

**DairyLine:** Mike Eby is a dairy producer from Pennsylvania and also chairman of the National Dairy Producers Organization. Mike, last time we spoke you told us about the DFA lawsuit and reported settlement with northeast dairy producers. Tell us why you are involved in this lawsuit settlement and why NDPO members are interested in this across the nation.

**Eby:** It's alleged from many years ago that DFA and DMS worked together to, in essence, conspire lower milk prices to dairy producers. It's been going on now since 2009. I personally became involved January 29<sup>th</sup>. I was able to visit the courts for the first time, and speaking on behalf of myself as a dairy producer, producing milk in the state of Pennsylvania in a fairly small herd, but none the less representing our interests as small producers.

As far as National Dairy Producers Organization, I felt that it would be great to take this to the next level. Not only would I be speaking on behalf of my interest as a dairy farmer, I would also be representing a larger entity. We all know this case is much bigger than just the northeast. We know whatever comes of this case will have drastic effects across the nation. This is why I feel that it is imperative that we as dairy producers become involved and understand that even though what we hear in AP news is that the settlement has been accepted. What they are not telling you is that DFA and our class counsel has come to an agreement to resubmit the \$50 million settlement, but that does not mean that the judge accepts it.

At this point we are waiting for another hearing and we are not certain or not whether we are going to get it. Simply because within the new settlement deal, our own lawyers of dairy farmers are requesting that farmers do not have a hearing from this. They are saying farmers had the opportunity to represent their wishes at the hearing on January 29<sup>th</sup> – it's basically the same settlement so we can just move forward and the judge should accept it "as is." That's basically where we are at this point.

The worst part of about this is we were to have a pre-trial hearing on August 7<sup>th</sup> and this was submitted very last minute. In fact, I was actually on my way when we got word that the pre-trial hearing was cancelled. We drove up anyway to Burlington, Vermont. I felt if nothing else, I had in my hand information from the National Dairy Producers Organization to submit as "friends of the court."

**DairyLine:** Can you share with us a few excerpts from that letter?

**Eby:** The National Dairy Producers Organization is the only national dairy farmer organization comprised entirely of dairy farmers with the goal of dairy farmer sustainable profitability. Today, dairy farmer owned processing co-ops claim to control more than 80% of the milk produced on our nation's dairy farms. Defendant DFA is one of the largest dairy farmer owned processing co-ops of which has contributed to the loss of over 180,000 dairy farms in the U.S. since 1980.

Most NDPO members, like plaintiffs, are members of processing co-ops, or who pull milk under the Federal Orders. The issues being litigated are the same problems that many dairy farmer members have with their prospective processing co-ops that they own and ship milk to.

Listed as A, B, C & D.

A- Management fails to comport themselves as cooperative and fiduciary existing for the benefit of dairy farm owner members, but rather, operates the dairy farmer owned cooperative processor as a for-profit corporation that benefits management only at the dairy farmers' expense.

B- Management fails to promote dairy farmer profitability, and on the contrary, actively pursues policies and actions that promote dairy farmer losses.

C- Management philosophy and strategy is one that promotes unrestrained milk growth, which in turn causes a milk supply in excess of profitable demand, which in turn results in dairy farmers selling their milk for less than what it cost to make.

D- Management fails to consider a business plan that pays a profitable price for dairy farmer owner members' milk.

Obviously what happens in this case could have a significant impact on the 45,000 farms in this country whether they ship milk to a public, private, or a cooperative processor. Plaintiffs in essence allege, and defendants in essence admit through their monetary offer of settlement that defendant's management has not been operating in the best interest of the dairy farmer owner members of DFA.

As the court has properly determined, the proposed monetary payment is not sufficient remedy for the defendant's wrong-doing. Rather, more importantly than an adequate monetary payment, the court should also consider placing defendant organization in some type of court supervised receivership until the organization's dairy farmer members can create some new organizational rules and elect new leadership so that the defendant organizations can be reelected for their original purpose - the pursuit of the sustainable profitability of its dairy farmer members.

**DairyLine:** Mike, what do you hope to accomplish by writing this letter?

**Eby:** I am hoping that the judge will look at this letter and will see to it that dairy producers stand united and that this issue is more than just a northeast case – and understand completely that we as dairy producers need to have our cooperatives represent us for what they were set out to do. That is not to just be a cooperative to market our milk, but to position them so that we as dairy producers have an opportunity to profit.

At this point, the lawyers who do represent us in this class action lawsuit are obviously hoping that she accepts it "as is," meaning no hearing - it's a done deal. Cut the check to dairy farmers - \$4,000 a piece.

The other option is she would grant the wishes of the settlement; however she would provide an opportunity for the dairy farmers to have a hearing, for us then to be able to drive to Vermont and speak our own wishes, whether they we are in favor of the settlement or opposed.

**DairyLine:** Have you had any feedback from dairy producers since you wrote the letter?

**Eby:** I was able to submit 84 signatures of dairy producers (in a short period of time). When dairy farmers understand truth and want to become a part of it...a signature carries a lot of weight.

If you look at the transcript from the hearing on January 29<sup>th</sup>, there were only 15 famers that we were able to get petitions for and submit to the court and recommend they deny the settlement. Had I known they would have been that powerful, I would have attempted to have gotten a lot more. You can be assured that if we have an opportunity to present our case and oppose the settlement once again, within a fairness hearing, that we will be submitting many petitions to the court allowing opportunity for dairy farmers to voice their opinion.

**DairyLine:** You had mentioned that this isn't necessarily about the money (or getting a larger settlement).

**Eby:** You're right; this is not about the money. My father made the comment, "You're making a lot of an issue out of this, aren't you fearful of some sort of retaliation?" No, because when I am getting a milk check in 2015 for \$14.83 per cwt. – that's a price to risk. It's not a price that I can survive long-term. We as dairy producers in this country obviously need a better price for our milk than \$14.83. We are convinced that the manipulation of the markets, much in part, had to do with the pricing that we are now receiving today.

**DairyLine:** With the \$50 million settlement, and the \$4,000 paid to each northeast dairy producer, is there a number you would like instead?

**Eby:** That's a great question, because we are looking at this from the standpoint that it is not about the money. How can DFA change the way they are doing business so that we can be assured a future in this industry? So, even if it would be zero. I know that sounds crazy...but the reality is it is not about the money rather the potential of a future. That means a cooperative could no longer work with, for instance, a corporation like Dean Foods. To then be able to use the cooperative laws in their favor to be able to monopolize an industry under the protection of the 1922 Capper-Volstead law.

**DairyLine:** Thanks Mike for your comments today.

**Eby:** Thank you for the opportunity and we ask that dairy farmers continue to support the efforts of the National Dairy Producers Organization. This is what we do. We represent the interest of the dairy producers, and given an opportunity, we will see to it that dairy producers have a future.

**DairyLine:** Mike Eby is a Pennsylvania dairy producer and chairman of the National Dairy Producers Organization. For more info go to: [NationalDairyProducersOrganization.com](http://NationalDairyProducersOrganization.com)