



## Farm-to-Consumer Legal Defense Fund Case Updates

by D. Gary Cox, Esq. - May 24, 2010

Eight of the cases currently handled by the Farm-to-Consumer Legal Defense (FTCLDF) are reviewed by General Counsel for the Fund, Gary Cox, starting with the lawsuit against FDA.

### **Lawsuit against FDA Interstate Raw Milk Ban**

The Farm-to-Consumer Legal Defense Fund has filed suit against the U.S. Food and Drug Administration (FDA) and its parent agency, Health and Human Services (HHS), claiming that FDA's regulation banning the interstate transport of raw milk and raw dairy products for direct human consumption constitutes several violations of the United States Constitution and federal law. FDA has responded by filing a motion to dismiss, arguing, among other things, that there is no fundamental right to travel across state lines with raw milk in one's possession, and that there is no fundamental right to consume the food of one's choice or to give one's family members the food of one's choice. The Fund is in the process of responding to FDA's motion. Once the matter is fully briefed to the court, a decision will be issued on whether the Fund's case should or should not be dismissed. The Fund anticipates its case will not be dismissed and that the next phase of the case will go forward.

***For more details on the case, go to <http://www.farmtoconsumer.org/litigation-FDA.htm>***

### **Missouri Civil Action against Bechard Family Farm**

FTCLDF is defending Missouri dairy farmers, Armand and Teddi Bechard of Bechard Family Farm, in a civil action brought by the State of Missouri. Two undercover agents from the Springfield-Greene County Health Department have alleged they bought raw milk from the Bechards' daughters at a central distribution point. The State has filed for a permanent injunction to prevent the Bechards from delivering at a central distribution point the raw milk they have sold their customers. The State is arguing that deliveries to customers must be made directly to the customers' residences. The Fund moved to dismiss the State's case but that motion was denied. In answering the State's civil complaint, the Fund brought a counter claim against the State, arguing that it is not against the law to sell raw dairy products at the farm and then deliver those products to the owners at a centralized distribution point. The State has answered the counter claim and the parties are waiting on the court to issue a scheduling order that will decide how the case will proceed.

The county district attorney's office has also brought a criminal action against Armand Bechard for allegedly selling milk at a location off the farm premises. Mr. Bechard has local counsel representing him in the criminal proceeding.

### **Iowa Shareholder Lawsuit**

FTCLDF has brought a suit against the State of Iowa Department of Agriculture and Land Stewardship (IDALS) on behalf of two Fund consumer members, Charles Freitag and Mindy Slippery who are shareholders in Iowa. The suit claims that it is legal to own a cow, that it is legal to drink the milk from one's own cow, that it is legal to board one's cow at the farm of a dairy farmer, and that it is legal to enter into a contract with a dairy farmer to have the farmer tend to, manage and take care of the cow on behalf of the owner. The State of Iowa has answered the complaint and has denied that any of these rights exist. The parties are waiting on the court to issue a scheduling order that will decide how the case will proceed.

### **Herdshare Lawsuit against Wisconsin DATCP**

FTCLDF has brought suit against the State of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) on behalf of Fund members, dairy farmers Mark and Petra Zinniker, as well as individuals who are members of an LLC (Nourished by Nature) that owns cows boarded at the Zinnikers' farm. The suit claims that herdshares are legal in Wisconsin and that an LLC and its members are entitled to board the LLC's cows at the farm of an experienced dairy farmer. The State of Wisconsin has



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answered the complaint, denied all the allegations, and has asked the court to move the case to another county where a similar case brought by the Fund is pending (see the Grassway Organics case below). The Fund will soon be filing an opposition to the motion to change venue to the other county.

### **Meadowsweet Dairy LLC et al. v. Patrick Hooker, et al.**

FTCLDF has been representing two New York dairy farmers (Stephen and Barbara Smith) and Meadowsweet Dairy LLC for almost three years. In 2007, the LLC and its members filed a lawsuit seeking a court order that the distribution of raw milk and raw milk products to its members is legal and beyond the jurisdiction of the New York Department of Agriculture and Markets (NYDAM). Currently, the matter is before the Appellate Division and the highest court in New York, the Court of Appeals. The Fund has filed a motion with the Appellate Division for permission to appeal its recent adverse ruling to the Court of Appeals and NYDAM has opposed that motion. The Fund has also filed a notice of 'appeal as a matter of right' with the Court of Appeals, the department has opposed that notice as well, and the Court of Appeals is in the process of determining whether it has jurisdiction to hear the 'appeal as a matter of right'. If the 'appeal as a matter of right' does not go forward, the Appellate Division may allow the appeal to go forward with permission. The parties are waiting on the two courts to issue rulings. **For more details on the case, go to <http://www.ftcldf.org/litigation-FDA.htm>**

### **FDA Allegations against Pennsylvania Dairy Farmer**

FTCLDF is responding to a warning letter issued by FDA to Pennsylvania dairy farmer Dan Allgyer of Rainbow Acres. FDA is claiming that the dairy farmer has caused raw milk to be delivered in interstate commerce yet is refusing to disclose the facts upon which it is basing its allegation. The Fund has sent two letters to FDA asking for their evidence. The Fund will continue to counsel the dairy farmer as the situation develops.

**To read about the farm raid, go to <http://www.farmtoconsumer.org/aa/aa-26april2010.htm>**

### **Misdemeanor Charges in Ventura County, California against Dairy Goat Farmer**

FTCLDF is counseling Sharon Palmer, a California member who has been charged with a misdemeanor by the Ventura County District Attorney's Office for allegedly selling raw goat cheese when it was labeled as pasteurized goat cheese. The Fund has written letters on behalf of Palmer and has engaged in a dialogue with the District Attorney's Office. Palmer may obtain local counsel with whom the Fund will consult and advise as appropriate.

### **Grassway Organics Lawsuit against Wisconsin DATCP**

FTCLDF has filed suit against the State of Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) on behalf of Grassway Organics Farm Store LLC, operated by Fund farmer members Kay and Wayne Craig of Grassway Farm who along with members of Grassway Organics Association are investors in the LLC. The suit claims that under Wisconsin law, the sale of raw milk to LLC members is legal when the LLC holds the Grade A permit and owns the cows. DATCP has denied these claims and has moved for judgment on the pleadings. The Fund is in the process of drafting a response to DATCP's motion. Once the matter is submitted to the court, the parties will await the court's ruling. DATCP is seeking to move another Fund case to this court, arguing the issues are the same (see Wisconsin herdshare case above). The issues are not the same and the Fund will be opposing DATCP's attempt to have this one court hear both cases.

**For more details on the case <http://www.farmtoconsumer.org/news/news-18Dec2009.htm>**