

IN THE GRAND COURT OF THE CAYMAN ISLANDS

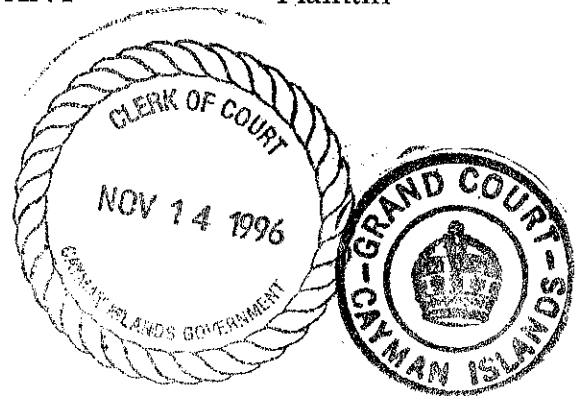
CAUSE NO. 612 OF 1996

BETWEEN: ARCHER DANIELS MIDLAND COMPANY

Plaintiff

- AND:
- (1) MARK E. WHITACRE
  - (2) SIDNEY D. HULSE
  - (3) ABP TRADING LIMITED
  - (4) BEAT SCHWEIZER
  - (5) MANUELA SCHWEIZER
  - (6) SWISS BANK & TRUST CORPORATION LIMITED
  - (7) CALEDONIAN BANK & TRUST LIMITED
  - (8) DEUTSCHE MORGAN GRENFELL (CAYMAN) LIMITED

Defendants



EX-PARTE APPLICATION

The Plaintiff will attend before the Honourable Mr. Justice Douglas on the 14th day of November 1996 at 10.30 a.m. on the hearing of an application on behalf of the Plaintiff to obtain Orders for injunctive and other relief as set out in the draft Orders annexed hereto.

DATED this 14th day of November, 1996

QUIN & HAMPSON

Attorneys-at-Law for the Plaintiff

To:           The Clerk of the Court

TIME ESTIMATE: The estimated length of time for the hearing of this Summons is 2 hours

**This Summons** was issued by Quin & Hampson, Attorneys-at-Law for and on behalf of the Plaintiff herein, whose address for service is Harbour Centre, Third Floor, P.O. Box 1348, George Town, Grand Cayman.

If you, the within named [relevant Defendant] neglect to obey this Order by the time stated, you may be liable to be held in contempt of Court and liable to imprisonment.

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AND:

- (1) MARK E. WHITACRE
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Defendants

**INJUNCTION PROHIBITING DISPOSAL OF ASSETS  
IN THE CAYMAN ISLANDS AND DISCLOSURE ORDERS**

**IMPORTANT NOTICE TO THE DEFENDANTS**

- (1) This Order prohibits you from dealing with your assets up to the amount stated. The Order is subject to any exceptions in the Order. You should read it carefully. You are advised to consult an attorney as soon as possible. You have a right to ask the Court to vary or discharge this Order.

- (2) If you disobey this Order you will be guilty of contempt of Court (and in the case of the **FIRST TO SIXTH DEFENDANTS**) you may be sent to prison and (in the case of **ALL DEFENDANTS**) fined or your assets may be seized.

### THE ORDER

An application was made on 14th November 1996 by Leading Counsel for Archer Daniels Midland Company, the Plaintiff, to The Honourable Mr. Justice Douglas who then heard the application and read the Affidavits listed in Schedule 3 at the end of this Order, subject to the undertaking therein referred to.

As a result of the application **IT IS ORDERED** by The Honourable Mr. Justice Douglas as follows:-

1. **Disposal of assets**

- (1) The First to Fifth Defendants must not, without the written consent of the Plaintiffs' Attorneys, remove from the jurisdiction of the Cayman Islands or in any way dispose of or deal with or diminish the value of any of their assets (of whatsoever nature) which are within or controlled from within the Cayman Islands, whether in their own names or not and whether solely or jointly owned, up to the aggregate value of US\$ , nor suffer or permit the disposal of, dealing with, or diminution in value of any of these assets. For the avoidance of doubt, this prohibition includes (although is not limited to) the following assets in particular:-
- (i) any money standing to the credit of any of the First to Fifth Defendants in account numbers 41327 and 53413 with the Sixth Defendant, in account number 006022 with the Seventh Defendant, or with any other bank(s) including the Eighth Defendant; within the jurisdiction of this Court;

- (ii) any money standing to the credit of any of the individuals, companies or entities specified in Schedule I at the end of this Order ("the Scheduled Persons") in account with the Sixth, Seventh or Eighth Defendants or with any other bank(s) within the jurisdiction of this Court; and
  - (iii) any other assets located within the jurisdiction of this Court and belonging to any of the First to Fifth Defendants whether the same be held in any of their names or on their behalf by any trustee(s), nominee(s) or agent(s).
- (2) If the total unencumbered value of the First to Fifth Defendants' assets in the Cayman Islands exceeds US\$2 million, such Defendants may remove any of those assets from the jurisdiction or may dispose of or deal with them so long as the total unencumbered value of their assets still in the Cayman Islands remains above US\$2 million, and provided also that, before doing so, they all furnish to the Plaintiffs' Attorneys full particulars of all their assets and give at least 72 hours' written notice to the Plaintiff's Attorneys of their intention to do so.

2. **Disclosure of information**

- (1) The Defendants must 48 hours of service of this Order upon them, or within such other period as the Plaintiff's Attorneys may agree in writing, disclose in writing to the Plaintiff's Attorneys, all such information as is in their possession relating to the nature, location, value and details of all assets of the First to Fifth Defendants [within and without the jurisdiction of the Cayman Islands.] In particular, without in any way limiting the scope of this obligation, they must disclose to the best of their knowledge, information and belief:

- (i) the identities of all companies or corporations or partnerships owned or controlled, whether directly or indirectly, by the First to Fifth Defendants or by any of them, or in which any of such Defendants is beneficially interested, of any trusts in which any of such Defendants has any interest or which any has settled or otherwise established, and of any person or firm handling any assets of any of the First to Fifth Defendants, providing also details of any such companies' or corporations' or partnerships' registered offices, directors (*de jure* and *de facto*) or general partners and their addresses and, in the case of trusts, the names and addresses of the trustees;
  - (ii) details of the bank accounts, including the current balances thereon, the location of the bank, the identity of the account-holder, the account number and the signatories authorised to operate such accounts for those companies or corporations, or partnerships, trusts, persons and firms identified pursuant to sub-paragraph (i) above; and
  - (iii) the same information as is required in sub-paragraphs (i) and (ii) above in relation to the First to Fifth Defendants but in relation also to the Scheduled Persons.
- (2) The Sixth, Seventh and Eighth Defendants must disclose to the Plaintiff's Attorneys forthwith and permit them to take copies of the following documents and records (whether in hard copy or computerised form):
  - (i) all correspondence passing between any of the First to Fifth Defendants and the Sixth, Seventh or Eighth Defendants or any other bank within the jurisdiction relating to any accounts at the Sixth, Seventh or Eighth Defendants or any such other bank in the

names of any of the First to Fifth Defendants or of any of the Scheduled Persons;

(ii) all cheques drawn on any account at the Sixth, Seventh or Eighth Defendants in the names of any of the First to Fifth Defendants or any of the Scheduled Persons or drawn by them for the benefit of any of the First to Fifth Defendants or any of the Scheduled Persons;

(iii) all debit vouchers, bank statements, transfer applications and orders, account opening documents and internal memoranda relating to any accounts at the Sixth, Seventh or Eighth Defendants in the name of or for the benefit of any of the First to Fifth Defendants or any of the Scheduled Persons; and

(iv) all other documents and records of whatsoever nature relating to any accounts or assets in the names of or had for the benefit of any of the First to Fifth Defendants or any of the Scheduled Persons wherever the same may be located.

(3) All Defendants must confirm the information provided in pursuance of sub-paragraphs (1) and (2) above by affidavits which each must swear and serve on the Plaintiff's Attorneys within 3 days after service of this Order.

4. Any application by the Sixth, Seventh and Eighth Defendants or any of them pursuant to Section 4(1) of The Confidential Relationships (Preservation) Law (1995 Revision) shall be heard as soon as reasonably possible after service upon them of this Order.

5. Preservation of documents and records

The Sixth, Seventh and Eighth Defendants must preserve all documents and records which they are required to disclose pursuant to paragraph 2 of this Order until further Order of this Court or unless the Plaintiff's Attorneys agree otherwise in writing.

6. Restrictions on notification of this Order

The Sixth, Seventh and Eighth Defendants must not disclose, directly or indirectly, the making or execution of this Order or the existence of these proceedings to any person (other than to their attorneys for the purpose of obtaining legal advice) without the prior written consent of the Plaintiff's Attorneys or the leave of the Court, until 10 days after the Sixth, Seventh and Eighth Defendants' disclosure obligations under this Order have been complied with.

7. Effect of this Order

- (1) A Defendant who is an individual who is ordered not to do something must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.
- (2) A Defendant which is a corporation and which is ordered not to do something must not do it itself or by its directors, officers, employees or agents or in any other way.

8. Third Parties

Effect of this Order. It is a contempt of Court for any person notified of this Order knowingly to assist in or permit a breach of the Order. Any person doing so may be sent to prison, fined, or have his assets seized.

9. Service out of the jurisdiction [and substituted service]

(1) The Plaintiff may serve the Writ of Summons on the First to Fifth Defendants out of the jurisdiction of the Cayman Islands, as follows:

- (1) MARK E. WHITACRE  
425 Deming Road  
Chapel Hill  
North Carolina 27514  
U.S.A.
- (2) SIDNEY D. HULSE  
1850 Bishops Green Drive  
Marietta  
Georgia 30062-6079  
U.S.A.
- (3) ABP TRADING LIMITED  
Weieneggstrasse 11K  
CH-3612 Steffisburg  
Canton of Bern  
Switzerland
- (4) BEAT SCHWEIZER  
Weieneggstrasse 11K  
CH-3612 Steffisburg  
Canton of Bern  
Switzerland
- (5) MANUELA SCHWEIZER  
Weieneggstrasse 11K  
CH-3612 Steffisburg  
Canton of Bern  
Switzerland

- (6) SWISS BANK & TRUST CORPORATION LIMITED  
Swiss Bank Building  
PO Box 852  
George Town  
Grand Cayman
- (7) CALEDONIAN BANK & TRUST LIMITED  
Caledonian House  
PO Box 1043  
George Town  
Grand Cayman
- (8) DEUTSCHE MORGAN GRENFELL (CAYMAN) LIMITED  
Elizabethan Square  
PO Box 1984  
George Town  
Grand Cayman

- (2) If any of the First to Fifth Defendants wish to defend the action they must acknowledge service within 21 days of being served with the Writ of Summons.

#### UNDERTAKINGS

The Plaintiff gives to the Court the undertakings set out in Schedule 2 at the end of this Order.

#### DURATION OF THIS ORDER

This Order will remain in force up to and including Judgment given at trial or further Order, unless before then it is varied or discharged by a further Order of the Court.

#### VARIATION OR DISCHARGE OF THIS ORDER

The Defendants (or anyone notified of and affected by this Order) may apply to the Court at any time to vary or discharge this Order (or so much of it as affects that

person), but anyone wishing to do so must first give 5 hours/days written notice to the Plaintiff's Attorneys.

**NAME AND ADDRESS OF INTENDED PLAINTIFF'S ATTORNEYS**

The Intended Plaintiff's Attorneys are:

Quin & Hampson, Harbour Chambers, Third Floor, Harbour Centre, PO Box 1348,  
George Town, Cayman Islands, BWI.

Telephone 809 949 4123

Facsimile 809 949 4647

**INTERPRETATION OF THIS ORDER**

- (1) In this Order "he", "him" or "his" include "she", "her" or "hers" and "it" or "its".
- (2) Where there are two or more Defendants then (unless otherwise stated):-
  - (a) References to "the Defendants" mean some or all of them.
  - (b) An Order requiring "the Defendants" to do or not to do anything requires each Defendant to do or not to do it.
  - (c) A requirement relating to service of this Order or of any legal proceedings on "the Intended Defendants" means on each of them.

COSTS

The costs of the application for this Order are reserved. The question of who should pay them has not yet been decided.

DATED this            day of            1996

FILED this            day of            1996

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The Honourable Mr. Justice Douglas

This Order is filed by Quin & Hampson, Attorneys-at-Law, for and on behalf of the Intended Plaintiff herein, whose address for service is that of its said Attorneys-at-Law, Harbour Centre, Third Floor, PO Box 1348, George Town, Grand Cayman, BWI.

## SCHEDULE 1

- (1) Ronald L. Ferrari.
- (2) Ginger Lynn Whitacre.
- (3) Terri L. Hulse.
- (4) Eurotechnologies Limited.
- (5) Far East Specialists Limited.
- (6) ABP Consulting Limited.

SCHEDULE 2

UNDERTAKINGS GIVEN TO THE COURT

BY THE PLAINTIFF

1. If the Court later finds that this Order has caused loss to the Defendants, and decides that the Defendants should be compensated for their loss, the Plaintiff will comply with any Order the Court may make.
2. As soon as practicable after the Sixth, Seventh and Eighth Defendants have complied with their disclosure obligations under this Order, the Plaintiff will issue a Writ of Summons substantially in the form of that produced to the Court on November 1996 and, as soon thereafter as is practicable, serve it on the First to Fifth Defendants together with this Order and copies of the Affidavits and exhibits containing the evidence relied upon by the Plaintiff.
3. Anyone notified of this Order will be given a copy of it by the Plaintiff's Attorneys.
4. The Plaintiff will pay the reasonable costs of anyone other than the First to Fifth Defendants which have been incurred as a result of this Order, including the costs of ascertaining whether that person holds any of such Defendants' assets, and if the Court later finds that this Order has caused such a person loss, and decides that the person should be compensated for that loss, the Plaintiff will comply with any Order the Court may make.
5. Not without the leave of the Court to use any information obtained pursuant to the execution of this Order except for the purposes of these proceedings or for the purpose of taking proceedings abroad in respect of any of the claims identified in the proposed Writ of Summons herein or disclosed in the Affidavits listed in Schedule 3 at the end of this Order, or in respect of assets which may be

made available for the purpose of satisfying any judgment which may be obtained by the Plaintiff against the First to Fifth Defendants in any jurisdiction or in connection with any other rights or claims which the Plaintiff may have against any of the First to Fifth Defendants.

SCHEDULE 3

AFFIDAVITS

The Honourable Chief Justice read the following Affidavits before making this Order:

1. Douglas J. Schmalz unsworn, but subject to Plaintiff undertaking to have this sworn and filed forthwith.
2. Charles George Quin dated November, 1996.