

**UNITED STATES DISTRICT COURT  
FOR NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

UNITED STATES OF AMERICA,

COMMONWEALTH OF  
MASSACHUSETTS,

and

STATE OF WISCONSIN,

*Plaintiffs,*

v.

DAIRY FARMERS OF AMERICA, INC.

and

DEAN FOODS COMPANY,

*Defendants.*

No. 20 C 2658

Judge Feinerman

**JOINT STATUS REPORT**

**A. Nature of the Case**

**1. Counsel**

*a. Plaintiff United States*

Karl D. Knutsen, lead trial counsel for the United States  
Justin T. Heipp  
Nathaniel J. Harris  
Joseph Chandra Mazumdar  
Christopher A. Wetzel  
Trial Attorneys  
Antitrust Division  
United States Department of Justice

*b. Plaintiff Commonwealth of Massachusetts*

Daniel H. Leff  
Assistant Attorney General  
Office of Massachusetts Attorney General

*c. Plaintiff State of Wisconsin*

Gwendolyn J. Cooley  
Assistant Attorney General  
Office of Wisconsin Attorney General

*d. Defendant Dairy Farmers of America*

W. Todd Miller, lead trial Counsel for Dairy Farmers of America  
Baker and Miller PLLC

Michael G. Egge  
Latham and Watkins LLP

Garrett Rasmussen  
Orrick Herrington and Sutcliffe LLP

*e. Defendant Dean Foods Company*

Arthur J. Burke, Lead Trial Counsel for Dean Foods  
Davis, Polk & Wardwell LLP

**2. Basis for federal jurisdiction**

This Court has subject matter jurisdiction under 28 U.S.C. § 1331, because this case is a “civil action[] arising under the Constitution, laws, or treaties of the United States.” Specifically, the United States brings this action under Section 15 of the Clayton Act, 15 U.S.C. § 25, and the Plaintiff States bring this action under Section 16 of the Clayton Act, 15 U.S.C. § 26.

**3. Nature of the claim(s) and any counterclaim(s), including the amount of damages and other relief sought**

Plaintiffs bring this action to prevent and restrain Defendants from violating the Clayton Act. The Complaint (Docket No. 1) alleges that the likely effect of Defendants’ transaction would be to substantially lessen competition for the processing and sale of Fluid Milk in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, in (1) northeastern Illinois and Wisconsin and (2) New England. Plaintiffs seek only injunctive relief.

At the same time that they filed the Complaint, the United States filed an Asset Preservation and Hold Separate Stipulation and Order (“Stipulation and Order”) (Docket No. 4-1) and a proposed Final Judgment (Docket No. 4-2), which are designed to remedy the

anticompetitive effects of the acquisition. The proposed injunctive relief includes the divestiture of three dairy processing plants and related assets identified in the proposed Final Judgment (Docket No. 4-2).

**4. Whether the defendant will answer the complaint or, alternatively, whether the defendant will otherwise plead to the complaint**

Defendants have agreed to resolve the dispute and will not answer the Complaint. Instead, they have agreed to the Stipulation and Order and proposed Final Judgment.

**5. Principal legal and factual issues**

Antitrust actions typically raise many factual and legal issues. In this case, the parties have agreed to resolve their dispute pursuant to the Stipulation and Order and the proposed Final Judgment.

Entry of proposed Final Judgment is subject to the requirements of the Antitrust Penalties and Procedure Act, 15 U.S.C. § 16(b)-(h) (“The APPA”), which governs the settlement of antitrust claims by the United States. The APPA requires that the United States publish the proposed Final Judgment and the Competitive Impact Statement to facilitate public comment. The United States published notice of the proposed Final Judgment in the *Federal Register* on June 2, 2020, to inform members of the public of a 60-day comment period during which they may submit comments about the proposed Final Judgment to the United States Department of Justice, Antitrust Division. *See* 15 U.S.C. § 16(b)-(c). Similarly, a newspaper notice informing members of the public of the proposed Final Judgment was published in the *Washington Post*, *Chicago Tribune*, and *Boston Globe* beginning on June 1, 2020. During the 60-day period, the United States will consider, and at the close of that period respond to, any comments it has received. The United States will publish all comments it receives, and the responses of the United States, in the Federal Register, or alternatively, upon leave of the Court, on the U.S. Department of Justice, Antitrust Division’s internet website. After publication of any comments and the United States’ response, the United States can move the Court for entry of the proposed Final Judgment. The Court would then determine, based on factors that are specified in the statute, whether the proposed Final Judgment is in the public interest.

**6. Which defendants have been served with process, which defendants have not been served, and the status of efforts to effect service on the unserved defendants**

Both Defendants waived service of process pursuant to Section III of the Stipulation and Order.

**B. Proceedings to Date**

Because Dean Foods was in bankruptcy and suffering from severe liquidity problems, the United States and Defendants submitted an Emergency Motion on May 1, 2020 (Docket No. 6), asking the Court to sign the Stipulation and Order. Judge Kennelly, acting as Emergency Judge for this Court, signed the Order on May 1, 2020. (Docket No. 7, amended by Docket No. 13 to address a typographical error). Under the terms of the Stipulation and Order, DFA was

permitted to acquire the Dean assets after the Court signed the Order. DFA and Dean closed their transaction on May 1, 2020.

There are no outstanding motions. Plaintiffs note that DFA submitted the affidavit required under Paragraph IX.A. of the Proposed Final Judgment one day late and that this affidavit failed to cover some of the required subject matter. DFA also submitted the affidavit required under Paragraph IX.B. of the Proposed Final Judgment seven days late. DFA has since supplied the additional required information for both affidavits. Plaintiffs do not intend to move the Court for further relief based on the tardiness and incompleteness of these affidavits alone but reserve the right to do so if additional issues with DFA's compliance arise.

The United States has extended the time period for DFA to divest the Divestiture Assets (as defined in the proposed Final Judgment) for 30 days. Under the proposed Final Judgment, DFA had until June 1, 2020 to divest the Divestiture Assets, and the United States has sole discretion to grant extensions of up to 60 additional days total. DFA has been working diligently to divest the Divestiture Assets. Pursuant to Paragraph IV.A of the proposed Final Judgment, the United States extended the time period for DFA to market the plants for 30 days on June 1, 2020. Under the proposed Final Judgment, the United States may, in its sole discretion, further extend the time period for up to an additional 30 days.

#### **C. Discovery and Case Plan**

The parties do not anticipate any discovery or a trial.

#### **D. Settlement**

The parties have successfully negotiated a resolution of their dispute and do not request a settlement conference.

#### **E. Magistrate Judge**

The parties do not consent to proceed before a magistrate judge. No matters are pending before the magistrate judge.

Dated: June 4, 2020

Respectfully submitted,

/s/ Karl D. Knutsen

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