

The Milkweed

Dairy's best information and insights

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RICO! Milk Powder Lawsuit Turns Against DairyAmerica & CDI

by Pete Hardin

Imagine a group of dairy co-op leaders, sitting around board meetings of a powerful Common Marketing Agency (DairyAmerica), plotting how to keep badly needed money away from dairy producers' milk checks. That's exactly what happened, according to court documents.

"Conspiracy" is a fighting-word, used carefully in legal circles. But that's exactly the concept embraced in the huge legal decision delivered on January 19, 2016 by the presiding federal judge in the long-running lawsuit directed against DairyAmerica and California Dairies, Inc. (CDI) – cooperatives in the U.S. non-fat milk powder trade. CDI, a California based co-op, is the nation's largest milk powder producer.

By his own written admission, new documents submitted to the court in summer 2015 by plaintiffs' attorneys provided an "Eureka" moment for Judge Anthony W. Ishii. (*Eureka* is a Greek word meaning, "I've got it!"). That game-busting document was the Declaration of Ralph Douglas White – former sales manager for DairyAmerica. White's Declaration detailed how management and directors of DairyAmerica openly discussed and pursued strategies to falsely underreport weekly sales prices of nonfat dry milk to USDA. (White's explosive statement was printed, in full, in the October 2015 issue of *The Milkweed*. That monthly issue carried two relevant articles on the subject. [See "Sworn Declaration of Ralph Douglas White, June 18, 2015," (pages 10-11, October 2015 issue). Also, "'Whistle-Blower' Tells All in Milk Powder Price-Misreporting Case," (pages 10-11, same issue).]

The case is listed as *Gerald Carlin, et al., versus DairyAmerica, Inc. and California Dairies, Inc.* Carlin is a now retired dairy farmer from northeastern Pennsylvania. The docket number is 1:09-cv-0430 EPG, and is being adjudicated at the United States District Court Eastern District of California.

Following DairyAmerica ex-insider White's revelations, plaintiffs' lawyers amended their complaint to seek RICO charges

Anti-Mafia Laws Trained on Defendants

The January 19, 2016 decision by the presiding federal judge has completely upended the long-running, milk powder price-fixing class action lawsuit. The judge accepted plaintiffs' attorneys' motion to add California Dairies, Inc. as a defendant. And the judge also opened the door wide for plaintiffs' lawyers to enter RICO charges against defendants DairyAmerica and California Dairies, Inc. RICO statutes – a body of federal anti-mafia legal protections dating back to the 1970s – provide successful plaintiffs with triple damages and attorneys' fees.



National All-Jersey Inc. director John Kokoski and his wife, Elaine, left, operate Mapleline Farm with their family, which includes, left to right, daughter Jennifer, son and daughter-in-law, Paul and Leann, daughter and son-in-law, Jessica and Chad, and their families. The couple's grandchildren, Jack, Sophia, Molly, Kaci, Cathryn, Shawn, Kirnen, Austin and Henry, are also becoming involved with the family bottling and dairying business. See our article about Mapleline Farm on pages 6 & 7.

Photo credit: Jersey Journal

and add additional defendants (all cooperatives belong to DairyAmerica, except the Vermont-based St. Albans Co-op).

Judge Ishii's January 19, 2016 decision agreed to add only California Dairies, Inc. back to the list of defendants. And the judge left the door wide open for plaintiffs' attorneys to pursue claims under RICO statutes.

What's RICO? That body of federal laws was instituted in the 1970s to provide liberal compensation for victims – and stiff penalties against perpetrators – of mafia-like extortion. RICO is the acronym for "Racketeer-Influenced and Corrupt Organizations." Successful claimants' documented damages under RICO laws are tripled, with lawyers' fees added for good measure. Get the picture???

This class action lawsuit was originally filed in March 2009 by attorneys representing dairy farmers whose milk was marketed through federal milk orders during a period through March 2007. Claims against defendants focus on

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McDonald's Smacked with Lawsuit Alleging "Adulterated" Mozzarella Sticks

by Pete Hardin

"Mozzarella"?

On Friday, January 29, 2016, lawyers filed a Class Action complaint against McDonald's Corporation. At issue: Allegations that McDonald's "Mozzarella Sticks" are adulterated and misbranded consumer products, due to presence of starch in the so-called "Mozzarella" portion of the breaded product.

The case was filed in the United States District Court's Central District of California—Eastern Division. Chris Howe is the named plaintiff, Howe resides in Riverside County, California. Claims of damages are unspecified at this time.

The filing is summarized on page 1 of the Complaint, which states:

"COMPLAINT FOR VIOLATIONS OF CALIFORNIA'S UNFAIR COMPETITION LAW, FALSE ADVERTISING LAW AND CONSUMERS LEGAL REMEDIES ACT; BREACH OF EXPRESS WARRANTY AND UNJUST ENRICHMENT.

The lawsuit, filed on behalf of plaintiff Chris Howe and unnamed others, seeks national Class Action status for the matter.

McDonald's widely promotes and advertises the cheese portion of "Mozzarella Sticks" as containing Mozzarella, including: "made with real mozzarella," "Mozzarella sticks," "100% Mozzarella," "Baked Mozzarella Sticks," etc., etc.

Perhaps unfortunately for McDonald's, the word "Mozzarella" refers to a specific cheese product for which the federal Food and Drug Administration has designated a standard of identity. For cheese products with FDA-defined standards of identity, no deviation from FDA's specific list of approved ingredients is allowed. The presence of starch or any other adulterants in products labeled as "Mozzarella" would be a clear violation of FDA rules. The complaint filed against McDonald's notes:

"... by adding starch to its Sticks, McDonald's fraudulently, misleadingly, and deceptively adulter-

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