

White Eagle is a cooperative marketing association incorporated under the laws of the State of Indiana. To perform the marketing functions of the cooperative, White Eagle engaged Defendants T.C. Jacoby & Co. (Jacoby) and its subsidiary company, Dairy Support, Inc. (DSI) to handle the day-to-day operations of the cooperative. Jacoby and DSI held full responsibility for the marketing of milk for members of White Eagle, including DeVries. Jacoby and DSI determined who would purchase milk produced by White Eagle member farms, the terms of such sales, and set the prices that White Eagle members would receive for their milk.

DeVries has pleaded a cause of action under the Restatement (Second) of Torts § 876 for tortious acts in concert. The Plaintiff's Amended Complaint alleges that Jacoby and DSI "effectively controlled all aspects of the operation of White Eagle, including control over the milk produced by DeVries and the proceeds due to DeVries after the marketing of its milk" and "provided substantial encouragement and assistance to White Eagle in carrying out the day-to-day operations, including payment of the proceeds due to members of White Eagle, such as DeVries Dairy." Amended Complaint, Docket 49 at 16, ¶¶ 112-113. Plaintiff further alleges that "both Jacoby and DSI owed a fiduciary duty to DeVries as a member of White Eagle," and that White Eagle "was aware of all of the actions taken by Jacoby through DSI and others in, among other things, failing to pay to DeVries Dairy the amount due under the terms of the marketing agreement and bylaws and, at the same time ensuring that other members received more premiums even though they were in the same or substantially the same position as DeVries." Amended Complaint, Docket 49 at 16, ¶¶ 114-115. DeVries alleges that the Defendants are all subject to liability for the commission of tortious acts in concert under the Restatement of Torts (2d) §876. *Id.* at 17. Jacoby and DSI have filed a motion to dismiss DeVries' claims asserted on this basis arguing that, at least in these circumstances, such a cause

of action is not recognized under Ohio law. Based on its review of the law cited to it by the parties in briefing the defendants' motion to dismiss, this Court is unable to determine whether the Supreme Court of Ohio has, or would likely, recognize a cause of action for tortious acts in concert.

QUESTION OF LAW TO BE ADDRESSED

Given these facts and the lack of controlling precedent from the Supreme Court of Ohio on legal issues important to the proper determination of the case presently before it, this Court certifies the following question to the Supreme Court of Ohio:

1. Under the applicable circumstances, does Ohio recognize a cause of action for tortious acts in concert under the Restatement (2d) of Torts, § 876?

NAMES OF THE PARTIES AND COUNSEL

The Plaintiff is DeVries Dairy, LLC. Counsel for Plaintiff are as follows:

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David W. Wicklund, Esq., John N. MacKay, Esq.
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The Defendants are White Eagle Cooperative Association, Inc., T.C. Jacoby & Co., Inc., and Dairy Support, Inc. Counsel are as follows:

For Defendant White Eagle Cooperative Association, Inc.

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John M. Carey, Esq., Jared J. Lefevre, Esq.
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For Defendants T.C. Jacoby & Co., Inc. and Dairy Support, Inc.

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DESIGNATION OF THE MOVING PARTY

Although both sides of this dispute have indicated that this question is appropriate for certification, the Rules of Practice of the Supreme Court of Ohio clearly require designation of one of the parties as the moving party. Ohio S. Ct. Prac. R. 18.2(E). Because DeVries Dairy, LLC is the party asserting a claim under §876, for purposes of this Certification Order, the Plaintiff is hereby designated as the moving party.

In accordance with Rule 18 of the Rules of Practice of the Supreme Court of Ohio, the Clerk of the United States District Court for the Northern District of Ohio, Western Division, is hereby directed to serve copies of this certification order upon counsel for the parties and to file this certification order, under the seal of this Court, with the Supreme Court of Ohio, along with appropriate proof of service.

IT IS SO ORDERED.

s/ James G. Carr

JAMES G. CARR
SENIOR UNITED STATES DISTRICT JUDGE

11/21/2011

Date

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

CERTIFICATE OF SERVICE

3:09cv207

In re: DeVries Dairy, LLC. v. White Eagle Cooperative Association, et al.

This is to certify that copies of the foregoing Supplemental Order Certifying Question of State Law to the Supreme Court of Ohio was filed electronically on the 21st day of November, 2011, to all counsel of record listed below:

Ryan Miltner, David W. Wicklund, John N. MacKay, John H. Vetne,
John M. Carey, Jared Lefevre, Philip C. Graham, Kimberly Means Steuterman,
Richard Kerger

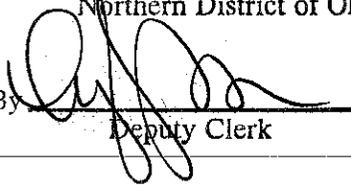
Geri M. Smith, Clerk of Court
Northern District of Ohio

S/ Amy L. Schroeder
Courtroom Deputy Clerk

Toledo, Ohio

I hereby certify that this
instrument is a true and
correct copy of the original
on file in my office.

Attest: Geri M. Smith, Clerk
U.S. District Court
Northern District of Ohio

By 
Deputy Clerk

Cat04,Knepp,Referred

**U.S. District Court
Northern District of Ohio (Toledo)
CIVIL DOCKET FOR CASE #: 3:09-cv-00207-JGC
Internal Use Only**

DeVries Dairy, LLC v. White Eagle Cooperative
Association
Assigned to: Judge James G. Carr
Referred to: Magistrate Judge James R. Knepp, II
(Settlement)
Demand: \$625,000
Cause: 28:1332 Diversity-Breach of Contract

Date Filed: 01/29/2009
Jury Demand: Both
Nature of Suit: 190 Contract: Other
Jurisdiction: Diversity

Plaintiff**DeVries Dairy, LLC**

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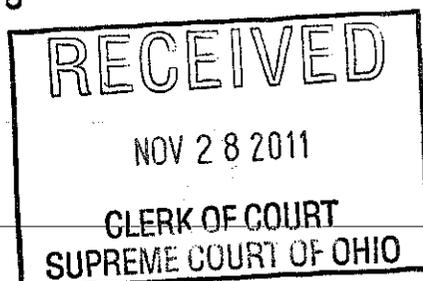
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I hereby certify that this
instrument is a true and
correct copy of the original
on file in my office.
Attest: Geri M. Smith, Clerk
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Northern District of Ohio

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Deputy Clerk



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V.

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Defendant**Dairy Support, Inc.**

represented by **Kimberly Means Steuterman**
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ATTORNEY TO BE NOTICED

Philip C. Graham

(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Richard M. Kerger

(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
01/29/2009	<u>1</u>	Complaint against White Eagle Cooperative Association. Filing fee \$ 350, receipt number 06470000000003396875, filed by DeVries Dairy, LLC. (Attachments: # <u>1</u> Civil Cover Sheet) (Miltner, Ryan) Modified on 1/29/2009 (M,L). (Entered: 01/29/2009)
01/29/2009		Judge James G. Carr assigned to case. (M,L) (Entered: 01/29/2009)
01/29/2009		Notice by Clerk that DeVries Dairy, LLC failed to file a corporate disclosure statement as required by Local Rule 3.13(b). (M,L) (Entered: 01/29/2009)
01/29/2009	<u>2</u>	Service by Waivers. Magistrate Consent Form issued to Counsel. (M,L) (Entered: 01/29/2009)

01/30/2009	<u>3</u>	Corporate Disclosure Statement by DeVries Dairy, LLC filed by DeVries Dairy, LLC. (Miltner, Ryan) (Entered: 01/30/2009)
03/13/2009	<u>4</u>	Waiver of Service Returned Executed by DeVries Dairy, LLC. White Eagle Cooperative Association waiver sent on 1/30/2009, answer due 3/31/2009. filed on behalf of DeVries Dairy, LLC (Miltner, Ryan) (Entered: 03/13/2009)
05/29/2009	<u>5</u>	Attorney Appearance by John M. Carey filed by on behalf of White Eagle Cooperative Association. (Carey, John) (Entered: 05/29/2009)
05/29/2009	<u>6</u>	Motion for extension of time until May 29, 2009 to answer <i>the Complaint</i> filed by Defendant White Eagle Cooperative Association. (Attachments: # <u>1</u> Proposed Order)(Carey, John) (Entered: 05/29/2009)
05/29/2009	<u>7</u>	Corporate Disclosure Statement by White Eagle Cooperative Association filed by White Eagle Cooperative Association. (Carey, John) (Entered: 05/29/2009)
05/29/2009	<u>8</u>	Answer Defendant's Answer, Affirmative Defenses and Counterclaims filed by White Eagle Cooperative Association. (Carey, John) (Entered: 05/29/2009)
06/05/2009	<u>9</u>	Order granting <u>6</u> Motion for Extension of Time to Answer: White Eagle Cooperative Association answer due 05/29/2009.. Judge James G. Carr on 6/5/2009.(S,AL) (Entered: 06/05/2009)
06/18/2009	<u>10</u>	Case Management Conference Scheduling Notice: case management conference to be held on 7/6/2009 at 04:30 PM at Chambers 210 before Judge James G. Carr. Recommended track: standard. (S,AL) (Entered: 06/18/2009)
06/20/2009	<u>11</u>	Reply to <i>Counterclaims</i> filed by DeVries Dairy, LLC. Related document (s) <u>8</u> . (Miltner, Ryan) (Entered: 06/20/2009)
07/01/2009	<u>12</u>	Joint Report of Parties' Planning Meeting. Parties do not consent to this case being assigned to the magistrate judge, filed by DeVries Dairy, LLC. Related document(s) <u>10</u> .(Miltner, Ryan) (Entered: 07/01/2009)
07/06/2009	<u>13</u>	Motion for attorney John H. Vetne to Appear Pro Hac Vice with Proposed Order. Filing fee paid of \$100.00, receipt number 0647000000003632677, filed by Defendant White Eagle Cooperative Association. (Carey, John) Modified on 7/8/2009 (B,TM). (Entered: 07/06/2009)
07/09/2009	<u>14</u>	Order: Case management conference was held 7/6/2009 before Judge James G. Carr. The track designation is standard. Leave granted to John H. Vetne, Esq. (for defendant) and Alfred W. Ricciardi, Esq. (for plaintiff) to appear pro hac vice or to file application for admission to practice in this District by 8/3/2009. Amended pleadings to be filed or additional parties joined by 12/1/2009. Rule 26 disclosures to be exchanged by 8/17/2009. Further scheduling held in abeyance pending telephonic status/scheduling conference to be held 12/14/2009, at 4:30 p.m. EST. Parties to submit agenda and proposed schedule, if mutually desired, by

		12/10/2009. Signed by Judge James G. Carr on 7/9/2009. Parties are referred to full order for further details. Attorney Alfred W. Ricciardi for DeVries Dairy, LLC, John H. Vetne for White Eagle Cooperative Association added. Motion terminated: 13 Motion for attorney John H. Vetne to Appear Pro Hac Vice. (Time: 20 min.) (S,JM) (Entered: 07/09/2009)
07/31/2009	<u>15</u>	Motion for attorney Alfred W. Ricciardi to Appear Pro Hac Vice. Filing fee \$ 100, receipt number 0647000000003671776, filed by Plaintiff DeVries Dairy, LLC. (Miltner, Ryan) (Entered: 07/31/2009)
08/03/2009	<u>16</u>	Marginal Entry Order granting <u>15</u> Motion for attorney Alfred W. Ricciardi to appear pro hac vice for plaintiff DeVries Dairy, LLC. Signed by Judge James G. Carr on 8/3/2009.(S,JM) (Entered: 08/03/2009)
10/27/2009	<u>17</u>	Proposed Stipulation <i>for Protective Order</i> filed by DeVries Dairy, LLC, White Eagle Cooperative Association. (Attachments: # <u>1</u> Appendix Acknowledgement and Agreement To Be Bound)(Miltner, Ryan) (Entered: 10/27/2009)
10/29/2009	<u>18</u>	Stipulated Protective Order: Signed by Judge James G. Carr on 10/29/2009. (See order for full details.) (Related Doc # 202). (S,JM) (Entered: 10/29/2009)
11/30/2009		Notice [Non Document]: The Telephone Status Conference set for 12/14/2009 is vacated and rescheduled for 12/18/2009 at 08:30 AM in to be held telephonically before Judge James G. Carr. Parties to submit agenda's by not later than 12/14/2009. (S,AL) (Entered: 11/30/2009)
12/14/2009	<u>19</u>	Joint Status Report filed by All Parties. (Miltner, Ryan) (Entered: 12/14/2009)
12/21/2009	<u>20</u>	Order: Telephone status/scheduling conference was held before Judge James G. Carr on 12/18/2009. Amended pleadings to be filed or additional parties joined by 4/1/2010. Discovery re. dispositive motions to be completed by 4/30/2010. Dispositive Motions due by 6/1/2010; Opposition and counter-motion, if any, is due 6/30/2010; Reply and opposition to counter- motion, if any, is due 7/2/2010; Reply to counter-motion, if any, is due 8/2/2010. Final discovery cutoff is 10/15/2010. Initial Settlement Conference to be scheduled at request of any party. Mediation or other ADR to be completed in sufficient time to avoid alteration of the deadlines set herein. Final settlement and pretrial conference to be held before United States Magistrate Judge during last week of October or first week of November, 2010, at a date and time convenient for the Magistrate Judge, parties and counsel. Non-jury trial is scheduled 11/30/2010 at 8:30 a.m. in Courtroom 204 before Judge James G. Carr. Signed by Judge James G. Carr on 12/21/2009. Parties are referred to order for full details. Signed by Judge James G. Carr on 12/21/2009. (Time: 20 min.) (S,JM) Modified on 12/21/2009 (S,JM). (Entered: 12/21/2009)
01/15/2010		Notice [non-document] of Final Settlement Conference set for 10/26/2010 at 01:00 PM in Chambers 318, 1716 Spielbusch Avenue, Toledo, Ohio

		before Magistrate Judge Vernelis K. Armstrong. Counsel and principal parties or representatives with full settlement authority shall attend the settlement conference in person. Not later than two weeks prior to the settlement conference, plaintiff shall have made a reasonable demand on the defendant, and not later than one week prior to the conference, defendant shall have given a reasonable response to that demand. Ex parte narrative statements re. settlement are to be e:mailed to Jo_Ann_Lillibridge@ohnd.uscourts.gov NO LATER THAN ONE WEEK PRIOR TO THE SETTLEMENT CONFERENCE. Parties to notify clients. (A,P) (Entered: 01/15/2010)
04/30/2010	<u>21</u>	Consent Motion for extension of Amendment of Pleadings and Addition of Parties until conclusion of key depositions filed by Plaintiff DeVries Dairy, LLC. Related document(s) <u>20</u> . (Attachments: # <u>1</u> Proposed Order) (Miltner, Ryan) (Entered: 04/30/2010)
05/11/2010	<u>22</u>	Order granting <u>21</u> the parties agreed motion to extend time for addition of parties and amendment of pleadings. Leave to amend pleadings and addition of parties be extended two weeks following the conclusion of depositions of key witnesses. Judge James G. Carr on 5/11/2010.(S,AL) (Entered: 05/11/2010)
05/14/2010	<u>23</u>	Stipulated Motion for extension of Multiple Discovery and Motion Deadlines until Various Dates as Set Forth in Motion filed by Plaintiff DeVries Dairy, LLC, Defendant White Eagle Cooperative Association. Related document(s) <u>20</u> . (Attachments: # <u>1</u> Proposed Order)(Miltner, Ryan) (Entered: 05/14/2010)
05/18/2010	<u>24</u>	Marginal Entry Order granting <u>23</u> Joint motion to extend deadlines. Deadline for completion of discovery regarding summary judgment is extended to 5/28/2010. Dispositive motion cutoff is extended to 7/1/2010; opposition/any counter-motion due 7/30/2010; reply/opposition to any counter-motion due 8/20/2010; reply to any counter-motion due 9/3/2010. The 10/26/2010 settlement conference and 11/30/2010 trial date are confirmed. Signed by Judge James G. Carr on 5/18/2010.(S,JM) (Entered: 05/18/2010)
06/29/2010	<u>25</u>	Consent Motion for extension of Dispositive Motion Filing until July 8, 2010, Consent Motion for leave to file <i>overlength memoranda</i> filed by Plaintiff DeVries Dairy, LLC, Defendant White Eagle Cooperative Association. (Attachments: # <u>1</u> Proposed Order)(Miltner, Ryan) (Entered: 06/29/2010)
06/30/2010	<u>26</u>	Order granting <u>25</u> Motion to extend dispositive motion deadlines and for leave to file overlength memoranda. The deadline for the filing of dispositive motions is reset to 7/8/2010; opposition/counter-motion, if any, is due 8/10/2010; reply and opposition to counter- motion, if any, is due 8/31/2010; reply to counter-motion, if any, is due 9/15/2010. The parties are each granted leave to file a consolidated dispositive motion and memoranda with a page limit of 45 pages. All other aspects of the Court's prior scheduling orders remain unchanged. Signed by Judge James G. Carr on 6/30/2010.(S,JM) (Entered: 06/30/2010)

07/08/2010	<u>27</u>	Stipulated Motion for extension of time until July 13, 2010 to to File Dispositive Motions filed by Defendant White Eagle Cooperative Association. (Carey, John) Modified on 7/9/2010 (G,D). (Entered: 07/08/2010)
07/08/2010		(Court only) Utility Event Terminating Motions. <u>27</u> Stipulated Motion for extension of time until July 13, 2010 to to File Dispositive Motions <filed by White Eagle Cooperative Association. Document not a two part motion - termed motion. (G,D) (Entered: 07/09/2010)
07/13/2010	<u>28</u>	Motion for summary judgment filed by Defendant White Eagle Cooperative Association. Related document(s) <u>27</u> . (Attachments: # <u>1</u> Brief in Support)(Carey, John) (Entered: 07/13/2010)
07/13/2010	<u>29</u>	Joint Appendix of Exhibits Referenced in the Parties' Opening Briefs on Motions for Summary Judgment filed by White Eagle Cooperative Association. Related document(s) <u>28</u> . (Carey, John) (Entered: 07/13/2010)
07/13/2010	<u>30</u>	Motion for summary judgment filed by Plaintiff DeVries Dairy, LLC. (Miltner, Ryan) Modified on 7/14/2010 (B,TM). (Entered: 07/13/2010)
07/15/2010	<u>31</u>	Marginal Entry Order granting <u>27</u> the parties joint stipulation for an extension of time until 7/13/10 to file dispositive motions. Judge James G. Carr on 7/15/2010.(S,AL) (Entered: 07/15/2010)
08/05/2010	<u>32</u>	Stipulated Motion for extension of Filing Responses to Dispositive Motions and Cross Motions until August 16, 2010 filed by Plaintiff DeVries Dairy, LLC, Defendant White Eagle Cooperative Association. (Attachments: # <u>1</u> Proposed Order)(Miltner, Ryan) (Entered: 08/05/2010)
08/12/2010	<u>33</u>	Order granting <u>32</u> Motion to Extend Deadlines. The deadline for the filing of Responses to Dispositive Motions and Cross Motions is reset to 8/16/2010. 2. All other aspects of the Court's prior scheduling orders remain unchanged. Signed by Judge James G. Carr on 8/12/2010.(S,JM) (Entered: 08/12/2010)
08/16/2010	<u>34</u>	Opposition to <u>30</u> Motion for summary judgment <i>on Counterclaims</i> filed by White Eagle Cooperative Association. (Carey, John) (Entered: 08/16/2010)
08/16/2010	<u>35</u>	Opposition to <u>28</u> Motion for summary judgment <i>AND Cross-Motion for Partial Summary Judgment on Defendant's Affirmative Defenses and Defendant's Claimed Damages</i> filed by DeVries Dairy, LLC. (Miltner, Ryan) Modified on 8/17/2010 (G,Di). (Entered: 08/16/2010)
08/31/2010	<u>36</u>	Reply to response to <u>30</u> Motion for summary judgment filed by DeVries Dairy, LLC. (Miltner, Ryan) (Entered: 08/31/2010)
08/31/2010	<u>37</u>	Motion to strike <i>Plaintiff's Cross Motion for Summary Judgment # <u>35</u> or for Extension of Time to Respond</i> filed by Defendant White Eagle Cooperative Association. (Attachments: # <u>1</u> Brief in Support)(Lefevre, Jared) Modified on 9/1/2010 (G,D). (Entered: 08/31/2010)

08/31/2010	<u>38</u>	Reply to response to <u>35 Motion</u> for summary judgment filed by White Eagle Cooperative Association. (Vetne, John) (Entered: 08/31/2010)
09/01/2010	<u>39</u>	Reply to response to <u>35 Motion</u> for summary judgment (<i>Doc. #28</i>) on <i>Plaintiff's Claim ("Corrected Version")</i> filed by White Eagle Cooperative Association. (Carey, John) (Entered: 09/01/2010)
09/07/2010	<u>40</u>	Joint Motion to Amend Briefing Schedule and Issues until 9/20/2010 on Cross Motion for Summary Judgment and for withdrawal of Motion to Strike filed by Plaintiff DeVries Dairy, LLC, Defendant White Eagle Cooperative Association. Related document(s) <u>35</u> , <u>37</u> . (Attachments: # <u>1</u> Proposed Order)(Miltner, Ryan) Modified on 9/8/2010 (B,TM). (Entered: 09/07/2010)
09/09/2010	<u>41</u>	Motion for Status Conference and Settlement Conference filed by Plaintiff DeVries Dairy, LLC. (Miltner, Ryan) (Entered: 09/09/2010)
09/17/2010	<u>42</u>	Order: Status conference was held 9/16/2010. Parties to confer re. plaintiff's request for settlement conference or mediation; status report to be filed on or before 10/1/2010. Proceedings re. decisional motions are held in abeyance pending filing of status report. Signed by Judge James G. Carr on 9/17/2010. (Time: 9/17/2010) (S, JM) (Entered: 09/17/2010)
09/20/2010	<u>43</u>	Opposition to <u>35 Motion</u> for summary judgment (<i>cross-motion</i>) filed by White Eagle Cooperative Association. (Vetne, John) (Entered: 09/20/2010)
09/24/2010		(Court only) Utility Event Terminating Motions. <u>41 Motion</u> for Status Conference and Settlement Conference filed by DeVries Dairy, LLC, <u>40 Joint Motion</u> to Amend Briefing Schedule and Issues until 9/20/2010 on Cross Motion for Summary Judgment and withdrawal of Motion to Strike filed by White Eagle Cooperative Association, DeVries Dairy, LLC. (S,AL) (Entered: 09/24/2010)
10/01/2010	<u>44</u>	Notice of Settlement Conference set for 11/5/2010 at 10:00 AM in Chambers 318 before Magistrate Judge James R. Knepp II. Ex parte letter summarizing settlement positions shall submitted by e:mail to Knepp_chambers@ohnd.uscourts.gov 3 days before the conference. (A,P) (Entered: 10/01/2010)
10/01/2010	<u>45</u>	Joint Status Report filed by All Parties. Related document(s) <u>42</u> .(Miltner, Ryan) (Entered: 10/01/2010)
10/05/2010	<u>46</u>	Reply to response to <u>35 Motion</u> for summary judgment on <i>Affirmative Defenses</i> filed by DeVries Dairy, LLC. (Miltner, Ryan) (Entered: 10/05/2010)
10/08/2010		Notice [non-document] vacating Final Settlement Conference set for 10/26/2010 before Magistrate Judge Vernelis K. Armstrong. (A,P) (Entered: 10/08/2010)
11/08/2010		Minutes of Settlement Conference [non-document] held 11/5/10 before Magistrate Judge James R. Knepp, II. Settlement Conference was unsuccessful. Time: 3 hours. (A,P) (Entered: 11/08/2010)

11/12/2010		Notice [Non Document] of Scheduling Conference (to reschedule the trial) set for 11/29/2010 at 09:00 AM in Chambers 210 before Judge James G. Carr. (S,AL) (Entered: 11/12/2010)
11/17/2010		Direct Assignment of Magistrate Judge pursuant to General Order 2010-33 dated 9/13/2010 In the event of a referral, case will be assigned to Magistrate Judge James R. Knepp II. (L,V) (Entered: 11/17/2010)
11/23/2010		Remark: Counsel to call the bridge line at (419) 213-5509, access code 550911 for the conference scheduled on 11/29/2010. (S,AL) (Entered: 11/23/2010)
11/24/2010		Notice [Non Document]: Pretrial Conference set for 11/29/2010 is rescheduled for 12/2/2010 at 10:00 AM to be held telephonically before Judge James G. Carr. Counsel to call the bridge line as previously noticed. (S,AL) (Entered: 11/24/2010)
12/02/2010	<u>47</u>	Order: Telephone status/scheduling conference was held on 12/2/2010 before Judge James G. Carr. Previously set dates and deadlines are vacated. Parties are to file supplementation to record on or before 12/15/2010. Leave is granted to join additional party by 12/30/2010. Telephone status/scheduling conference is set for 1/31/2011, at 11:00 a.m. EST; status reports/proposed schedule is to be submitted on 1/28/2011. Further scheduling is held in abeyance pending status/scheduling conference. Signed by Judge James G. Carr on 12/2/2010. (Time: 20 min.) (S,JM) (Entered: 12/02/2010)
12/02/2010		(Court only) Outstanding schedule and motion deadlines terminated. (S,JM) (Entered: 12/02/2010)
12/15/2010	<u>48</u>	Supplemental Joint Appendix of Exhibits and Deposition Excerpts referenced in parties Response Briefs on Motion for Summary Judgment filed by all Parties. Related document(s) <u>46</u> , <u>35</u> , <u>43</u> , <u>30</u> , <u>47</u> , <u>36</u> , <u>28</u> , <u>29</u> , <u>34</u> , <u>38</u> , <u>39</u> . (Miltner, Ryan) Modified on 12/17/2010 (B,TM). (Entered: 12/15/2010)
12/30/2010	<u>49</u>	First Amended complaint with jury demand against All Defendants and adding new party defendant(s) T.C. Jacoby & Co., Inc. and Dairy Support, Inc.. Filed by DeVries Dairy, LLC. (Miltner, Ryan) Modified on 1/4/2011 (B,TM). (Entered: 12/30/2010)
01/14/2011		Notice [Non document] of Telephone Conference set for 1/18/2011 at 11:00 AM in to be held telephonically before Judge James G. Carr. The Court will initiate the phone call. (S,AL) (Entered: 01/14/2011)
01/18/2011	<u>50</u>	Order: Telephone conference was held on 1/18/2011, before Judge James G. Carr. The 1/31/2011, telephone status/scheduling conference is confirmed. Signed by Judge James G. Carr on 1/18/2011. (Time: 15 min.) (S,JM) (Entered: 01/18/2011)
01/21/2011	<u>51</u>	Attorney Appearance of counsel Alfred W. Ricciardi filed by on behalf of All Plaintiffs. (Miltner, Ryan) Modified on 1/24/2011 to note s/signature of attorney Ricciardi. (B,TM). (Entered: 01/21/2011)

01/28/2011	<u>52</u>	Status Report <i>suggesting that conference be rescheduled</i> filed by DeVries Dairy, LLC. Related document(s) <u>50</u> , <u>47</u> .(Miltner, Ryan) (Entered: 01/28/2011)
01/31/2011		Motions Referred: to Magistrate Judge Vernelis K. Armstrong <u>30</u> Motion for summary judgment, <u>28</u> Motion for summary judgment. Case Referral still remains with Knepp. Related document(s) <u>30</u> , <u>28</u> . (L,V) Modified on 1/31/2011 (L,V). (Entered: 01/31/2011)
01/31/2011	<u>53</u>	Order. Status Conference held on 1/31/11. Status conference held January 31, 2011. Pending motions for summary judgment are referred to the Hon. Vernelis K. Armstrong for Report and Recommendation, to be filed, if possible, on or before 3/15/11. Judge James G. Carr on 1/31/11. (15 min.)(G,Di) (Entered: 01/31/2011)
02/25/2011	<u>54</u>	Waiver of Service Returned Executed by DeVries Dairy, LLC. Dairy Support, Inc. waiver sent on 1/6/2011, answer due 3/7/2011. filed on behalf of DeVries Dairy, LLC (Miltner, Ryan) (Entered: 02/25/2011)
02/25/2011	<u>55</u>	Waiver of Service Returned Executed by DeVries Dairy, LLC. T.C. Jacoby & Co., Inc. waiver sent on 1/6/2011, answer due 3/7/2011. filed on behalf of DeVries Dairy, LLC (Miltner, Ryan) (Entered: 02/25/2011)
03/02/2011	<u>56</u>	Joint Motion for Correction of Supplemental Appendix filed by Plaintiff DeVries Dairy, LLC, Defendant White Eagle Cooperative Association. Related document(s) <u>48</u> . (Attachments: # <u>1</u> Appendix Corrected Supplemental Appendix)(Miltner, Ryan) (Entered: 03/02/2011)
03/03/2011	<u>57</u>	Motion for leave to <i>Add Document to Appendix</i> filed by Plaintiff DeVries Dairy, LLC. Related document(s) <u>29</u> , <u>48</u> . (Attachments: # <u>1</u> Supplement Proposed Addition to Joint Appendix)(Miltner, Ryan) (Entered: 03/03/2011)
03/07/2011	<u>58</u>	Marginal Entry Order granting plaintiff's motion to file a corrected supplemental appendix. (Related Doc # <u>56</u>). Judge James G. Carr on 3/7/2011.(S,AL) (Entered: 03/07/2011)
03/07/2011	<u>59</u>	Answer to <u>49</u> First Amended Complaint filed by Dairy Support, Inc., T.C. Jacoby & Co., Inc. (Kerger, Richard) Modified on 3/8/2011 (M,L). (Entered: 03/07/2011)
03/07/2011	 <u>60</u>	Motion to dismiss (<i>partial</i>) directed to Plaintiff's Seventh Claim for Relief filed by Dairy Support, Inc., T.C. Jacoby & Co., Inc.. (Kerger, Richard) (Entered: 03/07/2011)
03/07/2011	<u>61</u>	Brief in Support of Partial Motion to Dismiss filed by Dairy Support, Inc., T.C. Jacoby & Co., Inc.. Related document(s) <u>60</u> . (Kerger, Richard) (Entered: 03/07/2011)
03/08/2011		(Court only) Staff Notes: After Mag. Judge Knepp held an unsuccessful settlement conference in 11/10, counsel asked Judge Carr to refer to Mag. Judge Armstrong for a "fresh set of eyes" to rule on pending summary judgment motions which she has now done. Next, the case will again be referred to Mag. Judge Knepp for the remainder of the case. (L,JA)

		(Entered: 03/08/2011)
03/08/2011	<u>62</u>	Report and Recommendation. It is recommended that the Court grant deft White Eagle's Motion for summary Judgment; grant pltf's Motion for Summary Judgment on the counterclaim and terminate the referral to Magistrate Armstrong. Plaintiff's claims against Jacoby and Dairy Support remain pending with the Court. re <u>28</u> & <u>30</u> Objections to R&R due by 3/22/2011. Magistrate Judge Vernelis K. Armstrong on 3/8/11. (B,CJ) (Entered: 03/08/2011)
03/11/2011	<u>63</u>	Joint Motion for extension of time until 4/5/2011 to file objections to Magistrate's Report and Recommendation filed by Plaintiff DeVries Dairy, LLC, Defendant White Eagle Cooperative Association. (Miltner, Ryan) Modified on 3/15/2011 (B,TM). (Entered: 03/11/2011)
03/15/2011	<u>64</u>	Marginal Entry Order granting plaintiff's motion for leave to add documents to the appendix. (Related Doc # <u>57</u>). Judge James G. Carr on 3/15/2011.(S,AL) (Entered: 03/15/2011)
03/16/2011	<u>65</u>	Marginal Entry Order granting <u>63</u> the parties joint motion for an extension of time until 4/5/2011 to file objections to the report and recommendation. Judge James G. Carr on 3/16/2011.(S,AL) (Entered: 03/16/2011)
04/05/2011	<u>66</u>	Objection to Report and Recommendation <i>with Request for Oral Argument</i> filed by DeVries Dairy, LLC. Related document(s) <u>65</u> , <u>62</u> . (Miltner, Ryan) (Entered: 04/05/2011)
04/11/2011	<u>67</u>	Opposition to <u>60</u> Motion to dismiss (<i>partial</i>) directed to Plaintiff's Seventh Claim for Relief filed by DeVries Dairy, LLC. (Miltner, Ryan) (Entered: 04/11/2011)
04/18/2011	<u>68</u>	Motion for extension of time until 5/3/2011 to file response to plaintiff's objections to the Report and Recommendation filed by Defendant White Eagle Cooperative Association. (Vetne, John) Modified on 4/19/2011 (B,TM). (Entered: 04/18/2011)
04/19/2011	<u>69</u>	Marginal Entry Order granting <u>68</u> Motion by defendant for extension of time until 5/3/2011, to file their response to plaintiff's objections to Magistrate's Report and Recommendation. Signed by Judge James G. Carr on 4/19/2011.(S,JM) (Entered: 04/19/2011)
05/04/2011	<u>70</u>	Response to Plaintiffs Objection to Magistrate Report filed by White Eagle Cooperative Association. Related document(s) <u>66</u> . (Vetne, John) (Entered: 05/04/2011)
05/27/2011	<u>71</u>	Motion for attorney Philip C. Graham to Appear Pro Hac Vice. Filing fee \$ 100, receipt number 0647-4731135, filed by Dairy Support, Inc., T.C. Jacoby & Co., Inc.. (Attachments: # <u>1</u> Certificate of Good Standing) (Kerger, Richard) (Entered: 05/27/2011)
05/27/2011	<u>72</u>	Motion for attorney Kimberly Means Steuterman to Appear Pro Hac Vice. Filing fee \$ 100, receipt number 0647-4731161, filed by Dairy Support, Inc., T.C. Jacoby & Co., Inc.. (Attachments: # <u>1</u> Certificate of

		Good Standing)(Kerger, Richard) (Entered: 05/27/2011)
06/08/2011	<u>73</u>	Marginal Entry Order granting <u>71</u> Motion for attorney Philip C. Graham to appear pro hac vice for defendants Dairy Support, Inc. and T.C. Jacoby & Co., Inc. Signed by Judge James G. Carr on 6/8/2011. (Related Doc # S,JM) (Entered: 06/08/2011)
06/08/2011	<u>74</u>	Marginal Entry Order granting <u>72</u> Motion for attorney Kimberly Means Steuterman to appear pro hac vice for defendants Dairy Support, Inc. and T.C. Jacoby & Co., Inc. Signed by Judge James G. Carr on 6/8/2011. (S,JM) (Entered: 06/08/2011)
07/29/2011	<u>75</u>	ORDER Adopting in Part & denying in part Mag's Report and Recommendation. White Eagle's motion for summary judgment <u>28</u> is granted as to DeVries' claims of breach of good faith and fair dealing, conversion and negligent misrepresentation; White Eagle's motion for summary judgment is hereby granted in part and denied in part as to DeVries' claim of breach of contract; DeVries' motion for summary judgment on White Eagle's counterclaims <u>30</u> is hereby granted; and DeVries' motion for summary judgment on White Eagle's affirmative defenses is granted in part and denied in part. Motions terminated: <u>35</u> <u>28</u> <u>30</u> & <u>37</u> The Clerk shall schedule a telephonic status/scheduling conference. Judge James G. Carr on 7/29/11. (B,CJ) (Entered: 07/29/2011)
08/01/2011	<u>76</u>	Notice of Telephone/Scheduling Conference set for 8/25/2011 at 9:30 AM in to be held telephonically before Judge James G. Carr. (counsel shall call Court's bridgeline) (B,CJ) (Entered: 08/01/2011)
08/12/2011		Notice [Non Document]: The Telephone Conference set for 8/25/2011 is vacated and rescheduled for 8/26/2011 at 01:30 PM before Judge James G. Carr. Counsel to follow the previous instructions re. call in number for conference. (S,AL) (Entered: 08/12/2011)
08/30/2011	<u>77</u>	Order: Status/scheduling conference was held on 8/26/2011. Leave is granted to defendants T.C. Jacoby and Dairy Support, Inc., to file reply re. pending motion to dismiss by 9/6/2011. Discovery, including expert discovery, re. dispositive motions is to be completed by 6/1/2012. Final discovery cutoff is 10/15/2012. Dispositive motion is to be filed on or before 7/1/2012; opposition is due 8/1/2012; reply is due 8/15/2012. Twelve person jury trial is scheduled 11/13/2012, at 1:30 p.m. in Courtroom 204 before Judge James G. Carr. Parties consent to voir dire before the United States Magistrate Judge James R. Knepp, II, in Courtroom 204, on 11/13/2012, at 9:00 a.m. Prior orders re. motions prior to trial, deadlines for marking and exchanging exhibits and witness lists, submission of proposed jury instructions, and providing of information to the court reporter are confirmed. Settlement conference and final pretrial is to be held before Magistrate Judge Knepp during the last two weeks of October, 2012, at a date and time convenient for the parties, counsel and Magistrate Judge; settlement conference may be held prior to said date at request of any party. Signed by Judge James G. Carr on 8/30/2011. (Time: 20 min.) (S,JM) (Entered: 08/30/2011)

09/06/2011	<u>78</u>	Reply to response to <u>60 Motion</u> to dismiss (<i>partial</i>) directed to Plaintiff's Seventh Claim for Relief filed by Dairy Support, Inc., T.C. Jacoby & Co., Inc.. (Graham, Philip) (Entered: 09/06/2011)
09/08/2011		Order referring case to Magistrate Judge James R. Knepp, II for Settlement. re <u>77 Minute Order</u> _ Scheduling Conference. Judge James G. Carr on 9/8/2011. (S,AL) (Entered: 09/08/2011)
09/08/2011		Voir dire to be held before Magistrate Judge Knepp.. Judge James G. Carr on 9/8/2011. (S,AL) (Entered: 09/08/2011)
09/20/2011		Notice [non-document]: Telephone Conference is scheduled 9/21/2011 at 3:30 PM EST. with Judge James G. Carr. Counsel are to call into the court bridge line at 419-213-5509, passcode is 550911. (S,JM) (Entered: 09/20/2011)
09/21/2011	<u>79</u>	Attorney Appearance of <i>David W. Wicklund and John N. MacKay</i> by David W. Wicklund filed by on behalf of DeVries Dairy, LLC. (Wicklund, David) (Entered: 09/21/2011)
09/23/2011		(Court only) Utility Event adding attorney John N. MacKay for DeVries Dairy, LLC. Related document(s) <u>79</u> . (M,L) (Entered: 09/23/2011)
09/23/2011	<u>80</u>	Order: Status conference was held on 9/21/2011. Parties are to submit proposed order of certification to Ohio Supreme Court on or before 10/14/2011. In the event parties cannot agree to proposed order, each shall submit its own proposal with a brief supporting statement. Further proceedings are held in abeyance pending adjudication of certified question. Signed by Judge James G. Carr on 9/23/2011. (Time: 20 min.) (S,JM) (Entered: 09/23/2011)
10/14/2011	<u>81</u>	Proposed Order of Certification filed by All Parties. Related document(s) <u>80</u> . (Miltner, Ryan) (Entered: 10/14/2011)
10/24/2011		Non document Order: All documents from todays date and hereafter, must be filed as PDF documents in text searchable format (i.e. no scanned documents, except for exhibits). All exhibits must be specifically identified. Failure to comply with these requirements will result in the Clerks Office marking the document(s) as a filing error and you will be required to re-file in compliance with this order. Judge James G. Carr on 10/24/2011. (S,AL) (Entered: 10/24/2011)
11/21/2011	<u>82</u>	Order certifying questions to the Ohio Supreme Court (see order for full details). Judge James G. Carr on 11/21/2011. (S,AL) (Entered: 11/21/2011)
11/21/2011	<u>83</u>	Notice of certificate of service to Ohio Supreme Court. Related document (s) <u>82</u> .(S,AL) (Entered: 11/21/2011)