

Dairy giants accused of monopoly
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By Kathryn Flagg

Dairy farmers in the Northeast are training their sights on the massive Dairy Farmers of America (DFA) co-op and processing giant Dean Foods in an effort to prove that price fixing and illegal monopolization of the dairy industry has kept milk prices artificially low for struggling producers.

These farmers' action represents the latest in a series of lawsuits around the country alleging that a lack of competition in the dairy processing industry has resulted in record profits for milk processors at the cost of lower prices for farmers.

Lawyers from Burlington firm Gravel and Shea alongside the Washington, D.C.-based Cohen Milstein firm were slated to make the case for the antitrust class-action suit against four milk processors — DFA, Dean Foods, Dairy Marketing Services (DMS) and HP Hood — in a hearing in U.S. District Court in Burlington on May 6. The defendants are pushing a motion to dismiss the case altogether.

Earlier this month a federal judge in Milwaukee denied a similar motion to dismiss and let the U.S. Justice Department's antitrust lawsuit against Dean Foods in the Midwest move forward. Meanwhile, lawyers are slogging ahead in the Southeast to make the case, as they will attempt to do in Burlington, that a conspiracy is afoot to fix prices and monopolize the dairy industry.

"We think there's a lack of competition. The defendants have conspired to give you fewer options, because they want lower prices," D.C.-based lawyer Benjamin Brown told dairy farmers in Middlebury last week in a briefing about the case. "The industry has changed. We think it changed on purpose."

Neither the defendants' lead attorney nor public affairs officials at Dean Foods could be reached for comment for this article.

The class action suit in the Northeast accuses the defendants of conspiring to tie up access to fluid milk bottling plants, allegedly forcing dairy farmers to join DFA or market their milk through DMS in order to survive.

In New England, Dean — which markets milk under brands like Dean's, Garelick Farms and Horizon Organic — processes roughly 70 percent of the milk produced in the region. Hood, meanwhile, bottles around 20 percent of the region's milk. The suit claims DFA and others engaged in unlawful mergers, acquisitions and closures of bottling plants to strengthen their control of the fluid milk market — and then entered into unlawful agreements with Dean Foods and Hood to ensure DFA would supply virtually all of the milk the processors used.

The lawsuit claims that by monopolizing the milk bottling industry, Dean Foods and DFA were able to avoid competition for farmers' milk and keep prices low. Lawyers say that milk processors enjoyed the economic benefits of low milk prices, while DFA and DMS profited from the membership fees, dues and market access fees farmers must pay to sell their milk. The co-op allegedly diverted revenue from farmers to themselves and outside business partners.

Members of the Cohen Milstein and Gravel and Shea firms filed the suit in October. If allowed to move forward, the case will head into a lengthy period of “discovery,” or research. The lawyers hope that the case could be heard in court as early as next summer.

Right now, the case has two named plaintiffs: Wells River, Vt., dairy farmer Alice Allen and New York farmer Ralph Sitts. If the case moves forward, the class could encompass more than 9,000 farmers in 11 states. The prosecution is seeking damages for farmers as well as structural changes to encourage competition in the dairy industry.

The firms stand to profit if the class action suit is successful, in which case a judge would establish two pools of money: one for damages, to be divided among members of the class, and one to cover legal expenses incurred during the case.

Brown, a law partner with Cohen Milstein, was on hand in Middlebury last week, along with lawyers from the D.C.-based Howrey antitrust law firm, to meet with dairy farmers to discuss the ongoing case in the South as well as the state of the milk industry in the Northeast.

Last week’s meeting also included an update on litigation in the Southeast. In this Tennessee case, Howrey is representing more than 4,000 dairy farms in two suits that seek to prove that Dean, DFA and National Dairy Holdings, along with a number of alleged co-conspirators, conspired to monopolize the production, marketing and processing of milk in the southeast.

“I think it’s fair to say that some fairly dramatic changes are on the way in the Southeast,” Howrey special counsel Kenneth Anderson told farmers.

Greg Commins, an attorney with Howrey, voiced the belief that much of what the prosecution has learned about the dairy industry in the south appears to be true in the northeast as well.

“It appears that the same kind of conspiracy is in place,” Commins said.

Farmers at the meeting voiced concerns about just what could replace the current system of milk marketing, if the lawsuit is successful, but litigators urged them to take one step at a time.

“You don’t have a meaningful opportunity to put Humpty Dumpty back together until you push him off the wall,” Anderson said. “We want to push him off the wall.” 5-06-10