

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

HARRY STUTZLE, ET. al.,	:	October Term, 2002
Individually and on behalf of all others	:	
Similarly Situated,	:	No. 002768
Plaintiffs,	:	
	:	Commerce Program
v.	:	
	:	Control Number 06265
RHONE- POULENC S.A.(n/k/a/Aventis	:	
S.A.), ET. Al.	:	

ORDER and MEMORANDUM OPINION

AND NOW, this 26th day of September , 2003, upon consideration of Defendants' Preliminary Objections to Plaintiffs' complaint, all responses in opposition, all matters of record, and in accordance with the Memorandum Opinion being filed contemporaneously with this Order, it is hereby **Ordered and Decreed** that Defendants' preliminary objections are **Sustained**. Plaintiffs' complaint is dismissed.

BY THE COURT

GENE D. COHEN, J.

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
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CIVIL TRIAL DIVISION**

HARRY STUTZLE, ET. AL.,	:	October Term, 2002
Individually and on behalf of all others	:	
Similarly Situated,	:	No. 002768
Plaintiffs,	:	
	:	Commerce Program
v.	:	
	:	Control Number 062165
RHONE- POULENC S.A. (n/k/a/Aventis	:	
S.A.), ET. AL.	:	

MEMORANDUM OPINION

COHEN, J.

Before this Court are defendants' preliminary objections pursuant to Pa. R. Civ. P. 1028 (a)(4) to plaintiffs' class action complaint. For the reasons set forth below, this Court sustains defendants' preliminary objections.

DISCUSSION

Defendants attempt to have each of the two claims in plaintiffs' class action complaint dismissed. These claims, which the court will address in order, are unjust enrichment and conspiracy.

A. Unjust Enrichment

In the complaint, plaintiffs allege that defendants have engaged in activities that caused the plaintiffs and the class members to pay more for Methoinine¹ than they should have absent

¹Methionine is sold as an animal feed additive, including DL-methionine, calcium salt of

the illegal conduct. (Plts. Complaint ¶ 68). Plaintiffs also allege that defendants received excessive and unreasonable profits by virtue of the higher prices paid by plaintiffs and that equity and good conscious requires that defendants return these excess profits to the plaintiffs and the class members. (Id.). Defendants argue that the claim is legally insufficient because plaintiffs as indirect purchasers did not confer a benefit upon defendants.

To state a claim for unjust enrichment, the plaintiffs must allege that they conferred a benefit on the defendant, that defendant appreciated the benefit under the circumstances and that the defendant accepted and retained the benefit without payment for value. BurgettstownSmith Twp. Joint Sewage Auth. v. Langeloth Townsite Co., 403 Pa. Super. 84, 588 A.2d 43, 45 (Pa. Super.1991).

In the case sub judice, plaintiffs did not confer a benefit upon defendants. Plaintiffs are indirect purchasers and had no direct dealings with defendants. (Plts. Compliant ¶ 1). Perhaps defendants appreciated the value of the benefits, but any unjust enrichment claim would belong to the direct purchasers, not to indirect purchasers such as plaintiffs. See e. g. Phillips v. Selig, 2001 WL 1807951, *8 (Sept. 19, 2001) (Sheppard).

Notwithstanding the fact that plaintiffs did not confer a benefit upon defendants, the plaintiffs have also failed to allege how the enrichment is unjust. The most significant element of the unjust enrichment doctrine is whether the enrichment of the defendant is unjust; the doctrine does not apply simply because the defendant may have benefited as a result of the

methionine hydroxy analog and any product that contains methionine sold as an animal feed additive. (Plts complaint ¶ 2).

actions of the plaintiff. Styler v. Hugo, 422 Pa. Super. 262, 610 A.2d 347, 350 (Pa. Super. 1993).

Plaintiffs allege that defendants were unjustly enriched from excessive and unreasonable profits which resulted from defendant's illegal conduct. (Plts. Complaint ¶ 68). The "illegal conduct" described in the complaint is "a horizontal agreement and conspiracy between defendants and their co-conspirators to fix or maintain the price of Methionine and/or allocate markets and customers in connection with the sale of Methionine." (Plts complaint ¶ 1). In essence, plaintiffs allege that defendant's illegal conduct amounts to an antitrust violation. To date, no court in Pennsylvania has held that a private remedy is available for damages under Pennsylvania's common law on antitrust violations. XF Enterprises, Inc. v. BASF Corp., 47 Pa. D. & C. 4th 147, 150 (2000) (Levin). Additionally, Pennsylvania has no legislation which provides for these damages. Id.

"The common law doctrines relating to contracts and combinations in restraint of trade were well understood long before the enactment of the Sherman Law...Such contracts were deemed illegal and were unenforceable at common law. But the resulting restraints of trade were not penalized and gave rise to no actionable wrong."

XF Enterprises Inc. v. BASF Corp., 47 Pa. D & C. 4th 147, 150 (2000)(quoting Apex Hosiery Co. v. Leader, 310 U.S. 469, 497 (1940)). Since the Pennsylvania legislature and the courts have not created a cause of action for damages sustained as a result of the antitrust violations, than plaintiffs failed to allege within their complaint how the benefit to defendants was unjust. Moreover, to allow plaintiffs to use a claim for unjust enrichment as a means for collecting damages which are not allowable by Pennsylvania's antitrust law, is not a proper use of the claim and can only lead to mischief. XF Enterprises, supra. 152 (use of a civil conspiracy claim as a means of collecting damages which are not allowable by Pennsylvania's antitrust law is not a

proper use of the claim). Accordingly, plaintiff's unjust enrichment claim is dismissed with prejudice.

B. Civil Conspiracy

Defendants also assert preliminary objections to plaintiffs' cause of action for civil conspiracy. Plaintiffs allege that defendants engaged in an unlawful combination and conspiracy to fix, raise, maintain and stabilize at artificial and non competitive levels the price of Methionine and to conceal this unlawful activity. (Plts. Complaint ¶ 69). In their brief, plaintiffs argue that the civil conspiracy claim is legally sufficient because unjust enrichment is the predicate act for the conspiracy. (Plts. memorandum of law pp.12-13). Since the court sustained defendants' preliminary objection with respect to plaintiffs' cause of action for unjust enrichment, the court also sustains defendants preliminary objections plaintiffs cause of action for civil conspiracy count.

CONCLUSION

For these reasons, this court finds that defendants' preliminary objections are sustained. Plaintiffs' complaint is dismissed.

BY THE COURT:

GENE D. COHEN, J.

Dated: 9/26/03

