

CASE OPINION COVER SHEET

U.S. District Court for the Central District of Illinois

<p>Complete TITLE of Case</p>	<p>In Re: High Fructose Corn Syrup Antitrust Litigation This Document Relates to All Actions</p>	
<p>Type of Document Docket Number COURT Opinion Filed</p>	<p>ORDER MDL No. 1087 Master File No. 95-1477 UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF ILLINOIS - PEORIA DIVISION Date: March 15, 2004</p>	
<p>JUDGE</p>	<p>Honorable Michael M. Mihm 204 U.S. Courthouse 100 N.E. Monroe Peoria, IL 61602</p>	
<p>ATTORNEYS For Class Plaintiffs For Plaintiff Gray & Co.</p>	<p>Mr. Michael J. Freed Mr. Robert N. Kaplan Mr. H. Laddie Montague, Jr. Mr. Brian Posewitz</p>	<p>Much Shelist Freed Denenberg Ament Bell & Rubenstein, P.C. 200 N. LaSalle Street, Suite 2100 Chicago, IL 60601-1095 Kaplan, Kilsheimer & Fox, LLP 805 Third Avenue New York, NY 10022 Berger & Montague, P.C. 1622 Locust Street Philadelphia, PA 19103-6365 Tonkon Torp, LLP 888 S.W. Fifth Avenue Portland, OR 97204</p>

ATTORNEYS		
For Defendant Cargill, Inc.	Mr. Mark W. Ryan Mr. Richard J. Favretto	Mayer, Brown & Platt 1909 K St., N.W. Washington, D.C. 20006
For Defendant Archer Daniels Midland Co.	Mr. Aubrey M. Daniel, III Mr. Steven R. Kuney	Williams & Connolly 725 Twelfth Street, N.W. Washington, D.C. 20005
For Defendant A.E. Staley Manufacturing Co.	Mr. Terry M. Grimm Mr. Joseph Spiegler	Winston & Strawn 35 West Wacker Drive, 45th Floor Chicago, IL 60601
For Defendant American Maize- Products Co.	Mr. Donald R. Harris Mr. Edward F. Malone	Jenner & Block, LLC One IBM Plaza Chicago, IL 60611

IT IS FURTHER ORDERED that the schedule for notice to the members of the class on the settlement shall be as follows:

1. Notice in the form attached as Exhibit A shall be mailed to all class members identified on the customer lists provided by defendants on or before March 25, 2004;
2. Notice in the form attached as Exhibit B shall be published twice in the national edition of *The Wall Street Journal* and *USA Today* on or before April 5, 2004;
3. A hearing before the Court on final approval of the settlement shall take place on May 19, 2004 at 3:00 p.m. (“Hearing Date”);
4. Any motions and memoranda for final approval of the settlement shall be filed on or before May 4, 2004;
5. Any comments or objections to the settlement, or requests to speak at the fairness hearing must be received by the Clerk on or before May 10, 2004.

ENTERED this 15th day of March, 2004.

Michael M. Mihm
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

IN RE: HIGH FRUCTOSE CORN)
SYRUP ANTITRUST LITIGATION)

) MDL No. 1087 and
) Master File No. 95-1477
) Judge Michael M. Mihm

THIS DOCUMENT RELATES TO:)
ALL ACTIONS)

TO: DIRECT PURCHASERS OF HIGH FRUCTOSE CORN SYRUP

If you bought high fructose corn syrup in the United States during the period July 21, 1991 through June 30, 1995 directly from one or more of the five defendant companies mentioned below.

PLEASE READ THIS NOTICE

THIS IS A NOTICE OF PARTIAL SETTLEMENT

A federal court authorized this notice. This is not a solicitation from a lawyer.

- The five defendants initially named in this litigation were Archer Daniels Midland Company (“ADM”), A.E. Staley Manufacturing Company (“Staley”), Cargill, Incorporated (“Cargill”), CPC International, Inc. (“CPC”), and American Maize-Products Company (“Maize”). The allegations are that the defendants conspired to fix prices and allocate volumes of high fructose corn syrup in the United States in violation of Sherman Act § 1.
- You were previously notified in July 1996 of the existence of this class action, the nature of the class’ claims, and a partial settlement with defendant CPC. You were then given the opportunity to exclude yourself from the Class certified by the Court on May 9, 1996. If you previously excluded yourself from the Class, you are not a member of the Class.
- A partial settlement has now been reached with two additional defendants, Maize and Cargill. The settlement, if approved by the Court, will provide \$24,000,000 to pay claims of direct purchasers of high fructose corn syrup in the United States during the period July 21, 1991 through June 30, 1995 and reasonable expenses of litigation and attorneys’ fees.
- The litigation is continuing against ADM and Staley, and the Court has set a trial date of September 7, 2004.
- Your legal rights are affected whether you act or don’t act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS PARTIAL SETTLEMENT:	
COMMENT OR OBJECT	Write to the Court about the settlement.
GO TO A HEARING	Ask to speak in Court about the fairness of the settlement.
DO NOTHING	If you previously did not exclude yourself from the Class, you are a member of the Class and need do nothing at this time. Since this is a partial settlement, no distribution of the proceeds will be made at this time. At some time in the future, a claim form will be disseminated which you will need to complete and return to receive your share of the settlement proceeds. As stated in the previous notice, you should maintain all of your records of purchases of high fructose corn syrup from any of the defendants for the period July 21, 1991 through June 30, 1995.

- These rights and options - **and the deadlines to exercise them** - are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the settlement.

SUMMARY OF PARTIAL SETTLEMENT

Current Status of the Litigation

This litigation was commenced in 1995. On May 9, 1996, the Court certified the case to proceed as a class action. In July 1996, via mail and publication the Court notified the Class of the certification of the class and the nature of the class' claims, afforded eligible persons the opportunity to exclude themselves from the Class, and reported that a partial settlement had been reached with defendant CPC for approximately \$7,000,000.

Between 1996 and 2001, the plaintiffs and the remaining parties engaged in extensive discovery including more than 100 depositions of the defendants' relevant executives and employees (both current and former), the class plaintiffs' representatives, absent class members' representatives, and other relevant third parties. In addition, both the plaintiffs and defendants engaged in extensive document discovery and hundreds of thousands of pages of documents were produced. The plaintiffs and defendants also utilized the services of expert witnesses to analyze the high fructose corn syrup market, and these experts produced reports and gave depositions.

In April 2001, defendants moved for summary judgment seeking dismissal of class plaintiffs' claims. On August 23, 2001, the Court granted the motion for summary judgment dismissing plaintiffs' claims. Class plaintiffs appealed to the United States Court of Appeals for the Seventh

Circuit (“Seventh Circuit”). The Seventh Circuit reversed the grant of summary judgment in June 2002, reinstated plaintiffs’ claims, and remanded the case to this court for trial.

After the Seventh Circuit decision, the parties continued their preparations for trial. At the Seventh Circuit’s suggestion, the court appointed an economic expert to evaluate the parties’ experts’ analyses. The court-appointed expert filed a report on January 6, 2004 and was deposed on February 17 and 18, 2004. Among other things, the parties filed more than 50 so-called *in limine* motions seeking to preclude certain evidence at trial. During the week of November 17, 2003, the Court held a hearing on these motions. The Court found that a large amount of evidence that class plaintiffs planned to use at trial was admissible against ADM but not against Maize and Cargill. The Court also issued two additional rulings. First, the Court denied ADM’s motion to compel the testimony of two former ADM executives, Terrance Wilson and Michael D. Andreas, who had previously invoked their Fifth Amendment privilege. Second, the Court denied Staley’s, Cargill’s and Maize’s motion to hold a separate trial from ADM. The district court certified these decisions for immediate appeal to the Seventh Circuit. At the time this settlement was entered into, the Seventh Circuit had not yet ruled whether it would hear these appeals. Since then, the Seventh Circuit declined to hear the appeal concerning the testimony of the former ADM executives.

A proposed settlement has now been reached with defendants Maize and Cargill for \$24,000,000, which has been paid into escrow and is earning interest. This proposed settlement, when added with the settlement with CPC, would bring the total settlements in this case to over \$31,000,000. These are partial settlements. A portion of the proceeds from the CPC settlement has been used with Court approval to pay necessary expenses of the litigation.

The litigation against ADM and Staley is proceeding, and the Court has set a trial date of September 7, 2004.

Further Information

Further information regarding the Action and this Notice may be obtained by contacting Plaintiffs’ Co-Lead Counsel:

Robert N. Kaplan, Esq.
KAPLAN FOX & KILSHEIMER LLP
805 Third Avenue
New York, New York 10022
(212) 687-1980

Michael J. Freed, Esq.
MUCH SHELIST FREED DENENBERG
AMENT & RUBENSTEIN, P.C.
191 N. Wacker Drive, Suite 1900
Chicago, IL 60606
(312) 521-2000

H. Laddie Montague, Jr., Esq.
BERGER & MONTAGUE
1622 Locust Street
Philadelphia, Pennsylvania 19103
(215) 875-3000

Please do not call any representative of the defendants or the Court.

Reasons for the Settlement

Plaintiffs' counsel believe that the proposed partial settlement is a good recovery and is in the best interests of the Class. Because of the risks associated with continuing to litigate and proceeding to trial with Cargill and Maize, there was a danger that plaintiffs would not have prevailed on any of their claims, in which case the Class would receive no further recovery. *For example, as a result of the tentative settlement Maize's and Cargill's appeal regarding a separate trial from ADM was dismissed. If that appeal had been successful and a separate trial was held without ADM, according to the Court's rulings, much evidence admitted against ADM would not be admissible in the trial with Maize and Cargill.*

Therefore, the parties agreed to the partial settlement to help to ensure a fair and reasonable resolution to this matter and to provide further monetary benefits to the members of the Class recognizing the existence of complex, contested issues of law and fact; the risks inherent in such complex litigation; the likelihood that in the absence of settlement future proceedings could take additional years and be extremely costly; and the magnitude of the benefits resulting from the settlement.

BASIC INFORMATION

1. Why did I get this notice package?

You or your company may have directly purchased high fructose corn syrup in the United States during the period July 21, 1991 through June 30, 1995.

The Court directed that this Notice be sent to you because you have a right to know about a proposed partial settlement of a class action lawsuit and that the Court will hold a hearing to determine whether to approve it.

This package explains the lawsuit, the settlement, your legal rights, and what benefits are available.

The Court in charge of this case is the United States District Court for the Central District of Illinois, and the case is known as *In re High Fructose Corn Syrup Antitrust Litigation*, Master File No. 95-1477. It has been pending since 1995. The people who sued are called Plaintiffs,

and the company and the persons they sued, ADM, Staley, Cargill, CPC, and Maize are called the defendants.

2. What is this lawsuit about?

The lawsuit claims that beginning at least as early as 1988 and continuing at least until June 30, 1995, defendants engaged in an unlawful conspiracy to fix, raise, maintain and stabilize the prices of high fructose corn syrup in the United States in violation of section 1 of the Sherman Act, Title 15 U.S.C. § 1.

Plaintiffs claim that as a result of the alleged conspiracy, they and other members of the class described below have paid more than they would have absent the alleged conspiracy. For the purpose of this action, plaintiffs define “high fructose corn syrup” to mean a sweetener derived from corn containing 42% or 55% fructose.

Defendants deny that they engaged in a conspiracy to fix the price of HFCS or that they violated the antitrust laws in any other way.

3. Why is this a class action?

In a class action, one or more people called Class Representatives sue on behalf of people who have similar claims. All these people are a Class or Class Members. One court resolves the issues for all Class Members. Judge Michael M. Mihm, who is located in Peoria, Illinois, is in charge of this class action.

4. Why are there settlements?

The Court did not decide in favor of plaintiffs or defendants. Instead, the Plaintiffs and Maize and Cargill agreed to a settlement. That way, they avoid the cost of a trial, the risks associated with their participation in the case, and the people affected will get compensation. The plaintiffs and their attorneys think the settlement is in the best interests of all Class Members.

WHO IS IN THE SETTLEMENT

To see if you will get money from this settlement, you first have to decide if you are a Class Member.

5. How do I know if I am part of the settlement?

On May 9, 1996, Judge Mihm decided that everyone who fits this description is a Class Member:

all purchasers in the United States who purchased high fructose corn syrup directly from any defendant or any subsidiary or affiliate of any defendant at any time during the period from July 21, 1991 to and including June 30, 1995.

A direct purchase is one made from one of the defendants and not from anyone else, for example, a distributor.

6. Are there exceptions to being included?

You are not a Class Member if you are a defendant, a defendant's parent, subsidiary or affiliate. Governmental entities are also excluded.

Purchases that are not from a defendant, or that were not made in the United States, are not included in this settlement.

However, in July 1996, a notice was mailed to class members and was published in the national edition of *The Wall Street Journal* and in *USA Today* advising that the Court had certified a class and that eligible persons had the right to exclude themselves. If you previously elected to exclude yourself from the Class, you are not a member of the Class.

THE SETTLEMENT BENEFITS

7. What does the settlement provide?

Subject to the terms and conditions of the Settlement Agreement with Maize and Cargill, Maize and Cargill have paid the principal sum of twenty-four million dollars (\$24,000,000), which has been deposited in an escrow account and is earning interest on behalf of the class.

The Settlement Agreement provides that Maize and Cargill will be dismissed with prejudice, and released from any liability to members of the class for claims relating to the purchase of high fructose corn syrup under federal or state antitrust or unfair competition or similar laws or regulations which are based, in whole or in part, on the facts, occurrences or other matters alleged in this litigation.

This notice is only a summary of the terms of the proposed partial settlement. The full agreement is set forth in the Settlement Agreement with Maize and Cargill dated February 23, 2004 which has been filed with the Court. The Settlement Agreement contains other important provisions and you are referred to the Settlement Agreement on file with the Court for the complete terms of the settlement.

IF YOU DO NOTHING

8. What happens if I do nothing at all?

There is no need to do anything now, unless you want to comment on or object to the settlement. Since this is a partial settlement, and the litigation is continuing against ADM and Staley, there is not going to be any distribution of settlement proceeds at this time, although the Court could order that some portion be paid to cover litigation expenses. At some future date, you will be sent a claim form which at that time you will need to complete and return to obtain your share of the settlement.

THE LAWYERS REPRESENTING YOU

9. Do I have a lawyer in this case?

The Court ordered that the law firms of Kaplan Fox & Kilsheimer LLP, in New York, New York, Berger & Montague, P.C. in Philadelphia, Pennsylvania, and Much Shelist Freed Denenberg Ament & Rubinstein, P.C. in Chicago, Illinois will represent you and other Class Members. These lawyers are called Co-Lead Counsel. You will not be charged for the representation provided by these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

10. How will the lawyers be paid?

To date, in the nearly nine years that this litigation has been pending, plaintiffs' counsel have not received any payment for their services in conducting this Litigation on behalf of plaintiffs and the members of the Class. Since this is a partial settlement and the litigation is continuing against ADM and Staley, plaintiffs' counsel are not seeking any fees at this time or reimbursement of expenses. However, the Settlement Agreement provides that the Court may approve the use of a portion of the settlement proceeds to fund the ongoing litigation against ADM and Staley.

COMMENTING OR OBJECTING TO THE SETTLEMENT

You can tell the Court that you don't agree with the settlement or some part of it.

11. How do I tell the Court what I think of the settlement?

If you're a Class Member, you can tell the Court what you think of the settlement. You can give reasons why you think the Court should or should not approve it. The Court will consider your

views. To comment, you must send a letter or file a pleading saying that you support or object to *In re High Fructose Corn Syrup Antitrust Litigation*, MDL No. 1087 and Master File No. 95-1477. Be sure to include your name, address, telephone number, your signature, and the reasons for your comments. Mail it so that it will be received no later than May 10, 2004 to:

John M. Waters, Clerk
United States District Court
for the Central District of Illinois
Peoria Division
100 N.E. Monroe Street
Peoria, Illinois 61602

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you don't have to.

12. When and where will the Court decide whether to approve the settlement?

The Court will hold a Fairness Hearing on May 19, 2004, at 3:00 p.m., before the Honorable Michael M. Mihm, United States District Judge of the Central District of Illinois, Courtroom A, 100 N.E. Monroe Street, Peoria, Illinois 61602. At this hearing the Court will consider whether the settlement is fair, reasonable and adequate. If there are objections, the Court will consider them. Judge Mihm will listen to people who have asked to speak at the hearing. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

13. Do I have to come to the hearing?

No. Class Counsel will answer questions Judge Mihm may have. But, you are welcome to come at your own expense. If you send a comment or objection, you don't have to come to Court to talk about it. As long as you mailed your written comment or objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

14. May I speak at the hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in *In re High Fructose Corn Syrup Antitrust Litigation*." Be sure to include your name, address, telephone number, and your

signature. Your Notice of Intention to Appear must be sent to the Clerk of the Court at the address in question 11 so that it will be received not later than **May 10, 2004**. You cannot speak at the hearing if you previously excluded yourself from the Class.

GETTING MORE INFORMATION

15. Are there more details about the settlement?

This notice summarizes the proposed partial settlement. More details are in a Settlement Agreement filed with the Court on February 24, 2004 and in papers in support of the settlement which shall be filed by May 4, 2004. You can get a copy of the Settlement Agreement and the papers in support of the settlement by writing to one of:

Robert N. Kaplan, Esq.
Gregory K. Arenson, Esq.
Kaplan Fox & Kilsheimer LLP
805 Third Avenue, 22nd Floor
New York, NY 10022
Telephone (212) 687-1980

H. Laddie Montague, Jr., Esq.
Charles P. Goodwin, Esq.
Berger & Montague, P.C.
1622 Locust Street
Philadelphia, PA 19103

Michael J. Freed, Esq.
Barat S. McClain, Esq.
Much Shelist Freed Denenberg
Ament & Rubinstein, P.C.
191 N. Wacker Drive, Suite 1800
Chicago, IL 60606-1615

16. How do I get more information?

You can call one of:

Robert N. Kaplan or Gregory K. Arenson at (212) 687-1980

H. Laddie Montague, Jr. or Charles P. Goodwin at (215) 875-3000

Michael J. Freed or Barat S. McClain at (312) 521-2000.

PLEASE DO NOT TELEPHONE OR ADDRESS ANY INQUIRIES TO THE COURT.

Dated: March 15, 2004

BY ORDER OF THE COURT:

John M. Waters, Clerk
United States District Court
for the Central District of Illinois
Peoria, Illinois

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

_____)	
IN RE: HIGH FRUCTOSE CORN)	MDL No. 1087 and
SYRUP ANTITRUST LITIGATION)	Master File No. 95-1477
_____)	Judge Michael M. Mihm
)	
THIS DOCUMENT RELATES TO:)	
ALL ACTIONS)	
_____)	

TO: DIRECT PURCHASERS OF HIGH FRUCTOSE CORN SYRUP IN THE UNITED STATES DURING THE PERIOD JULY 21, 1991 THORUGH JUNE 30, 1995

SUMMARY NOTICE OF PARTIAL SETTLEMENT

This Notice is given pursuant to the Federal Rules of Civil Procedure. On May 9, 1996, the United States District Court for the Central District of Illinois entered an order, which certified a class on behalf of:

all purchasers (excluding governmental entities, defendants, subsidiaries and affiliates of defendants, and other producers of high fructose corn syrup and their subsidiaries and affiliates) in the United States who purchased high fructose corn syrup directly from any defendant or any subsidiary or affiliate of any defendant at any time during the period from July 21, 1991 to and including June 30, 1995 ("Class Period").

In July 1996, notice of the class certification was mailed and published and class members were given the opportunity to exclude themselves from the Class. Plaintiffs claim that defendants, Archer Daniels Midland Company ("ADM"), A.E. Staley Manufacturing Co. ("Staley"), Cargill Incorporated ("Cargill"), CPC International, Inc. ("CPC"), and American Maize-Products Company ("Maize") violated the antitrust laws during the Class Period. Defendants deny the allegations.

This Notice is to inform you that a settlement has been reached with defendants Maize and Cargill for payment of \$24,000,000.00 in exchange for the release of certain claims by all class members who did not timely requested exclusion from the Class. The litigation is continuing against ADM and Staley. A hearing will be held on May 19, 2004 at 3:00 p.m. in the United States Courthouse, Courtroom A, 100 N.E. Monroe Street, Peoria, Illinois, for the Court to determine whether the proposed settlement with Maize and Cargill is fair, reasonable and adequate.

A description of this litigation and the proposed partial settlement and your options concerning approval or objections is contained in a detailed Notice of Partial Settlement which has been mailed to identifiable class members. If you believe you are a member of the class identified above and you have not received a Notice, you may obtain a copy by writing to: *In re: High Fructose Corn Syrup Antitrust Litigation*, P.O. Box 5306, Chicago, Illinois 60680-5306.

Any questions which you have concerning the matters contained in this Summary Notice may be directed in writing to any of the following co-lead counsel for the plaintiffs:

Robert N. Kaplan, Esq.
KAPLAN FOX & KILSHEIMER LLP
805 Third Avenue
New York, New York 10022
(212) 687-1980

Michael J. Freed, Esq.
MUCH SHELIST FREED DENENBERG
AMENT & RUBENSTEIN, P.C.
191 N. Wacker Drive, Suite 1900
Chicago, IL 60606
(312) 521-2000

H. Laddie Montague, Jr., Esq.
BERGER & MONTAGUE
1622 Locust Street
Philadelphia, Pennsylvania 19103
(215) 875-3000

**PLEASE DO NOT TELEPHONE OR ADDRESS ANY INQUIRIES TO THE
COURT.**

Dated: March 15, 2004

BY ORDER OF THE COURT:

John M. Waters, Clerk
United States District Court
for the Central District of Illinois
Peoria, Illinois