, will be deducted from the total settlement amount.

---

**9 Questions About the Agreement** If you would like a copy of the Agreement or have questions, you can call the Claims Administrator's Information Line at **XX**. A copy of the Agreement can be sent to you at a cost of \$20.00 per copy, which amount represents the cost of photocopying and mailing the Agreement.

---

**10 Interpretation** If there is a conflict between the provisions of this Notice and the Agreement and any of its appendices, the terms of the 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 "C"

**METHOD OF DISSEMINATION OF NOTICE OF CERTIFICATION  
AND SETTLEMENT APPROVAL**

**1. NOTICE OF COURT APPROVAL AND CERTIFICATION**

1.1 Publication in Newspapers

The Notice of Certification and Settlement Approval will be published on one day in each of the following newspapers;

The Globe & Mail  
National Post  
Gazette  
La Presse

1.2 Industry Publications

The Notice of Certification and Settlement Approval will be published once in each of the following publications;

Food in Canada  
The Canadian Grocer  
Cosmetics

1.3 Other Methods of Dissemination

- a. The Notice of Certification and Settlement Approval shall be sent to all members of the Food Institute of Canada via e-mail from the Food Institute of Canada.

1.4 By first class mail based on customer lists.

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.

**1. QUALIFICATION CATEGORIES**

1.1 Class Members shall qualify for benefits under this Settlement Agreement in one of four categories:

- Distributors - Class Members who purchased Citric Acid in raw form and who resold the Citric Acid in raw form to a further purchaser.
- Manufacturers - Class Members who purchased Citric Acid in raw form and manufactured a product of which the Citric Acid was a component part.
- Intermediaries - Class Members who purchased products containing Citric Acid as a component part and who resold the same product as purchased to a further purchaser.
- Consumers - Class Members who purchased products which contained Citric Acid as a component part, and consumed that product.

**2. DISTRIBUTORS AND MANUFACTURERS SETTLEMENT FUND**

2.1. A Settlement Fund equalling \$5,055,000.00 plus interest accrued from April 1, 2001, less (a) applicable class counsel fees and disbursements, and (b) applicable opt out reductions, shall be available to compensate Distributors and Manufacturers.

**2.2 Eligibility**

Eligibility requires proper completion of the Distributors and Manufacturers Claim Form attached hereto as Exhibit "A". The Distributors and Manufacturers Claim Form must be submitted to the Claims Administrator by the Claim Deadline

Subject to the approval of the Claims Administrator, a Distributor or Manufacturer shall be eligible for compensation out of the Distributors and Manufacturers Settlement Fund upon filing a properly completed Distributors and Manufacturers Claim Form postmarked before the Claim Deadline, and upon establishing: (a) that the Distributor or Manufacturer

purchased Citric Acid in raw form in or from Canada between July 1, 1991, and June 27, 1995; and (b) the dollar amount of the Citric Acid purchased.

To be deemed sufficient to establish that a Distributor or Manufacturer purchased Citric Acid in raw form between July 1, 1991, and June 27, 1995, and to be deemed sufficient to establish the dollar value of the Citric Acid purchased, "Product Purchase Verification" in the following form shall be required:

1. Proof of purchase and payment, confirming the Distributor or Manufacturer purchased Citric Acid in raw form between July 1, 1991, and June 27, 1995, and confirming the dollar value of the Citric Acid purchased; or
2. Seller's sales record verifying the sale of Citric Acid in raw form to the Distributor or Manufacturer between July 1, 1991, and June 27, 1995, and verifying the dollar value of the sale; or
3. If a Distributor or Manufacturer is unable to provide any of the documentation as specified above in paragraphs 1 and 2, a Distributor or Manufacturer may submit to the Claims Administrator such other verification as may be acceptable to the Claims Administrator. Such other objective verification must be accompanied by an Affidavit from the Distributor or Manufacturer stating:
  - a. the steps taken by the Distributor or Manufacturer to obtain the Product Purchase Verification outlined in subparagraphs 1 and 2 above; and
  - b. the responses, if any, to those steps.

### **2.3. Entitlement to Compensation**

Distributors and Manufacturers who satisfy the eligibility requirements outlined in section 2.2 of this Protocol, shall be entitled to compensation, calculated by the Claims Administrator in accordance with the following rules:

1. A Distributor who establishes, to the satisfaction of the Claims Administrator, that it purchased Citric Acid from a Defendant shall be entitled to the lesser of:
  - a. \$0.0225 per dollar spent on Citric Acid; and
  - b. a pro-rata share of the Distributors and Manufacturers Settlement Fund with such share to be based upon a value equal to 15% of the Distributor's established purchases;

2. A Distributor who does not establish to the satisfaction of the claims administrator that the Citric Acid purchased was purchased from a Defendant shall be entitled to the lesser of:
  - a. \$0.0045 per dollar spent on Citric Acid; and
  - b. a pro-rata share of the Distributors and Manufacturers Settlement Fund with such share to be based upon a value equal to 3% of the Distributor's established purchases;
3. A Manufacturer who establishes, to the satisfaction of the Claims Administrator that it purchased Citric Acid from a Defendant shall be entitled to the lesser of:
  - a. \$0.15 per dollar spent on Citric Acid; and
  - b. a pro-rata share of the Distributors and Manufacturer's Settlement Fund with such share to be based upon the full dollar value of the Manufacturer's established purchases;
4. A Manufacturer who does not establish to the satisfaction of the claims administrator that the Citric Acid purchased was purchased from a Defendant shall be entitled to the lesser of:
  - a. \$0.03 per dollar spent on Citric Acid; and
  - b. a pro-rata share of the Distributors and Manufacturers Settlement Fund with such share to be based upon a value equal to 20% of the Manufacturer's established purchases

#### **2.4 General Claims Processing Guidelines**

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

If during claims processing, the Claims Administrator finds that technical deficiencies exist in a Distributors and Manufacturers Claim Form or the Product Purchase Verification, the Claims Administrator shall notify the Manufacturer or Distributor of the deficiencies via registered mail and shall allow the Manufacturer or Distributor thirty (30) days from the date of receipt of such notice to correct the deficiencies. If the deficiencies are not corrected within the thirty (30) day period, the Claims Administrator shall reject the claim without prejudice to the right to resubmit the claim provided the Manufacturer or Distributor 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 consider Claim Forms postmarked after the Claim Deadline.

**2.5. Notification and Payment of Claims**

The Claims Administrator shall notify via registered mail all claiming Distributors and Manufacturers as to the approval or rejection of their claims under this Protocol.

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

**2.6. Appeal of Claims**

A Manufacturer or Distributor shall be granted thirty (30) days from the date it receives notice pursuant to paragraph 2.5 of this Protocol, to appeal the rejection (in whole or in part) 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 revision whatsoever.

**2.7. Disposition of Any Residue of the Distributors and Manufacturers Settlement Fund**

Following the expiration of all appeals periods, the Claims Administrator shall transfer any residue of the Distributors and Manufacturers Settlement Fund, to the Consumers and Intermediaries Settlement Fund, to be distributed in accordance with paragraphs 3.2 and 3.3 of this Protocol.

**3. CONSUMERS AND INTERMEDIARIES SETTLEMENT FUND**

- 3.1.** A Settlement Fund of at least \$1,263,208.00 plus interest accrued from April 1, 2001, less applicable class counsel fees and disbursements, shall be available to compensate Consumers and Intermediaries.

Recognizing that a portion of the Citric Acid overcharge is borne by Consumers and Intermediaries, and recognizing the difficulty of accurately identifying the amount of overcharge actually borne by any given Consumer or Intermediary, and recognizing the related difficulties in directly compensating Consumers and Intermediaries, Class Counsel



has sought the input of experts to create a method of compensation that will adequately recognize the overcharge borne by Consumers and Intermediaries. The Consumers and Intermediaries Settlement Fund has been apportioned with the expectation of benefiting class members who suffered damages as a consequence of the actions alleged in this proceeding.

### **3.2 Method of Distribution**

The Consumers and Intermediaries Settlement Fund shall be paid out in its entirety to the benefit of Consumers and Intermediaries as outlined below.

#### **A. Intermediaries**

Fifty percent of the Consumers and Intermediaries Settlement Fund shall be available to compensate Intermediaries. The organizations specified below have been identified as appropriate recipients of the Consumers and Intermediaries Settlement Fund. It is understood that the compensation paid to each of the recipient organizations will be used for the general benefit of their respective members.

1. The Canadian Federation of Independent Grocers shall receive 50% of funds allocated to compensate Intermediaries; and
2. The Canadian Council of Grocery Distributors shall receive 50% of funds allocated to compensate Intermediaries.

#### **B. Consumers**

Fifty percent of the Consumers and Intermediaries Settlement Fund shall be available to compensate consumers. The organizations specified below have been identified as appropriate recipients of the Consumers and Intermediaries Settlement Fund.

1. The Consumers Association of Canada shall receive 33.3% of the funds available to compensate Consumers;
2. The Canadian Association of Food Banks shall receive 33.3% of the funds available to compensate Consumers; and
3. The University of Guelph, Ontario Agricultural College, shall receive 33.3% of the funds available to compensate Consumers.

### **3.3. Residue of the Distributors and Manufacturers Settlement Fund**

The Claims Administrator shall pay out the residue of the Distributors and Manufacturers Settlement Fund in the same manner, to the same organizations, and in the same proportions as specified in paragraphs 3.2 above.

Exhibit "A"

**DISTRIBUTORS AND MANUFACTURERS CLAIM FORM**  
**Citric Acid Settlement**

TO BE ELIGIBLE FOR COMPENSATION YOUR COMPLETE APPLICATION TOGETHER WITH SUPPORTING DOCUMENTATION MUST BE SENT TO THE CLAIMS ADMINISTRATOR NO LATER THAN **XXX** (insert claim deadline once known)

You must complete all pages of this Form. Attach additional pages if space is insufficient.  
Please type or print legibly in black ink.

**Identification of Distributor or Manufacturer**

Name:

\_\_\_\_\_  
Name of Distributor or Manufacturer (full legal name)

\_\_\_\_\_  
Contact Person

Address:

\_\_\_\_\_  
No./Apt./Street

\_\_\_\_\_  
City

\_\_\_\_\_  
Province

\_\_\_\_\_  
Postal Code

Telephone :

\_\_\_\_\_  
Area code / phone no. (Ext. if applicable)

Is the above identified entity a Distributor or a Manufacturer? \_\_\_\_\_

**Please Inform the Claims Administrator of all Address Changes in Writing**

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

- I am an authorized employee, officer or director of the above-identified Distributor or Manufacturer. I am signing this Form to register the Distributor or Manufacturer for settlement benefits.
- I am the trustee, receiver or other representative of the above-identified Distributor or Manufacturer. I am signing this Form to register the Distributor or Manufacturer for benefits under 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).

2. The following supporting documentation must be submitted with this Claim Form:

A. Please list all citric acid purchases made between July 1, 1991, and June 27, 1995:

	Date of Purchase	Volume Purchased	Dollar Value of purchase	Seller's Identity
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

Please attach additional sheets if required.

B. Product Purchase Verification:

- Proof of purchase and payment confirming the Distributor's or Manufacturer's purchase of citric acid between July 1, 1991, and June 27, 1995, and confirming the dollar value of the citric acid purchased;
- Seller's sales record(s) verifying the sale of citric acid in raw form to the Distributor or Manufacturer between July 1, 1991, and June 27, 1995, and verifying the dollar value of the sale; or
- If a Distributor or Manufacturer is unable to provide any of the documentation as specified above, a Distributor or Manufacturer may submit to the Claims Administrator such other comparable verification as may be acceptable to the Claims Administrator. Such other objective verification must be accompanied by an Affidavit from the Distributor or Manufacturer stating:
  - a. the steps taken by the Distributor or Manufacturer to obtain the Product Purchase Verification outlined in subparagraphs 1 and 2 above; and
  - b. the responses, if any, to those steps.

C. If claiming as a Manufacturer, please list the products that you manufacture which contain citric acid as a component part, and attach evidence demonstrating that the products listed are manufactured by you and contain citric acid as a component part.

---

---

3. I declare under penalty of perjury that the information on this Form is true, correct and complete to the best of my knowledge, information and belief.

\_\_\_\_\_

Date Signed

\_\_\_\_\_

Signature (Claimant or Representative)

\* To preserve eligibility for benefits under the settlement, your completed application, together with the required documentation must be submitted to the Claims Administrator no later than X date (insert claim deadline when known).

**THE INFORMATION PROVIDED IN THIS FORM WILL REMAIN CONFIDENTIAL  
AS PROVIDED IN THE SETTLEMENT AGREEMENT**

Please mail this Form to the following address:

## APPENDIX "E"

### QUEBEC CLASS ACTION DISTRIBUTION PROTOCOL

The procedures set forth herein are intended to govern the administration of the settlement funds and costs paid in accordance with the Transaction in respect of the Quebec action.

1. Fonds d'aide aux recours collectifs

A sum of \$75,000.00 shall be paid to the Fonds d'aide aux recours collectifs.

2. Option Consommateurs

A sum of \$50,000.00 shall be paid to Option Consommateurs.

3. Judicial fees and costs

A sum of \$50,000.00 shall be paid to Unterberg, Labelle, Lebeau & Morgan and Sylvestre, Charbonneau, Fafard ("Counsel for the Applicant and the Designated person").

4. Extra-judicial fees and costs

A sum of \$75,000.00 shall be paid to Counsel for the Applicant and the Designated person.

5. Taxes on Extra-Judicial Fees

A sum of \$11,268.75 shall be paid to Counsel for the Applicant and the Designated person in respect of taxes (QST and GST) on the extra-judicial fees and costs.

6. Fondation Claude Masse

The balance of the settlement funds payable to the Quebec Class namely, the sum of \$463,731.25 (the "Settlement Funds"), shall be paid to the Fondation Claude Masse (the "Fondation"), a public foundation established to, inter alia, promote the advancement of education and research and the dissemination of knowledge in the areas of law and economics relating to competition and consumerism, which Settlement Funds shall be disbursed by the Fondation in strict accordance with the following terms and conditions:

- (i) The entire amount of the Settlement Funds will be used by the Fondation to fund academic research (the "Research") in the fields of consumerism and competition;

(ii) The Research will be conducted by the Faculties of Law and/or Economics of McGill University and at least (2) of the following universities or departments: Université du Québec, Université de Montréal, Université Laval, Université de Sherbrooke, Université of Ottawa, Université Concordia, and Faculté des sciences de l'agriculture et de la consommation de l'Université Laval (collectively the "Universities");

(iii) The Universities will be notified in writing by the Fondation, within thirty (30) days of the judgment approving the Transaction, of the terms hereof and the availability of the Settlement Funds for the Research.

(iv) The entire Settlement Funds will be spent and/or committed for the Research within a maximum of four (4) years from the date of the approval of the Transaction by the Superior Court of Quebec;

(v) For a period of five (5) years from the date of the approval of the Settlement Agreement Transaction by the Superior Court of Quebec, the Fondation will furnish the Settling Defendants with an annual written report describing the research mandates given by the Fondation and their status, and file a copy of the said report in the Court record (S.C.M.: 500-06-000094-991);

(vi) The extent and definition of and any decision respecting the Research to be conducted pursuant to the terms hereof, including, but not limited to the allocation of research funds between the Universities, as well as the review and supervision thereof, will be within the exclusive authority of the Fondation, without any involvement, participation or intervention of any of the Settling Defendants or Counsel for the Applicant and the Designated person;

(vii) Under no circumstances will any of the Settlement Funds be used for any purpose other than the Research and in particular but without limiting the generality of the foregoing, under no circumstances will any of the Settlement Funds be used, directly or indirectly, to fund litigation of any kind or nature whatsoever.

7. All amounts provided for above shall be paid by the Settling Defendants to Siskind, Cromary, Ivey & Dowler LLP which shall forward the funds to counsel for the Applicant and the Designated person.

