



Commonwealth of Pennsylvania
Milk Marketing Board

BOARD

2301 North Cameron Street
Harrisburg, Pennsylvania 17110-9408
717-836-3115

Pennsylvania dairy farmers and milk haulers have received avoidance claim settlement offers from ASK LLP in conjunction with the Dean Foods bankruptcy. Farmers and haulers (as well as others) who received payments from Dean Foods during the 90-day period immediately preceding Dean's bankruptcy filing on November 12, 2019, have received the settlement offers because the bankruptcy trustee can avoid and recover those payments under some circumstances.

However, if creditors received the payments from Dean in the ordinary course of their business with Dean, the payments are not liable to be avoided. A payment is not avoidable if it was received in the ordinary course of business of the debtor (Dean) and the creditor (dairy farmer or milk hauler) and was made according to ordinary business terms.

As we have noted previously dairy farmers selling milk to a dairy processor and being paid for that milk according to federal and/or state regulations is the definition of the ordinary course of business. Similarly, milk haulers transporting milk from farm to plant and being paid via deductions from farmer payments is another simple example of a transaction taking place in the ordinary course of business.

The Board believes that the vast majority of Pennsylvania dairy farmers and Pennsylvania milk haulers received payments from Dean in the ordinary course of business and according to ordinary business terms. Therefore, the Board worked with the Pennsylvania Attorney General's office and ASK LLP to develop a mechanism for farmers and haulers to demonstrate that the payments they received from Dean were made in the ordinary course of business and according to ordinary business terms.

The result of the collaboration among the Board, Pennsylvania Attorney General, and ASK is the attached Farmer Declaration and Hauler Declaration. Farmers and haulers should complete the appropriate Declaration by entering their ASK file number, the date they received correspondence from ASK, and brief details regarding their relationship with Dean. While our understanding is that haulers were paid by Dean by deducting hauling fees from farmer milk checks, any haulers that had a different arrangement may note that by checking the appropriate line in the Hauler Declaration and explaining on a separate sheet of paper.


After completing and signing the Declaration, it should be returned via email, fax, or US Mail to the paralegal assigned to the matter as noted in the letter from ASK.

If the Declaration, along with payment information ASK has, appears sufficient ASK will contact its client to request permission to close the file. When the file is closed ASK will inform the farmer or hauler.

Please contact Doug Eberly at 717-836-3115 with any questions.

Handwritten signature of Robert N. Barley in cursive script.

Robert N. Barley
Chairman

Handwritten signature of James A. Van Blarcom in cursive script.

James A. Van Blarcom
Member

File number: _____

I received an avoidance claim settlement offer from ASK LLP dated _____.

I am a dairy farmer.

I was selling milk to Dean Foods in the ordinary course of my business relationship with Dean Foods when Dean filed its bankruptcy petition on November 11, 2019. I also sold milk to Dean in the ordinary course of my business relationship with Dean during the 90 days prior to November 11, 2019.

Prior to November 11, 2019, I had sold milk to Dean for _____ years. During the course of my relationship with Dean, my milk was picked up every _____ days and sold to Dean.

While my milk was picked up every _____ days, I was paid two times per month on the dates and in a manner mandated by Federal and/or State Regulations (7 CFR sections 10XX.70-10XX.74 and 7 CFR section 10XX.90). I was paid on these dates and in this manner during the 90 days prior to November 11, 2019, and during the entire course of my business relationship with Dean prior to the period beginning 90 days prior to November 11, 2019. There was no difference in my payments from Dean or milk shipments to Dean during the period 90 days prior to November 11, 2019, as compared to the course of our business relationship prior to that period.

I did not receive preferential payment treatment from Dean during the 90 days prior to November 11, 2019. I did not receive preferential payment treatment, nor did I ask for preferential payment treatment, because there was no need to ask for preferential payment treatment. I put no pressure on Dean to pay me because it always paid on time according to the applicable Federal and/or State Regulations.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this _____ day of _____, 2020

Print name

Signature

Address:

File number: _____

I received an avoidance claim settlement offer from ASK LLP dated _____.

I am a milk hauler.

I was hauling milk from dairy farms to Dean Foods in the ordinary course of my business relationship with dairy farms and Dean Foods when Dean filed its bankruptcy petition on November 11, 2019. I also hauled milk from dairy farms to Dean in the ordinary course of my business relationship with Dean during the 90 days prior to November 11, 2019.

Prior to November 11, 2019, I had hauled milk from farms to Dean for _____ years.

During the course of my relationship with Dean, I was paid two times per month. While I received payment through Dean, I was actually paid by the dairy farms. Dean deducted my hauling fees from dairy farms' payments and sent the money to me. My payments from Dean were not subject to Federal and/or State Regulations but I was paid two times per month in conjunction with payment dates to dairy farms according to the Federal and/or State Regulations governing payment to dairy farms (7 CFR sections 10XX.70-10XX.74 and 7 CFR section 10XX.90). I was paid on these dates and in this manner during the 90 days prior to November 11, 2019, and during the entire course of my business relationship with Dean prior to the period beginning 90 days prior to November 11, 2019. There was no difference in my payments from Dean during the period 90 days prior to November 11, 2019, as compared to the course of our business relationship prior to that period.

I did not receive preferential payment treatment from Dean during the 90 days prior to November 11, 2019. I did not receive preferential payment treatment, nor did I ask for preferential payment treatment, because there was no need to ask for preferential payment treatment. I put no pressure on Dean to pay me because it always paid on time and in the same manner by deducting my fees from dairy farm payments which were made according to the applicable Federal and/or State Regulations.

____ I have additional details about my payments which are described in the attached page which is incorporated into this declaration.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this _____ day of _____, 2020

Print name

Signature

Address: