

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

COUNTY OF MECKLENBURG

03 CVS 15096

THAI HOLDING OF CHARLOTTE, INC., )  
and CHIENGTHONG KONGKHAM, )  
individually and as representatives for all others )  
similarly situated, )

Plaintiffs, )

v. )

ARCHER DANIELS MIDLAND CO., ET AL., )

Defendants. )

ORDER

This matter was last brought to the Court's attention by letter dated October 4, 2006 from Wyatt & Blake, L.L.P., counsel for Thai Holding of Charlotte, Inc., in which counsel informed the Court that there were settlement agreements reached in connection with a proposed multi-state class action in New Mexico.

The Court gleaned from a motion filed in the New Mexico action that North Carolina counsel had widely seen that a specific percentage of the fund was available to North Carolina. *See* Plaintiffs' Memorandum in Support of Unopposed Motion for an Order Preliminarily Approving Settlements and Certification of a Class for Settlement Purposes at 5, *Higgins v. Archer Daniels Midland Co.*, No. D-0202-CV-200306168 (N.M. Second Jud. Dist. Ct. May 12, 2006). The motion also indicated that some cy pres distribution would be made subject to Court approval and that the cy pres distribution **should be** to "public and/or non-profit entities that use MSG and Nucleotides and/or products that use MSG or Nucleotides." *Id.* at 6. What these entities may be is not specified, nor is the manner of their selection clear.

Nor can the Court glean from the pleadings before it what the attorneys fees and expenses will be. Thus, the bottom line number of dollars to come to North Carolina residents and the manner in which those funds will be distributed is unclear.

The Court would call to the attention of counsel this Court's opinion in *Teague v. Bayer AG*, 2007 NCBC 12 (N.C. Super. Ct. May 7, 2007), and the public policy expressed by the North Carolina General Assembly in section 1-267.10 of the General Statutes that any class action funds not distributed to or for the benefit of class members be allocated in accordance with the statute. The Court will await a formal motion to dismiss accompanied by more complete details.

IT IS SO ORDERED, this the 7th day of May, 2007.