



Commonwealth of Pennsylvania
Milk Marketing Board

BOARD

2301 North Cameron Street
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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.

A handwritten signature in black ink that reads "Robert N. Barley". The signature is fluid and cursive, with the first name being the most prominent.

Robert N. Barley
Chairman

A handwritten signature in black ink that reads "James A. Van Blarcom". The signature is cursive and spans across the width of the signature area.

James A. Van Blarcom
Member