

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,
STATE OF WISCONSIN, STATE OF ILLINOIS,
and STATE OF MICHIGAN,

Plaintiffs,

v.

Case No. 10-CV-59

DEAN FOODS COMPANY,

Defendant.

PROTECTIVE ORDER

In the interests of: (i) ensuring an efficient and prompt resolution of this action; (ii) facilitating discovery by the parties litigating this action; and (iii) protecting the parties' and non-parties' confidential information from improper disclosure or use, plaintiffs United States of America, State of Wisconsin, State of Illinois and State of Michigan, and defendant Dean Foods Company (collectively, the "parties"), have stipulated to and respectfully request the Court to enter, pursuant to Fed. R. Civ. P. 26(c)(1)(G) and Civil L.R. 26(e), the provisions set forth below. Upon good cause shown, the Court ORDERS as follows:

A. DEFINITIONS

1. As used herein:

(a) "Confidential information" means any document, transcript, or other material produced by or in the possession or control of any Protected Person that contains:

- (1) trade secrets;
- (2) confidential, proprietary financial information not publicly filed with any federal or state regulatory authority or otherwise publicly available;
- (3) confidential, proprietary information regarding prices or costs;
- (4) confidential, proprietary information regarding customers' or suppliers' identities or business practices; and
- (5) confidential, proprietary, competitively sensitive information (e.g., strategic plans to compete in the sale of fluid milk, plans for acquisitions, plans for introduction of new products, plans for expansion of distribution, plans to achieve cost savings, etc.).

(b) "Disclosed" means shown, divulged, revealed, produced, described, transmitted or otherwise communicated, in whole or in part.

(c) "Document" refers to any discoverable writing or recording, as defined in Fed. R. Civ. P. 34(a).

(d) "Investigation" means the Department of Justice's and/or the Plaintiff States' pre-Complaint inquiry into the matters at issue in this action.

(e) "Investigation Materials" means documents or testimony that (i) any non-party provided to any party either voluntarily or under compulsory process

in anticipation of or during the period of the Investigation until the filing of the complaint in this action or any document constituting any communication by any party to or from any non-party during the period of the Investigation until the filing of the complaint in this action, or (ii) that Defendant, or any affiliated person or entity, has provided to any Plaintiff during the Investigation.

(f) "Plaintiff States" means the State of Wisconsin, State of Illinois and/or State of Michigan.

(g) "Protected Person" means any person or entity who has produced information or testified during the Investigation either voluntarily or in response to a civil investigative demand from the Department of Justice, or who produces any information or testifies in this action voluntarily or in response to a discovery request or subpoena.

(h) "This Action" means the above-captioned action pending in this Court, including any pretrial, trial, post-trial or appellate proceedings.

B. DESIGNATION OF CONFIDENTIAL INFORMATION

2. A Protected Person may designate as confidential any Investigation Materials it, or any affiliated person or entity, has provided to a party in connection with the Investigation, or hereafter provides during discovery in this action, to the extent such information constitutes confidential information as defined in Paragraph 1(a) of this Order. Such designations constitute a representation to the Court that such Protected Person (and counsel, if any) in good faith believes that the

information is not reasonably believed to be already in the public domain and that the information so designated constitutes confidential information as defined in Paragraph 1(a). Any production of information without it being designated as confidential will not thereby be deemed a waiver of any future claim of confidentiality concerning such information, which may thereafter be designated confidential in compliance with Paragraph 6 of this Order.

However, any such subsequent designation will not apply retroactively to the disclosure of any information for which disclosure was proper when made.

3. Within two business days of the Court's entry of this Order, Plaintiffs shall send by email, facsimile, or overnight delivery a copy of this Order to each Protected Person (or, if represented by counsel, the Protected Person's counsel) that provided Investigation Materials to any Plaintiff.

4. Confidential designation of investigative deposition transcripts and documents produced during the Investigation is governed as follows:

(a) All transcripts of depositions taken by any Plaintiff during the Investigation will be treated as confidential in their entirety for 30 days after the date the deponent or counsel for the deponent has received a copy of this Order from Plaintiffs. At any time during the 30-day period, any deponent or counsel for the deponent may designate as confidential, in compliance with paragraph 2 of this Order, any portion of the transcript, by page and line, and any exhibits produced by the deponent or an affiliated entity. Within three business days following the lapse

of the 30-day period, Plaintiffs' counsel must transmit to Defendant's counsel such confidentiality designations as may be made by others.

(b) All documents produced by Protected Persons to any Plaintiff during its Investigation will be treated as if designated as confidential in their entirety for 60 days after the date the Protected Person has received of a copy of this Order from Plaintiffs. At any time during the 60-day period, any Protected Person or counsel for the Protected Person may designate as confidential, in compliance with paragraph 2 of this Order, any document or portion of a document produced to any Plaintiff as confidential by providing Plaintiffs with page numbers or other means of easily identifying the designated documents. Within three business days following the lapse of the 60-day period, Plaintiffs' counsel must transmit to Defendant's counsel such confidentiality designations as may be made by others.

5. Confidential designation of deposition transcripts and documents produced during this action is governed as follows:

(a) Whenever discovery is sought from a non-party in this action, a copy of this Order shall accompany the discovery request or subpoena.

(b) All transcripts of depositions taken in this action will be treated as if designated as confidential in their entirety for a period of 30 days after the date a full and complete copy of the transcript has been made available to all Protected Persons whose confidential information was disclosed in the deposition. The party

who noticed the deposition is responsible for notifying any party whose confidential information was disclosed in the deposition in accordance with paragraph 8 that they may review the transcript (or portions thereof) and designate any confidential testimony or exhibits. During the deposition or at any time during the 30-day period, the party whose confidential information was disclosed may designate as confidential, in accordance with paragraph 2 of this Order, any portion of the transcript and any deposition exhibits produced by the deponent or an affiliated entity. Such designations (with reference to the page(s) and line(s) of the transcript) must be provided in writing to Plaintiffs' and Defendant's counsel.

(c) A Protected Person who designates as confidential any document or information produced in this action must stamp or label the face of each document with the designation "CONFIDENTIAL." If the entire document is not confidential, the Protected Person shall specify the portions of the document that contains confidential information. Where confidential material is produced in electronic format on a disk that exclusively contains confidential material, the "CONFIDENTIAL" designation may be placed on the disk.

6. If a party or Protected Person inadvertently fails to designate any Investigation Materials, documents or testimony as confidential information, it may later so designate by notifying the parties in writing. The parties shall take reasonable steps thereafter to treat such information as confidential information.

No person or party, however, shall incur any liability for any disclosure that occurred prior to receipt of written notice of a belated designation.

7. This Order does not preclude any Plaintiff or Defendant from raising with the Court, after good faith efforts to resolve any disputes, whether any particular information designated as confidential is appropriately designated at any evidentiary proceeding or trial in this case. No party concedes by complying with the procedures set forth in this Order that any information designated by any Protected Person as confidential is in fact confidential as that term is defined in paragraph 1(a) of this Order. However, no information designated as confidential pursuant to this Order may be disclosed, except as provided by this Order, unless and until the Court orders the release of such information from the confidentiality provisions of this Order.

C. DISCLOSURE OF CONFIDENTIAL INFORMATION

8. Except as otherwise authorized by this Order, information designated as confidential pursuant to this Order must not be disclosed to any person other than the individuals set forth below and may be disclosed to and used by those individuals only in connection with this action:

(a) the Court and all persons assisting the Court in this action, including law clerks, court reporters, and stenographic or clerical personnel;

(b) Department of Justice attorneys, employees and independent contractors retained by the Department of Justice to assist in the prosecution of this litigation or otherwise assist in the work of the Department;

(c) Plaintiff States attorneys, employees, and independent contractors retained by the Plaintiff States to assist in the prosecution of this litigation or otherwise assist in the work of the Plaintiff States.

(d) counsel acting for Defendant in this action and that counsel's employees and independent contractors (other than members, or former members, of Defendant) assisting such outside counsel in the defense of this litigation;

(e) authors, addressees and recipients of particular information designated as confidential solely to the extent that they have previously had lawful access to the particular information disclosed or to be disclosed;

(f) persons (and their counsel) whom counsel for Plaintiffs or Defendant believes in good faith to have, or have had, prior access to confidential information, or who have been participants in a communication that is the subject of the confidential information and from whom verification of or other information about that access or participation is sought, solely to the extent of disclosing such information to which they have or may have had access or that is the subject of the communication in which they have or may have participated; provided that, unless and until counsel confirms that any such persons have or have had access or were

participants, only as much of the information may be disclosed as may be necessary to confirm the person's access or participation; and

(g) testifying or consulting experts retained by a party to assist in the prosecution or defense of this action, including employees of the firm with which the expert or consultant is associated to the extent necessary to assist the expert's work in this action, provided that such experts and staff are not employed or affiliated in any other way with Defendant.

9. Before any information designated as confidential may be disclosed to any person described in paragraph 8 of this Order, he or she must first read this Order or must have otherwise been instructed on his or her obligations under the Order by this Court or counsel for a party, and any person described in subparagraphs 8(g) of this Order shall have executed the agreement included as Appendix A hereto. Counsel for the party making the disclosure must retain the original of such executed agreement for a period of at least one year following the final resolution of this action. Each individual described in paragraph 8 of this Order to whom information designated as confidential is disclosed must not disclose that confidential information to any other individual, except as provided in this Order.

10. Notwithstanding the provisions of paragraphs 8 and 9 of this Order, nothing in this Order:

(a) limits a Protected Person's use or disclosure of its own information designated as confidential;

(b) prevents disclosure of confidential information to any current employee of the Protected Person that designated that information as confidential;

(c) prevents disclosure of confidential information with the consent of counsel for the party or non-party that designated the confidential information; and

(d) prevents the United States or any Plaintiff State, subject to taking appropriate steps to preserve the further confidentiality of such information, from disclosing information designated as confidential (1) to duly-authorized representatives of the Executive Branch of the United States Government or of the Plaintiff States; (2) in the course of any other legal proceedings to which the United States or any of the Plaintiff States is a party; (3) for the purpose of securing compliance with a Final Judgment in this action; or (4) for law enforcement purposes, or as may be required by law.

D. USE OF CONFIDENTIAL INFORMATION IN LITIGATION

11. If any material designated as confidential by any party or Protected Person under this Order is included in any pleading, motion, exhibit or other paper to be filed with the Court, the party seeking to file such material shall follow the procedures set forth in General Local Rule 79(d) of this Court. Nothing in this Order shall restrict the parties or any interested member of the public from challenging the filing of any confidential material under seal.

12. The provisions of this Order govern the disclosure of confidential information in pre-trial proceedings only. The disclosure of confidential information at trial shall be subject to separate order of the Court.

E. PROCEDURES UPON TERMINATION OF LITIGATION

13. Within 90 days after receiving notice of the entry of an order, judgment or decree terminating this action, all persons having received information designated as confidential must either make a good faith effort to return such material and all copies thereof to the Protected Person (or the person's counsel if represented by counsel) that produced it, or destroy all such confidential material and certify that fact in writing to the party or Protected Person. Counsel for Plaintiffs and Defendant will be entitled to retain court papers, deposition and trial transcripts and exhibits, and work product, provided that Plaintiffs' employees and Defendant's counsel and such counsel's employees do not disclose the portions of court papers, deposition transcripts, exhibits or work product containing information designated as confidential to any person except pursuant to Court order or agreement with the Protected Person that produced the information designated as confidential. All confidential materials returned to the parties or their counsel by the Court likewise must be disposed of in accordance with this Paragraph. Nothing in this Paragraph, however, restricts the rights of the parties under Paragraph 10 of this Order, or the rights of Plaintiffs to retain and use confidential materials for law enforcement purposes or as otherwise required by law.

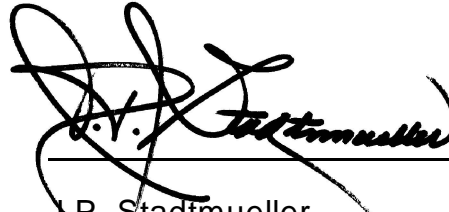
F. RIGHT TO SEEK MODIFICATION

14. Nothing in this Order prevents any party or Protected Person from seeking modification of this Order upon motion duly made pursuant to the Rules of this Court.

SO ORDERED.

Dated at Milwaukee, Wisconsin, this 20th day of May, 2010.

BY THE COURT:

A handwritten signature in black ink, appearing to read "J.P. Stadtmueller", is written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke extending to the right.

J.P. Stadtmueller
U.S. District Judge

APPENDIX A

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,
STATE OF WISCONSIN, STATE OF ILLINOIS,
and STATE OF MICHIGAN,

Plaintiffs,

v.

Case No. 10-CV-59

DEAN FOODS COMPANY,

Defendant.

AGREEMENT CONCERNING CONFIDENTIALITY

I, _____, am employed as _____
by _____.

I HEREBY CERTIFY THAT:

1. I have read the Protective Order entered in the above-captioned action, and understand its terms.
2. I agree to be bound by the terms of the Protective Order entered in the above-captioned action. I agree to use the information provided to me only for the purpose of this litigation.
3. I understand that my failure to abide by the terms of the Protective Order entered in the above-captioned action will subject me, without limitation, to civil and criminal penalties for contempt of Court.

4. I submit to the jurisdiction of the United States District Court for the Eastern District of Wisconsin solely for the purpose of enforcing the terms of the Protective Order entered in the above-captioned action and freely and knowingly waive any right I may otherwise have to object to the jurisdiction of said Court.

5. I make this certificate this _____ day of _____, 201____ .

(SIGNATURE)