

WILLIAM H. SORRELL
ATTORNEY GENERAL
JANET C. MURNANE
DEPUTY ATTORNEY GENERAL
WILLIAM E. GRIFFIN
CHIEF ASST. ATTORNEY
GENERAL



TEL: (802) 828-3171
FAX: (802) 828-2154
TTY: (802) 828-3665
CIVIL RIGHTS: (802) 828-3657

<http://www.atg.state.vt.us>

STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER, VT
05609-1001

July 14, 2011

Hon. Christina Reiss
Chief Judge
United States Court for the District of Vermont
P.O. Box 953
Burlington, VT 05402-0953

Re: Allen v. Dairy Farmers of America, Inc. et al., Case No. 5:09-cv-00230-cr

To the Honorable Christina Reiss,

The Attorney General's Office for the State of Vermont writes regarding the proposed settlement between Plaintiffs and Defendant Dean Foods Company ("Dean") in the above-referenced litigation.

The subject matter of this litigation is of great interest to the people of Vermont, and as such the Attorney General's office has closely monitored this litigation and the settlement. We have also reviewed the pleadings in the case, as well as several of the discovery documents, and have spoken or met with the parties to the litigation.

Initially, the intent of this office was to opine on or recommend improvements to the injunctive relief contained within Section 9.2 of the Settlement Agreement. However, by agreement of the parties, that section has been removed. This leaves the settlement in the form of a payment by Dean of \$30 million to the Settlement Class.

Our office is aware of criticism that this amount is too low. This is a common criticism in class action litigation. As a policy matter, our office has objected to settlements that appear to be primarily for the benefit of the Plaintiffs' counsel, that are in effect injurious to the class members, or that only award the class members a token amount, often in the form of "coupons." This settlement does not fall into any of those categories.

In assessing whether a settlement value is appropriate, it is necessary to assess the strengths and weaknesses of the case, the likelihood of success, and how the settlement amount compares to the overall value that may be recovered. As this Court has pointed out, at this stage of the litigation it is nearly impossible to properly value the case, as a calculation of damages is a question of fact that has not yet been determined. It is also extremely difficult to judge the strength of the case against Dean, which generally requires an intimate knowledge of the case which comes of actively litigating the matter.

Despite this, a recent development has raised concerns within our office. On July 12, 2011, Plaintiffs in the *In re Southeastern Milk Antitrust*, E.D. Tenn., 2:08-MD-1000, settled with Defendant Dean for \$140 million, almost 5 times as much as this settlement. The allegations in the Southeastern litigation are not identical to those in this litigation, our office has not weighed the strength of that case against this one, and this settlement occurred after four years of litigating against Dean, close to the eve of trial, which is scheduled to begin August 15, 2011. The plaintiffs in this case settled with Dean after approximately one year of litigating, and prior to any discovery being taken from Dean. There has been no settlement with the other defendants in the Southeastern litigation.

Our research shows that the Northeastern market produces approximately 3.5 times as much milk as the Southeastern market, and that there are almost 5 times as many milk producers in the Northeast as there are in the Southeast. This means that on a per farmer basis, the Southeastern litigants are receiving approximately 16.5-23.5 times as much recovery from Dean as the Northeastern litigants.¹

Further complicating matters, if this settlement is not permitted to happen, there is the risk that Plaintiffs' case against Dean will simply fail, in which case no dairy farmers will

¹ We base our conclusion on the following analysis:

	Southeast		Northeast	
	Lbs Produced	# of Producers	Lbs Produced	# of Producers
2010	7,001,124,000	2,705	24,335,641,000	13,429
2009	7,169,317,000	2,867	23,494,743,000	13,384

These numbers represent milk pooled in their respective regions, regardless of the geographic location of the producer. We recognize that this is at variance from the class definition, but present these numbers solely to show a general comparison of the Northeast and Southeast markets, which have approximately 3.5 times as much milk (24.3 B lbs vs. 7 B lbs in 2010) and approximately 5 times as many producers (13.4 K producers vs. 2.7 K producers in 2010).

The recovery from Dean in the Southeast is 4.7 times that of the Northeast (\$140 M vs. \$30 M). Thus, based on the varying volumes of milk produced, producers will receive 16.5 times more money in the Southeast (4.7 x 3.5). Based on the varying number of producers, producers will receive 23.5 times more money in the Southeast (4.7 x 5). In other words, were Northeast producers to settle for the same advantage as Southeast producers who settled for \$140 million, the Northeast settlement would be between approximately \$495 million and \$705 million.

July 14, 2011

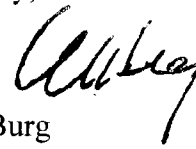
Page 3

recover anything. The Attorney General's office is satisfied that Plaintiffs intend to continue to diligently prosecute this case, and that due to joint and several liability, there may be further recovery for members of the class.

We note that nothing in the settlement prevents any state or federal government office or agency from pursuing its own claims against Defendant Dean.

In light of these considerations, we hope that prior to the Court making a decision on the settlement proposal, class counsel be required to explain to the Court the discrepancy between the settlement outcomes in the Southeastern litigation and in this litigation.

Sincerely,

A handwritten signature in black ink, appearing to read "Elliot Burg", written in a cursive style.

Elliot Burg
Assistant Attorney General
Public Protection Division

cc: Paul H. Friedman, Esq. (via email)
Kevin Hardy, Esq. (via email)
Kit A. Pierson, Esq. (via email)