

Exhibit S

VOLUME II

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF VERMONT
DOCKET #: 5:09-cv-00230

ALICE H. ALLEN AND LAURENCE E. ALLEN, d/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,

v.

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

Defendants.

This is the Videotaped Examination of

GREG I. WICKHAM

held on the 20th of May, 2011 held at
Bond, Schoeneck & King, One Lincoln
Center, Syracuse, New York, commencing at
9:04 a.m., ending at 6:25 p.m.

REPORTED BY: NANCY H. SWARTZ
Shorthand Reporter, Notary Public

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1 finance area.

2 (WICKHAM EXHIBIT NUMBER 56 WAS MARKED
3 FOR IDENTIFICATION.)

4 Q I've handed you Exhibit 56 and I'll tell
5 you, I'm going to give you a number of exhibits
6 and you're free to read what you want to but
7 there are particular points to be made on these
8 exhibits that I'm trying to understand. And I'll
9 try to direct your attention to those so we can
10 move efficiently.

11 Exhibit 56 has a mysterious Bates number
12 because it's been cutoff. But the document is
13 entitled "Notes Membership Meeting Tuesday, March
14 25th, 2003." Now, I'm looking at the second
15 page. The fifth bullet down says: "Pay price
16 alignment, Dairylea and DFA in each area, the
17 regional managers have payroll reports that show
18 how Dairylea and DFA members compare in each
19 area." Do you see that language?

20 A Yes, I do.

21 Q And then down below that there are two --
22 there are three more bullets, and the middle one

1 says: "DFA and Dairylea can and should have
2 separate premium programs but the net pay price
3 should not be more than ten or fifteen cents
4 apart." Did you agree that the net pay price for
5 Dairylea and DFA farm program should not be more
6 than ten or fifteen cents apart?

7 MR. KUNEY: Objection to form.

8 A I don't know who wrote this document or
9 what they meant, I don't think it was me that
10 wrote it, but it may have been. But anyway, I
11 recall at about this time we had discussion about
12 that bullet point you referenced. And here was
13 the problem, Dairylea and DFA, of course, had
14 very separate routes and weren't working together
15 whatsoever prior to '99 and so they had different
16 geographies where they set their pay zones. So
17 perhaps we're in Onondaga County and DFA had a
18 Western New York pay zone -- I'm just making
19 examples up -- that started the next county to
20 the west and it had a certain criteria. Dairylea
21 had a pay zone for Western New York and it
22 included Onondaga County so there was an overlap

1 or an underlap. And what we were trying to
2 address, that this bullet point references, is if
3 you and I were neighbors and had about the same
4 size farm and we were pretty close together and
5 we found when comparing our paychecks if your
6 quality components and mine were the same, so we
7 kind of made the same milk, that wouldn't be a
8 difference and we were on the same truck, and
9 Dairylea and DFA are both part of DMS, it stands
10 to reason, if you truly understand our business,
11 that there would not be a real good business
12 reason for us to be substantively different. And
13 I guess we picked the ten or fifteen cents range
14 to kind of be the marker of what was
15 substantially different. And it was frustrating
16 to you and I as neighbors when there was a
17 difference greater than fifteen cents. And we
18 decided there wasn't any real business purpose
19 for that or market reason for that, it was an
20 anomaly created by where you kind of drew the
21 line for that geographical pay zone area for the
22 farms. And so we said, well, that's an easy fix,

1 now that we do so much work together, there's no
2 good explanation for it to the farm and so why
3 don't we just fix it and make sure we kind of
4 redraw the lines. And so we had specific reports
5 to try and find the outliers before they find
6 themselves in the form of the farmers saying,
7 hey, what are you guys doing.

8 Q And so did you basically try to hold the
9 difference -- did DMS basically try to hold the
10 difference in net premiums to similarly situated
11 DFA and Dairylea farmers to be within a range of
12 ten to fifteen cents?

13 MR. KUNEY: Objection to form.

14 A I want to characterize it comfortably to
15 me. If the farms were the same size, they made
16 exactly the same components in their milk, they
17 made exactly the same pounds of milk, quality of
18 milk and were on the same truck and lived within
19 a few miles of each other, we use that as a
20 marker to say, gee, I think we ought to -- we
21 didn't force it, anybody outside of that range,
22 we said we should look at that and see if there

1 is, in fact, a business reason that's plausible
2 and explainable to the farmers. And if there
3 wasn't, we'd mark those situations where there
4 was a bigger difference than that as to something
5 we should take a look at. So we didn't force it,
6 it wasn't automatic, it was more like an
7 exception report that may show us something that
8 we determined, we made, kind of made a management
9 decision that we wanted to fix those things now
10 that we've been together so long.

11 Q Were you -- have you been successful in
12 bringing the DFA/DairyLea net premiums in to
13 closer alignment?

14 MR. KUNEY: Objection to form.

15 Misstates the testimony.

16 A That's a gross generalization, so you've
17 got to go back to my marker of close neighbors,
18 same truck, same components, same quality, same
19 quantity.

20 To your specific question, have we been
21 successful, frankly, I don't think we've measured
22 it, per se, since that time when we kind of went

1 through a process over the course of six or
2 twelve months of looking at it and making sure it
3 was explainable to us and our members and fixing
4 ones that seemed to be anomalies. I don't think
5 we've looked at it since then, so.

6 Q Well, what did you do to fix the
7 variability in the --

8 A Good point.

9 Q -- in the DFA and Dairylea net pay
10 premiums?

11 A Generally what we tried to do, if you
12 were DFA and I was Dairylea and we found that
13 everything was the same, like I said in my
14 earlier qualifiers, and you got twenty cents more
15 than me, we would, you know, generally because
16 our mission is to pay farmers more, not less, we
17 would move me up to be equal to you and try
18 and -- we don't really have lines on the map but,
19 I mean, mentally draw the boundary of a pricing
20 geography for DFA and Dairylea similar. So I
21 explained in one of my earlier comments, there
22 might have been a difference, we tried to

1 mentally draw them the same so we wouldn't
2 encounter a difference in the future.

3 Q Did you take any actions to realign the
4 net premiums paid to independents to bring them
5 into closer alignment, so to use your -- so
6 equals are treated equally?

7 A There's a -- I was going to say yes, but
8 there's a big asterisk on the yes that I need to
9 explain. Same situation, if you had two
10 independents, for example, there was Farmland
11 independent that was a neighbor of a Crowley
12 independent and they obviously had different
13 family trees and far different pay programs and
14 we ended up managing both of them and they were
15 neighbors and they were, like my earlier example,
16 everything alike and there's more than a ten or
17 fifteen cent difference, that's truly hard to
18 explain and now you've got one management group
19 managing the pricing for both, so over time we
20 tried to fix it. But the way we fixed it, was we
21 didn't really want to take anybody down, we kind
22 of waited until the market said farms should get