

EXHIBIT B

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Alice H. Allen v. Dairy Farmers of America Inc.

David Rudd

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

ALICE H. ALLEN AND LAURENCE E. ALLEN, a/b/a
Al-lens Farm, GARRET SITTS and RALPH SITTS,
JONATHAN HAAR and CLAUDIA HAAR, on behalf of
themselves and all others similarly situated,
Plaintiffs,

Docket No. 5:09-cv-00230

v.

DAIRY FARMERS OF AMERICA, INC.,
DAIRY MARKETING SERVICES, LLC,
and DEAN FOODS COMPANY,

Defendants.

Deposition Upon Oral Examination of:
David S. Rudd

Location: Nixon Peabody LLP
1100 Clinton Square
Rochester, New York 14604

Date: February 28, 2011

Time: 2:11 p.m.

Reported By: KIMBERLY A. BONSIGNORE

DIGITAL EVIDENCE GROUP
1299 Pennsylvania Ave, NW, Suite 1130E
Washington, DC 20004
(202) 232-0646

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1 grow our energy; we have to buy it. And organic corn
2 is just -- can't touch it, not for the price that
3 they're paying. It would be nice.

4 Q. What was said about the lawsuit at the
5 zone meeting?

6 A. Verbally what was said was there was some
7 issues concerning Dean and DFA and DMS, and the -- I
8 want to say administration, I guess, was keeping track
9 of it or watching it.

10 Q. What administration are you referring to?

11 A. Brad Keating, the COO or -- I think he's
12 COO.

13 Q. Mr. Keating is the COO of --

14 A. COO of DFA. And the Northeast Council,
15 their Board of Directors, they're watching it. They
16 just wanted us to know that if we heard things in the
17 news, that they had it under -- I don't want to say --
18 they didn't say under control; that they were aware of
19 it.

20 Q. Who made the verbal report about the
21 lawsuit at the zone meeting?

22 A. I would -- boy, I don't -- there were two

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1 presenters, and I don't know which one.

2 Q. Who were the two presenters?

3 A. Todd O'Brien, Ed Schoen.

4 Q. What position does Mr. O'Brien hold with
5 DFA?

6 A. Member Relations. Well, actually, I think
7 Todd's Dairylea. At least, he came to DMS under
8 Dairylea.

9 Q. What position does Mr. Schoen hold?

10 A. He's our district -- I don't know for 10
11 or 11, whatever district we are, he is our director.

12 Q. When you say "our," are you referring to
13 DFA?

14 A. Our district.

15 Q. Of DFA?

16 A. Not council. There's 13 districts in the
17 Northeast Council. Whatever I told you, Jefferson,
18 Oswego, that district, he's our district director.

19 Q. Of DFA?

20 A. Correct.

21 Q. When was the next time you heard anything
22 about the lawsuit?

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1 A. December, late December. My wife's a
2 schoolteacher and she was on holiday.

3 Q. Of what year?

4 A. 2010.

5 Q. And what happened in late December of 2010
6 in connection with the lawsuit?

7 A. I got a phone call from Gerald Heatwole;
8 he is the Chairman of the Northeast Council of DFA.

9 Q. And what did Mr. Heatwole say to you?

10 A. He said that they had received word -- and
11 I'm presuming the Northeast Council -- that Dean Foods
12 had come to a tentative settlement with the
13 plaintiffs -- and I'm trying to think of the words,
14 how he -- but the gist of it was without first
15 consulting DFA and DMS.

16 Q. Did Mr. Heatwole tell you that he thought
17 that Dean should have consulted with DFA about its
18 settlement?

19 A. Say that again.

20 Q. Did Mr. Heatwole tell you that he believed
21 that Dean Foods should have consulted with DFA about
22 its settlement?

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1 A. No.

2 Q. Did he suggest that he believed that Dean
3 Foods should have consulted with DMS before it reached
4 the Settlement Agreement?

5 A. Can I ask a question?

6 Q. Sure. I may not answer it.

7 A. Is there a difference between "believe"
8 and "wish"?

9 Q. It depends on the speaker.

10 What did Mr. Heatwole say about the
11 settlement between Dean Foods and the plaintiffs?

12 A. He said he wished they would have
13 consulted with the other parties in the lawsuit prior
14 to this.

15 Q. Did he explain why he believed that Dean
16 Foods should have consulted with the other parties?

17 MR. KUNEY: Objection to form. Misstates
18 his testimony.

19 A. No.

20 Q. Did he explain why he wished --

21 A. No.

22 Q. -- that Dean Foods had consulted with DMS

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1 or DFA?

2 A. No, he did not.

3 Q. Did Mr. Heatwole describe to you the terms
4 of the settlement?

5 A. No.

6 Q. When Mr. Heatwole informed you of this
7 proposed settlement, what, if anything, did you say?

8 A. Gerald Heatwole told me that they had
9 got -- received information that Dean had reached a
10 tentative agreement with the plaintiffs, and he asked
11 me if I would be interested in looking at that
12 agreement, and I said yes.

13 Q. Did he ask -- or did he tell you why he
14 was curious whether you would be interested in looking
15 at the agreement?

16 A. I believe Gerald didn't want to prejudice
17 me, and so the way he worded the -- his statement was
18 to let me read the Settlement Agreement on my own,
19 because I was an active member in our zone and in our
20 council in our district, I'm probably of age where --
21 what's the word I want? -- I had some credibility.

22 Q. Other than asking you whether you would be

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1 interested in reading the Settlement Agreement, did he
2 ask you to do anything else?

3 A. No. He said after I read the Settlement
4 Agreement, if I had an opinion I wanted to share, he
5 or Brad Keating would be willing to listen.

6 Q. Did Mr. Heatwole send you a copy of the
7 Settlement Agreement?

8 A. I received a copy.

9 Q. Who sent it to you?

10 A. Brad Keating.

11 Q. At the time that you received the
12 Settlement Agreement, had you seen the Complaint that
13 had been filed by the plaintiffs in the Vermont case?

14 A. No.

15 Q. Have you ever seen the Complaint that was
16 filed in the Vermont case?

17 A. Yes.

18 Q. When did you see the Complaint filed in
19 the Vermont case for the first time?

20 A. When I received the Settlement Agreement.

21 Q. So you received the Complaint?

22 A. Yes, sir.

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1 Q. And the Settlement Agreement?

2 A. Yes, sir.

3 Q. Did you receive anything else at that
4 time?

5 A. No.

6 (The following exhibit was marked at deposition
7 of Todd A. Hathorn: Exhibit No. 3.)

8 Q. Let me show you what's been previously
9 marked as Hathorn Exhibit 3, which is a copy of the
10 Complaint, the public Complaint.

11 A. It looks like about -- all black-lined, it
12 makes hardly a lick of sense, but anyway...

13 Q. Because of --

14 A. All the black lines.

15 Q. Right. All the good stuff was taken out?

16 A. I presume so. That's the implication.

17 Q. All right.

18 A. I have no idea.

19 (The following exhibit was marked at deposition
20 of Todd A. Hathorn: Exhibit No. 4.)

21 Q. Let me show you what was previously marked
22 as Hathorn Exhibit 4.

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1 confirm that that's your affidavit.

2 A. Yes, sir.

3 Q. Okay. Now, Mr. Heatwole asked you if you
4 would look through the settlement, right?

5 A. Uh-huh.

6 Q. Is that a yes?

7 A. Yes, sir. Sorry.

8 Q. And after you did so -- what's the next
9 thing you did; did you call Mr. Heatwole?

10 A. No.

11 Q. Okay. What did you do?

12 A. I called Brad Keating.

13 Q. Okay. Why did you call Mr. Keating?

14 A. Because I told him I had an opinion.

15 Q. And what opinion did you express to
16 Mr. Keating?

17 A. That my farm would be impacted by this
18 settlement.

19 Q. And when you said that to Mr. Keating,
20 what did he say to you?

21 A. He said, "We can put you in touch with
22 people that can help get your opinion before the

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1 Court."

2 Q. And when Mr. Keating made that offer, what
3 did you say?

4 A. I said I would like to do that --

5 Q. Okay.

6 A. -- to get my opinion before the Court.

7 Q. So who did Mr. Keating put you in touch
8 with?

9 A. Leah. Nixon Peabody.

10 Q. Now, prior to your getting in touch with
11 Nixon Peabody, had you had any prior relationship with
12 the law firm?

13 A. No.

14 Q. Okay. Has Nixon Peabody ever represented
15 you?

16 A. No.

17 Q. Do you have a retainer agreement with
18 Nixon Peabody?

19 A. I signed something.

20 Q. Something other than your affidavit?

21 A. Yeah.

22 Q. Did you receive a letter from Nixon

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1 January?

2 A. Yes, sir.

3 Q. And who was present when you signed the
4 affidavit?

5 A. My wife and the Notary.

6 Q. Mr. Robinson?

7 A. Mr. Robinson.

8 Q. And where did you sign the affidavit,
9 other than at the bottom of the page?

10 A. At White Springs Manor in the Town of
11 Geneva, I believe, New York, County of Ontario.

12 Q. Is that a restaurant?

13 A. No. It's --

14 Q. What is it?

15 A. It's a hotel.

16 Q. Have you seen any other affidavits signed
17 by any other farmers in connection with the proposed
18 settlement with Dean Foods?

19 A. No, sir.

20 Q. Do you have an understanding of what was
21 done with the affidavit after you signed it?

22 A. It was sent to the Court as a Motion of

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1 C E R T I F I C A T I O N

2

3 STATE OF NEW YORK:

4

5 COUNTY OF MONROE:

6

7 I, KIMBERLY A. BONSIGNORE, being a
8 Freelance Court Reporter and Notary Public in and for
9 Monroe County, New York, do hereby certify that I
10 reported in machine shorthand the foregoing pages of
11 the above-styled cause, and that they were prepared by
12 computer-assisted transcription under my personal
13 supervision and constitute a true and accurate record
14 of the proceedings.

15 I further certify that I am not an
16 attorney or counsel of any parties, nor a relative or
17 employee of any attorney or counsel connected with the
18 action, nor financially interested in the action.

19 WITNESS my hand in the City of Rochester,
20 County of Monroe, State of New York.

21

22

Kimberly Bonsignore
Freelance Court Reporter and
Notary Public No. 01B06032396 in
and for Monroe County, New York