

Southeast Milk Litigation: FAQ's – Dean Foods/SMA Payments and DFA Claims Process February 21, 2013 © Julie Walker, AgriVoice Enterprises

The Southeast Milk Litigation, a Class Action lawsuit alleging price-fixing and antitrust among several defendants, has resulted in two Settlement Agreements, with two different Claims Recovery processes, on two different schedules.

The settlements are commonly known as: 1). The Dean Foods/Southern Marketing Agency Agreement, and 2.) The DFA Settlement. [This settlement actually involved several entities related to DFA, including Mid-Am Capital, LLC; Dairy Marketing Services, LLC (DMS); National Dairy Holdings, LP (NDH); and Gary Hanman, a former CEO of DFA.]

The overlapping of differing phases of the two settlements is confusing to some producers, and has resulted in many questions. To answer those questions, this Fact Sheet of Frequently Asked Questions (FAQs) has been developed. This answer sheet has been organized by each differing settlement, the first from Dean Foods/SMA, and the second Settlement from DFA. This is prepared from common questions coming from producers, but is not a product of the Court.

The **Dean Foods/SMA Settlement** received the Court's Final Approval in June of 2012. After a lengthy and meticulous claims process, producers began receiving their first checks on January 22, 2013. Some may still be waiting on checks.

The **DFA & Related Entities Settlement**, announced on January 22, 2013 is in the "Preliminary Approval" stage, now in the Claims filing process, with a Claims filing Deadline of March 20, 2013. Producers have begun receiving Claims Forms in the mail – these are separate and a bit different from the Dean Foods/SMA Claims Forms that were submitted last year. A Fairness Hearing will take place on April 3, 2013 in Greeneville, TN at which farmers may speak and relay their thoughts on the Settlement Agreement, and if they are acceptable or not. Notice to speak must be filed by Mar. 20.

To be clear: ALL producers, not just past or present DFA members, are eligible and should apply for the newly announced DFA & Related Entities Settlement!

All payment schedules, payment amounts, and related processes are dictated by Federal Court Rules and/or monitored by the Court. There are federal rules which govern all Class Action litigation and payments. The Court and the Attorneys must abide by those rules.

This sometimes makes for a lengthy and burdensome process, but is designed to be thorough and fair. Compared to Class Actions similar in complexity and scope, especially the 'Big Tobacco' settlements, the SE Milk Litigation is typical in its time to get resolved.

All Claims Forms, Class Notices and significant Court Documents are available online, particularly important if you did not receive one in the mail:

General Website: www.southeastdairyclass.com

2-page Claims Forms (to be printed, filled out, and mailed – no online submission)
<http://www.southeastdairyclass.com/PDFs/ClaimForm.pdf>

Contact Information for OFFICIAL, COURT-APPROVED Attorneys and Claims Administrator:

Attorney (Independent Farmer Subclass):

Baker-Hostetler: Robert Abrams, Greg Commins, Danyll Foix; 202-861-1500

Attorney (DFA Member Subclass): Brewer & Terry; 423-587-2730

Claims Administrator: PH- 1-800-874-2297 EMAIL: info@southeastdairyclass.com

Additional FAQs & Answers : <http://www.southeastdairyclass.com/PDFs/FaqsUpdated.pdf>

DEAN FOODS/SMA Settlement CHECKS – present and future

Length of time to get checks - Why did it take so long from the Settlement Announcement?

- It took 11 months and 8 days from the Court's Approval of the Preliminary Dean Foods/SMA \$145 Million Settlement Agreements, and six months from the entry of the Final Approval, for producers to receive checks.
- The complete process was directed by a mandated Federal Court procedure, which dictated a vigorous examination and audit of the claims due to the large amounts of dollars received by a single recipient. The nature of these claims involving movement of milk and comparisons of sources information from producer, handler, and FMMO personnel were complex and detailed. Some of these audits were still occurring as late as mid-December, 2012.
- The Order for Approval of the Preliminary Dean Foods/SMA Settlement was entered on February 14, 2012, the Final Approval was entered June 15th 2012.
- A complete timeline of events will be available in the near future.

When did most checks arrive?

- Many producers began received their Dean Foods/SMA Settlement checks on Tuesday, January 22, 2013. According to producer feedback, most have received them; some have not.

What if I haven't yet received a check that I expected?

At this writing (Thursday, Feb. 20th), producers who believe they are certified Class members may still have not yet received their checks. Why? There could be a variety of reasons:

- **Use of a 'Recovery Group' as an Agent:**
 - If a claimant signed a contract with one of the 'recovery groups' that contacted potential recipients last spring, that could be a key reason for a delay. In such cases, the funds/ checks may have gone to the Recovery Group, because the producer enabled such groups to act as 'agents' on their behalf.
 - Additionally, a recipient could expect such groups to not mail the money to the farmer for about a month. This would give the agent time for them to deposit checks, allow checks to clear, calculate their 15-35% commissions which they will deduct before reissuing checks to claimants.
 - Such claimants shouldn't call Rust Consulting, they shouldn't call the class attorneys, they should call or email their 'agent,' since the claimant signed over certain rights to the Recovery Service. Such groups included, but were not limited to Financial Recovery Services, the Lex Group, Johnson Recovery
- **Mail delays/errors:** Delayed mail delivery by the US Postal Service, or even an honest mistake going to someone else's mail box. Rust Consulting cannot be responsible for the timely work of the Postal Service.

What can I do if I haven't gotten a check that I expected, and I mailed claims forms via a documented delivery means (i.e. certified mail USPS Priority w/signature, or FedEx or UPS)?

- Best answer – Written email requests to Rust Consulting at info@southeastdairyclass.com - OR - a written email to your designated recovery agent, including the identifying numbers on the mail/shipping certification slips. If you can, scan and make copies of such certification slips, and attach those to the emails. Make the tracing as easy as possible by including all pertinent information, particularly tracking numbers and who signed receipts and what dates.
- If not email, send a written request via certified or signature required mail.
- Phone calls to your Authorized agent or Rust Consulting, whichever you used. Expect delays, or extended time on 'Hold'.

What if I kept no record of how I mailed a claim, but I did submit one?

- Not certain, but here's one suggestion. Email Rust Consulting with your concern, giving them some of your contact information. They perhaps can crosscheck their database with the appropriate tax numbers you should have provided them. (You may not want to put such numbers in an email.) If they haven't processed your claim, and you kept no documentation, then you may or may not be able to claim any pounds for the future – or see the last question below, you may reapply).
- There may be absolutely nothing you can do – but contact the Class attorneys & Rust Consulting.
- Access the "Motion to Distribute Dean Funds" motion on Southeast Dairy Class website. If you kept a record of the pounds you submitted ('claimed'), go to the section EXHIBIT E-1, Page 122 on the pdf pg. counter [This is a 376 page document, and this section alone is over 200 pages]. Find the pounds column, in numeric order, and look for your total pounds. This will be a strong clue that the pounds have been calculated and processed, but not a guarantee.

Link to Motion: <http://www.southeastdairyclass.com/PDFs/MotionToApproveAndDistributeTheSettlementFunds.pdf>

What if a person didn't apply for the Dean/SMA Settlement last year? Can they still submit a claim?

- Strangely enough, yes. BUT – a claim must be submitted on DEAN FOODS/SMA claim forms (contact me).
- This applies only to those who didn't apply – those who opted out will not receive any Dean/SMA payments.
- **What are the odds of having a claim accepted?** Not known. Maybe they will be approved, maybe not.
- **How much could a claimant this late expect to recover?** Not for certain. 40% of the funds have already been distributed, and 98% of potential claimants got their applications in by appropriate dates. It makes common sense that a claimant would only be eligible for the remaining four payments, and only if approved.
- **OPT-OUTS**, those who officially submitted a form to not file, cannot opt back in to the Dean Settlement monies.
- **What should a person do – file, or not file?** Not known, up to the individual. But, 'nothing ventured, nothing gained,' as the saying goes.

What can a claimant expect from future Dean/SMA payments? (*this should be considered as projected and estimated information only*)

TO ESTIMATE PAYMENTS: Current & Future Payment Schedule of Dean Foods/SMA Settlement:

Pymnt Dates	Payment #	Gross Stlmnt	Net Stlmnt left for Distribution
Jan. 2013	1 of 5	\$65 Million*	\$35,458,613.64 (Just Completed)
June/July 2013***	2 of 5	\$20 Million	\$12-13.5 Million (Estimate)***
June/July 2014	3 of 5	\$20 Million	\$12-13.5 Million (Estimate)***
June/July 2015	4 of 5	\$20 Million	\$12-13.5 Million (Estimate)***
June/July 2016	5 of 5	\$20 Million	\$12-13.5 Million (Estimate)***
TOTAL:		\$145 Million –	\$140 Million Dean/\$5 Million SMA Settlement Funds

*\$65 Million = \$60 Million Dean Foods Settlement + \$5 Million from Southern Marketing Agency (SMA)

**June is the anniversary date of Court's Final Approval of Dean/SMA Settlement Agreement – expect checks June/July

***Attorneys have asked to be on same payment schedule as farmer class members: \$6.6 million expected deduction for their fees per each payment plus any future related administration or other costs may be taken out before distribution – those costs unknown. 33.3% is standard attorney compensation for class action suits – but final amount to be approved by the court. These figures should be considered only in the projected and 'estimated' sense.

"Quick Figure" for a producer to estimate the amount of future Dean/SMA payments: Take the amount of the check you just received, and the **remaining payments will likely be an estimated 33-38%** of that amount, depending on as yet unknown expenses taken out of each remaining gross settlement payment. This percentage may vary if a claimant contracted with one of the recovery services.

DFA & RELATED ENTITIES – New and Different Settlement – Claims now in Progress

When will I receive my DFA Settlement claims forms, or how can I get one in case I didn't get one in the mail?

- Producers may have already received these forms by mail beginning last week; they were mailed by Rust Consulting beginning Thursday, January 31st.
- OR - they are now available online at the link below. These forms can be printed, and filled out, and submitted by mail; but are not set-up for electronic filing:
<http://www.southeastdairyclass.com/PDFs/ClaimForm.pdf>

NOTE: RUST CONSULTING is the ONLY Court-Approved Claims Administrator; they are working under the supervision of the Court, and theirs is the only paperwork that will allow a plaintiff/claimant to keep the full amount of their proportioned share money authorized by the Court.

- **Other Firms – not authorized by the Court - are sending letters saying “Let Me Help”:** As happened with the Dean/SMA Settlement last spring, there are several firms sending letters to producers indicating they can help file paperwork. These letters appear to be convincing, and they are legal, but there is a key element missing in these documents – they don't say they are “Approved by the Court” to act on a producer's behalf. The main thing accomplished by these firms is that if a producer signs a contract with them, then those firms are going to get anywhere from 15-33% of what would be rightfully be a producer's money if a producer files with Rust Consulting. Say a claimant was eligible to receive \$6,000; then one of these companies is going to get \$2,000 for just writing a letter, while the producer has to supply the same pounds that he/she would have to supply to Rust, who is the official Claims Administrator. **THINK CAREFULLY** – Fill out the Claims Form you may have received in the mail from RUST CONSULTING, and which can also be found on the official Litigation website:
<http://www.southeastdairyclass.com/PDFs/ClaimForm.pdf>

Are the pounds to be claimed for the new DFA Settlement different - or the same - as the pounds I claimed for the Dean/SMA Settlement?

Claimants have two options:

- **Use only the same pounds claimed for the Dean/SMA Settlement;** read the DFA Claims Form carefully to file properly. Advantages: This method will save time. Additionally, all the pounds claimed will likely be allowed without audits, since the first Dean/SMA checks have already been issued, signifying your final claim was accepted. *This option particularly applies to producers out of business before May 1st of 2012.*
- **Producers still in business may want to use the pounds for the entire class period,** from January 1st, 2001 to 'present.' Best means would be to use the pounds submitted last spring, and add appropriate pounds from milk check statements. [up 'to present' means up until claims deadline of March 20, 2013.] Probably best not to stretch claims too far past March 1st milk statements. - OR – Some milk handlers may have already supplied updated pounds to producers [Piedmont has through the end of 2012].
 - a. **Which is best for current producers?** Not really known, will depend on producer's situation. Since first checks were based on a 'percentage' of the net settlement fund, those percentages are not going to change that much, since all producers will have additional pounds. The shift may be that the total of current producers receive more of a percentage increase than out-of-business producers. The key question is 'will the dollars be worth the extra time?', and that is a question only a producer can answer for him or herself. Most are adding all the pounds they can.
 - b. **Will all pounds found on my milk check statements since the Dean Claims period ended be allowed?** Not known, due to nature of pooling and diverting milk – some of the pounds produced since last spring may not have been sold/marketed to plants outside of FMMO 5 or 7. Audits and cross-checks may be performed by the Claims Administrator. Ask your milk handler for this information, if they haven't already supplied it. Piedmont has supplied production info to their producers through the end of 2012.

How can I determine how many pounds I need to add to meet the 'until present' notation for pounds to claim by the March 20, 2013 deadline?

- A producer may refer to any copies they may have kept from last year's Dean/SMA Settlement filing to determine their cut-off date, and add any milk pounds produced since that time.
- If copies of that information were not kept, then they may find the pounds they submitted at this link: <http://www.southeastdairyclass.com/PDFs/MotionToApproveAndDistributeTheSettlementFunds.pdf>
 - Once at this link, here are some suggestions for finding 'your' claim: Scroll to page 96, Section E-1. This is what you will find:
 - Claimant numbers, assigned by Rust, are in the left hand column, but not in numeric order. If you have your claim number, you can run through several pages of these numbers. –OR–
 - The total pounds claimed are in descending numeric order in the center column. You may find your pounds by scrolling down.
- Once you have determined the 'cut-off' date you used from last spring, gather your 2012-13 milk check pay statements, and add them up. Add them to the total.

SUGGESTION: Make copies of the payment stubs which include pounds information and attach them to your Claims Form to make documentation easier for the Claims Administrator.

If a producer didn't participate in the Dean/SMA settlement, can they participate in the DFA Settlement? YES – Opt-Back-In, or just apply:

- **If a producer Opted-Out** of the Dean Settlement, they can Opt-Back In to the DFA settlement, by sending a written request, along with a completed Claims Form. Those with Opt-out forms on file with Rust MUST fill out an Opt-Back-In form to be eligible. Find instructions at this link: <http://www.southeastdairyclass.com/PDFs/OptBack.pdf>
- If a producer simply didn't fill out and submit paperwork, then all they need to do is submit appropriate paperwork for the DFA Claims. It is recommended they contact their last known milk handler to ask for qualifying pounds, or a producer may already have this information if they kept it as provided last spring.

Is the DFA Settlement final, and are the monies and settlement terms guaranteed?

- **NO** – Not at this moment. Although it is profoundly significant and meaningful, and at this point likely, the \$140 Million + \$18.6 Million, along with the injunctive changes offered by the DFA Defendants, are a PRELIMINARY agreement at this point. The claims process must be completed, as well as the Fairness Hearing held and any statements considered, before the Agreement receives FINAL APPROVAL from the court. There is also the possibility for an appeal, which can occur at any level of legal processes.

What and when is the payment schedule for the DFA Settlement Funds?

- At this writing, DFA funds are expected to be distributed in one lump sum payment. That payment will be authorized by the Court after the Settlement Agreement receives the Court's 'Final Approval' (perhaps as early as late spring), and after the Claims Administrator completes the audits and verifications for claims (this may take a few months).
- While subject to change due to the Fairness hearing and any other additional court filings, that payment **may** come sometime this summer. The process is not expected to take as long as the Dean/SMA Settlement.

REMEMBER:

- **Mail any Claims or Opt-Back-In forms via some method of SIGNATURE-VERIFIED MAIL.** (US Postal Service Certified Mail, US Postal Service Signature Priority are suggested.)
- **MAKE and KEEP COPIES of all of the information in your Entire Claims Submission envelope:** WHY? Should there be any difficulties or questions about your claim, the more information available for tracking purposes will make it easier for any resolution to occur. Copies will document your claims.