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# Agricultural Law NetLetter™

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**\*\* HIGHLIGHTS \*\***

- \* The British Columbia Court of Queen's Bench has certified a class action for recovery of alleged losses sustained as a result of an alleged international price fixing scheme for a food additive -- high fructose corn syrup. (Sun-Rype Products Ltd. v. Archer Daniels Midland Co., [CALN/2010-019](#), [2010] B.C.J. No. 1308, British Columbia Supreme Court)

**\*\* NEW CASE LAW \*\***

*Sun-Rype Products Ltd. v. Archer Daniels Midland Co.*; [CALN/2010-019](#), Full text: [\[2010\] B.C.J. No. 1308](#); [2010 BCSC 922](#), British Columbia Supreme Court, E. Rice J., June 30, 2010.

Food Products -- Price Fixing -- Class Actions.

The Plaintiff, Sun-Rype Products Ltd. and Wendy Weberg applied for certification of a class under the British Columbia Class Proceedings Act, [R.S.B.C. 1996, c. 50](#). They claimed for the benefit of direct and indirect purchases of high fructose corn syrup ("HFCS").

Decision: The Honourable Mr. Justice Rice granted certification of the class.

The Court recognized that both direct and indirect purchasers can plead a cause of action under s. 36, citing the motion to strike in *Chadha v. Bayer Inc.* 1998 CanLII 14791 (ON S.C.), (1998), [82 C.P.R. \(3d\) 202](#) (Ont. Gen. Div.).

The Court held that it was not plain and obvious that the direct or indirect purchasers did not have a cause of action.

As to whether there was an identifiable class, the court held that the direct purchasers of the product could self identify whether they were part of the class. With respect to the

indirect purchasers, the Court held that while it may be difficult or even impossible for some indirect purchaser class members to self-identify in this case, this need not affect the ability of the plaintiffs, assuming their claims to be true, to calculate the amount of wrongful gains of the defendants.

Commenting on the policy reasons behind class action suits, the court stated that there are unique facts that would justify a less stringent requirement for the class definition. There is the widespread use of HFCS in products that are also widely purchased by consumers, and over a certain length of time that a large number of residents may have purchased them. There is also the fact that only a small amount of the cost of the final products was made up of the cost of the HFCS. Thus, individual indirect purchasers' claims, while widespread, might only be measured in cents or at most a few dollars each. The concerns with opt-out and the class action being binding on all its members will be muted somewhat, while the behaviour modification and judicial economy concerns are coincidentally heightened.

The Court held that the claims of the class members raised common issues, and that proceedings under class action was the preferable procedure, and that the representative plaintiff is a proper person to carry the action.

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### **\*\* CREDITS \*\***

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