

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

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In re: ) Docket Nos.  
Milk in the Northeast, ) AO-14-A78, AO-388-A23,  
Appalachian, Florida, ) AO-356-A44, AO-366-A52,  
Southeast, Upper Midwest, ) AO-361-A44, AO-313-A53,  
Central, Mideast, Pacific ) AO-166-A73, AO-368-A40,  
Northwest, Southwest, and ) AO-231-A72 and AO-271-A44,  
Arizona Marketing Areas ) DA-09-02, AMS-DA-09-0007  
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VOLUME X  
- - -

Public Hearing Administrative Law Judge  
Before: Jill S. Clifton  
  
Date: May 15, 2009  
  
Time: Commencing at 8:09 a.m.  
  
Place: Westin Cincinnati Hotel  
21 East Fifth Street  
Cincinnati, Ohio 45202  
  
Before: Linda Mullen, RMR, CRR  
Notary Public - State of Ohio

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1 P R O C E E D I N G S

2 JUDGE CLIFTON: We are back on record at  
3 8:09 in the morning. It's Friday, May 15, 2009.  
4 This is day ten of the milk rulemaking hearing.  
5 This will be volume X of the transcript and the  
6 pages will be numbered in sequence to those of  
7 yesterday.

8 We are scheduled now for the voir dire of  
9 Dr. Knutson and I would like to begin with that  
10 first. Mr. English.

11 MR. ENGLISH: Your Honor, it would be  
12 much more efficient if I could just do this as  
13 part of my cross-examination. I had planned it  
14 as part of my cross, when I went into my cross.

15 JUDGE CLIFTON: Good. Drs. Knutson and  
16 Knoblauch, you remain sworn. And just for the  
17 record, please again state your names.

18 DR. KNUTSON: I'm Ronald D. Knutson.

19 DR. KNOBLAUCH: Wayne Knoblauch.

20 JUDGE CLIFTON: Thank you, who would like  
21 to begin cross-examination? Is there anyone  
22 else who wanted to voir dire? I only knew of  
23 Mr. English. Does anybody else want to voir  
24 dire? All right. We'll just go into cross and  
25 you can combine voir dire with your cross. Who

1 would like to go first?

2 I know it's no fun to be the first. But  
3 I will allow you to appear again should you  
4 think of other things that are prompted by the  
5 questions. Would you like to be heard? Come to  
6 a microphone. Thank you Mr. Vetne.

7 MR. VETNE: I had anticipated, your  
8 Honor, as you apparently did from an earlier  
9 remark, that voir dire would come first.  
10 Because if there's a challenge to the foundation  
11 of Dr. Knutson's testimony, it will affect the  
12 content of the cross-examination. So I would  
13 prefer that that happen first.

14 JUDGE CLIFTON: All right. Now,  
15 Mr. English wants to combine his with cross. Do  
16 you have voir dire and would you like to begin  
17 with that?

18 MR. VETNE: No, absolutely, I do not.

19 JUDGE CLIFTON: Okay. I guess then  
20 you're stuck with Mr. English's choice. I will  
21 not make him separate his voir dire from his  
22 cross. Okay. I need a brave soul to say you  
23 will go first.

24 MR. MILTNER: I think there's no cross.

25 MR. RICCIARDI: Apparently there's no



1 cross, Judge.

2 JUDGE CLIFTON: Mr. English, thank you.

3 MR. ENGLISH: It seems to me that in a  
4 real way, direct is not finished until the  
5 aligned parties go first. The witnesses here  
6 are supporting a proposal, especially supported  
7 by Mr. Vetne's clients. And, you know, I think  
8 that in logical order, we ought to hear the rest  
9 of the direct before we do the cross, because it  
10 is direct.

11 MR. BESHORE: I join Mr. English's  
12 comments.

13 JUDGE CLIFTON: Are you willing,  
14 Mr. Vetne, to cross-examine now?

15 MR. VETNE: I'm willing to start.

16 JUDGE CLIFTON: Thank you, I appreciate  
17 that.

18 JUDGE CLIFTON: Mr. Vetne, you may  
19 proceed.

20 MR. VETNE: However, I would note that  
21 neither Dr. Knutson nor Dr. Knoblauch are  
22 testifying on behalf of my clients, nor have  
23 they expressed support for my clients'  
24 proposals, contrary to what Mr. English or  
25 somebody represented.

1 JUDGE CLIFTON: He just wants a little  
2 more time to organize his thoughts.

3 MR. VETNE: All right. Whoops. I took  
4 the wrong exhibit up.

5 CROSS-EXAMINATION

6 BY MR. VETNE:

7 MR. VETNE: Let me start the other way.  
8 Dr. Knoblauch, I'm going to start with you. Do  
9 you have a copy of the versions of your  
10 testimony that were distributed?

11 DR. KNOBLAUCH: Yes, I do.

12 MR. VETNE: Okay. I just want to make  
13 sure, if you go to the table in the back --

14 JUDGE CLIFTON: For the record, we're  
15 looking at Exhibit 90.

16 MR. VETNE: Thank you, yes.

17 I just want to make sure I match the  
18 headings to the correct columns at the top of  
19 the page. Am I correct that the label of the  
20 columns to match the numbers ought to move right  
21 or the numbers ought to move left, so that under  
22 the first column, for example, cash, for 2006,  
23 is \$11.20?

24 DR. KNOBLAUCH: That's correct.

25 MR. VETNE: And everything else moves to

1 the right correspondingly?

2 DR. KNOBLAUCH: I think perhaps -- well,  
3 I do agree with you, but perhaps a better way to  
4 say that -- perhaps not a better way -- is that  
5 you can see the cash, purchased input and total  
6 cost repeats itself across the top.

7 MR. VETNE: Yes, sir.

8 DR. KNOBLAUCH: And, for example, less  
9 than 100 cows, cash, purchased inputs and total  
10 cost is then repeated for 100 to 300 cows and so  
11 on across the page.

12 MR. VETNE: All right.

13 DR. KNOBLAUCH: So there are three  
14 columns under each herd size heading.

15 MR. VETNE: All right. In terms of  
16 what's included in the category, what is the  
17 difference between cash costs and purchased  
18 input costs?

19 DR. KNOBLAUCH: Depreciation.

20 MR. VETNE: Would depreciation be  
21 purchased inputs?

22 DR. KNOBLAUCH: Yeah, purchased inputs is  
23 cash plus depreciation.

24 MR. VETNE: Oh, okay. Let's see. So  
25 purchased inputs in the top line for 2006 of

1 12.57 includes all of the cash costs of \$11.20?

2 DR. KNOBLAUCH: Correct.

3 MR. VETNE: But adds depreciation?

4 DR. KNOBLAUCH: Correct. And the logic  
5 goes that not only are cash inputs purchased,  
6 but you also must purchase capital assets.

7 MR. VETNE: Is there a particular rule  
8 for how depreciation is calculated or do these  
9 analyses simply use tax schedule depreciation?

10 DR. KNOBLAUCH: Our rule in the dairy  
11 farm business summary is that we will use  
12 Federal IRS rules, unless when you take a look  
13 at it, especially for small farms, if Section  
14 179 really biases the result, we will then  
15 allocate those Section 179 costs over the useful  
16 life of the asset.

17 MR. VETNE: Okay. So in between the  
18 first two columns, you have all the total  
19 out-of-pocket monies. What is included in the  
20 difference in the first line there, between  
21 \$12.57 and \$18.39, roughly \$6 in addition.  
22 What's included in the \$6?

23 DR. KNOBLAUCH: That would be the value  
24 of unpaid family labor, that would be the  
25 operator or operators' labor and management, and

1 a return to equity.

2 MR. VETNE: Okay. Those are in the  
3 category of imputed costs?

4 DR. KNOBLAUCH: Imputed costs,  
5 opportunity costs, yes.

6 MR. VETNE: I think your testimony was  
7 that -- to the effect that for -- for many farms  
8 over a period of many years, the farms  
9 consistently operate and continue to operate at  
10 selling milk at less than cost of production.  
11 If I'm -- is that correct?

12 DR. KNOBLAUCH: Less than the total cost  
13 of production, yes.

14 MR. VETNE: Which means that the farms  
15 are willing to operate at lower unpaid labor,  
16 family input opportunity costs than you impute  
17 to a farm of that kind?

18 DR. KNOBLAUCH: That would be true. Some  
19 of the farms do continue to operate at below  
20 total cost. The problem -- or I should say  
21 let's talk about the rationale behind that  
22 before we address the problem.

23 The rationale would be that some, at  
24 least in the short run, are willing to accept  
25 less than, for example, a 5 percent rate of

1 return on equity. However, the farms that go  
2 out of business by and large are those that  
3 realize in the long run that they cannot cover  
4 their total costs.

5 For example, if we're talking about a  
6 farm continuing to the next generation, one of  
7 the major reasons why those farms do not  
8 continue to the next generation is because the  
9 younger generation realizes that that business  
10 cannot return their opportunity costs to their  
11 equity or whatever else is invested, or they  
12 view that they cannot project that they can  
13 change the business such that that happens.

14 MR. VETNE: With respect to cash costs,  
15 would it not be true that those costs vary from  
16 place to place, region to region?

17 DR. KNOBLAUCH: Certainly those costs can  
18 vary and do vary.

19 MR. VETNE: The cost of -- of feed and  
20 equipment, for example, would depend on whether  
21 there is robust competition and supply in your  
22 neighborhood, or whether you have to reach a  
23 long way to get it, correct?

24 DR. KNOBLAUCH: That's true. Or whether  
25 you're growing most of your own grain supply,

1           yes.

2                   MR. VETNE:  If you're growing your own  
3           feed, what column would that appear under?  
4           Would that appear in cash?

5                   DR. KNOBLAUCH:  If you're growing your  
6           own feed, that cost or those costs would likely  
7           appear in all three columns, because you do have  
8           cash cost, depreciation on machinery and  
9           operator and unpaid family labor involved in  
10          that operation.

11                   MR. VETNE:  Okay.  Feed is the largest  
12          single line item input under cash cost, is that  
13          correct?

14                   DR. KNOBLAUCH:  Purchased feed, yes, it  
15          is.

16                   MR. VETNE:  Okay.  And for those farms  
17          that do not purchase feed but grow their own and  
18          store it, is there an imputed purchase feed cost  
19          that is -- that is included in that line, or is  
20          it simply omitted from that line and placed  
21          elsewhere?

22                   DR. KNOBLAUCH:  I'm not certain I  
23          understand your question.  Could you just bear  
24          with me and rephrase that?

25                   MR. VETNE:  Yes, I can.  In many cost of

1 production analyses, there are a number of lines  
2 for various types of costs, correct?

3 DR. KNOBLAUCH: Yes.

4 MR. VETNE: And one of the lines that  
5 appears in common in all cost of production  
6 analyses is feed costs --

7 DR. KNOBLAUCH: Correct.

8 MR. VETNE: -- where a producer grows his  
9 or her own feed. Is that homegrown feed  
10 included by some formula or conversion into the  
11 feed cost line?

12 DR. KNOBLAUCH: No, it is included at the  
13 cost of producing those feeds, whatever they  
14 might be, on the farm. The actual costs  
15 incurred.

16 MR. VETNE: So it would be included on  
17 other farm costs, farm costs for labor, seed, et  
18 cetera, et cetera?

19 DR. KNOBLAUCH: That's correct.

20 MR. VETNE: The colored bars at the  
21 bottom of the page show -- actually, it shows a  
22 variety of calculations of cost of production  
23 from a variety of sources, am I correct about  
24 that?

25 DR. KNOBLAUCH: Well, from two sources,



1           yes, the Cornell studies and the Economic  
2           Research Service.

3                   MR. VETNE:   Some of the -- some of the  
4           colored bar lines do not include imputed costs,  
5           am I correct about that?

6                   DR. KNOBLAUCH:  I don't believe that  
7           would be correct in terms of total costs of  
8           production, which are represented on the graph.  
9           There would be imputed costs in all of those  
10          categories.

11                   MR. VETNE:  Okay.  Wherever there is a  
12          total cost, imputed costs are applied?

13                   DR. KNOBLAUCH:  That's correct.

14                   MR. VETNE:  Okay.  Do cost of production  
15          surveyors use the same imputed assumptions from  
16          one survey to another?  Is there a standard for  
17          imputation?

18                   DR. KNOBLAUCH:  The Farm Financial  
19          Standards Task Force and the ERS does use  
20          consistent procedures.

21                   MR. VETNE:  Within ERS, it's consistent,  
22          but between ERS, for example, and Cornell and  
23          the Northeast Farm Credit System, which also has  
24          a cost of production survey, do they use the  
25          same imputed standards so that one can be

1 compared to another?

2 DR. KNOBLAUCH: There will be some slight  
3 differences between those procedures, yes.

4 MR. VETNE: Okay. And where costs are  
5 imputed, is it true that the same imputation is  
6 made from farm to farm to farm, one size fits  
7 all?

8 DR. KNOBLAUCH: Within the same --

9 MR. VETNE: Within the same survey.

10 DR. KNOBLAUCH: Within the same survey,  
11 by and large, yes. There may be some  
12 differences and I alluded to one of those. And  
13 that's how you handle Section 179, depreciation  
14 on smaller businesses.

15 MR. VETNE: Okay. In your testimony  
16 under -- on page 5, cost of processing, you  
17 refer to or discuss plant efficiency at 3  
18 million pounds or less and discuss niche  
19 products. Would it not be true that a processor  
20 who makes niche products that have a small  
21 consumer following will very, very likely incur  
22 higher costs per unit than generic white milk  
23 processing?

24 DR. KNOBLAUCH: Certainly based on the  
25 differences in scale of operation, yes. And

1           there are probably other reasons for that as  
2           well.

3           MR. VETNE:   And for that matter, even if  
4           a large manufacturer were to shut down the line  
5           for a few minutes to produce, you know, a  
6           specialty beverage, a kefir or something like  
7           that, the per unit cost for that to shut down  
8           the line for a little while and then go back,  
9           that would be a higher unit cost for that  
10          product, correct?

11          DR. KNOBLAUCH:   Higher costs and more  
12          difficulty in just the requirement taking the  
13          time, making sure everything's done correctly,  
14          yes.  It's a hassle as well as a cost.

15          MR. VETNE:   Many of these niche products,  
16          as we discussed, have a discrete but very small  
17          consumer market following?

18          DR. KNOBLAUCH:   I would agree with that.  
19          Small sometimes is a relative concept, but yes.

20          MR. VETNE:   For example, if a consumer  
21          wants to get milk that is -- comes just from  
22          grass-fed cows, that would be a small part of  
23          the market difficult to make on a per unit basis  
24          or costly to make on a per unit basis?

25          DR. KNOBLAUCH:   I've not done any studies

1 on that, but logically I agree with you, yes.

2 MR. VETNE: Maybe you're not the right  
3 witness on the panel to answer this, but with  
4 respect to the -- the very large players, do you  
5 know whether there is direct competition in  
6 those niche markets?

7 DR. KNOBLAUCH: I'm not certain if I'm  
8 understanding the question, especially if large  
9 players in niche markets are --

10 MR. VETNE: Okay.

11 DR. KNOBLAUCH: I'm not sure I  
12 understand, but --

13 MR. VETNE: That's okay. Dean Foods,  
14 National Dairy Holdings, which recently changed  
15 ownership, Kroger, the Smith Food & Drugs of  
16 this world, where there is a market for -- we  
17 have milk that is controlled from farm to store,  
18 you know, and comes locally. Or we have milk  
19 that isn't homogenized and cream floats on the  
20 top, that kind of thing. Do you know whether  
21 those products are in direct competition with  
22 the generic white milk products of larger  
23 processors?

24 DR. KNOBLAUCH: I would assume not, but  
25 that is not my area of expertise, product

1 competition.

2 MR. VETNE: If there is competition,  
3 would you expect to hear from the large  
4 processors that we indeed produce those things  
5 and the small niche sellers are taking our share  
6 of the money?

7 DR. KNOBLAUCH: I really have no factual  
8 basis to answer that question. I'm sorry.

9 MR. VETNE: That's a good answer. On  
10 page 6 of your statement, on balancing costs,  
11 you refer to a producer-handler selling some  
12 surplus in order to balance and getting a  
13 Class IV price. Am I correct that you are  
14 assuming that a class -- even a Class IV price  
15 is available?

16 DR. KNOBLAUCH: Yes, this is a  
17 hypothetical.

18 MR. VETNE: Okay. So if a  
19 producer-handler as a price taker couldn't even  
20 get the Class IV price, then the penalty, as you  
21 put it, would even be greater?

22 DR. KNOBLAUCH: That's correct.

23 MR. VETNE: And would you expect --  
24 strike that.

25 Okay. Let me move over to Dr. Knutson.

1 JUDGE CLIFTON: Let's go off record for  
2 just a moment.

3 (Off the record.)

4 JUDGE CLIFTON: All right. Let's go back  
5 on record. We're back on record at 8:33.  
6 Dr. Knoblauch, at a time when Kate Fisher is  
7 here, will give some instruction with regard to  
8 the top part of this chart so that it's clear to  
9 someone that has not read this cross-examination  
10 how to read the columns of cash, purchased  
11 inputs, and total cost.

12 Thank you, Mr. Vetne. You may proceed  
13 with your questions for Mr. Knutson.

14 MR. VETNE: Thank you, your Honor.  
15 Dr. Knutson, I want to start on page 7 of your  
16 testimony and ask you some questions about your  
17 observations and conclusions there.

18 First, I want to ask you if you have in  
19 front of you, a copy of the table headed Federal  
20 Milk Order Small Plant Structure Information,  
21 which has been marked in this proceeding as  
22 Exhibit 18?

23 JUDGE CLIFTON: Tell us again, Mr. Vetne,  
24 where were you going?

25 MR. VETNE: I want to ask if he has in

1 front of him a Small Plant Structure exhibit to  
2 which he referred in paragraph 15, which we  
3 marked as Exhibit 18 and which Dr. Knutson  
4 referred to as an attachment to the proposal  
5 submitted by NMPF.

6 DR. KNUTSON: No, I don't have it in  
7 front me.

8 MR. VETNE: Judge Hillson is providing  
9 you a copy.

10 DR. KNUTSON: Yes, I do.

11 JUDGE CLIFTON: Except it's Clifton, not  
12 Hillson.

13 MR. VETNE: Judge Clifton, I am so, so,  
14 so sorry. It has been a long -- okay.

15 In the middle of paragraph 15, you used  
16 the word, conventional regulated pool  
17 distributing plants. Do you see that?

18 DR. KNUTSON: Yes.

19 MR. VETNE: And in the first line of your  
20 paragraph 16, you also use the word,  
21 conventional pool distributing plant. Do you  
22 see that?

23 DR. KNUTSON: Yes.

24 MR. VETNE: Did you make an assumption  
25 totally from the content of Exhibit 18, the

1           small -- the Federal Milk Order Small Plant  
2           Structure, did you make an assumption that the  
3           plants included in that exhibit, the regulated  
4           pool distributing plants, were conventional?

5           DR. KNUTSON: Yes.

6           MR. VETNE: Okay. You didn't make any  
7           independent inquiry of what was included in the  
8           universe of regulated plants reported, am I  
9           correct?

10          DR. KNUTSON: That's correct.

11          MR. VETNE: Based on your assumptions  
12          reading Exhibit 18, were you not surprised to  
13          find that there might be conventional regulated  
14          pool distributing plants as small as 2 million  
15          pounds or less?

16          DR. KNUTSON: Yes. It's a matter of  
17          definition. Yes, you know, surprise, you know,  
18          I'm -- I made the assumption that at least the  
19          majority of these plants were conventional  
20          plants.

21          MR. VETNE: Okay. Let me represent to  
22          you that prior testimony by a USDA witness  
23          describing this data explained that the volume  
24          associated with regulated pool distributing  
25          plants is simply a Class I volume from any plant



1           that distributes milk and may include, for  
2           example, a dedicated Class II plant that has  
3           some small part of products that may go out as  
4           Class I because of the fluid milk definition. I  
5           used the word kefir before, but there are  
6           others. And it also may include a unit -- as  
7           indicated on there, a unit plant whereby a  
8           processor has a fluid milk plant and a -- and a  
9           Class II processing plant and some Class I  
10          distribution is associated with the plant, and  
11          it does not necessarily represent the size of  
12          the plant but simply represents the volume of  
13          Class I milk coming from that facility. Okay?

14                 DR. KNUTSON: Okay.

15                 MR. VETNE: I'll represent that to you.  
16          With -- with that -- with that representation,  
17          do you have any -- any comment or additional  
18          opinion on the ability of plants that are  
19          actually 2 million in size, as far as volume, to  
20          compete with conventional pool distributing  
21          plants?

22                 DR. KNUTSON: I -- I must say I do not  
23          understand the question.

24                 MR. VETNE: That would be my fault. You  
25          observed, I believe, in your testimony -- and

1 correct me if I'm wrong -- that because of small  
2 size -- producer-handlers are generally small  
3 size -- they have difficulty competing with what  
4 you call conventional distributing plants that  
5 are generally much larger?

6 DR. KNUTSON: Yes.

7 MR. VETNE: But in your testimony as  
8 prepared and with the assumptions that you make  
9 when you prepared it, it appeared that there  
10 were some conventional plants that were as small  
11 as producer-handler plants.

12 DR. KNUTSON: Sure.

13 MR. VETNE: And with the information I've  
14 given you from the prior testimony, there may,  
15 in fact, be no conventional plants that are as  
16 small as producer-handler plants?

17 DR. KNUTSON: I understand.

18 MR. VETNE: Okay. The inference that I  
19 had of reading your testimony was that maybe  
20 there are some conventional plants that pay into  
21 the pool that aren't disadvantaged, or very  
22 small in size of receipts and inefficiencies --  
23 economies of scale. If, in fact, a -- if, in  
24 fact, a plant distributing -- let's say a  
25 Class II plant that has a little bit of

1           Class I. If a large Class II plant that had a  
2           little bit of Class I were competing with a  
3           producer-handler that just had a little bit of  
4           Class I, that larger plant would -- would still  
5           have some economies of scale that puts the  
6           producer-handler with just small volume and not  
7           the economies of receipts applied across the  
8           board -- that disadvantage, competitive  
9           disadvantage from economies of scale, would  
10          still apply, even though the actual fluid  
11          distribution of the large plant with a little  
12          bit of Class I milk? It just has a little bit  
13          of Class I milk.

14                 DR. KNUTSON: That is correct. In  
15                 addition, there's always the possibility of  
16                 cross-subsidization within the firm, between the  
17                 Class II products and the Class I products.  
18                 There's a possibility of utilization of some of  
19                 the same labor, certainly from a management  
20                 standpoint. There's a possibility that the  
21                 management of both operations would be the same.

22                 MR. VETNE: Okay. And with respect to  
23                 milk costs, as a matter of fact, if a small  
24                 producer-handler had a little bit of Class II in  
25                 that small volume, for the large regulated plant

1 with a lot of Class II and a little bit of  
2 Class I, the plant would -- would be able to  
3 draw from the pool on that volume and just  
4 pay -- and pay blend price to producers, whereas  
5 a producer-handler would, as Dr. Knoblauch  
6 discussed, essentially receive a penalty because  
7 the producer side of that enterprise would not  
8 get the advantage of the blend on the Class II  
9 volume?

10 Do you want me to start that question  
11 again?

12 DR. KNUTSON: Yeah. You better -- you  
13 better go back over that.

14 MR. VETNE: There's another --

15 DR. KNUTSON: You're making some  
16 assumption about how they treat the  
17 producer-handler.

18 MR. VETNE: A producer-handler is a  
19 unified enterprise?

20 DR. KNUTSON: Yes.

21 MR. VETNE: A processor and producer?

22 DR. KNUTSON: Right.

23 MR. VETNE: In that enterprise, when a  
24 producer-handler has a little bit of Class II,  
25 the producer side of that enterprise does not

1 get to draw the difference between the Class II  
2 price and a higher Federal blend?

3 DR. KNUTSON: Right.

4 MR. VETNE: A competitor who has a large  
5 Class II plant and a little bit of Class I, on  
6 the Class II portion does get to draw, correct?

7 DR. KNUTSON: Yes.

8 MR. VETNE: And the producer-supplier, in  
9 that case a divided enterprise, does get the  
10 benefit of the blend price on that Class II  
11 volume?

12 DR. KNUTSON: Yes.

13 MR. VETNE: Which looking at -- at the  
14 entire stream of milk from producer to handler  
15 on the regulated handler side, that enterprise  
16 would have advantage over an enterprise that  
17 couldn't draw?

18 DR. KNUTSON: Yes. I mean, let me make  
19 this observation in addition. You're looking at  
20 the entire operation in that case --

21 MR. VETNE: Yes.

22 DR. KNUTSON: -- as opposed to a  
23 segmentation of the two operations.

24 MR. VETNE: Yes.

25 DR. KNUTSON: And that makes a difference

1 in the scheme of things.

2 MR. VETNE: Going -- moving over to  
3 page 11, you're referring to the time -- well,  
4 the Great Depression, Franklin Roosevelt, when  
5 Federal Marketing Orders were created, top of  
6 page 11, the paragraph ending there.

7 Federal Orders were created at a time  
8 when milk markets were highly monopolistically  
9 controlled by a few major proprietary milk  
10 processing firms. It's the sentence that  
11 ends --

12 DR. KNUTSON: What's the section?

13 MR. VETNE: Paragraph 22.

14 DR. KNUTSON: It starts --

15 MR. VETNE: Sorry. Go to paragraph 23,  
16 and go immediately above that.

17 DR. KNUTSON: Yes. Okay.

18 MR. VETNE: Page 11. You're referring to  
19 historical conditions, historical conditions  
20 surrounding the enactment of the Agricultural  
21 Adjustment Act of 1933 and 1935.

22 DR. KNUTSON: Yes.

23 MR. VETNE: And subsequently the  
24 Marketing Agreement Act of 1937, correct?

25 DR. KNUTSON: Yes.

1 MR. VETNE: It may be observed that in  
2 1933, 1935 there were literally thousands of  
3 milk processing plants and many hundred times  
4 the number of producers than there are now.  
5 That's correct?

6 DR. KNUTSON: There were -- there were.  
7 At the same time, there was still a high level  
8 of central control by a few firms. So you have  
9 what we call, in economic terms, is a monopoly  
10 with a competitive fringe of small producers or  
11 small processors operating in the market,  
12 National Dairy Products and so forth and so on,  
13 who were basically in control of the situation.

14 MR. VETNE: In your reference to  
15 monopolistically controlled, a huge difference  
16 between now and then would be definition of the  
17 relevant markets. The relevant market for  
18 monopoly purposes back in 1933 would have been  
19 basically a city and not much more?

20 DR. KNUTSON: Exactly, yes.

21 MR. VETNE: And so within a city, there  
22 were a few firms that controlled the purchase of  
23 milk and distribution, and then a few -- and  
24 then producers who wanted access to that --  
25 that, those fluid handlers?

1 DR. KNUTSON: Yes.

2 MR. VETNE: And today the relevant market  
3 is much different.

4 DR. KNUTSON: It is, much larger.

5 MR. VETNE: From an economic  
6 standpoint -- I don't know if you looked at this  
7 in preparation -- but could you give us some  
8 indication of how one would approach the  
9 defining of relevant market in today's market?

10 DR. KNUTSON: Yeah. You know, it depends  
11 upon are you talking about a processor's market  
12 for selling milk or a producer market for  
13 supplying milk. Which are you talking about?

14 MR. VETNE: When you say producer market  
15 for supplying, you've got raw milk sales is one  
16 reference point?

17 DR. KNUTSON: Yes.

18 MR. VETNE: And then distribution of  
19 packaged product is another reference point?

20 DR. KNUTSON: Exactly. That's what I'm  
21 saying, yes.

22 MR. VETNE: When you use the term on the  
23 top of page 11 to describe conditions in the  
24 early 1930s, which one of those two, or maybe  
25 both, were you referring to?



1 DR. KNUTSON: Yeah, you're really talking  
2 about both, but the main concern at that point  
3 in time was with the producer part of business.

4 MR. VETNE: Because there were few  
5 buyers?

6 DR. KNUTSON: Because there were few  
7 buyers, yes. Understand that I wasn't around at  
8 that time.

9 MR. VETNE: Really?

10 DR. KNUTSON: Yes. I'm going upon what  
11 was in the literature at the time. And it's  
12 well described in the Nourse report, as a matter  
13 of fact. And those individuals that were on the  
14 Nourse Committee were around at that time.

15 MR. VETNE: Some of the major historical  
16 literature contributors are Dr. Nourse and  
17 Dr. Black?

18 DR. KNUTSON: Exactly, yes.

19 MR. VETNE: Is it true today that  
20 purchasers -- that there are few purchasers of  
21 milk, raw milk supplies?

22 DR. KNUTSON: Yeah. The situation is  
23 different today in the sense that at that time,  
24 cooperatives were not strong entities. And of  
25 course you have the issue of whether you

1           considered a cooperative to be a buyer or not.  
2           I considered them to be a buyer, but you can  
3           argue that either way; the cooperative being an  
4           extension of the farm business, the farmer owns  
5           it. So you've got that kind of a distinction.

6                     But -- so you've got that level, which  
7           was very different at that time. And then when  
8           you become the real buyer at that time -- since  
9           cooperatives were unorganized and producers were  
10          unorganized, the real buyer at that time was the  
11          national dairy companies that were operating in  
12          the individual markets.

13                    MR. VETNE: Okay. The -- the adverse  
14          characteristic of the market in the 1930s to  
15          which you refer -- or an adverse condition, is  
16          that there were very few marketing choices for  
17          dairy farmers?

18                    DR. KNUTSON: Exactly.

19                    MR. VETNE: Which gave the buyer a huge  
20          influence to disadvantage -- to the disadvantage  
21          of producers?

22                    DR. KNUTSON: And very little cooperative  
23          representation, or at least organized  
24          cooperative representation in the market.

25                    MR. VETNE: You refer to a difference in

1           today's market, whether it would include  
2           cooperatives or not as buyers, and you do. The  
3           existence of cooperatives as dominant in some  
4           marketplaces as the only outlet for milk  
5           involves some of the same disadvantages for  
6           producers, they only have one choice.

7           DR. KNUTSON: In terms of cooperatives in  
8           this case, that's right. They have to sell  
9           through the cooperative or become a  
10          producer-handler effectively in some markets.  
11          It isn't a universal phenomena, but it's  
12          effectively in some markets.

13          MR. VETNE: And effectively in some  
14          markets, is it not true that a producer whose  
15          closest market is a cheese plant, that in order  
16          for that producer to share the pool -- share in  
17          the pool, that producer may not be able to share  
18          unless the producer sells to the cheese plant  
19          through a cooperative?

20          DR. KNUTSON: Exactly, because of full  
21          supply contracts.

22          MR. VETNE: And because of performance  
23          requirements?

24          DR. KNUTSON: Yes.

25          MR. VETNE: In some cases, it doesn't

1 matter what the producer does, but if the -- the  
2 reporting handler has some attributes, milk that  
3 goes every day to a cheese plant will be pooled,  
4 and if -- qualification is frequently a function  
5 of what the buyer does, and the buyer in  
6 performance requirements as a cooperative,  
7 correct?

8 DR. KNUTSON: Yes.

9 MR. VETNE: So a producer that -- you're  
10 aware that a producer who wants to maintain  
11 independence may not have access to the pool  
12 like his brothers down the street, all of whom  
13 sell to the same cheese plant 365 days a year?

14 DR. KNUTSON: Yes.

15 MR. VETNE: I want to ask about transfer  
16 price. Why should, in considering  
17 producer-handlers -- well, I guess I need to  
18 build a little foundation for that question.

19 When you are looking at regulated  
20 handlers, the transfer price is the cost of  
21 acquiring milk from a producer or a cooperative,  
22 or another handler, for that matter --

23 DR. KNUTSON: Exactly.

24 MR. VETNE: -- from a third party. In  
25 that case, the cost of the transfer price would

1           be what you've described as -- as the price,  
2           which it included a regulated portion, it would  
3           include a premium portion, it would include  
4           subsidies, it would include everything. That's  
5           the transfer price for a non-vertically  
6           integrated organization, correct?

7           DR. KNUTSON: Yeah. The only problem I  
8           have with your description is the subsidy issue  
9           and I guess I would like to know what you  
10          mean --

11          MR. VETNE: I'm sorry.

12          DR. KNUTSON: -- there.

13          MR. VETNE: Some hauling costs, for  
14          example, are subsidized, so the producer bears  
15          the hauling -- the theory is the farmers bear  
16          the hauling cost of delivering milk to the  
17          plant, and as a practical matter that's not the  
18          case. The farmer bears some of the hauling  
19          costs and the buyer bears others. Sometimes the  
20          farmers are deducted a hauling cost that exceeds  
21          the transportation because it's uniform across  
22          the supply chain.

23          MR. ENGLISH: Objection.

24          JUDGE CLIFTON: Mr. English. Don't  
25          answer yet, please. I'll hear your objection.

1 MR. ENGLISH: That seems like Mr. Vetne  
2 was testifying about what these things are, and  
3 I'm not sure if this witness -- see, the witness  
4 had to ask, what do you -- what is that? And  
5 now we have Mr. Vetne sort of describing what it  
6 is as if that's a fact in the record, and it's  
7 not a fact in the record.

8 JUDGE CLIFTON: Mr. Vetne, if you would  
9 ask your question again?

10 MR. VETNE: Yeah. I was referring to --  
11 I was referring to hauling costs when the  
12 witness said, what do you mean? My answer was,  
13 hauling costs. So at that point we got focused.

14 DR. KNUTSON: Let me say this. My  
15 confusion over the term subsidy is as a guy who  
16 works in ag policy, a subsidy to me tends to  
17 mean something that comes from the government.  
18 There's a lot of subsidies in the dairy industry  
19 and that's -- that's why I wanted to clarify  
20 what the term subsidy was.

21 MR. VETNE: And I can see why my use of  
22 the term would create confusion, which is  
23 frequently a problem before this bar, is we talk  
24 about things as though other people know it, and  
25 it's just not the case.

1 DR. KNUTSON: I know about hauling  
2 subsidies, so just that --

3 MR. VETNE: Okay. Processors or buyers,  
4 be they cooperatives or processors, frequently  
5 pay some of the cost from the farm to the plant  
6 that is not charged to the producer?

7 DR. KNUTSON: Yes.

8 MR. VETNE: And that would be part of  
9 the -- of the transfer price for fully regulated  
10 handlers that don't make their own milk?

11 DR. KNUTSON: Yes.

12 MR. VETNE: I'm sorry. I should say,  
13 don't produce their own milk at the farm.

14 Now, with respect to producer-handlers --  
15 go back, even before I get to that.

16 In some cases, perhaps in many cases  
17 according to Dr. Knoblauch's testimony, the milk  
18 that ends up in the silo at the plants that  
19 purchase it is produced at a cost that exceeds  
20 the price to -- to the handler, the price the  
21 supplier charges the processor.

22 It appears to me that you are using a  
23 different measure of producer-handlers. In  
24 other words, the regulated plants' cost of  
25 milk --

1                   JUDGE CLIFTON: Lower the mic. I know  
2                   you're tall and you can't get that mic up,  
3                   but -- good.

4                   MR. VETNE: It seems that you're using a  
5                   somewhat different measure for  
6                   producer-handlers. The regulated handlers'  
7                   transfer price is not the cost of production.  
8                   In fact, the regulated handler may receive it  
9                   for less than the cost of production. Can you  
10                  explain why a different measure of transfer  
11                  price should apply for economic analysis of the  
12                  integrated producer-handler operation?

13                  DR. KNUTSON: Yes. Because, you know,  
14                  the price to the producer is as the price --  
15                  excuse me -- is as you've described. It is the  
16                  Federal Order price plus the premium plus what  
17                  you referred to as, I'll say hauling subsidies,  
18                  because that's what -- where the subsidies in  
19                  that sense tend to be. That's for the  
20                  conventional producer. The price paid -- there  
21                  is no price paid by a producer-handler. The  
22                  only reference price that you have is a cost to  
23                  the producer-handler of producing that product.

24                  As an economist, it makes no sense to use  
25                  anything else as a reference price for the



1 producer-handler. So the -- the cost to a  
2 processor is the -- is something that is  
3 actually paid.

4 Now, the only -- only thing that bothers  
5 me about this discussion is that really what  
6 we're talking about in the transfer price is  
7 what the producer gets. Because you're talking  
8 about the difference between the producer price  
9 and the Class I price.

10 Now, that goes through a series of --  
11 what should I say -- adjustments by the  
12 cooperative that Dr. Stephenson has analyzed and  
13 that Dr. Knoblauch has referred to here and that  
14 I've referred to in my testimony.

15 And my point is that the uniform blend  
16 price, while it's calculated, has -- has no  
17 meaning in terms of the price that is actually  
18 paid, you know, by the -- to that producer and  
19 that -- or as far as that goes, by the  
20 processor.

21 And so to use a minimum Federal Order  
22 price as the measure of the transfer cost has no  
23 relationship to what's going on in the  
24 marketplace at all.

25 MR. VETNE: And --

1 DR. KNUTSON: And so you've got to  
2 disentangle the Class I price from what the  
3 producer actually gets paid in the marketplace.  
4 And I tried to do that in my testimony by  
5 talking separately about what goes on in the  
6 Class I market and then what goes on in the  
7 producer market.

8 MR. VETNE: Okay. Now, let me take that  
9 in context of your testimony of disorderly  
10 marketing. There has been some suggestion that  
11 if -- if the uniform price or statistical  
12 uniform price in the Federal Order System  
13 differs from producer to producer, or the  
14 effective class -- regulated Class I price  
15 differs from handler to handler, that that  
16 regulatory difference, in an economic sense, is  
17 disorderly marketing.

18 Would it be true that, for that purpose,  
19 it's simply a hypothetical statistical reference  
20 and you have to look to the real world  
21 transaction to even begin to analyze marketing  
22 disorder in the economic sense?

23 DR. KNUTSON: That's exactly what my  
24 testimony was, that you've got to look at  
25 reality, you've got to look at real prices in

1 the market in order to decide whether there's  
2 any notion of disorderly orderliness. Because  
3 if you look at the origin of regulation as  
4 described in the Nourse report, as we started  
5 out discussing here, it was -- it was -- it was  
6 over prices that were not -- that were market  
7 prices. It was over what was happening in the  
8 marketplace.

9 MR. VETNE: Now, I want to ask you some  
10 questions from paragraph 66 to 69 or 70, pages  
11 26 to 28 of your testimony on individual handler  
12 pools.

13 DR. KNUTSON: Could I ask you again what  
14 section?

15 MR. VETNE: 66, 67, 68.

16 DR. KNUTSON: Thank you.

17 MR. VETNE: I'm going to start with the  
18 paragraph numbered 68. The first bullet under  
19 paragraph 68, it says, if you have an individual  
20 handler pool, manufacturing plants, unless they  
21 affiliate with a distributing plant, will not  
22 pool their milk. You are assuming, I believe --  
23 tell me if I'm correct -- that an individual  
24 handler pool is defined in such a way so that  
25 manufacturing handlers on their own are not

1           considered handlers whose milk would be pooled  
2           by that individual handler?

3           DR. KNUTSON:  Yeah.  They're not --  
4           they're not regulated.  They're not a supplier  
5           to that handler.

6           MR. VETNE:  No.  That's not what I'm  
7           saying.  You are assuming -- right now, a  
8           handler definition includes manufacturer, a  
9           distributing plant and so forth.

10          DR. KNUTSON:  I understand.

11          MR. VETNE:  A maker of cheese is a  
12          handler.

13          DR. KNUTSON:  Yes, yes.

14          MR. VETNE:  And for that handler who  
15          might have different uses, that handler -- that  
16          handler's price could be regulated.  And within  
17          that handler's plant or supply --

18          DR. KNUTSON:  Yes.

19          MR. VETNE:  -- there could be an  
20          individual handler pool?

21          DR. KNUTSON:  Yes.

22          MR. VETNE:  You didn't go -- no offense  
23          intended.  You didn't go outside the box far  
24          enough from what happened in the past in  
25          defining individual handler pool.  You thought

1           it would be similar to upper Michigan.

2           JUDGE CLIFTON: Similar to what?

3           MR. VETNE: Upper Michigan.

4           JUDGE CLIFTON: Oh, Upper Michigan.

5           DR. KNUTSON: Yes.

6           MR. VETNE: An individual handler pool  
7           can in fact be defined to -- so every milk plant  
8           or every milk buyer of Grade A milk can be  
9           defined as a handler. And their milk, price  
10          regulated for one thing, pooled within their  
11          supply for another thing, correct?

12          DR. KNUTSON: Right, right.

13          MR. VETNE: So that in the individual  
14          handler pool, producers would not -- let's see.  
15          In fact, with individual handler pooling, if the  
16          handlers are so defined, because -- well, the  
17          handlers of every Grade A producer could get the  
18          benefit of government verified weights and  
19          tests?

20          DR. KNUTSON: I understand. Yes.

21          MR. VETNE: And everybody would get the  
22          benefit of statistical information that's  
23          generated from the reports of every handler?

24          DR. KNUTSON: Yes.

25          MR. VETNE: That would not --

1 DR. KNUTSON: Yes. And I was speaking  
2 there from the perspective of a plant that  
3 processed fluid milk.

4 MR. VETNE: You were speaking from the  
5 perspective of past regulatory policy that  
6 limited the definition of handler in individual  
7 handler pool to distributing plants?

8 DR. KNUTSON: Yes.

9 MR. VETNE: And it does not have to be  
10 that way, does it?

11 DR. KNUTSON: Yes, I understand.

12 MR. VETNE: And it does not have to be  
13 that way, does it?

14 DR. KNUTSON: That's right.

15 MR. VETNE: Your Honor, that's all I have  
16 for the moment. I will have some more, I  
17 promise, but I think I got the basics down.

18 JUDGE CLIFTON: Good. And, Mr. Vetne, I  
19 really appreciate you going first. I always  
20 appreciate people who are willing to begin  
21 cross-examination because that is the most  
22 difficult position. Thank you.

23 All right. I know it's only 9:10, but I  
24 think we should take a break. For right now,  
25 let's just take ten minutes. Please be back and

1 ready to go at 9:20.

2 (A recess was taken from 9:10 to 9:25.)

3 JUDGE CLIFTON: Let's go on record.

4 We're back on record at 9:25. Mr. English, will  
5 you be the next to examine?

6 MR. ENGLISH: I will, your Honor. Just  
7 one second. Because what Mr. Carman just said  
8 is relevant. Let me look at this for one  
9 second.

10 JUDGE CLIFTON: All right. While we were  
11 off record, Mr. Carman indicated that he has  
12 placed on the back table revised or corrected  
13 exhibits, three exhibits. So if you have not  
14 had an opportunity to get those, if you'll do  
15 those now -- do that now. And we'll go off  
16 record for just a moment at 9:25.

17 (Off the record.)

18 JUDGE CLIFTON: All right. We're back on  
19 record at 9:26. Mr. English.

20 CROSS-EXAMINATION

21 BY MR. ENGLISH:

22 MR. ENGLISH: Good morning, gentlemen --  
23 or Doctors.

24 DR. KNOBLAUCH: Good morning.

25 MR. ENGLISH: Please don't take offense,

1 Dr. Knoblauch, but you can almost take a nap  
2 here for a while. I think that Dr. Knutson and  
3 I will be going for a while. But just -- I  
4 might interject something occasionally just to  
5 make sure that you feel that you aren't being  
6 left out.

7 DR. KNOBLAUCH: Thank you.

8 MR. ENGLISH: Dr. Knutson, when were you  
9 first engaged on this project?

10 DR. KNUTSON: The week of April the 13th.  
11 I believe it may have been just a few days prior  
12 to that.

13 MR. ENGLISH: And who engaged you?

14 DR. KNUTSON: The AIDA. Mr. Miltner  
15 called me and we talked.

16 MR. ENGLISH: And up to the time that you  
17 arrived at the hearing -- let me back up. You  
18 arrived here at the hearing yesterday morning?

19 DR. KNUTSON: Actually, the evening  
20 before.

21 MR. ENGLISH: Did you attend any portions  
22 of the hearing the evening before?

23 DR. KNUTSON: No, I did not.

24 MR. ENGLISH: How much time have you  
25 spent preparing your testimony for this project?



1 DR. KNUTSON: In terms of hours?

2 MR. ENGLISH: Yes, sir.

3 DR. KNUTSON: Gee. I should have summed  
4 it up. Close to 100 hours, yeah. Let me change  
5 that. Close to 200 hours.

6 MR. ENGLISH: And you're being paid for  
7 this project, correct?

8 DR. KNUTSON: Oh, yes.

9 MR. ENGLISH: And you've indicated in  
10 your testimony some of the materials you've  
11 reviewed and persons you've spoken with. Is  
12 there anyone else not listed in your testimony  
13 that you've spoken with in order to prepare for  
14 your testimony?

15 DR. KNUTSON: Yes. I spoke briefly with  
16 Mary Ledman about sources of data. And so I --  
17 I did that.

18 MR. ENGLISH: L-e-d-m-a-n. When did you  
19 speak with Ms. Ledman?

20 DR. KNUTSON: In mid April.

21 MR. ENGLISH: Other than sources of  
22 information, did you have any conversations or  
23 communications with Ms. Ledman in connection  
24 with this project?

25 DR. KNUTSON: Yes. We talked a little

1 bit about niche marketing firms, organic marked  
2 products, which is one of her specialty areas.

3 MR. ENGLISH: Organic products is one of  
4 her specialty areas?

5 DR. KNUTSON: Yes.

6 JUDGE CLIFTON: When you first referred  
7 to it, did you say organic marked products?

8 DR. KNUTSON: No. I didn't mean to, at  
9 least. I said organic products. I said niche  
10 marketing and organic products.

11 JUDGE CLIFTON: Thank you.

12 MR. ENGLISH: Did you speak with her  
13 about anything else?

14 DR. KNUTSON: No.

15 MR. ENGLISH: What did she tell you about  
16 organic issues?

17 DR. KNUTSON: I was checking with her on  
18 her perception of costs and her perception of  
19 comparative market positions of organic product  
20 producers. That's basically it.

21 MR. ENGLISH: Do you mean market position  
22 within the organic market or market position  
23 organic versus conventional product?

24 DR. KNUTSON: Both.

25 MR. ENGLISH: In those discussions, did

1           you learn anything that you relied on for your  
2           testimony?

3           DR. KNUTSON: No. It was purely one of  
4           checking my knowledge against her knowledge of  
5           the situation and confirming, you know, that I  
6           had correctly assessed what was going on from an  
7           economic standpoint, if you will.

8           MR. ENGLISH: Any other conversations  
9           with Mary Ledman?

10          DR. KNUTSON: No.

11          MR. ENGLISH: Other than those listed in  
12          your testimony and Mary Ledman, who else have  
13          you communicated with in preparing for today --  
14          yesterday and today?

15          DR. KNUTSON: I -- when you say, in my  
16          testimony, I have cited Dr. Stephenson at  
17          Cornell University, and we have exchanged  
18          e-mails with respect to the data that he  
19          analyzed and that I've cited in my testimony.

20          MR. ENGLISH: Which data did he --

21          DR. KNUTSON: This is producer pay  
22          prices.

23          MR. ENGLISH: Producer pay prices?

24          DR. KNUTSON: Yes.

25          MR. ENGLISH: Anything else with

1 Dr. Stephenson?

2 DR. KNUTSON: No.

3 MR. ENGLISH: Did you discuss at all his  
4 study that is referenced in Dr. Knoblauch's  
5 testimony and relied on by you as well?

6 DR. KNUTSON: No. I -- we did not. I  
7 was familiar with that study. I was familiar  
8 with the publication by virtue of my  
9 participation in the Dairy Markets and Policy  
10 Group. So I knew about what was done there, we  
11 had discussed it.

12 MR. ENGLISH: To be clear, that's  
13 RB 2006-07?

14 DR. KNUTSON: Yes.

15 MR. ENGLISH: So you're familiar with  
16 that study?

17 DR. KNUTSON: Yes, I'm familiar with it.  
18 I didn't do the study. But I've read the  
19 material, and I've been involved in discussions  
20 of the results.

21 MR. ENGLISH: And Dr. Stephenson is a  
22 well-respected economist in the dairy industry?

23 DR. KNUTSON: Oh, yes.

24 MR. ENGLISH: And his coauthor,  
25 Dr. Nicholson, is also a well-respected

1 economist in the dairy industry?

2 DR. KNUTSON: Not nearly as much  
3 experience, but a good analyst.

4 MR. ENGLISH: Good analyst. Other than  
5 Mary Ledman and Dr. Stephenson and those listed  
6 in your testimony, anyone else with whom you've  
7 had communications in preparing for your  
8 testimony yesterday and today?

9 DR. KNUTSON: Well, I guess I should say  
10 that I -- I -- in being comprehensive, I should  
11 say that I indicated in my testimony that I  
12 talked to each of the members of AIDA concerning  
13 the nature of their operations. And I had a  
14 questionnaire that I received back from them,  
15 and I discussed their answers in that  
16 questionnaire. And the purpose was to become  
17 familiar with their businesses.

18 MR. ENGLISH: And we had a discussion  
19 like this in Seattle, and I believe you did  
20 something like that in Seattle. And you  
21 indicated then that the answers to the questions  
22 that you asked were confidential information,  
23 correct?

24 DR. KNUTSON: Yes.

25 MR. ENGLISH: And that's the case today?

1 DR. KNUTSON: Yes. I have signed  
2 confidentiality agreements.

3 MR. ENGLISH: So to shortcut some  
4 cross-examination, if I asked you any questions  
5 about the answers to the questionnaires, you  
6 would say confidential information, correct?

7 DR. KNUTSON: Exactly.

8 MR. ENGLISH: Okay. So other than Mary  
9 Ledman, Dr. Stephenson and the individual  
10 producer-handlers, communications both in  
11 writing and orally, obviously Mr. Miltner,  
12 anyone else you've communicated with in  
13 preparing for your testimony yesterday and  
14 today?

15 DR. KNUTSON: No.

16 MR. ENGLISH: You indicated in your  
17 testimony that you had familiarized yourself  
18 with the proposals, including the submission by  
19 AIDA, and with the USDA exhibits that have been  
20 posted on the website, and of course, studies  
21 that you reference within your materials.

22 Have you reviewed any other documents,  
23 other than those stated in your testimony, in  
24 preparing for and providing your testimony  
25 yesterday and today?

1 DR. KNUTSON: No.

2 MR. ENGLISH: So, for instance, there  
3 have been a significant number of witnesses who  
4 have appeared in this proceeding, most -- not  
5 all, but most of whom have appeared with  
6 prepared statements. You have not -- leaving  
7 aside Aurora, who testified yesterday, or  
8 Braum's, who testified yesterday, you have not  
9 seen any of those statements?

10 DR. KNUTSON: No. I've seen the  
11 statement of National Milk, I've seen the  
12 statement of IDFA, and that's the extent of my  
13 reviewing of statements.

14 MR. ENGLISH: Thank you for that. So  
15 National Milk and IDFA. Have you reviewed --  
16 other than the statements of National Milk and  
17 IDFA, have you reviewed any testimony provided  
18 by any witnesses in this proceeding?

19 DR. KNUTSON: No.

20 MR. ENGLISH: Other than the statements  
21 of National Milk and IDFA, which are exhibits,  
22 and the exhibits posted on the website of USDA,  
23 and any other of the documents, such as the  
24 statements of AIDA, assuming they are exhibits,  
25 have you reviewed any other exhibits for your

1 testimony yesterday and today?

2 DR. KNUTSON: Not that I recall.

3 MR. ENGLISH: Has anyone told you what  
4 witnesses, other than Dr. Yonkers and Dr. Cryan,  
5 have said on the witness stand?

6 DR. KNUTSON: I have had some discussions  
7 with the attorneys representing AIDA concerning  
8 testimony that has been presented.

9 MR. ENGLISH: And --

10 JUDGE CLIFTON: I need you to be a little  
11 closer to that microphone. Thank you.

12 MR. ENGLISH: And what testimony by name  
13 have you learned about?

14 DR. KNUTSON: I don't think the  
15 discussion has been that specific in terms of us  
16 talking about who specific witnesses were. It  
17 was more content type of discussion.

18 MR. ENGLISH: Was it -- I mean -- okay.  
19 So leaving aside names, how about organizations?

20 DR. KNUTSON: Relating to markets, for  
21 example. Like Kansas City, El Paso, situations  
22 of that type.

23 MR. ENGLISH: Have you discussed the  
24 testimony of Dr. Schiek?

25 DR. KNUTSON: As a matter of fact, yes.



1 We have talked about his testimony.

2 MR. ENGLISH: And what were you told  
3 about his testimony?

4 DR. KNUTSON: I think you need to be more  
5 specific in terms of what you're interested in.

6 MR. MILTNER: Your Honor, this is  
7 Ryan Miltner. I obviously want Mr. English to  
8 have the opportunity to do his voir dire, but  
9 the conversations with counsel, I think, are  
10 starting to get beyond the scope of what is  
11 reasonably permissible. And so I'm going to  
12 object to further in-depth questioning on, you  
13 know, conversations between the experts and the  
14 attorneys.

15 JUDGE CLIFTON: Mr. English.

16 MR. ENGLISH: I assume, of course, that's  
17 not a privilege or confidentiality objection,  
18 since once an expert testifies, there is no  
19 privilege or confidentiality.

20 And as for my exploration of what he may  
21 be told, I -- I may not ask necessarily. I do  
22 think I am entitled to know which witnesses and  
23 explore in order to understand what he is  
24 relying on.

25 It is -- there is simply no privilege,

1           and therefore it seems to me I'm entitled to  
2           know what he's relying on.  If I don't know what  
3           he's relying on, USDA doesn't know what he's  
4           relying on, none of us know what he's relying  
5           on.

6                    JUDGE CLIFTON:  I think you can explore  
7           what he's relying on in a way other than asking  
8           him what he learned from counsel about  
9           Dr. Schiek's testimony, when he may not be able  
10          to distinguish what Dr. Schiek's testimony was  
11          specifically.

12                   I can see why he would ask you to be a  
13          little more specific.  In other words, he may  
14          have been given information, he may not know  
15          whether that's from Dr. Schiek or from somebody  
16          else.

17                   MR. ENGLISH:  If he doesn't recall about  
18          which witness it is, he can say, I don't recall  
19          which witness it is.

20                   JUDGE CLIFTON:  But your question is  
21          about what were you told about Dr. Schiek's  
22          testimony.

23                   MR. ENGLISH:  And that was a very precise  
24          question.  And I think I'm entitled to an  
25          answer.  And, you know, there is no

1 confidentially, there is no privilege. I'm  
2 entitled to know what he's been told in order to  
3 know what's going on with his testimony.

4 JUDGE CLIFTON: Let me hear from you,  
5 Mr. Beshore, and then I'll hear from  
6 Mr. Miltner.

7 MR. BESHORE: Just a quick comment on the  
8 question. Dr. Knutson specifically said he  
9 recalled discussing Dr. Schiek's testimony, and  
10 that's the testimony which led to the question  
11 that's been tendered. I think that's perfectly  
12 appropriate. He knew -- he had talked about  
13 Dr. Schiek's testimony.

14 JUDGE CLIFTON: Mr. Miltner.

15 MR. MILTNER: There is a subtle but real  
16 difference between asking if he knows about  
17 Dr. Schiek's testimony, what he knows about  
18 Dr. Schiek's testimony and discussions about  
19 conversations with counsel, which I presume and  
20 I have observed, occur with every attorney in  
21 this room with every witness in this room.

22 You know, there is a work product  
23 doctrine as well. And, you know, we can explore  
24 those areas without touching on other sensitive  
25 gray areas.

1 JUDGE CLIFTON: Mr. English.

2 MR. ENGLISH: Your Honor, I'm going to  
3 try -- I think that Mr. Miltner is right, there  
4 are other ways of asking the question. By doing  
5 so, I don't -- I don't agree, for the record,  
6 that an outside paid expert, such as  
7 Mr. Wilcox -- the same questions could have been  
8 asked of him. An outside paid expert does not  
9 come with work product or privilege.

10 But I'm not going to get into that  
11 because I think -- I think Mr. Miltner has  
12 pointed the way to asking the question in a way  
13 that, apparently, he won't object. And  
14 therefore, since presumably I can get the same  
15 information, I will do that.

16 JUDGE CLIFTON: I appreciate that. Thank  
17 you, Mr. English.

18 MR. ENGLISH: What do you know about the  
19 testimony of Dr. Schiek?

20 DR. KNUTSON: I have not read the  
21 testimony of Dr. Schiek.

22 MR. ENGLISH: What information about the  
23 testimony of Dr. Schiek have you relied on in  
24 providing your testimony yesterday and today?

25 DR. KNUTSON: Oh, not at all. Because

1           that was after my testimony was presented.

2           MR. ENGLISH: But you've been -- you've  
3           been here for additional direct. So that was an  
4           add-on. So --

5           DR. KNUTSON: I have not relied upon any  
6           of the discussions of testimony for what I have  
7           presented thus far.

8           MR. ENGLISH: Have you relied on any of  
9           the testimony that you have learned about, other  
10          than Dr. Cryan and Dr. Yonkers, in providing  
11          your testimony yesterday and today?

12          DR. KNUTSON: No.

13          JUDGE CLIFTON: If I might follow that  
14          up? Did you rely on the testimony of  
15          Dr. Yonkers in preparing your testimony?

16          DR. KNUTSON: I read the testimony of  
17          Dr. Yonkers and Dr. Cryan. Let me see.  
18          Timingwise, probably -- timingwise, Dr. Cryan's  
19          I read early on. I wasn't provided Dr. Yonkers'  
20          testimony until much later, so it certainly  
21          didn't enter into my written statement, because  
22          my written statement was essentially completed  
23          before reading the testimony of Dr. Yonkers.

24          JUDGE CLIFTON: Thank you. Mr. English.

25          MR. ENGLISH: Thank you, your Honor. I

1 appreciate that.

2 All right, sir. I think we can put the  
3 preliminaries away. Let's get to the feature  
4 event.

5 JUDGE CLIFTON: Well said.

6 MR. ENGLISH: In paragraph 10 of your  
7 testimony -- and by the way, I agree with you  
8 that for testimony of this length, numbering is  
9 very helpful. So thank you, sir.

10 DR. KNUTSON: Thank you.

11 MR. ENGLISH: You reference the Nourse  
12 report.

13 DR. KNUTSON: Yes.

14 MR. ENGLISH: And you have stated in your  
15 testimony that the Nourse report does not deal  
16 with disorderly marketing by producer-handlers,  
17 correct? You said that.

18 DR. KNUTSON: So far as I know, yes.

19 MR. ENGLISH: Isn't it also true that the  
20 Nourse report from 1962 -- and I confess, I  
21 apparently have a different version than the one  
22 that appears on the Internet and from Cornell  
23 that has been handed out here. So I have a  
24 different page reference, and I'll give you both  
25 page references. The original that I have,

1           which I think is a much older document, on  
2           page 62 says, historically, exemption from  
3           regulation has been given to certain handlers,  
4           particularly publicly-owned processors and  
5           producer-distributors. Little justification  
6           exists today for exemption from regulation, and  
7           only under the most unusual circumstances should  
8           such exemption be granted. Do you remember  
9           that?

10           DR. KNUTSON: No, I don't remember that  
11           specific statement.

12           MR. ENGLISH: Do you remember that  
13           statement from your testimony -- well, your  
14           cross-examination in 2003?

15           DR. KNUTSON: I must say, I do not.

16           JUDGE CLIFTON: Do you have it with you,  
17           Mr. English?

18           MR. ENGLISH: I'm looking for it right  
19           now, your Honor.

20           MR. BESHORE: What was the page again?

21           MR. ENGLISH: I'm going to give you the  
22           page that it's on in the one that's here.

23           JUDGE CLIFTON: Let's go off record for  
24           just a moment while you do that. It's 9:54.

25           (A recess was taken from 9:54 to 9:57.)

1 JUDGE CLIFTON: We're back on record at  
2 9:57. Mr. English.

3 MR. ENGLISH: Your Honor, during the  
4 break, the document that's been provided by  
5 counsel for AIDA -- and we appreciate the  
6 copies -- are labeled April 1962, Report to the  
7 Secretary by the Federal Milk Order Study  
8 Committee. I suspected that there was another  
9 version of this, and indeed, the version that  
10 Dr. Knutson has in front of him is different in  
11 a couple of respects. The date is  
12 December 1962 rather than April 1962. I think  
13 what he has may be the final version, but both  
14 were published. And the one we have that's  
15 dated April 1962 is the one that's available on  
16 the Cornell website. The pagination is  
17 completely different.

18 The statement that I was referring to for  
19 the version that has been provided here appears  
20 on a page that has Roman II-3-28, appearing at  
21 the top third. And a Roman II-3-29, the very  
22 beginning of the next page.

23 Dr. Knutson, the version you have is  
24 dated December 1962. Does the language appear  
25 on page 57?



1 DR. KNUTSON: Yes.

2 MR. ENGLISH: Do you recall that language  
3 now?

4 DR. KNUTSON: No, I do not recall that  
5 specific language, as I stated in my testimony.

6 MR. ENGLISH: And you don't recall our  
7 having a discussion about that language six  
8 years ago in Seattle?

9 DR. KNUTSON: Actually, no, I do not.

10 JUDGE CLIFTON: Dr. Knutson, I would like  
11 you to take a minute to familiarize yourself  
12 with the context of the statement, and then read  
13 the statement into the record and indicate  
14 whether you have any other comment about the  
15 context of it as you find it there. We'll go  
16 off record to give you a moment to do that.

17 (Off the record.)

18 JUDGE CLIFTON: Let's go back on record.  
19 We're back on record at 10. Mr. English. Well,  
20 let me first ask --

21 MR. ENGLISH: Sure.

22 JUDGE CLIFTON: -- Dr. Knutson, first,  
23 would you read that statement into the record?  
24 And then tell me if you have any additional  
25 comments based on the context.

1 DR. KNUTSON: Yes. First of all, it  
2 says, historically, exemption from regulation  
3 has been given to certain handlers, particularly  
4 public-owned processors and  
5 producer-distributors. Little justification  
6 exists today for exemption from regulation, and  
7 only under the most unusual circumstances should  
8 such exemption be granted.

9 And my only comment on it is that it is  
10 one paragraph with no explanation whatsoever of  
11 any concerns that they have about  
12 producer-handlers as related to disorderly  
13 marketing. So, you know, that's -- that's the  
14 only comment that I have. But I do not recall  
15 this statement, nor do I recall the discussion  
16 from Seattle with respect to it.

17 MR. ENGLISH: There are, on your  
18 attachment -- I'm not sure, maybe it wasn't put  
19 in the record -- but your curriculum vitae, a  
20 significant number of publications, correct?

21 DR. KNUTSON: Yes.

22 MR. ENGLISH: And as I recall from our  
23 prior conversation in Seattle, if you are listed  
24 as the first named author, you have primary  
25 authorship of an article, is that correct?

1 DR. KNUTSON: I have primary --

2 MR. ENGLISH: Primary authorship.

3 DR. KNUTSON: You better repeat the  
4 question. If I'm listed first --

5 MR. ENGLISH: Let me say that in that  
6 document, in your curriculum vitae --

7 DR. KNUTSON: Yes.

8 MR. ENGLISH: First of all, there's  
9 documents that just have Ronald Knutson's name  
10 on them, correct?

11 DR. KNUTSON: Yes.

12 MR. ENGLISH: You're the author of those,  
13 correct?

14 DR. KNUTSON: Yes.

15 MR. ENGLISH: Then there are documents  
16 that have multiple authors that are credited for  
17 the article, correct?

18 DR. KNUTSON: Yes.

19 MR. ENGLISH: Okay. In that case, as I  
20 understood your testimony, and I think maybe we  
21 still have it here from 2003, the order of the  
22 authorship, as it's listed, has some importance,  
23 in that if you're not listed first and there's  
24 seven or eight people listed on the paper, you  
25 don't have primary authorship, is that correct?

1 DR. KNUTSON: Well, you know, the answer  
2 to that question is a difficult one from an  
3 academic perspective, particularly from the  
4 perspective of things done, for example, by the  
5 Cornell group of ag economists since we work so  
6 closely together. And who is listed and in what  
7 order they're listed is -- is not a matter of a  
8 whole lot of discussion.

9 Frequently we just -- it lists them in  
10 alphabetical order because everybody contributed  
11 to it. And that's probably the best way to  
12 resolve it, in our eyes. But generally  
13 speaking, you are right.

14 Generally speaking, you know, the first  
15 person is the primary author. If you see  
16 something in alphabetical order, then probably  
17 not.

18 MR. ENGLISH: Okay. So with the caveat  
19 that if it's in alphabetical order, it probably  
20 isn't -- or doesn't necessarily mean you're the  
21 major author?

22 DR. KNUTSON: Yes, yes.

23 MR. ENGLISH: But otherwise, if it's not  
24 in alphabetical order, I think your testimony  
25 was in Seattle, I am the major author.

1 DR. KNUTSON: Yes.

2 MR. ENGLISH: But regardless, if you're  
3 not the major author, you would still have  
4 involvement in the publication, correct?

5 DR. KNUTSON: Yes.

6 MR. ENGLISH: And you would have reviewed  
7 the publication before it was published,  
8 correct?

9 DR. KNUTSON: Certainly, yes.

10 MR. ENGLISH: And if you had strong  
11 disagreement with a portion of the article, what  
12 would you do?

13 DR. KNUTSON: Well, again, that's a very  
14 interesting question because, you know, you  
15 don't normally take your name off from a project  
16 that you worked on. Academically, I guess, if  
17 you felt strongly enough you could dissent from  
18 it, but that's not typical of what is done.

19 So you know, my -- my view is that you --  
20 you -- you go with the consensus of the group in  
21 terms of what's in an article that's jointly  
22 written by them.

23 MR. ENGLISH: And the consensus of the  
24 group of dairy economists, at least represents,  
25 you know, a strong opinion in that direction,

1 correct?

2 DR. KNUTSON: Sure.

3 MR. ENGLISH: Thank you, sir. In  
4 paragraph 10 of your testimony, you reference  
5 equitable treatment.

6 DR. KNUTSON: Yes.

7 MR. ENGLISH: Underlined, equitable  
8 treatment.

9 DR. KNUTSON: Yes, I do.

10 MR. ENGLISH: The word equitable does not  
11 appear in the Agricultural Marketing Agreement  
12 Act, does it?

13 DR. KNUTSON: That's true, but it does  
14 appear in the Nourse report, as indicated there.

15 MR. ENGLISH: But it does not appear in  
16 the Agricultural Marketing Agreement Act, does  
17 it?

18 DR. KNUTSON: That's true. Not that I  
19 know of.

20 MR. ENGLISH: Do you remember having this  
21 discussion back in 2003?

22 DR. KNUTSON: No, I really don't.

23 MR. ENGLISH: So you didn't go look in  
24 the Agricultural Marketing Agreement after our  
25 last discussion to see if maybe you had missed

1           it before?

2                   DR. KNUTSON: No. I suspect that when  
3 you say it's not in there, it's not in there,  
4 so --

5                   MR. ENGLISH: Thank you for that.

6                   You say that treating all parties  
7 equitably, and by implication, not necessarily  
8 equally in paragraph 10?

9                   DR. KNUTSON: Yes.

10                  MR. ENGLISH: If you look in a thesaurus  
11 under the word equitable or equitably, do you  
12 know whether the very first word you see is  
13 equal or equally?

14                  DR. KNUTSON: Okay.

15                  MR. ENGLISH: Do you know that?

16                  DR. KNUTSON: Yeah, okay.

17                  MR. ENGLISH: So how is the word  
18 equitable different from equal?

19                  DR. KNUTSON: Oh, well, that's pretty  
20 obvious to me. Equity involves balancing  
21 interests of different parties. And there's a  
22 very different meaning, to me, of equitable  
23 treatment versus equal treatment. Equal means  
24 what it says, equal. And so the two terms are  
25 quite different terms.

1 MR. ENGLISH: The two terms are quite  
2 different terms, even if, in Roget's New  
3 Thesaurus, Third Edition, the very first synonym  
4 for the word equitable is equal.

5 DR. KNUTSON: It doesn't -- that is not  
6 meaningful to me in a thesaurus. So I mean, you  
7 know, you could use it as an alternative in a  
8 thesaurus if you desire to, but it doesn't mean  
9 they're the same.

10 JUDGE CLIFTON: Do you happen,  
11 Mr. English, to have the whole Roget's thesaurus  
12 entry on that?

13 MR. ENGLISH: No. I have the transcript  
14 of the last hearing, where we had this very same  
15 discussion, your Honor.

16 JUDGE CLIFTON: All right. Thank you.

17 MR. ENGLISH: On page 2183. Do I dare  
18 ask what page we're up to here?

19 (Off the record.)

20 MR. ENGLISH: We didn't work as long  
21 hours. All right. Sir, let's turn to Exhibit  
22 89, Table 1.

23 DR. KNUTSON: You will have to tell me  
24 what Exhibit 89 is.

25 MR. ENGLISH: It's your testimony. Your



1 testimony.

2 DR. KNUTSON: Oh, my testimony. Fine.  
3 Go ahead. What paragraph?

4 MR. ENGLISH: I said Table 1.

5 DR. KNUTSON: Oh, Table 1, fine. Sorry.

6 MR. ENGLISH: Quite all right. And I'll  
7 be referring back to paragraph 14, which appears  
8 on page 6. Your handler -- the second -- you  
9 have the producer box and the handler box, and  
10 you have -- so I want to discuss the handler box  
11 to start with. What is included in handlers?

12 DR. KNUTSON: Handlers is basically  
13 any -- anyone who is classified under the order  
14 as being a handler of milk.

15 MR. ENGLISH: So it's all milk --

16 DR. KNUTSON: All milk.

17 MR. ENGLISH: -- under the orders?

18 DR. KNUTSON: Yes. Yes, it includes  
19 co-ops, processors, yes, exactly.

20 MR. ENGLISH: It is not, by any stretch  
21 of the imagination, a measure of Class I usage,  
22 is it?

23 DR. KNUTSON: It is not, no.

24 MR. ENGLISH: And I note that, you know,  
25 you did your calculation of growth for

1 producers, for handlers, and for  
2 producer-handlers, but you didn't do it for  
3 Class I utilization of sales volume, did you?

4 DR. KNUTSON: No.

5 MR. ENGLISH: Had you done it for Class I  
6 utilization of sales volume, it would be a  
7 number just above 1.16, wouldn't it?

8 DR. KNUTSON: For?

9 MR. ENGLISH: If you did the growth of  
10 Class I utilization of sales volume in the same  
11 way that you did growth for producers -- for  
12 handlers and for producer-handlers?

13 DR. KNUTSON: Yes, but the problem -- the  
14 problem is this with that assertion. And that  
15 is, that if I had the numbers, you know, of pool  
16 distributing plants, then it would have been  
17 easier, but I didn't have that number.

18 Now, it's entirely possible that it was  
19 subsequently provided, but I didn't have it.

20 MR. ENGLISH: You couldn't -- never mind.

21 JUDGE CLIFTON: I would like you to  
22 re-ask that question. I don't see how  
23 Dr. Knutson's answer is responsive to your  
24 question, Mr. English.

25 MR. ENGLISH: Well, my question --

1           actually, he was responsive and then he decided  
2           to add much more to it.

3           My question was, you didn't do that  
4           calculation. He said, yes, I did not do that  
5           calculation, but -- and then wanted to -- he  
6           wanted to say something and he explained what he  
7           wanted to say and, you know, that's --

8           JUDGE CLIFTON: Okay.

9           MR. ENGLISH: I would rather he answer my  
10          question, but I'm -- you know, not prepared to  
11          go -- try to clarify what he did when it wasn't  
12          what I asked.

13          JUDGE CLIFTON: Okay. I'm content.  
14          Thank you.

15          MR. ENGLISH: Well, let's talk about  
16          Figures 1, 2 and 3 -- or just 1 and 2. You  
17          know, because you've testified in -- that there  
18          was a hearing in 2003 and 2004 with respect to  
19          the producer-handler regulation in the Pacific  
20          Northwest and Arizona, correct?

21          DR. KNUTSON: Yes.

22          MR. ENGLISH: And you know, because you  
23          submitted declarations in subsequent litigation,  
24          that regulation was adopted that changed the  
25          regulatory treatment of producer-handlers in the

1 Pacific Northwest and Arizona, correct?

2 DR. KNUTSON: Yes.

3 MR. ENGLISH: And you know that the  
4 litigation to date has not been successful,  
5 there's no injunction in place, and therefore  
6 the regulatory changes in the Pacific Northwest  
7 and Arizona went into place April of 2006,  
8 correct?

9 DR. KNUTSON: Yes.

10 MR. ENGLISH: So the Figure 1, from  
11 December '05 to March '09, doesn't account for  
12 the fact that certain producer-handlers who were  
13 producer-handlers and lost that status because  
14 of change in regulation, you don't take that  
15 into consideration in your Figure 1, do you?

16 DR. KNUTSON: No.

17 MR. ENGLISH: So isn't it the case that  
18 the producer-handlers listed in December '05 and  
19 March '09, it's really an apples to oranges  
20 comparison?

21 DR. KNUTSON: No. It's just the number  
22 of producer-handlers.

23 MR. ENGLISH: But there would be more  
24 producer-handlers if the regulation had not gone  
25 into effect, correct?

1 DR. KNUTSON: Yes.

2 MR. ENGLISH: And a portion of your  
3 testimony is, there hasn't been a growth in the  
4 number, but one of the reasons for that is  
5 regulations reduced the opportunity for  
6 producer-handlers in those orders, correct?

7 DR. KNUTSON: That's true. That's one of  
8 the factors.

9 MR. ENGLISH: And that would also be true  
10 of Figure 2, which is now the sales by  
11 producer-handlers. The fact of the matter is,  
12 if you wanted to do sales by producer-handlers,  
13 and do a comparison from '05 through '08, there  
14 are -- there are volumes of producer-handler  
15 milk in the 2005 number that simply can't be in  
16 the 2008 number, correct?

17 DR. KNUTSON: Right.

18 MR. ENGLISH: And if one wanted to  
19 compare, one could adjust at either end, add  
20 volumes back in '08 or subtract volumes in '05,  
21 to try to compare apples to apples?

22 DR. KNUTSON: Well, that's -- that's an  
23 interesting proposition as to whether that  
24 compares apples to apples, because as you've  
25 indicated, you've got a change in the regulatory

1 status itself. So is that -- I don't know that  
2 that's comparing apples to apples, but --

3 MR. ENGLISH: Well, you've also suggested  
4 that the lack of growth in producer-handlers is  
5 an indication that this opportunity really isn't  
6 what our side says it is, correct?

7 DR. KNUTSON: Exactly, and I stand by  
8 that.

9 MR. ENGLISH: Do you know about a dairy  
10 farmer from Florida who testified in this  
11 proceeding?

12 DR. KNUTSON: No, I am not familiar with  
13 the dairy farmer from Florida.

14 MR. ENGLISH: The one who is building a  
15 plant who wants to be a producer-handler?

16 DR. KNUTSON: No.

17 MR. ENGLISH: Do you know about two dairy  
18 farmers from Virginia who showed up, who already  
19 have a plant, trying to figure out how to make  
20 it a producer-handler?

21 DR. KNUTSON: No, I am not familiar with  
22 that.

23 MR. ENGLISH: Are you familiar with the  
24 dairy farmer from Colorado, who is building a  
25 plant and intends to be a producer-handler?

1 DR. KNUTSON: No, I am not.

2 MR. ENGLISH: Has built a plant. Are you  
3 aware of the testimony from Erick Metzger, of  
4 three of the members of National All Jersey, who  
5 either are or have built plants in the last  
6 couple of years?

7 DR. KNUTSON: No, but they should be  
8 reflected in the numbers here if they're  
9 producer-handlers.

10 MR. ENGLISH: If they haven't yet opened  
11 their plant, they're not yet a producer-handler,  
12 they're not listed, are they, sir?

13 DR. KNUTSON: No.

14 MR. ENGLISH: Since you weren't here and  
15 you don't about their testimony, you don't know  
16 what their status is right now, do you?

17 DR. KNUTSON: No. No, but you know, let  
18 me -- let me say this. You've got data for  
19 March 2009 here on numbers of producer-handlers  
20 and there are 37 of them. So that's pretty  
21 recent.

22 MR. ENGLISH: Now, the other thing is, do  
23 you know how many of those producer-handlers  
24 listed in '09 didn't even have plants before the  
25 year 2000?

1 DR. KNUTSON: No, I do not.

2 MR. ENGLISH: So you could have an  
3 unstatic situation where you're comparing a  
4 larger number of producer-handlers with old,  
5 small plants to a smaller number of  
6 producer-handlers who have new, larger plants?

7 DR. KNUTSON: You could be on the margin,  
8 yes.

9 MR. ENGLISH: On the margin?

10 DR. KNUTSON: Yeah, on the lower -- you  
11 know, are you talking about exempt versus  
12 nonexempt?

13 MR. ENGLISH: We're talking about --

14 DR. KNUTSON: Just producer-handlers.

15 MR. ENGLISH: Do you know whether or not  
16 there's been testimony in this proceeding about  
17 the size of some of the producer-handlers who  
18 have built plants since the year 2000?

19 DR. KNUTSON: No, I do not.

20 MR. ENGLISH: Since you surveyed the  
21 members of AIDA, A-I-D-A, how many of those  
22 members' plants were built since the year 2000?

23 DR. KNUTSON: Well, there's a difference  
24 between plants that were built and became  
25 producer-handlers.



1 MR. ENGLISH: Would you please answer the  
2 question I asked? I asked about a plant being  
3 built since 2000.

4 DR. KNUTSON: I don't know the answer to  
5 that question.

6 MR. ENGLISH: So you surveyed your  
7 members and you got information, but you don't  
8 know how many of those built plants since the  
9 year 2000?

10 DR. KNUTSON: No.

11 MR. ENGLISH: Do you remember a  
12 publication, AFPC -- all caps, AFPC, Policy  
13 Issues Paper 97-1, Envisioning a Deregulated  
14 Dairy Industry, on which you're listed as an  
15 author?

16 DR. KNUTSON: Yes.

17 MR. ENGLISH: And I will note, not in the  
18 number one position.

19 DR. KNUTSON: Right.

20 MR. ENGLISH: May 1997, correct? Is that  
21 close enough to your recollection? If I say  
22 it's --

23 DR. KNUTSON: I suspect if you say --

24 MR. ENGLISH: -- it's May 1997, I'm  
25 probably right?

1 DR. KNUTSON: I suspect if you say it's  
2 that, it probably is.

3 MR. ENGLISH: Do you remember either from  
4 that publication or maybe refreshed from 2003,  
5 the following statement in that document: No  
6 uniform pool blend prices, that's the heading.  
7 A primary equity function performed by FMMOs is  
8 to guarantee that a milk producer will receive  
9 the same minimum price regardless of the  
10 identity of the processor by buying that  
11 producer's milk. This marketwide pooling  
12 function will cease upon the elimination of  
13 FMMOs.

14 DR. KNUTSON: Yes.

15 MR. ENGLISH: And it's true, that if  
16 Federal Milk Orders were terminated, marketwide  
17 pooling would cease, correct?

18 DR. KNUTSON: In legal terms, that's  
19 correct.

20 MR. ENGLISH: Okay. The regulated  
21 marketwide pooling would?

22 DR. KNUTSON: Yes.

23 MR. ENGLISH: And if the proposal for  
24 individual handler pool is adopted,  
25 marketwide -- the regulated marketwide pooling

1 function will terminate, correct?

2 DR. KNUTSON: Yes.

3 MR. ENGLISH: In paragraph 13 of your  
4 testimony, you indicate, among others, that  
5 retailers exert significant market control,  
6 correct?

7 DR. KNUTSON: Absolutely.

8 MR. ENGLISH: Including buying from  
9 producer-handlers in order to lower their cost?

10 DR. KNUTSON: You better --

11 MR. ENGLISH: In exerting significant  
12 market control --

13 DR. KNUTSON: Yes.

14 MR. ENGLISH: -- retailers can buy from  
15 producer-handlers in order to lower their costs,  
16 is that not a true statement?

17 DR. KNUTSON: Where do you see that in  
18 that paragraph?

19 MR. ENGLISH: I am asking you a question,  
20 sir.

21 DR. KNUTSON: Oh, you're asking me a  
22 question. I'm sorry, I thought you were quoting  
23 from what I had said. And I certainly didn't  
24 recall that.

25 MR. ENGLISH: I apologize if I inferred

1           that.

2           DR. KNUTSON: State that again.

3           MR. ENGLISH: One way in which retailers  
4           can exert significant market control --

5           DR. KNUTSON: Yes.

6           MR. ENGLISH: Those were your words.

7           DR. KNUTSON: Yes.

8           MR. ENGLISH: -- is to buy milk from  
9           producer-handlers who don't have to pay the  
10          producer settlement fund in order to lower that  
11          retailer's cost --

12          DR. KNUTSON: No.

13          MR. ENGLISH: -- correct?

14          DR. KNUTSON: No. I do not agree with  
15          that statement as a general proposition. Now,  
16          you -- if you go on to state a specific  
17          instance, I'll take a look at it.

18          MR. ENGLISH: Well, unfortunately, you  
19          haven't been at the hearings, so I guess it's a  
20          little difficult for me, isn't it? Are you  
21          aware of the testimony --

22          JUDGE CLIFTON: Mr. English? Okay,  
23          you're going there. I was just going to ask you  
24          to have him assume that certain things were  
25          testified to, or the like.

1                   MR. ENGLISH: Assume that witnesses have  
2 testified -- that witnesses for regulated  
3 handlers have testified that they have lost  
4 business, for instance, in a store in which a  
5 regulated handler has the brand and the higher  
6 of two private label priced products in the  
7 store. They had all three, and they lost the  
8 lowest level to a large retailer. Does that --  
9 is that not an example of retailers exerting  
10 significant market control?

11                   DR. KNUTSON: It is true that retailers  
12 exert significant market control. What that has  
13 to do with the producer-handler is unclear to  
14 me.

15                   MR. ENGLISH: Do you think it's clear to  
16 the witnesses who appeared and testified that  
17 they've lost business in private label to  
18 producer-handlers?

19                   MR. MILTNER: Your Honor, I object.

20                   JUDGE CLIFTON: Mr. Miltner.

21                   MR. MILTNER: First of all, the witness  
22 has said he wasn't here for the testimony. So  
23 Mr. English represented that there were  
24 statements made here.

25                   First of all, the hypothetical was

1 different from the question he had proposed  
2 before. So we're muddling a lot of things  
3 together here, and I think it's unfair to the  
4 witness.

5 JUDGE CLIFTON: Thank you. It's true,  
6 Mr. English. The question you asked him  
7 included reference to a producer-handler. What  
8 you asked him to assume indicated that the lower  
9 level of the three products were lost to a large  
10 retailer. You made no reference to a  
11 producer-handler.

12 MR. ENGLISH: I'm sorry. If I asked it  
13 backwards, I apologize.

14 JUDGE CLIFTON: Well, what happened there  
15 then is the witness said to you, I don't see the  
16 relation to producer-handler. And it's because  
17 you left it out in what you wanted him to  
18 assume. Mr. Miltner.

19 MR. MILTNER: In addition, the initial  
20 question was that the retailer is exerting  
21 market pressure on the producer-handler. And  
22 the hypothetical made absolutely no reference to  
23 the retailer putting pressure on anything. He  
24 described a market situation in which a store  
25 was supplied by a regulated handler and a

1 producer-handler. He made absolutely no  
2 reference to an exertion of power or dominance  
3 or control. It's completely different.

4 And then the follow-up question tied in  
5 at least one other concept. So the question,  
6 the hypotheticals, need to be clear so the  
7 witness can answer them and we have a clean  
8 record on the point.

9 JUDGE CLIFTON: I agree. And,  
10 Mr. English, it's very brave of you to try to  
11 condense hours of testimony in some cases into a  
12 hypothetical. But if you want to explore this  
13 witness' response to such evidence, that is a  
14 good way to do it.

15 MR. ENGLISH: I appreciate that. I  
16 think I can clarify some things.

17 Assume with me that there is testimony in  
18 the record from a -- an individual who, when  
19 operating a regulated plant, was approached by a  
20 large retailer and asked to become a  
21 producer-handler. Do you need me to repeat  
22 that?

23 DR. KNUTSON: Okay, okay. Okay.

24 MR. ENGLISH: A witness from a handler --

25 DR. KNUTSON: Yes, I got it.

1 MR. ENGLISH: -- testified that a --  
2 assume that that is the case.

3 DR. KNUTSON: Okay, okay.

4 MR. ENGLISH: Is that not an example of a  
5 large retailer exerting its market power in  
6 light of producer-handler regulation, or  
7 nonregulation?

8 DR. KNUTSON: Oh, I don't know that I  
9 would say it's exerting market power. It's  
10 simply saying to him, you know, I would like an  
11 alternative source of supply. And that is not  
12 unusual for large retailers.

13 MR. ENGLISH: Do you understand -- I'm  
14 sorry. Assume that that entity, the handler,  
15 was already supplying the retailer. It wasn't  
16 an alternative supply. It was an alternative  
17 form of the same supply. Is that not an  
18 example --

19 DR. KNUTSON: So he was not a  
20 producer-handler before, and he became a  
21 producer-handler?

22 MR. ENGLISH: Well, I'll get to that in a  
23 moment. He was asked to become a  
24 producer-handler by a retailer.

25 DR. KNUTSON: Okay.



1 MR. ENGLISH: Is that not an example of a  
2 retailer using its power to exploit the  
3 producer-handler advantage?

4 DR. KNUTSON: No, I can't draw that  
5 conclusion that it's the use of market power. I  
6 mean, market power is -- has different meaning  
7 to me than that particular example.

8 MR. ENGLISH: What -- what can you  
9 learn -- let me strike that.

10 Assume that there is evidence in this  
11 record that a producer was approached by a  
12 retailer, asked to become a producer-handler and  
13 became a producer-handler. Doesn't that tell  
14 you that retailers want to buy from  
15 producer-handlers because of the regulatory cost  
16 advantage?

17 DR. KNUTSON: No, it doesn't mean that at  
18 all. I mean, first of all, you don't --  
19 there -- there is not a cost advantage for  
20 producer-handlers, as a general rule, except in  
21 the instance where you've got a monopolistic  
22 kind of market situation. And where that  
23 exists, then you've opened the door for someone  
24 to contest that market. And contesting a market  
25 is competition.

1                   MR. ENGLISH:  If the testimony of this  
2                   individual from the Pacific Northwest was  
3                   specifically that the retailer understood that  
4                   the working margin they had for a  
5                   producer-handler versus a regulated handler was  
6                   the difference between the Class I and the  
7                   blend, isn't that an indication that a retailer  
8                   understands that there is a difference between a  
9                   producer-handler and a handler for what it can  
10                  buy the milk for?

11                  DR. KNUTSON:  No.

12                  MR. ENGLISH:  I want to go back to the  
13                  part of the discussion about there hasn't been a  
14                  growth in numbers or a growth of volume in  
15                  producer-handlers.

16                  Would you agree that the risk that USDA  
17                  could -- as the Secretary and its judicial  
18                  officer have said repeatedly over 50 years,  
19                  could take away the producer-handler exemption,  
20                  may cause some persons not to pursue  
21                  producer-handler status for fear that they would  
22                  lose the benefit having incurred the cost of  
23                  becoming a producer-handler?  I get two lawyers.

24                  JUDGE CLIFTON:  Certainly.

25                  Mr. Ricciardi.

1 MR. RICCIARDI: You got me right now.  
2 Your Honor, I understand that we have an expert  
3 witness and therefore we can explore through  
4 hypotheticals. But there is even an extent to  
5 the hypotheticals, because we are asking this  
6 witness to try to get into someone's mind as to  
7 what they might think about something. And I  
8 think that that, even in the context of an  
9 expert, is asking him to really speculate as to  
10 what somebody might think or conclude.

11 JUDGE CLIFTON: I think you can just cure  
12 that by rewording, if you will, Mr. English.

13 MR. ENGLISH: As an economist, is  
14 regulatory risk something that businesses take  
15 into consideration in making decisions?

16 DR. KNUTSON: Yes.

17 MR. ENGLISH: Are you aware that there is  
18 testimony in this record that a person who is  
19 approached -- a handler is approached to become  
20 a producer-handler, one of the reasons they did  
21 not become a producer-handler was because they  
22 thought that the regulation would change, if  
23 they became a large producer-handler?

24 DR. KNUTSON: I'm not familiar with that  
25 fact, no.

1 JUDGE CLIFTON: Regulation might change.

2 MR. ENGLISH: The regulation might  
3 change. You're not familiar with that fact?

4 DR. KNUTSON: No.

5 MR. ENGLISH: Assume with me that there  
6 is such testimony in this record. Doesn't such  
7 testimony regarding the risk that regulations  
8 may change factor into the growth in the number  
9 or the size of producer-handlers?

10 DR. KNUTSON: It may, but it's one of the  
11 factors only.

12 MR. ENGLISH: Paragraph 51. You  
13 suggest -- you say that National Milk Producers  
14 Federation greatly enhances their chances -- or  
15 the members of National Milk Producers  
16 Federation greatly enhance their chances of  
17 gaining control of the producer-handlers' milk  
18 supply by putting them out of business of  
19 producing milk, processing milk or both.

20 You weren't here for the testimony of the  
21 United Dairymen of Arizona, were you, sir?

22 DR. KNUTSON: No, I was not.

23 MR. ENGLISH: Are you aware that United  
24 Dairymen of Arizona indicated that it has, since  
25 the regulation has changed in April 2006, a good

1 working relationship with Sarah Farms?

2 DR. KNUTSON: I'm not aware of that  
3 testimony, no.

4 MR. ENGLISH: Do you know whether Sarah  
5 Farms has been forced to go out of business?

6 DR. KNUTSON: No, no, I -- I don't think  
7 it's been forced to go out of business, no.

8 MR. ENGLISH: In fact, it's grown?

9 DR. KNUTSON: It's growing?

10 MR. ENGLISH: It has grown. Do you know  
11 if it's grown?

12 DR. KNUTSON: I'm not familiar with  
13 what's happened.

14 MR. ENGLISH: So you haven't been  
15 informed about what Mr. Hettinga testified about  
16 a couple days ago, about growing after becoming  
17 regulated?

18 DR. KNUTSON: No. I know there's others  
19 that have gone out of producer-handler status,  
20 like Smith Dairy in the Pacific Northwest.

21 MR. ENGLISH: But they're still in  
22 business?

23 DR. KNUTSON: Yeah, but they're not a  
24 producer-handler anymore.

25 MR. ENGLISH: They're not a

1 producer-handler because the regulation changed.

2 DR. KNUTSON: No, no, I think they're not  
3 a producer-handler because, you know, yeah,  
4 because the regulation -- because of the  
5 limitation put on them. Sure, that was a factor  
6 in the decision.

7 MR. ENGLISH: To be clear, and to speed  
8 up the process, because somebody will ask  
9 anyway, what you mean is they sold their cows?

10 DR. KNUTSON: They sold their cows.

11 MR. ENGLISH: But they're still in the  
12 process of processing milk?

13 DR. KNUTSON: That's my understanding.

14 MR. ENGLISH: And Edaleen is still  
15 producing milk and processing, correct?

16 DR. KNUTSON: Yes. But I understand that  
17 it's substantially reduced its labor force.

18 MR. ENGLISH: You did not talk to them  
19 for this hearing?

20 DR. KNUTSON: I have not talked to them.

21 MR. ENGLISH: So whatever you think you  
22 understand, you didn't get from them, did you?

23 DR. KNUTSON: No. It was -- as a matter  
24 of fact, I got it from Longmont Dairy in  
25 Colorado.

1                   MR. ENGLISH: You got it from a dairy in  
2 Longmont, Colorado?

3                   DR. KNUTSON: Who is a producer-handler.

4                   MR. ENGLISH: Who is a producer-handler?

5                   DR. KNUTSON: Yes.

6                   MR. ENGLISH: But not from Smith  
7 Brothers?

8                   DR. KNUTSON: Well, as a matter of  
9 fact --

10                  MR. ENGLISH: I'm sorry, not from  
11 Edaleen.

12                  DR. KNUTSON: Oh. In that case, that's  
13 right. In the case of Smith Brothers, it's a  
14 little bit different. I have a son and a  
15 daughter-in-law that lives in Seattle, and she  
16 bought milk from Smith Brothers because they  
17 produced their own milk. And when they quit  
18 producing their own milk, she quit buying milk  
19 from them.

20                  MR. ENGLISH: But they are still in the  
21 process of processing milk.

22                  DR. KNUTSON: Oh, yeah. She wanted to  
23 buy --

24                  MR. ENGLISH: So one customer left?

25                  DR. KNUTSON: She wanted to buy from a

1 firm that bought -- that's the niche market that  
2 I talked about earlier. Most of these  
3 producer-handlers operate under a niche  
4 marketing concept.

5 MR. ENGLISH: They were a niche market  
6 when they were 3 million pounds, correct?

7 DR. KNUTSON: They were, yeah --

8 MR. ENGLISH: Substantially more than  
9 3 million pounds.

10 DR. KNUTSON: They were a niche market.

11 MR. ENGLISH: But they were substantially  
12 more than 3 million pounds.

13 DR. KNUTSON: They appealed to certain  
14 customers.

15 MR. ENGLISH: I'll let him finish. But  
16 they were substantially above 3 million  
17 pounds --

18 MR. MILTNER: Objection.

19 MR. ENGLISH: -- weren't they, sir? He  
20 can answer that.

21 JUDGE CLIFTON: I'll hear your objection,  
22 Mr. Miltner.

23 DR. KNUTSON: You know --

24 JUDGE CLIFTON: Stop, please.

25 Mr. Miltner.



1                   MR. MILTNER: Substantially -- I object  
2                   to there's no basis for Mr. English's assertion  
3                   that they were substantially larger than  
4                   3 million pounds. There's nothing in the record  
5                   about their size. There's no evidence that  
6                   Dr. Knutson has knowledge about the size of  
7                   their operations at the time that the  
8                   regulations went into effect. So there's no  
9                   foundation for that particular question.

10                  JUDGE CLIFTON: I would like to interject  
11                  a question, if I may, Mr. English. Does niche  
12                  market connote a certain size market?

13                  DR. KNUTSON: No.

14                  JUDGE CLIFTON: What does it mean?

15                  DR. KNUTSON: It means that the product's  
16                  unique. It means that to the consumer. Like my  
17                  daughter-in-law, she views a dairy that produces  
18                  milk and processing it as a dependable source of  
19                  supply where she knows where that milk comes  
20                  from and the conditions under which it's  
21                  produced.

22                  In other words, there is a whole package  
23                  of unique consumer preferences that go with that  
24                  particular product. And it's not only organic.  
25                  It is -- it is this concept of knowing where the

1 milk comes from that motivates some consumers.

2 JUDGE CLIFTON: Name for me all the  
3 examples of niche marketing of milk that you can  
4 think of. And right into the microphone,  
5 please.

6 DR. KNUTSON: Okay. Certainly the most  
7 obvious one is the -- is organic. I mean,  
8 that's -- that's a -- very much of a growth  
9 area. That's a niche market. For some  
10 consumers, merely being a producer-handler is  
11 viewed by them as being a niche in the  
12 marketplace. That's another one.

13 Grass fed. We've got the firm that's  
14 grass fed that's not a producer-handler but  
15 could be. And that's a -- a market niche kind  
16 of situation. That's three kinds of examples.

17 I don't know how far down the road I  
18 ought to go because, you know, there are --  
19 there are a lot of ways, your Honor, in which  
20 consumers view milk as being unique.

21 You know, one of them that is the most  
22 contention is probably bST free. I don't know  
23 that it's fair to say that that's a niche  
24 anymore. I think it was at one time probably a  
25 niche. There's so much milk that's bST free

1           these days, there's so much difference of  
2           opinion as to how many consumers really care one  
3           way or another, that it's -- it's vanished as a  
4           niche. So those are examples.

5           JUDGE CLIFTON: Now, your testimony, your  
6           statement, mentions one other that I can  
7           remember and that was kosher.

8           DR. KNUTSON: Kosher, obviously, yeah. I  
9           forgot about that one. Kosher is obviously a  
10          niche as well. And there are probably others,  
11          but those are ones that come to mind.

12          JUDGE CLIFTON: Now, you've talked about  
13          glass bottles, or one of you did. One of the  
14          two of you talked about glass bottles. I don't  
15          know why that's significant.

16          DR. KNUTSON: Glass -- glass bottles are  
17          interesting because, as you probably know,  
18          there's a good deal of discussion in certain  
19          circles about plastic and -- and -- and --  
20          and -- and residues that may result from plastic  
21          and so on and so forth. You know, whether  
22          there's foundation or not to those assertions  
23          really doesn't make any difference. It's the  
24          consumers' perception that makes the difference  
25          in whether it's a niche market.

1                   Now, Heartland in specific, if you look  
2                   at their website, it makes a substantial show of  
3                   their glass bottles, and with the implication  
4                   that there's a consumer preference for glass  
5                   bottles. And you know, they've been a  
6                   successful operation. So you know, maybe  
7                   that's -- for the consumers in their area,  
8                   whether that's the Heartland brand or whether  
9                   it's the glass bottle, I'm not sure which it is.

10                   JUDGE CLIFTON: Another one you talked  
11                   about was the home delivery.

12                   DR. KNUTSON: Oh, home delivery, yeah,  
13                   yeah. Sorry. I'm glad you bring these up.

14                   Home delivery obviously is a niche.  
15                   Longmont Dairy, there aren't -- there aren't  
16                   many of these anymore. And that is a very  
17                   important service that certain customers would  
18                   have the ability to pay, which is probably the  
19                   most important factor in that, because it's --  
20                   all of these are higher costs, by and large.

21                   JUDGE CLIFTON: Why shouldn't the  
22                   providers of these niche market needs pay into  
23                   the pool?

24                   DR. KNUTSON: Oh, because they've got --  
25                   because, you know, as I've explained, they

1           inherently have a higher cost associated with  
2           their operations by virtue of them being a  
3           producer-handler. And it's -- it's the question  
4           of if you were to have a payment to the pool,  
5           what would be a rational kind of payment into  
6           the pool?

7                     And what I'm saying is these -- these  
8           people who are producer-handlers already have  
9           higher costs than everyone else in the market,  
10          at least everyone else in the market relative to  
11          the cost of -- of operating their own business  
12          and putting milk in stores.

13                    And so if you, in addition, put a  
14          payment -- a compensatory payment on top of  
15          that, then you increase their costs even more  
16          when they already have substantially higher cost  
17          by virtue, in large part, of the regulations to  
18          start with and by virtue of the business.

19                    Now, if you want me to explain that, I  
20          would be glad to do that.

21                    JUDGE CLIFTON: I would like you to move  
22          to one other area and talk to me about  
23          producer-handlers that serve no niche market.

24                    DR. KNUTSON: Okay. This gets into this  
25          issue of -- of a situation where you -- where

1           you have a producer-handler, and that  
2           producer-handler is producing milk under the  
3           rules and regulations of the order where they  
4           are forced to minimize purchases of milk, or not  
5           allowed any purchases, and are forced also to  
6           minimize surplus production of milk in their  
7           operation. That imposes substantial costs on a  
8           producer-handler.

9                   And even though they are not producing  
10           for a niche market, i.e., they're selling it to  
11           Wal-Mart or Costco or any other food retailer,  
12           they are constrained in terms of the costs of  
13           their operation. And the only way they compete  
14           is by virtue of a monopolistic situation in the  
15           market. That's -- that's the way these people  
16           compete in the marketplaces where somebody has  
17           exploited the market situation for some time.

18                   And it becomes a contestable market,  
19           not -- not -- not disorderly. I mean, it's a  
20           contestable market. That's not disorder in the  
21           market. It's -- it's one that consumers like,  
22           appreciate, as well as the buyer of milk of  
23           course, appreciates the competition.

24                   JUDGE CLIFTON: Thank you, Dr. Knutson.  
25           Mr. English.

1 MR. ENGLISH: Thank you, your Honor.

2 Dr. Knoblauch, don't get too far away.

3 In your testimony on page 2, the third  
4 paragraph, you say: The ERS average data  
5 demonstrates that even when measured against the  
6 Class I price, the cost of production exceeds  
7 the Class I price by \$5 to \$8 per hundredweight.

8 DR. KNOBLAUCH: That's correct.

9 MR. ENGLISH: That's true whether or not  
10 an entity is a producer-handler or a producer  
11 who sells to a regulated handler, correct?

12 DR. KNOBLAUCH: Yes. That data is simply  
13 reflective of those people who are producing  
14 milk. There's no distinction or qualification  
15 whether someone is a producer-handler or not.

16 MR. ENGLISH: You have discussed milk  
17 price differences on the top of page 3. I'm  
18 going to try to not spend a lot of time on it,  
19 but I want to discuss it a little bit. The  
20 comparisons are of -- the comparisons that are  
21 made are not of checks written by handlers to  
22 producers and producer associations, correct?

23 DR. KNOBLAUCH: I'm not certain I  
24 understand the distinction you're making, so  
25 could you help me with that?

1 MR. ENGLISH: Okay. The comparisons that  
2 have been made are of producer -- individual  
3 dairy farmer paychecks that they receive,  
4 correct?

5 DR. KNOBLAUCH: Yes, we receive  
6 individual paychecks.

7 MR. ENGLISH: Of individual dairy  
8 farmers, correct?

9 DR. KNOBLAUCH: That's correct.

10 MR. ENGLISH: Okay. The comparison is  
11 not of what was actually paid, for instance, to  
12 a co-op member's co-op in the first instance for  
13 the milk, correct?

14 DR. KNOBLAUCH: And again, I apologize,  
15 but I'm not certain I understand in the first  
16 instance for the milk what it is you're asking.

17 MR. ENGLISH: Do you understand that  
18 handlers who purchase milk from co-ops pay the  
19 cooperative for the milk?

20 DR. KNOBLAUCH: Yes. This is simply the  
21 check that the farmers receive regardless of who  
22 they're selling their milk to.

23 MR. ENGLISH: I understand. And my point  
24 is, this analysis doesn't look at what the  
25 handler paid the co-op for the milk, correct?



1 DR. KNOBLAUCH: That would be a second  
2 order step and we do not include that. It's  
3 simply what the farmer's paycheck shows.

4 MR. ENGLISH: And do you know that the  
5 uniform pricing provisions of the Agricultural  
6 Marketing Agreement Act speak to the prices paid  
7 by handlers to producers or producer  
8 associations?

9 DR. KNOBLAUCH: That is not my area of  
10 expertise. I have no knowledge of that  
11 situation.

12 MR. ENGLISH: So since you have no  
13 knowledge of that situation, you didn't think  
14 about making that analysis, correct?

15 DR. KNOBLAUCH: This is a study that I --  
16 Dr. Stephenson and I, and I believe Jason  
17 Carson, started and Mark has taken it over. And  
18 we were simply concerned with what prices were  
19 being received by farmers and what the  
20 variability was. End of our objective.

21 MR. ENGLISH: I'm not going to spend much  
22 time on it. Do you have that document with you?

23 DR. KNOBLAUCH: Which document are you  
24 referring?

25 MR. ENGLISH: The Comparing Your Milk

1 Check document which has been referenced.

2 DR. KNOBLAUCH: No, I don't.

3 MR. ENGLISH: Thank you, Mr. Miltner.

4 Turn to September 2008, I think it's the  
5 first -- there's a discussion of two pages --  
6 I'm sorry, three pages. And it's the first  
7 chart, Deciles Sorted Independently,  
8 September 2008.

9 DR. KNOBLAUCH: I have that.

10 MR. ENGLISH: And I just want to explore  
11 one thing with you. Looking at 1 versus 10,  
12 just 1 versus 10, the difference -- which  
13 difference would you like -- which difference do  
14 you think is the most meaningful? Is it the net  
15 marketing value difference, or is it -- what  
16 difference is most meaningful to you in terms of  
17 your discussion about differences between pay  
18 prices?

19 DR. KNOBLAUCH: In my perspective,  
20 probably both net pay and net marketing value.  
21 But being a farmer at heart, I want to know the  
22 difference in the net pay price, how much money  
23 do I, as a farmer, put in my pocket.

24 MR. ENGLISH: All right. So the  
25 difference between farmer -- well, farmer

1 group 1 and farmer group 10 net pay is \$2.26,  
2 correct?

3 DR. KNOBLAUCH: Yes.

4 MR. ENGLISH: The difference on  
5 butterfat, component value, from 1 to group 10,  
6 is \$1.05, correct?

7 DR. KNOBLAUCH: That's correct.

8 MR. ENGLISH: And the difference on  
9 protein, from 1 to 10, is \$1.18, correct?

10 DR. KNOBLAUCH: Correct.

11 MR. ENGLISH: And so the difference on  
12 just butterfat and protein is \$2.23, correct?

13 DR. KNOBLAUCH: That would not be  
14 correct, that's not how the data is --

15 MR. ENGLISH: That's not how the data  
16 works? Those numbers don't fall to the bottom  
17 line at some point, the butterfat value and the  
18 protein value?

19 DR. KNOBLAUCH: Maybe I'm not  
20 understanding here your question. Certainly --  
21 this is the average of the top 10 percent.  
22 Maybe I didn't understand your question.  
23 Certainly those values fall to the bottom  
24 because they're a component of the milk price.

25 MR. ENGLISH: And aren't those

1 components, the butterfat and the protein,  
2 differences between the 1st decile and the 10th  
3 decile, the most differences of all the  
4 differences ultimately on the page?

5 DR. KNOBLAUCH: The net marketing value  
6 is also about in that same range.

7 MR. ENGLISH: Yeah, right. But aren't  
8 they related? Isn't the net marketing value and  
9 the value of the butterfat and protein related?

10 MR. MILTNER: Your Honor.

11 JUDGE CLIFTON: Mr. Miltner.

12 MR. MILTNER: While they're discussing  
13 what's going on, can we go off record and take  
14 five, ten minutes?

15 JUDGE CLIFTON: Sure. Let's take a  
16 ten-minute break. It's 11:02. Please be back  
17 and ready to go at 11:12.

18 (A recess was taken from 11:02 to 11:17.)

19 JUDGE CLIFTON: All right. Let's go back  
20 on record. We're back on record at 11:17.  
21 Mr. English, I do have a producer, Jeff Brunton,  
22 of Brunton Dairy Farm, who is available to  
23 testify. Perhaps it would be best when you  
24 complete your cross?

25 MR. ENGLISH: However anyone wants to

1 handle it. I think I'm near the end.

2 JUDGE CLIFTON: All right. Let's proceed  
3 in this manner then.

4 MR. ENGLISH: Your Honor, as we begin,  
5 sometimes, even before the break, attorneys  
6 figure out that they know less about a document  
7 than they thought they did. And I'm going to  
8 drop my questions about the -- about that  
9 document, Dr. Stephenson document. It may get  
10 revisited by somebody else who, I think,  
11 understands it better than I. So discretion is  
12 sometimes good, and I'm going to move away from  
13 it.

14 Dr. Knoblauch, you had a discussion, and  
15 I appreciate the discussion, with Mr. Vetne  
16 about opportunity costs. Do you remember that  
17 discussion?

18 DR. KNOBLAUCH: Yes, I do.

19 MR. ENGLISH: Have you established an  
20 opportunity cost for unpaid family, maybe on a  
21 farm?

22 DR. KNOBLAUCH: We basically take a look  
23 at the information that's reported by the  
24 National Agricultural Statistics Service on the  
25 value of farm workers, and use that as a guide

1 in establishing what unpaid family labor is  
2 worth in the dairy farm.

3 MR. ENGLISH: Essentially what the --  
4 what that is, it's a value that has actually  
5 gone out, and so you apply that value based upon  
6 what they could have -- if they were working on  
7 another farm, for instance, what they might have  
8 been paid for working on that other farm,  
9 correct?

10 DR. KNOBLAUCH: That's correct.

11 MR. ENGLISH: You don't use family living  
12 expenses as a proxy for the opportunity costs  
13 for unpaid family labor?

14 DR. KNOBLAUCH: No.

15 MR. ENGLISH: And, Dr. Knutson, we've  
16 talked earlier about Dr. Stephenson and  
17 Dr. Nicholson and about the 2006-07 study. Do  
18 you know what value Dr. Stephenson and  
19 Dr. Nicholson applied for the value of raw milk  
20 for farms that did not sell raw milk?

21 DR. KNUTSON: No, I do not.

22 MR. ENGLISH: Would you be surprised if  
23 they asked dairy farmers to provide a value at  
24 which they believe the milk could be sold, and  
25 this value was used to calculate the transfer

1 price?

2 DR. KNUTSON: No, I wouldn't be surprised  
3 if they did that. They're not the  
4 producer-handler, however.

5 MR. ENGLISH: They didn't sell raw milk,  
6 did they? This is -- for farmers that did not  
7 sell raw milk, they were asked to provide a  
8 value at which they believed the milk could be  
9 sold.

10 DR. KNUTSON: Uh-huh. Uh-huh.

11 MR. ENGLISH: That's on page 16. So  
12 that's what other economists did for transfer  
13 price under those circumstance, is that correct,  
14 sir?

15 DR. KNUTSON: Yes, but the uniform blend  
16 price is not the price at which milk would be  
17 sold.

18 MR. ENGLISH: Let's say yes, but. You  
19 stated earlier it makes no sense to use anything  
20 other than the cost of producing the milk.  
21 Makes no sense.

22 DR. KNUTSON: Right.

23  
24 MR. ENGLISH: And that's not what your  
25 colleagues, Dr. Nicholson and Dr. Stephenson,

1 did in their study that you have relied on in  
2 your report?

3 DR. KNUTSON: But not for  
4 producer-handlers.

5 MR. ENGLISH: Do you recall after the  
6 20 -- well, the 2005 -- 2004 hearing resulting  
7 in a final decision in 2005 that resulted in,  
8 among other things, litigation filed in Lubbock,  
9 Texas by Hein Hettinga and Ellen Hettinga, doing  
10 business as Sarah Farms. Do you recall that?

11 DR. KNUTSON: Do I recall litigation?

12 MR. ENGLISH: Yes.

13 DR. KNUTSON: No, I don't.

14 MR. ENGLISH: Do you recall filing a  
15 declaration of Ronald Knutson, Ph.D. in a case?

16 DR. KNUTSON: I do recall that.

17 MR. ENGLISH: Okay. So that refreshes  
18 your recollection that there was a lawsuit?

19 DR. KNUTSON: Okay. Okay.

20 MR. ENGLISH: Correct?

21 DR. KNUTSON: Correct.

22 MR. ENGLISH: And you remember filing a  
23 declaration, correct?

24 DR. KNUTSON: Correct.

25 MR. ENGLISH: And part of your



1 declaration was the economic harm that would  
2 befall Sarah Farms if they were subject to  
3 regulation as opposed to continuing to be a  
4 producer-handler, correct?

5 DR. KNUTSON: Yes.

6 MR. ENGLISH: Do you remember making the  
7 following statement, paragraph 33 on page 13 of  
8 your declaration: Absent an injunction  
9 preventing the USDA regulation from taking  
10 effect on April 1, 2006, Sarah Farms will  
11 sacrifice its future viability pending the  
12 outcome of a full trial. Do you remember making  
13 that statement?

14 DR. KNUTSON: Yes.

15 MR. ENGLISH: No injunction was granted,  
16 was it, sir?

17 DR. KNUTSON: No.

18 MR. ENGLISH: And Sarah Farms is a  
19 healthy competitive element in the Arizona  
20 market, correct, today, sir?

21 DR. KNUTSON: True.

22 MR. ENGLISH: On page 14 in paragraph 38,  
23 do you remember making the following  
24 statement --

25 JUDGE CLIFTON: You're still --

1 MR. ENGLISH: I am merely in the  
2 declaration. I don't plan on making it an  
3 exhibit. Finally, if permitted to take effect  
4 on April 1, 2006, the USDA regulations would  
5 decimate Sarah Farms and mean higher prices for  
6 consumers, but other dairy farmers will not see  
7 a significant benefit. Do you remember making  
8 that statement?

9 DR. KNUTSON: Yes.

10 MR. ENGLISH: Do you know if there were  
11 higher prices in Arizona as a result of  
12 regulation of Sarah Farms?

13 DR. KNUTSON: I do not know the answer to  
14 that question.

15 MR. ENGLISH: You have done no study?

16 DR. KNUTSON: But I do go back to the  
17 point that this is a market that's contestable,  
18 controlled monopolistically and continues to be  
19 that way.

20 MR. ENGLISH: In Arizona?

21 DR. KNUTSON: Yes, Arizona, El Paso.  
22 They have the same --

23 MR. ENGLISH: I did not ask you about El  
24 Paso, sir.

25 DR. KNUTSON: Same basic characteristics.

1 MR. ENGLISH: But I didn't ask you about  
2 that.

3 DR. KNUTSON: I'm just saying --

4 JUDGE CLIFTON: Stop, please,  
5 Dr. Knutson. If your counsel on redirect want  
6 to go to El Paso, they can. Thank you.

7 DR. KNUTSON: Fine, fine.

8 MR. ENGLISH: Your Honor, I will disagree  
9 with that if they do it at the time, because  
10 they had their chance on direct. Fine.

11 JUDGE CLIFTON: I beg your pardon?

12 MR. ENGLISH: I will -- I will object,  
13 you can overrule my objection.

14 JUDGE CLIFTON: I will.

15 MR. ENGLISH: Of course. I understand.  
16 I will still make it.

17 JUDGE CLIFTON: All right. That's good.

18 MR. ENGLISH: Sarah Farms wasn't  
19 decimated, were they, sir?

20 DR. KNUTSON: No.

21 MR. ENGLISH: Thank you. I have no  
22 further questions of this witness.

23 JUDGE CLIFTON: Thank you, Mr. English.  
24 This would be a good time, I think, to ask the  
25 doctors to step down. I realize you have all

1           your many papers, it's a bit of an  
2           inconvenience, but it will give you a little bit  
3           of a break, too.

4           DR. KNUTSON: Here's that exhibit.

5           JUDGE CLIFTON: Thank you, yes. Please  
6           return to me anything you were asked to look at.  
7           I think this is the only one, Exhibit 18. All  
8           right. Let's take just five minutes, just  
9           stretch right where you are and that will allow  
10          the witnesses to transfer their things.

11          (Off the record.)

12          JUDGE CLIFTON: Okay. I think  
13          everybody's ready. Let's go back on record.  
14          We're back on record at approximately 11:29.  
15          Mr. Brunton, would you please state and spell  
16          your last name?

17          THE WITNESS: My name is Jeffry Brunton,  
18          J-e-f-f-r-y, B-r-u-n-t-o-n.

19          JUDGE CLIFTON: I would like now to swear  
20          you in. While you remain seated, would you  
21          raise your right hand, please?

22                               JEFFRY BRUNTON  
23          of lawful age, being duly sworn, was examined and  
24          testified as follows:

25          JUDGE CLIFTON: Thank you. First, tell

1           us about yourself, where your farm is, the  
2           nature of your operation, and then you may make  
3           the statement that you prepared.

4           A.       We have a family farm near Pittsburgh,  
5           Pennsylvania, called Brunton Dairy Farm. We are a small  
6           producer-handler. We milk about 106 cows, we home  
7           deliver most of our milk in glass bottles. And we also  
8           have a store on our farm where we sell milk to customers  
9           who come to the farm.

10                    JUDGE CLIFTON: Thank you. You may  
11           proceed.

12           A.       Okay. We -- we came here, I guess, just  
13           for an opportunity to speak plainly about the whole  
14           situation. We're not really in favor of any of the  
15           proposals. In fact, we're -- I would say we probably  
16           are against all of them. I think the thing that -- that  
17           troubled me most about most of the proposals is that the  
18           whole debate seems to be about the competing interests  
19           between different types of producers, and you know, who  
20           has the right to produce milk, how they want to do it,  
21           and you know, who has unfair advantages.

22                    Like the -- the National Milk Producers  
23           and IDFA, they claim that they're toiling under an  
24           unfair burden with the pooling provisions that they have  
25           to work under. I believe -- I think there's 15 cent per

1 gallon disadvantage. And you know, I wouldn't argue  
2 that, but I think that's unfair, too.

3           And then on the other hand, you have the  
4 producer-handlers who are threatened by losing their  
5 exemption from the provision because, you know, it would  
6 threaten the way they do business. Then there are small  
7 dairies like ours who really -- we fall in between the  
8 two provisions. Even though we are a producer-handler  
9 and we will lose that exemption but we're still covered  
10 by, you know, Proposal 2, where we would be covered by  
11 the small plant exemption.

12           But it seems to me that between the two  
13 interests -- I'll start over with that. It seems  
14 like -- like the dairy -- or the producer-handlers are  
15 kind of being divided so they can be conquered. Where  
16 right now the large producers are being gone after for  
17 their unfair advantages, and we're kind of being  
18 placated right now, saying, okay, well, you guys are  
19 covered, you know, under the small plant exemption, so  
20 don't worry, we won't worry about you.

21           But the contradiction that creates for us  
22 is even though it would actually -- it might actually  
23 benefit us for now, because we would have a little more  
24 flexibility to buy milk if we're working as a small  
25 plant, it creates a contradiction where, you know,

1 we're -- our only claim to conducting business the way  
2 we want to do it is we're not overly successful at it.

3 You know, that's fine if we're only  
4 producing 200,000 pounds a month, but as soon as we get  
5 good at it and start threatening, you know, the big  
6 guys, then, you know, our head is probably on the block  
7 next.

8 So we're not really satisfied with, you  
9 know -- with the situation that would create. And,  
10 really, I don't see why we need to be arguing over these  
11 competing interests, and you know, the scraps that the  
12 government would be willing to throw us by way of an  
13 exemption or regulating our competitors or whatever when  
14 we can actually, you know, enjoy the blessings of  
15 liberty among common values that would protect all of  
16 our interests.

17 Is it all right if I reference the  
18 Declaration or Independence or something? Or you know,  
19 the -- the three values that our country was founded on  
20 are life, liberty and property. I know it's called the  
21 pursuit of happiness in the declaration, but it's  
22 still -- it means property.

23 And I think these -- these proposals  
24 deteriorate these values rather than support them. For  
25 example, the value of life. I believe that production

1 is one of the highest virtues in any society that values  
2 life. You know, obviously one of the problems of our  
3 society is we have limited resources. The only way we  
4 can support life without compromising our resources is  
5 to produce more. We can't just live off of, you know,  
6 the limited resources we have. We have to be able to  
7 produce more. So production supports life.

8 But, you know, Proposal Number 1 is  
9 actually going to limit production, the way I see it.  
10 Because producer-handlers who would be harmed by this,  
11 they wouldn't go out of business or be restricted  
12 because they're breaking the law. You know, they're  
13 going to be restricted for following the law, because  
14 they're going -- an extra burden is going to be added to  
15 them. They'll be able to produce less, and that's not  
16 going to help anyone.

17 You know, the government would  
18 essentially be choosing how milk is produced, how much  
19 milk is produced by who, and who gets to produce. So in  
20 that way, I think that's deteriorating the value of life  
21 that our country is founded on.

22 Liberty. This is an easy one. I think  
23 any time our government is proposing a new law or new  
24 regulation, they should ask themselves, you know, does  
25 this increase the liberty or the freedom of our citizens



1 to do what they want with their own things, with their  
2 own property, with their own money. And if the answer  
3 is no, then it shouldn't be done.

4 And very clearly, the answer in this case  
5 is no. More regulation isn't going to help anyone.  
6 It's not going to help producers and it's certainly not  
7 going to help consumers who may be losing a niche  
8 product.

9 Like Dr. Knutson was talking about, the  
10 Smith Dairy that -- they were a producer-handler, they  
11 were bottling their own milk, but then with the added  
12 regulation they couldn't do that anymore. I'm sure  
13 they're still operating as a dairy, but some of those  
14 customers lost that producer-handler that they were  
15 relying on for the milk that they wanted. So you can't  
16 just consider the interests of the businesses that are  
17 competing here, there's also the consumers -- that want  
18 that product, that demand that product.

19 I know at Brunton Dairy, we don't have a  
20 pricing advantage over anyone as a producer-handler. We  
21 do have a quality advantage. We make the best milk in  
22 Western Pennsylvania. And even though our milk is  
23 priced higher than other brands of milk, there have been  
24 times where our milk is -- has pushed other milk out of  
25 the stores just because people wanted to buy the better

1 milk, not the cheaper milk.

2 We're not -- we weren't just another  
3 bottle on a shelf. We were a quality product that --  
4 that people wanted. So in a situation where you might  
5 have a large producer-handler that is going to have to  
6 change the way they do business, that's going to change  
7 the product that consumers are looking for. That's  
8 going to limit their liberty and their freedom to get  
9 the products that they want, because those products  
10 would not be able to be produced as they were.

11 And last, the value of property. The  
12 last time I checked, we still value private property  
13 somewhat in this country. And these proposals would  
14 weaken property rights by forcing producer-handlers to  
15 pay into a pool for the privilege of using their own  
16 milk. You know, if they have to pay someone else for  
17 the privilege of using something that they created, do  
18 they own that milk at all? It's like a pay-to-play  
19 situation. And we -- we would lose control of our own  
20 production essentially.

21 And I know it was argued in -- in the  
22 testimony by someone from the NMPF -- I got the written  
23 testimony when I was here the very first day. It was  
24 argued that there was no basis, there was no legal basis  
25 for the exemption producer-handlers. Well, the legal

1 basis should be that there's no reason you should have  
2 to pay someone else to use your own milk. I mean, it's  
3 your private property.

4 And if -- if you do away with that  
5 consideration, then I think it weakens property rights  
6 for everyone.

7 So, in my opinion, the way I see it, if  
8 there is a concern for equality and fairness and, you  
9 know, orderly marketing, the buzz words that have been  
10 bandied about here, I think it would be better, rather  
11 than trying to distribute an unfair burden to everyone  
12 else, it would probably be a better idea to try to  
13 remove that burden from the unfairly regulated parties.

14 So instead of -- I think the NMPF and the  
15 IDFA, the people who put forth the first two proposals,  
16 rather than trying to add their burden to their  
17 competitors, they should be trying to lift the burden  
18 off their own back. You know, if I have a monkey on my  
19 back, it's not going to do me any good to put a monkey  
20 on my uncle's back and everyone else's back, because the  
21 monkey is still on my back. I should be trying to get  
22 that monkey off of my own back. And I'm sure my uncle  
23 and everyone else would help me in doing that.

24 I mean, if anyone came to me and said,  
25 I'm being unfairly treated by the government, you know,

1 I'm being regulated and these other people aren't. I'm  
2 not going to help them regulate everyone else. I would  
3 want to help them lift the regulations that are unfairly  
4 burdening them.

5 So I know it's probably too late to  
6 submit a Proposal 27 or 28 or whatever, but I think at  
7 least someone needs to make the case for scrapping the  
8 whole system, and if you have to start over with  
9 something that is equitable and is fair and does support  
10 our values that our government is based on, or that our  
11 society is based on and our government is supposed to  
12 uphold. I think that would be a better course of action  
13 rather than trying to distribute unfairness.

14 And one more thing that I missed when I  
15 was talking about liberty, the term disorderly  
16 marketing. That was something really caught my eye when  
17 I was first reading about this. I'm not sure what  
18 everyone else means by disorderly marketing, but it  
19 seems to me that an orderly market is one where the best  
20 product is chosen, or the most efficiently produced  
21 product is chosen, the best value is chosen.

22 So a disorderly market would be when the  
23 best product is not chosen, when maybe the government or  
24 an interested third party has chosen for the consumers  
25 how the products are made, and that leads to an

1 inefficient product or a product that is not as a good a  
2 value being chosen.

3           And I think further regulation, or at  
4 least the regulations as proposed, is going to create a  
5 situation like that where we're going to lose quality,  
6 we're going to lose efficiency and we're going to lose  
7 value in the marketplace. And that is going to create a  
8 disorderly market, not unregulated, or as I would like  
9 to say, free producers producing the way they see fit  
10 with their own property.

11           So, hopefully, I've spoken plainly and  
12 hopefully that's a relief to you all. I know when I was  
13 here on Monday, we thought the hearing was taking place  
14 on Monday, because that's what the press release said,  
15 the hearing would be on Monday.

16           So we came on Monday, and everyone was  
17 arguing about the schedule for the next three weeks.  
18 And we were like, I guess we'll come back. And when we  
19 came back, you know, the first thing we heard was  
20 someone was parsing the difference between equitable and  
21 equal. And I'm like, wow, I guess they got a lot  
22 accomplished.

23           So if anyone has any questions, I will  
24 answer them the best I can. And I didn't present any  
25 factual evidence, but I wanted a chance to speak plainly

1 about the way I saw things.

2 JUDGE CLIFTON: Mr. Brunton, your  
3 perspective is brand new for this two weeks.  
4 And I appreciate it very much.

5 MR. BRUNTON: You are welcome, and thank  
6 you.

7 JUDGE CLIFTON: Now, cross-examination of  
8 Mr. Brunton. Mr. Ricciardi, would you begin,  
9 please?

10 MR. RICCIARDI: I will.

11 CROSS-EXAMINATION

12 BY MR. RICCIARDI:

13 Q. Mr. Brunton, I'm Al Ricciardi. I'm here  
14 on behalf of AIDA, a number of producer-handlers and  
15 exempt plants. I think we actually met the first day.  
16 It's good to see you back. Let's see if I can be as  
17 plainly spoken as you are. Most of the time I try.  
18 Sometimes I make it, sometimes I don't.

19 You want at this point, as a  
20 producer-handler, to be left alone, you don't want any  
21 change?

22 A. That's pretty much it, yeah.

23 Q. That was plainspoken, I hope?

24 A. Uh-huh.

25 Q. Okay. And one other point, again

1 hopefully plainly. When -- as producer-handler, when  
2 you send your milk from your farm to your processing  
3 plant, you don't purchase it, do you? Do you stop in  
4 the middle and say, my farm side has got to purchase  
5 this -- I mean, my processing side has got to purchase  
6 this milk from my farm side?

7 A. No, we -- we open a valve and it goes  
8 about 40 feet.

9 Q. Right. And so there is no purchase  
10 between the two sides, because you operate this business  
11 as one enterprise, right?

12 A. Correct.

13 Q. And plainly spoken, the idea that you  
14 actually are buying your own property when you open that  
15 valve, that don't make any sense, does it?

16 A. Not to me.

17 Q. It doesn't to me.

18 A. Or any reasonable people that I know,  
19 sir.

20 Q. Okay. Hopefully, there are a couple of  
21 reasonable people in the room. Thanks.

22 A. Hopefully.

23 JUDGE CLIFTON: Who will next  
24 cross-examine Mr. Brunton? Mr. Carroll.

25 CROSS-EXAMINATION

1 BY MR. CARROLL:

2 Q. Good morning.

3 A. Good morning.

4 Q. I am John Benjamin Carroll. I'm an  
5 attorney for the New England Producer-Handlers  
6 Association. We have people just like you, similar  
7 size, many of them. And there are two producer-handlers  
8 that have been targeted by this proposal that are also  
9 members. One is in Vermont and another one is in  
10 Connecticut. And we have an affiliate fellow who wants  
11 to be a producer-handler, but there's this definition,  
12 and that definition and this condition and that  
13 condition that hasn't yet satisfied the people that have  
14 to make the decision.

15 If we're not economically free, we're not  
16 free, isn't that so?

17 A. Yeah, I agree. Because our life is  
18 sustained by our property or the things we have, so if  
19 we don't have control over our own things, we don't have  
20 control over our own life.

21 Q. And one of the rights, and whether it's  
22 in the Declaration of Independence or otherwise, it's  
23 the right to have a dream or an aspiration, the right to  
24 go to market with it. And if you don't have that,  
25 you're a lot poorer than you were when you started,



1 isn't that correct?

2 A. Uh-huh. I believe those rights are  
3 unalienable or inalienable.

4 Q. Right. And they came according to the  
5 Declaration of Independence, not from Department of  
6 Agriculture. They came from our creator?

7 A. Uh-huh.

8 Q. Are you of that opinion?

9 A. I am. Big C creator.

10 Q. Right. Now, I want to talk to you about  
11 another part of the Declaration of Independence that you  
12 have paraphrased, but the actual words are, the creator  
13 gave us the right to pursue happiness.

14 A. Uh-huh.

15 Q. I don't know if you know this or not, but  
16 after the Constitution was adopted in 1789, one of the  
17 principal architects was Benjamin Franklin. And walking  
18 down the streets of Pennsylvania -- Philadelphia,  
19 Pennsylvania, he was stopped by a friend who said, you  
20 know, Mr. Franklin, we've had your constitution for a  
21 month and I don't feel like any happier than I did  
22 before. And Benjamin Franklin replied, we only  
23 guaranteed you the right to pursue it, you have to catch  
24 up with it by yourself.

25 And isn't that what you're trying to do

1 in your business? You're trying to catch up with your  
2 program and a dream and a family operation and everyone  
3 working together for a common purpose; isn't that so?

4 A. Yeah, exactly.

5 Q. Now, tell me your volume. What is your  
6 size?

7 A. We milk 106 cows on, I think -- a rough  
8 estimate of, like, pounds per month? Probably 180,000.

9 MR. ALAN BRUNTON: 250,000.

10 A. 150,000.

11 MR. ALAN BRUNTON: 250.

12 A. 250, okay.

13 Q. 250.

14 A. This is like The Price Is Right.

15 JUDGE CLIFTON: Let me interrupt. You  
16 got coaching from the man you came with. Would  
17 you identify who he is?

18 A. That's my uncle, Alan Brunton.

19 MR. ALAN BRUNTON: A-l-a-n.

20 Q. He's a knowledgeable person, I take it?

21 A. He knows more than me.

22 JUDGE CLIFTON: Let me tell you how we  
23 need to proceed here. I can't have the witness  
24 coached.

25 MR. ALAN BRUNTON: I'll shut up then.

1 JUDGE CLIFTON: But I would like the  
2 record to reflect that it was Alan Brunton who  
3 provided the figure of 250,000 pounds per month.  
4 You may proceed, Mr. Carroll.

5 BY MR. CARROLL:

6 Q. Who is Alan Brunton?

7 A. He's my uncle.

8 JUDGE CLIFTON: Excuse me just a minute.  
9 Mr. Vetne?

10 MR. VETNE: Can I consult with counsel?

11 JUDGE CLIFTON: You may.

12 BY MR. CARROLL:

13 Q. What is his position with your business?

14 A. I guess you would call him the plant  
15 manager. He runs the -- the bottling plant that we have  
16 as well as he milks cows and feeds cows and puts up hay  
17 like the rest of us.

18 Q. Is he knowledgeable of the volume figures  
19 of your business?

20 A. Yeah.

21 Q. Okay.

22 A. He knows.

23 Q. Now, do you know -- well, there's a  
24 proposal here. One of the proposals by the National  
25 Milk Producers is to take the 150,000 figure for an

1 exempt plant and move it to 450.

2 A. Uh-huh.

3 Q. And would that -- is that anything of any  
4 interest to you?

5 A. Well, the way I see it, it seems that  
6 that -- that might actually help us in the short term,  
7 because if we were to operate as a -- I may be wrong  
8 here, but if we were to operate as a small plant, we may  
9 be actually able to buy milk from other farms, as long  
10 as we were under the 450,000 pound limit.

11 But I don't -- I don't like the idea of a  
12 limit on what we can do with our business, because like  
13 right now, we're a family operation, all of our work is  
14 done by family. There's two uncles -- my two uncles,  
15 me, my two brothers, my mom, my sister, my brother's  
16 wife and my uncle's sons, and you know, all the work is  
17 done by our family.

18 Q. Right.

19 A. And we're a growing family. My two  
20 brothers are starting families. I would like to start a  
21 family. I don't want to have our family restricted on  
22 what we -- on how big we can grow by, you know, some  
23 federal rule on how much milk we can produce to support  
24 our family.

25 Because if we need to get bigger in size,

1 we shouldn't have to worry about what -- well, you know,  
2 I have two kids. If I have another one, we're going to  
3 produce more than 450,000 pounds a milk to pay for  
4 everything, so we can't have another kid. That's a  
5 contradiction of, you know, our value of life. We need  
6 to be free to raise a family and to pursue our dream.

7 MR. CARROLL: That's all. Thank you.

8 JUDGE CLIFTON: Thank you, Mr. Carroll.

9 Who next will cross-examine Mr. Brunton?

10 Mr. Brunton, is there anything else you would  
11 like to add?

12 MR. BRUNTON: No, I think that's --  
13 that's all I came to say. So I thank you for  
14 the opportunity.

15 JUDGE CLIFTON: Thank you and thank you  
16 for coming back. We -- right now, we think  
17 there may be the possibility that we would  
18 complete this hearing on Monday. If not Monday,  
19 I think Tuesday at the latest. So we won't need  
20 quite the full three weeks. Thank you very  
21 much. You may step down.

22 MR. BRUNTON: Thank you.

23 JUDGE CLIFTON: All right. I would like  
24 Drs. Knoblauch and Knutson to resume the witness  
25 box and whoever would like to cross-examine

1 next, to come to the podium. We have Mr. Vetne  
2 and Mr. Beshore both willing.

3 MR. VETNE: I have to leave early today.  
4 I don't have much of a choice. And I have -- I  
5 have --

6 JUDGE CLIFTON: Please pull that mic  
7 towards the center of the podium. It's gotten  
8 too far from people's mouths.

9 MR. VETNE: I have some evidence I would  
10 like to have marked, hopefully for its full  
11 purpose, or for a limited purpose if not a full  
12 purpose.

13 I understand -- I know for a fact that  
14 Mr. English and probably Mr. Beshore will  
15 object. But then -- and then for limited  
16 purposes, I wanted to examine Dr. Knutson  
17 concerning some of the information, so let me  
18 have those marked.

19 JUDGE CLIFTON: Would you identify what  
20 they are before I give them a number? Is it  
21 just one?

22 MR. VETNE: It's two. The first one  
23 is -- as I indicated on the record before, Jeff  
24 Sapp has a medical problem that prevents him  
25 from being here, so I asked him to sign an

1 affidavit.

2 The second, related to that, is a  
3 contract between Dean Foods and a store  
4 called -- or an offer to contract Big 8 Food  
5 Stores. After Mr. Sapp was incommunicado for a  
6 while and Mr. Carrejo came early, I didn't find  
7 out this stuff until after I could talk to my  
8 client. So anyway, that's the two things, a  
9 declaration and a contract offer.

10 JUDGE CLIFTON: Now, don't approach yet.  
11 Sapp is S-a-p-p?

12 MR. VETNE: That's correct.

13 JUDGE CLIFTON: And who is the other  
14 contracting party besides Dean Foods on the  
15 second one?

16 MR. VETNE: It's Price's -- Price's plant  
17 of Dean Foods and Big 8 Food Stores.

18 JUDGE CLIFTON: And is Big 8 shown,  
19 B-i-g, and then the number 8?

20 MR. VETNE: Exactly. Correct.

21 JUDGE CLIFTON: Okay. So we'll mark Jeff  
22 Sapp's affidavit as Exhibit 92, and we'll mark  
23 the contract between Price's plant and Big 8 as  
24 Exhibit 93.

25 (Exhibits 92 and 93 were marked for

1 identification.)

2 MR. VETNE: I have the original one with  
3 original signature and initials, that would be  
4 the official copy of the proffer. Where does  
5 that go?

6 JUDGE CLIFTON: That goes to Kate Fisher.

7 MR. VETNE: Okay. All right. I've  
8 indicated what the exhibits are, and I want to  
9 make my full offer so that -- because I know  
10 there's going to be an objection. And rather  
11 than go back and forth, back and forth, I'll  
12 state my case and that way it's on the table,  
13 will be clear, and then there can be a response.

14 Mr. Sapp's declaration is offered under  
15 oath, actually it's under double oath, because  
16 it was a declaration pursuant to federal law and  
17 it's also notarized. So it has both elements.  
18 And Mr. Sapp can't be here. And he won't be  
19 able to be here. And he's a small business and  
20 there's nobody else in his company that could  
21 provide this in his stead, other than perhaps he  
22 could tell somebody else. And the pattern in  
23 this proceeding is, if you told somebody else  
24 and they give it orally, it comes in. If you  
25 provide a document, it might not.



1           Mr. Sapp cannot travel from Waco at the  
2           moment -- or Roswell, New Mexico, rather. He  
3           can, however -- if the ability to cross-examine  
4           is an issue, he can, however, appear by  
5           telephone for cross-examination. We can make  
6           arrangements for video conferencing so you could  
7           see his face and take a measure of credibility,  
8           if that's important. We can take his deposition  
9           in Roswell. There are ways in which  
10          cross-examination can be done if that's  
11          necessary. A predicate to cross-examination, I  
12          think would be, is there a genuine issue of  
13          material facts?

14                 In other words, we're offering here and  
15                 verified by Mr. Sapp, two documents, one a check  
16                 and one a contract that comes from Dean Foods.  
17                 Dean Foods certainly has the opportunity to  
18                 contest that if it's untrue.

19                 The purpose of this proceeding and any  
20                 proceeding is to get to the truth.  
21                 Technicalities should not deprive the record of  
22                 truth.

23                 Let me first go to the rules of practice  
24                 that govern us. The evidentiary portion of that  
25                 is found on -- in section 900.8, 7 CFR 900.8.

1           And it provides for the exclusion of things that  
2           are immaterial, irrelevant, repetitive. And the  
3           catchall, the important one here is evidence  
4           which is not of the sort upon which responsible  
5           persons are accustomed to rely.

6           We have a declaration that is twice  
7           sworn. We have business records of Dean Foods,  
8           which they have the ability to rebut. And if  
9           there were a way to recall Mr. Carrejo, I would  
10          get him, but I didn't know this.

11          JUDGE CLIFTON: Thank you, Mr. Vetne.  
12          I've just been handed a copy of 900.8, but you  
13          may resume.

14          MR. VETNE: 900.8 (d), I think it's a  
15          little Roman numeral iii, and nevertheless, in  
16          (d)(6). If there's a question about  
17          admissibility, a document is marked part of an  
18          offer of proof, and we can argue the Judge's  
19          ruling through the Secretary at a later time.

20          I also understand that Mr. English would  
21          have objections, if not to its marking for offer  
22          of proof purposes, would have an objection to  
23          its marking and included even designated as not  
24          admitted, for inclusion on the Internet, which  
25          is a different thing. I know in the Pacific

1 Northwest hearing there were documents that  
2 weren't received but were nevertheless on the  
3 Internet. And there might be a different reason  
4 for that process.

5 Now, I want to turn to the Federal Rules  
6 of Evidence which provide us some guidance, even  
7 though we're not governed by them.

8 Federal Rules of Evidence start out with  
9 the basic principle in Rule 102, that the rules  
10 are to be applied for general considerations of  
11 fairness to arrive at the truth in proceedings.  
12 Rule 105 talks about a document or evidence that  
13 might be inadmissible for one purpose, may be  
14 received for another purpose with appropriate  
15 instructions.

16 Rule 613 deals with extrinsic evidence of  
17 inconsistent statements, so long as opposing  
18 party has the opportunity to appear and explain.  
19 Here we have Mr. Carrejo testified as to some  
20 disadvantage from producer-handlers' inability  
21 to compete and whatnot. And his offering a  
22 million dollars to take an account from a small  
23 producer-handler tends to be inconsistent with  
24 that assertion.

25 Rule 801(d), dealing with hearsay -- we

1           discussed this before -- is that a statement of  
2           a party, whenever made and for whatever purpose,  
3           is relevant for any purpose -- well, whether  
4           we're involved or not, it's not hearsay, so then  
5           the question becomes only is it relevant. We  
6           assert that it is.

7                     And are the documents genuine? Mr. Sapp  
8           has his declaration. Dean Foods has the  
9           opportunity to assert that the documents are not  
10          genuine if they like, and explain them.  
11          Business records can be received and can be, in  
12          some cases, authenticated without a sponsoring  
13          witness.

14                    There is provision for -- there is  
15          provision under 804, Rule 804, for receipt of  
16          evidence where the declarant is unavailable.  
17          Mr. Carrejo is not now available. He may be  
18          available later. But a statement against  
19          interest. This is different from an admission  
20          of a party. Admission of a party is anything  
21          that was said or written or contemplated.

22                    But Mr. -- there's a statement against  
23          interest exception to the receipt of hearsay;  
24          and that is, if it would tend to subject the  
25          declarant to civil liability, among other

1 things. And the -- the circumstances of this  
2 offer and a million dollar check to grab an  
3 account would at least tend to -- to subject  
4 Dean Foods to some claim -- some civil claim for  
5 interference with a business relationship or  
6 contract.

7 That is a circumstantial guarantee, a  
8 trustworthiness that is in the exceptions. And  
9 then Rule 807 is the catchall, which sort of  
10 conforms in some manner with our rules --  
11 900.8(d), the catchall in the Federal Rules of  
12 Evidence, as a residual exemption, where  
13 evidence is offered which has a circumstantial  
14 guarantee of -- I'm reading this, that's in  
15 quotes. Quote, circumstantial guarantees of  
16 trustworthiness, close quotes, and that is  
17 intended to promote the interest of justice.

18 So I would ask -- well, first of all,  
19 they have been marked. I would ask that -- that  
20 these documents be received for all evidentiary  
21 purposes and/or if cross-examination is  
22 necessary, that arrangements be made for  
23 Mr. Sapp to be cross-examined within the limits  
24 of his medical limitations, either by telephone  
25 or by video conference when we come back on

1 Monday.

2 JUDGE CLIFTON: Mr. English.

3 MR. ENGLISH: Your Honor, obviously I  
4 object. I'm not sure where to start. Let's  
5 start with this concept that somehow it's twice  
6 sworn. 1746 is in lieu -- in lieu of an  
7 affidavit. So this idea of it's twice sworn  
8 somehow doesn't make any sense. It's either  
9 sworn or it's not.

10 The best opportunity, of course, to  
11 present -- there's two best ways to have  
12 presented this evidence. One, of course, was to  
13 cross-examine Mr. Carrejo when he was here last  
14 Friday. That would have been the way to have  
15 done it, to authenticate the check, as opposed  
16 to simply showing up with something that they  
17 claim is a check and the documents.

18 Number two, of course, is to appear and  
19 be subject to cross-examination. Now, Mr. Vetne  
20 appears to concede that cross-examination is our  
21 right. And it is our right. And it's the right  
22 of everybody in this proceeding in the same  
23 fashion.

24 There's two distinct problems with this.  
25 The first is for this proceeding and the second

1 is for future proceedings. The problem for this  
2 proceeding is clear. We have a -- an attempt to  
3 put in evidence without someone showing up and  
4 being subject to cross-examination.

5 And there is nothing in the rules of  
6 practice that provide for examination to be  
7 taken in any form other than in this room. I  
8 sympathize with Mr. Sapp's health. I'm sorry,  
9 but that doesn't change the circumstances.

10 For future proceedings, your Honor, I  
11 guarantee you that if this loophole is open, you  
12 will have, for whatever reason, testimony be  
13 taken by video conference, by teleconference.  
14 Why would anybody, with all due respect to  
15 Cincinnati, Ohio, want to come to this hearing  
16 if they can appear either simply by submitting a  
17 declaration or by saying, I'll appear by video  
18 conference.

19 There is no procedure in the rules. And  
20 then, of course, for future proceedings,  
21 everybody is going to do the same thing. We  
22 have a fundamental right of cross-examination,  
23 we have a fundamental right here.

24 And most importantly, the witness to have  
25 asked and provided these documents, assuming

1           they can be authenticated, was Mr. Carrejo.  
2           It's not like Mr. Carrejo wasn't here. It's not  
3           like we didn't, you know, say we had a witness.  
4           He was here a whole day ahead of time. We  
5           announced him. You know, they could have done  
6           this if this is what they wanted to do.

7                         Now, your Honor, part of my objection is  
8           that if you don't admit it -- and I urge you not  
9           to admit the document -- that literally putting  
10          it up on the Internet has its own potential  
11          impacts. And I just urge you not to allow it.  
12          If it can accompany the record, that's fine.  
13          But putting it up on the Internet is, I think, a  
14          problem. It just is a non-authenticated  
15          document amongst the other exhibits.

16                        And finally, if Mr. Vetne is unsuccessful  
17          and it may not be admitted, my understanding is  
18          Mr. Vetne wishes to cross-examine one or more of  
19          the doctors on the stand at the moment.

20                        Well, if it's not admitted, getting to  
21          cross-examine a witness with something that's  
22          not evidence -- I remember an hour or two ago  
23          trying to ask some questions and being told, you  
24          can't ask it that way, because you know, it  
25          can't be done. And what's sauce for the goose



1 is sauce for the gander; can't be done.

2 Your Honor, there is no precedent, no  
3 case. All of the citations to the rules  
4 notwithstanding, this proceeding has -- and the  
5 proceedings like it going back 70 years have  
6 been governed by one central principle: You  
7 must show up. We object.

8 JUDGE CLIFTON: Thank you, Mr. English.  
9 Mr. Beshore.

10 MR. BESHORE: We object also. And I  
11 won't be repetitive, but I would -- I join the  
12 bases upon which Mr. English has objected.

13 I would just note that were this  
14 evidence -- were this type of evidence  
15 receivable in this proceeding -- I mean, I don't  
16 know why we've been here for two weeks taking  
17 live testimony subject to cross-examination, et  
18 cetera.

19 It's neither a notice in comment  
20 proceeding nor -- Mr. Vetne has gone to cite the  
21 Rule 56, for instance, of the Federal Rules of  
22 Civil Procedure, which govern proceedings in  
23 federal court to which there's compulsory  
24 process, which is a whole different dynamic than  
25 this type of hearing in which there is not

1 compulsory process, to compel witnesses, to have  
2 discovery, et cetera, et cetera. Genuine issue  
3 of material fact has not been in this proceeding  
4 whatsoever. It's Rule 56 of the Federal Rules  
5 of Civil Procedure.

6 JUDGE CLIFTON: Thank you.

7 Mr. Ricciardi.

8 MR. RICCIARDI: Your Honor, I have -- I  
9 stand in support of Mr. Vetne's position.  
10 Rather than articulate all of the rules, because  
11 I think he's correct on his interpretation of  
12 them, I will give you additional bases upon  
13 which the Court should admit the information.

14 And one of those is practical. And the  
15 practical issue is that not only do we have to  
16 follow the rules that we are provided with --  
17 well, let's follow the rules that we have  
18 adopted in this particular case, and I will cite  
19 one of my provisions as the goose for the gander  
20 provision --

21 JUDGE CLIFTON: It's sauce.

22 MR. RICCIARDI: -- sauce for the gander  
23 provision relied upon by Mr. English. And here  
24 it is. If you recall, when I was able to,  
25 quote, cross-examine, close quote, Mr. Rovey,

1           what did we find out? That Exhibit 32, which  
2           was admitted over my objection, in reality was  
3           prepared by three or four separate people who I  
4           never had the opportunity to cross-examine.

5           In fact, other than remembering his name  
6           and where his family was, Mr. Rovey had no  
7           information contained in Exhibit 32, which has  
8           been admitted.

9           JUDGE CLIFTON: Now, that's a bit of an  
10          exaggeration, but I get your drift.

11          MR. RICCIARDI: You got my point. So, in  
12          fact, if that's the issue, if effective  
13          cross-examination is the issue, then we have  
14          admitted -- and this is a good example --  
15          information from people who weren't here.

16          Secondly, I, of course, of anyone, is  
17          sympathetic with the position of Mr. Sapp, going  
18          through my own issues. But the point of it is  
19          this is not a situation where you are going to  
20          open the door or floodgates for people  
21          submitting affidavits. What you've got is a  
22          specific situation. He cannot travel.

23          As I think Mr. Vetne said, either he's a  
24          more compliant patient or he's got a more  
25          restrictive doctor than I do. And he can't be

1           here.

2                   The question becomes: Does this  
3 proceeding allow in the information set forth  
4 herein? We're not governed by the federal  
5 rules, as Mr. Vetne stated. There's a way in  
6 which the Federal Rules would even allow this  
7 information in. But if you go to 7 CFR 900.8 --  
8 it's actually sub (d), and then (iii) -- the  
9 last language is, for exclusion is this the sort  
10 of evidence effectively upon which responsible  
11 persons are accustomed to rely.

12                   Well, in the circumstances that we have  
13 here, where this person can't travel, we have  
14 documents that indicate that Prices or Dean  
15 prepared them, that indicate, on the check  
16 itself, that, in fact, it comes from Dean Foods.  
17 There is information on the documents themselves  
18 and the circumstances upon which they present  
19 upon which responsible persons would clearly be  
20 able to rely.

21                   Lastly, on the question of  
22 cross-examination of the experts, even the  
23 federal rules allow experts to rely upon  
24 anything, even information that is not evidence  
25 and admitted into the record, so those experts

1 can review and rely upon these documents in any  
2 event, even under the federal rules, let alone  
3 under this set of rules, which allows a more  
4 open process as we have seen in the last two  
5 weeks.

6 JUDGE CLIFTON: Thank you. Quickly,  
7 Mr. Yale.

8 MR. YALE: I want to just add some  
9 additional things. I am in support of these  
10 being admitted. And let me say, first of all,  
11 that as a statement against interest, you don't  
12 have to have the witness on the stand. That is  
13 a statement against interest. Justice can be  
14 done, Dean's has ample opportunity to fill the  
15 record. They've got a weekend and they can be  
16 here Monday. If necessary, we can hold over to  
17 accommodate.

18 But I want to share something else about  
19 making available Mr. Sapp, it hadn't been  
20 discussed here, and that is, that USDA has  
21 announced repeatedly that it is going to operate  
22 in a manner consistent with protection of the  
23 civil rights of individuals. And it is also  
24 going to take into consideration the nature of  
25 handicapped individuals and to ensure that their

1 rights are fully protected under these  
2 proceedings in a way that will adapt to their  
3 limitations. It is an obligatory declaration by  
4 the USDA. It is not a suggestion.

5 And if justice can be done by a way that  
6 may be precedential and maybe it may open some  
7 doors, so be it. It is the law. And it is --  
8 more importantly, it is right. And it leads to  
9 justice. And anything less than that just makes  
10 a mockery of what this is.

11 We have a company who is in the  
12 cross-hairs of this regulation. It has been in  
13 the cross-hairs of some of the proponents of  
14 this regulation and is now bringing evidence to  
15 support that. It has a limitation because it is  
16 small, which brings my final comment, and that  
17 is the Regulatory Flexibility Act.

18 I think that the Department has to make  
19 some adjustments. It did at the -- although it  
20 wasn't a record thing, we did it at -- what did  
21 we call it -- the listening session to allow for  
22 that. So I see -- first of all, I think it's  
23 admissible as a statement against declaration  
24 and they can cancel it. But the other part is,  
25 I think this Department has an absolute

1 obligation to either allow it in or to provide  
2 Mr. Sapp the opportunity to give these people  
3 the chance to find out that he's telling the  
4 truth, just as he said he did. Thank you.

5 JUDGE CLIFTON: Goodness gracious.  
6 Mr. Carroll.

7 MR. CARROLL: You're not anxious to see  
8 me, Judge?

9 JUDGE CLIFTON: Well, I just want to  
10 rule.

11 MR. CARROLL: I understand, but I want to  
12 help you, if I can.

13 JUDGE CLIFTON: You may.

14 MR. CARROLL: I have been a participant  
15 in several occasions where a problem has arisen  
16 of this type. And with the modern-day world,  
17 it's possible for that witness to be available  
18 on a telephone conference. You can swear that  
19 witness in. We've seen judges do that. And  
20 they can proceed, if it's not to be admitted  
21 otherwise, because it's in the interest of  
22 justice that this person put his case in.

23 JUDGE CLIFTON: Let's see. Let me hear  
24 from Mr. Stevens next.

25 MR. STEVENS: Your Honor, Garrett

1           Stevens, Office of General Counsel, U.S.  
2           Department of Agriculture. My thought on this,  
3           your Honor, is that this has happened before.  
4           And it has happened in recent hearings and more  
5           not so recent hearings, where people seek to  
6           have evidence put in the record without the  
7           person here to testify and be subject to  
8           cross-examination.

9                        There have been instances where  
10           Administrative Law Judges have admitted that  
11           evidence, and have had it accompany the record  
12           without being admitted. And so we have  
13           differing responses to offers of this type.

14                      I will say that no matter whether it is  
15           admitted or not, it will be given the weight --  
16           it will be subject to review by the Secretary,  
17           certainly, and it will be given the weight that  
18           is appropriate to a document that is offered not  
19           subject to cross-examination.

20                      I'm assuming it's being offered for the  
21           truth or falsity of the statements therein, and  
22           if it's then used subsequently in the hearing  
23           for cross-examination or for other purposes, the  
24           weight that is given to it, the consideration of  
25           it, follows it through the hearing process.



1                   JUDGE CLIFTON: Thank you. Mr. English,  
2                   quickly, please.

3                   MR. ENGLISH: Yes, your Honor. Actually,  
4                   I appreciate my colleague, Mr. Ricciardi. He  
5                   said that the cross-examination of Mr. Rovey  
6                   revealed the -- what he called the weaknesses.  
7                   We learned something because of  
8                   cross-examination. Right. 900.8(d), evidence.  
9                   The entire section on evidence is four  
10                  paragraphs. Hearings shall be publicly  
11                  conducted and the testimony given at the hearing  
12                  shall be reported verbatim. No rule for  
13                  testimony being given over the telephone or  
14                  otherwise.

15                  Every witness shall, before proceeding to  
16                  testify, be sworn or make affirmation.  
17                  Cross-examination shall be permitted to the  
18                  extent required for full and true disclosure of  
19                  the facts.

20                  Your Honor, we just modernized some of  
21                  the rules of practice, perhaps this would have  
22                  been the time. Supplementing the rules of  
23                  practice, maybe that was the time for people to  
24                  suggest alternatives such as this. There is no  
25                  rule that allows this and it should not be done.

1                   Finally, the claim that it's a statement  
2                   against interest. It's not a statement at all.  
3                   There's a check, allegedly from Dean Foods, to  
4                   an entity called Big B Advertising. That is --

5                   MR. VETNE: Big 8.

6                   MR. ENGLISH: Big 8. We don't know what  
7                   it's for.

8                   MR. VETNE: We do.

9                   MR. ENGLISH: We, the record, do not know  
10                  what it is for. I repeat, Mr. Carrejo was here  
11                  last Friday. This must be excluded in its  
12                  entirety.

13                  JUDGE CLIFTON: Mr. Vetne, I'll hear you.

14                  MR. VETNE: I just want to make one as  
15                  yet unmade point. With respect to any -- any  
16                  evidentiary submission, there are frequently  
17                  parts that are more reliable than others, less  
18                  objectionable than others.

19                  We have -- we have Mr. Sapp's statement  
20                  about what he does, how many cows he has.  
21                  There's nobody else that can either rebut or  
22                  discuss that. If there's any -- if there's a  
23                  need to cross-examine on that, I doubt it.

24                  And then there's -- then there's the  
25                  contract offer and the check, which comes from

1 Dean Foods, which has additional indicia of  
2 reliability.

3 The reason -- one of the reasons this was  
4 numbered paragraph by paragraph was to provide  
5 the opportunity, at least for opponents, to say,  
6 oh, you know, I disagree with that fact or I  
7 don't know anything about that or I would like  
8 to examine that fact.

9 Nobody has said -- Mr. English, who  
10 represents Dean Foods, he hasn't said that the  
11 documents are not genuine. He said --

12 MR. ENGLISH: I don't know.

13 MR. VETNE: He doesn't know. He can find  
14 out. And if they are not, we have a whole  
15 different situation.

16 But there is a representation under oath  
17 that they are, and he has the opportunity to say  
18 that they're not. And he's got a whole staff of  
19 people that might be able to come here and help  
20 rebut that. So portions of it, at least, ought  
21 to be received for full evidentiary purposes.  
22 Thank you.

23 JUDGE CLIFTON: All right. I'm ready to  
24 rule. I have conducted audiovisual hearings and  
25 the reason I conducted them is under a separate

1 set of procedures that I operate for different  
2 hearings, other than this kind. That is  
3 actually the preferred method of proceeding.

4 Nevertheless, it is not the best method  
5 of proceeding. The best method of proceeding is  
6 when we're all in the same room able to confront  
7 one another. Cross-examination is essential to  
8 the testing of evidence. It's essential to the  
9 person, the Secretary in this case, who must  
10 decide.

11 With regard to -- first of all, let me  
12 start with Exhibit -- well, before I get to  
13 that.

14 When I conduct hearings that are in  
15 person and one party wants a witness to appear  
16 by telephone, if the testimony of that witness  
17 is material, I rarely grant appearance by  
18 telephone over the objection of the other party.  
19 And the reason is that personal observation is  
20 important, it is important in testing  
21 credibility, it's important for other factors.

22 Now, had this proceeding been scheduled  
23 as one which permitted audiovisual testimony,  
24 there would have been a lot of preparation that  
25 would have gone into that. One must set up

1 equipment. One must make sure that the  
2 equipment in place A is compatible with the  
3 equipment in place B. It's expensive. That was  
4 not contemplated here.

5 This hearing was scheduled as an  
6 in-person hearing, a face-to-face hearing. As a  
7 result of that, I am not going to schedule a  
8 teleconference with Mr. Sapp for the purpose of  
9 cross-examination. I regret that he was unable  
10 to attend in person.

11 With regard to whether I should allow his  
12 statement, which is Exhibit 92, to be displayed  
13 on the USDA website, even though I reject it, I  
14 divide the statement into two parts.

15 As I begin to read his statement, he's  
16 talking about his Nature's Dairy experience and  
17 history in a relatively noncontroversial, I  
18 think, fashion on pages 1 and 2.

19 Now, he didn't get to complete that last  
20 sentence on page 2 that begins with item 11.  
21 But what I am going to do is I am going to  
22 reject both exhibits. I am going to instruct  
23 Kate Fisher to separate Exhibit 92, pages 1  
24 and 2, from the rest of it. I am going to allow  
25 pages 1 and 2 to appear on the USDA website as

1 an exhibit rejected because Mr. Sapp did not  
2 appear in person for cross-examination.

3 I am going to ask that the remainder of  
4 Mr. Sapp's statement, this is Exhibit 92, be  
5 sealed -- placed in an envelope and sealed.  
6 Indicate that it was, again, rejected because  
7 Mr. Sapp did not appear in person to be  
8 cross-examined, and that the judge determined  
9 that it should be sealed rather than displayed  
10 on the USDA website.

11 In the same envelope where the remainder  
12 of Exhibit 92 is placed sealed, Exhibit 93 will  
13 be placed sealed. There's no foundation at all  
14 for me to consider it, and I'm not going to  
15 permit Mr. Vetne to try to establish such  
16 foundation through these expert witnesses.

17 If this is an agreement, this Exhibit 93,  
18 which I cannot tell by looking at it -- the last  
19 page has agreement authorization signatories  
20 that include Ken Brandon of Big 8 Foods, Richard  
21 Powell of Big 8 Foods, and Gene Carrejo of  
22 Price's Creameries. Each signature shows a date  
23 in January of 2003.

24 Without someone to authenticate this  
25 document and indicate why it's relevant here, it

1           doesn't come in and I seal it because I think it  
2           does more harm than good to put it on the  
3           website with the exhibit -- exhibits that are  
4           there.

5                     Mr. Vetne, any further record you would  
6           like to make?

7                     MR. VETNE: Yes. I do want to take  
8           exception and ask the Judge to withdraw the  
9           comment on relevance. We haven't argued  
10          relevance. I don't think that a sua sponte  
11          comment applied by the Judge reflects any  
12          argument on relevance. I think it's clearly  
13          relevant, we discussed it.

14                    Whether it's an authenticated Dean Foods  
15          document is -- and that the person who has it in  
16          their business records is not here, at least on  
17          Jeff Sapp's side, that's a different question.

18                    Relevance is a whole different legal  
19          issue than anything we discussed so far. So  
20          cross-examination is fine. I don't want to have  
21          to -- in addition, when I take exception to  
22          relevance, nobody's objected on grounds of  
23          relevance. And, you know, it's clearly relevant  
24          to all the issues. It's relevant to Dr.  
25          Knutson's statement where somebody -- how shelf

1 space is being -- by larger processors.

2 JUDGE CLIFTON: Not by itself, it's not.  
3 It would have to have something to go with it.  
4 I cannot, just by looking at these pages you've  
5 handed me, which have been marked as Exhibit 93,  
6 fathom out of it the relevance. I honestly  
7 can't.

8 MR. VETNE: That's -- that's why we have  
9 post-hearing briefs, I suppose.

10 JUDGE CLIFTON: Very fine.

11 MR. VETNE: Thank you.

12 JUDGE CLIFTON: Thank you, Mr. Vetne.  
13 Mr. Ricciardi, do you want to be heard on this  
14 issue?

15 MR. RICCIARDI: I want to be heard on one  
16 issue, Judge. I think that, with regard to your  
17 decision on the evidence, obviously I disagree  
18 with that. And we can -- we'll move on to the  
19 next point, though.

20 I think under the rules that the way  
21 you've decided to proceed is in error. Because  
22 if we look at 900.86 on offers of proof, what it  
23 states is -- and here's the relevant portion --  
24 after the offer of proof is made, if the  
25 evidence consists of a brief oral statement or



1 an exhibit, it shall be inserted into the  
2 transcript in total -- or toto. So, in fact, if  
3 you're going to exclude it, then we have an  
4 offer of proof made, then I think you need to  
5 insert into the transcript all of these  
6 documents in toto under the rules.

7 MR. STEVENS: Your Honor.

8 JUDGE CLIFTON: How do you define  
9 evidence, Mr. Ricciardi, as it's utilized in the  
10 offer of proof paragraph?

11 MR. RICCIARDI: Well, I would assume at  
12 this point, Judge, since it says if -- in the  
13 section I just read from -- if the evidence  
14 consists of a brief oral statement or of an  
15 exhibit -- and these are obviously exhibits that  
16 are provided -- then it shall be inserted into  
17 the transcript in toto.

18 With regard to the definition of  
19 evidence, I think it's going to have to be the  
20 normal definition we take of evidence in any of  
21 these contexts, which would include, obviously,  
22 oral statements, documents, proposed exhibits,  
23 et cetera. I think that the rule itself  
24 contemplates that all of that goes into the  
25 record.

1 JUDGE CLIFTON: Now, would most evidence  
2 that comes into the record be introduced by a  
3 witness?

4 MR. RICCIARDI: I would assume that that  
5 would be the case, Judge. But obviously not all  
6 evidence that comes into the record is  
7 introduced by a witness.

8 JUDGE CLIFTON: Well, I'm aware of the  
9 kind that comes in through a witness, and I'm  
10 aware of the kind that comes in through official  
11 notice. What kind would this be?

12 MR. RICCIARDI: This, your Honor -- well,  
13 first of all, evidence can come in not only  
14 through official notice, not only through  
15 witnesses, but courts are permitted under a  
16 variety of rules, whether we talk about the  
17 federal rules or this rule, to allow in anything  
18 that is determined to be -- at least as this  
19 rule I read before states, reasonable or what  
20 reasonable or responsible people might rely  
21 upon.

22 JUDGE CLIFTON: But that's assuming  
23 there's a witness. We start with the fact that  
24 the hearing is publicly conducted and the  
25 testimony given at the hearing, and then

1 everything is a subset from there.

2 MR. RICCIARDI: I understand -- I  
3 understand your position. I think this rule is  
4 broad on offer of proof. And remember, with  
5 regard to an offer of proof in a regular  
6 context, if we weren't in this kind of a  
7 hearing, we would stand up in front of the  
8 court, after the exclusion, and give all of the  
9 specific details, if this witness were permitted  
10 to testify, if this document were allowed to  
11 come in, here is what it would state.

12 JUDGE CLIFTON: Yes, you're correct. I  
13 should allow Mr. Vetne to do that.

14 MR. RICCIARDI: Correct.

15 JUDGE CLIFTON: You're correct, so that  
16 if on appeal I am found to have erred,  
17 Mr. Vetne's evidence is there as an offer of  
18 proof to see whether -- what the appellate body  
19 wants to do with it.

20 MR. RICCIARDI: Which is the very reason  
21 for the rule I read. The only way for anybody  
22 to be able to rely upon that and make that  
23 decision -- because, remember, the next portion  
24 of the offer of proof rule here says that the  
25 Secretary may overrule you. The only way the

1 Secretary can do that is if the entirety of the  
2 proposed evidence is found in the record.

3 JUDGE CLIFTON: So what I would need to  
4 do then, since I'm putting these in sealed  
5 envelopes so that the Secretary will have them  
6 to look at, I need for Mr. Vetne to present for  
7 me the testimony that Mr. Sapp would provide on  
8 cross-examination if I were to hold a telephone  
9 conference on Monday. Is that correct?

10 MR. RICCIARDI: You would -- you would  
11 allow him to present the entirety of the  
12 statement and the documents, so that the  
13 Secretary has the basis to decide whether to, in  
14 fact, utilize the evidence or not.

15 JUDGE CLIFTON: No, the Secretary can  
16 open the sealed envelope.

17 MR. RICCIARDI: Okay, that's --

18 JUDGE CLIFTON: Yeah.

19 MR. RICCIARDI: I understand.

20 JUDGE CLIFTON: But what I'm missing is  
21 the testimony that I'm not allowing in, because  
22 Mr. Sapp is not here.

23 MR. RICCIARDI: True.

24 JUDGE CLIFTON: And the way Mr. Vetne can  
25 make an offer on proof on that is to anticipate

1           what questions will be asked on cross and to  
2           answer them for Mr. Sapp, is that correct?

3           MR. RICCIARDI: I think that is -- if  
4           that's the way you want to proceed, I think  
5           that's a reasonable manner. But I'm now  
6           speaking for Mr. Vetne and I don't want to  
7           anymore.

8           JUDGE CLIFTON: Mr. Beshore.

9           MR. BESHORE: A quick comment. I believe  
10          the ruling that your Honor has entered conforms  
11          with the rule; that is, the declaration is in  
12          essence the offer of testimony. That's the  
13          offer of proof. If he came, he would testify to  
14          that, that's what the declaration is.

15          The accompanying of the records, sealing  
16          the documents and having them be part of the  
17          record is what the rule requires, that they be  
18          part of the record. I don't think transcript  
19          means literally verbatim transcribed by the  
20          stenographers into the transcript page, but the  
21          record. And you've done that. I believe the  
22          rule has been complied with.

23          JUDGE CLIFTON: Let me hear from  
24          Mr. Stevens, and then I'll hear from Mr. Vetne.

25          MR. STEVENS: Your Honor, on the point

1           that just came up, in terms of anticipating  
2           cross-examination, that Mr. Vetne would put in  
3           the record what he thinks other parties would  
4           ask before it's asked, I don't know, I think  
5           we're off in -- we're off in slippery territory  
6           there.

7           I think you've done everything the rules  
8           require. I mean, the document is in the record  
9           in the sense that it is sealed, that it's in the  
10          record. Anything beyond that, at this point in  
11          terms of an offer of proof of what  
12          cross-examination might be and what Mr. Sapp's  
13          answers to that would be, I think we're on a  
14          slippery slope there, that I would not advise --  
15          I certainly don't see any point in going in that  
16          direction.

17          JUDGE CLIFTON: Mr. Vetne.

18          MR. VETNE: I agree with Mr. Beshore and  
19          Mr. Stevens on that point.

20          JUDGE CLIFTON: Thank you, Mr. Vetne.

21          MR. VETNE: I have no clue what others  
22          might ask. His testimony has been proffered. I  
23          think I know where we are.

24          My only concern now, as far as procedure  
25          structure in the future, is nobody asked for

1           these documents to be sealed. That was  
2           something that your Honor did on her own.  
3           Somebody asked for them not to be posted on the  
4           Internet for, you know, 6 billion people to have  
5           access to. That's a different thing. I've  
6           never dealt with a sealed document in this  
7           proceeding, I'm not aware that it's ever  
8           happened.

9                    JUDGE CLIFTON: That's how I'm  
10           distinguishing in this hearing those things that  
11           get posted to the Internet from those that  
12           don't.

13                   MR. VETNE: Oh, okay. Sealed from the  
14           Internet, essentially what you're trying to do.

15                   JUDGE CLIFTON: Yes. And once I've  
16           sealed a document, I do not expect -- for  
17           example, if the hearing clerk were asked to  
18           provide copies of all the exhibits in the  
19           hearing, the hearing clerk would have to get my  
20           authorization or somebody higher than me to go  
21           into the sealed envelopes and provide those.

22                   The hearing clerk could make a person  
23           aware that they were there, but they would not  
24           be -- they would not be given the same status as  
25           the things that are not sealed.

1 MR. VETNE: And for procedural purposes,  
2 you indicated earlier your role here after the  
3 record is certified, you have nothing do with  
4 it.

5 So after the record is certified, you  
6 anticipate you would have no more role in  
7 whether somebody, if they asked for it, can get  
8 it? It would be somebody's decision other than  
9 yours?

10 JUDGE CLIFTON: My guess is, since I'm  
11 the one who sealed it, if the hearing clerk  
12 got -- the hearing clerk routinely gets requests  
13 for documents. The hearing clerk might refer  
14 them to the Internet, the hearing clerk might  
15 see that there are sealed envelopes and come to  
16 me to ask what to do about it. That might still  
17 happen.

18 MR. VETNE: So we're sort of plowing new  
19 ground here and we'll see what happens if  
20 somebody asks.

21 JUDGE CLIFTON: I think so.

22 MR. VETNE: Okay.

23 JUDGE CLIFTON: Mr. Miltner?

24 MR. MILTNER: Your Honor, this has -- I  
25 want to move on to the next issue. I recognize



1           now it's been over 60 minutes since a question  
2           has been asked of the economists. I had a talk  
3           with them before this whole colloquy had started  
4           and Mr. Brunton took the stand. Dr. Knutson, I  
5           believe, would still prefer to plow on with  
6           questions, is that correct, Doctor?

7           DR. KNUTSON: I have a 5:35 flight,  
8           yes.

9           MR. MILTNER: Yes. And Dr. Knoblauch  
10          would like to take a break to get something to  
11          eat, as I would not mind to do and some others  
12          would. My suggestion is at this time that we  
13          take a break for lunch, but not take a full  
14          hour, so that we can come back and get right  
15          back into questioning so we can complete  
16          cross-examination and any redirect and get  
17          Dr. Knutson out of here on time for his plane.

18          JUDGE CLIFTON: And is there any  
19          restriction on how long we have Dr. Knoblauch?

20          MR. MILTNER: I don't -- I mean, I think  
21          he needs to finish today.

22          DR. KNOBLAUCH: My preference would be to  
23          finish today, of course.

24          MR. MILTNER: Yeah.

25          JUDGE CLIFTON: But if we went a little

1 after -- let's see, today's our 5:00 day.

2 MR. MILTNER: Yes.

3 JUDGE CLIFTON: If we went a little after  
4 5, would that still allow you to get home?

5 MR. BESHORE: Unless we have tangents  
6 like this, we're going to be done well before.

7 MR. MILTNER: I assume that's -- okay,  
8 then. The representations from other attorneys  
9 is that we will not have an issue, but I just --  
10 if we're back at -- if we take a full hour are  
11 we going to have time?

12 MR. ENGLISH: We believe.

13 MR. BESHORE: I believe so.

14 MR. MILTNER: Okay, I understand. I just  
15 want to make sure we have time to complete these  
16 gentlemen today if at all possible, and it seems  
17 we will. So I'll step down.

18 JUDGE CLIFTON: All right. Well, there's  
19 one thing about it, if we have to finish, we'll  
20 finish. All right. It's almost 12:45. We'll  
21 take an hour for lunch. Please be back and  
22 ready to go at 1:45.

23 (A recess was taken from 12:45 to 1:49.)

24 JUDGE CLIFTON: Let's go back on record.  
25 We're back on record at 1:49. Who next would

1           like to cross-examine the panel? Mr. Beshore.

2           MR. BESHORE: Thank you, your Honor.

3           CROSS-EXAMINATION

4 BY MR. BESHORE:

5           MR. BESHORE: Good afternoon,

6           Dr. Knoblauch and Dr. Knutson.

7           Marvin Beshore on behalf of National Milk  
8           Producers Federation and Dairy Farmers of  
9           America. First I have a couple of questions for  
10          Dr. Knoblauch.

11          The New York State Business Summary  
12          Annual Analyses, which you have worked with for  
13          a number of years, surveys 250 New York dairy  
14          farms, is that correct?

15          DR. KNOBLAUCH: Depends on the year. The  
16          number varies from year to year.

17          MR. BESHORE: I happen to be looking at  
18          2007, which seems to indicate for some purposes  
19          it was 250 New York dairy farms. Do you know if  
20          any of those are producer-handlers?

21          DR. KNOBLAUCH: Not to my knowledge.

22          MR. BESHORE: Have you ever -- are they  
23          the same farms every year?

24          DR. KNOBLAUCH: No, they are not. Most  
25          are the same from year to year, but they are not

1 all the same.

2 MR. BESHORE: Have you ever had a  
3 producer-handler farm in the study, to your  
4 knowledge?

5 DR. KNOBLAUCH: Not to my knowledge.

6 MR. BESHORE: Do you have any reason to  
7 believe that the financial information for the  
8 producer-handler farm would be substantially  
9 different than these -- the farms in the study?

10 DR. KNOBLAUCH: Since I've never studied  
11 that, I can't give you an academic answer. But  
12 I would expect that the producer-handler dairies  
13 would be similar. I don't know what differences  
14 there may or may not be.

15 MR. BESHORE: Okay. I realize you hadn't  
16 studied it. My question was just, you know, do  
17 you have, from your knowledge base or  
18 experience, expertise, any reason to believe  
19 that they would be different? And I gather that  
20 you do not know of any reason to believe they  
21 would be different than the other dairies you've  
22 studied?

23 DR. KNOBLAUCH: That's correct.

24 MR. BESHORE: Now, with respect to -- I  
25 note that the farm businesses are analyzed by

1 size categories, or one of the -- you do many  
2 analyses in the study. One of them is to  
3 organize them by size and present the expenses  
4 and receipts by size category. And in the 2007  
5 study at least, the largest herd size category  
6 is 600 or more cows. Do you recall that?

7 DR. KNOBLAUCH: Yes.

8 MR. BESHORE: Has that been the largest  
9 size category that you've grouped and studied in  
10 these reports?

11 DR. KNOBLAUCH: I don't believe so, no.

12 MR. BESHORE: Okay. In later years --  
13 what is the largest category that you've  
14 studied?

15 DR. KNOBLAUCH: I've studied the material  
16 that I prepared for this hearing, included the  
17 category of 800 cows and greater.

18 MR. BESHORE: Okay. And was that -- were  
19 those farms in New York?

20 DR. KNOBLAUCH: Yes.

21 MR. BESHORE: Okay. And that's  
22 represented on -- some of the results of that  
23 study are represented on the attachment to your  
24 report. I don't know if it's been given a  
25 separate number, but it's part of Exhibit 90,

1 correct?

2 DR. KNOBLAUCH: Yes.

3 MR. BESHORE: Okay.

4 JUDGE CLIFTON: It does not have a  
5 separate number. It's just the last page of  
6 Exhibit 90.

7 MR. BESHORE: The last page of  
8 Exhibit 90, okay. Now, I note that in that  
9 study, you reference the cost to the FMM01,  
10 Class I price.

11 DR. KNOBLAUCH: I'm not certain I  
12 understand the part about reference to cost.

13 MR. BESHORE: You compare the costs?

14 DR. KNOBLAUCH: Yes, I compare the costs  
15 to the Order 1 price, yes, sir.

16 MR. BESHORE: Okay. Now, is the Order 1  
17 price the price that any -- that farms will pay,  
18 the Order 1 Class I price?

19 DR. KNOBLAUCH: Highly unlikely, but  
20 there's that possibility.

21 MR. BESHORE: Well, the Class I price  
22 isn't the price that even applies to payment to  
23 farms, does it?

24 DR. KNOBLAUCH: I was thinking of maybe a  
25 statistical coincidence.

1 MR. BESHORE: Okay. But I guess my  
2 question is, for what -- why did you use a  
3 Federal Order Class I price, a price to which  
4 there would only be a statistical coincidence,  
5 if it compared to the cost?

6 DR. KNOBLAUCH: As well as a -- as well  
7 as the uniform price, just perspective.

8 MR. BESHORE: Okay. The uniform price,  
9 you used that also?

10 DR. KNOBLAUCH: Yes.

11 MR. BESHORE: Okay. For what reason?

12 DR. KNOBLAUCH: Again, for perspective.

13 MR. BESHORE: Is that a relevant price to  
14 compare for perspective, in your judgment?

15 DR. KNOBLAUCH: I would think so.

16 MR. BESHORE: Why?

17 DR. KNOBLAUCH: Because I understood  
18 those to be prices that were at issue in the  
19 hearing, so I compared cost of production to  
20 those prices.

21 MR. BESHORE: Okay. You understood the  
22 uniform price in Order 1 to be at issue in this  
23 hearing?

24 DR. KNOBLAUCH: Well, maybe I should not  
25 have said directly at issue, but it was a

1 Class I price in Order 1 that I put in for  
2 perspective.

3 MR. BESHORE: Okay. At what -- by the  
4 way, what location was the uniform price that  
5 you used quoted?

6 DR. KNOBLAUCH: I don't recall.

7 MR. BESHORE: Okay. Are you aware -- do  
8 you understand that Federal Order prices apply  
9 at a specific location?

10 DR. KNOBLAUCH: Yes.

11 MR. BESHORE: But you don't know what  
12 location you chose for the uniform price to  
13 compare for these costs of production on Exhibit  
14 90, the last page?

15 DR. KNOBLAUCH: That's correct.

16 MR. BESHORE: How about the Class I  
17 price, do you know what location that was?

18 DR. KNOBLAUCH: Same answer.

19 MR. BESHORE: Okay. Do you know the  
20 variation -- are you aware of the variation in  
21 location values under the Federal Order within  
22 the state of New York?

23 DR. KNOBLAUCH: Yes, there are  
24 differences.

25 MR. BESHORE: Okay. Are you aware of the



1 magnitude of those differences?

2 DR. KNOBLAUCH: Beyond stating that there  
3 are differences, I cannot quote you what they  
4 are.

5 MR. BESHORE: Wouldn't it be important,  
6 if you're comparing costs to prices on the farms  
7 in New York to -- and you were using federal  
8 minimum prices, to be comparing a price at  
9 the -- at or about the location of the farm?

10 DR. KNOBLAUCH: Well, the farms are  
11 scattered all across the state that are in the  
12 study, so the farms are not in any particular --  
13 they could be in the Western New York Order,  
14 they could be selling milk to Boston. Milk  
15 could be going to Ohio, Pennsylvania. So we've  
16 got the same situation, the data for farms is  
17 represented with the state of New York, and  
18 those orders were picked just for perspective.  
19 We could make the comparison to any price at any  
20 location or we could do it farm by farm.

21 MR. BESHORE: But you -- you compared it  
22 to a price that you don't know where it applies?

23 DR. KNOBLAUCH: That's correct.

24 MR. BESHORE: If I -- now, farms in New  
25 York deliver to plants in Boston, do you know

1           that?

2                   DR. KNOBLAUCH: That's my understanding.

3                   MR. BESHORE: Were there any farms in the  
4 study here who were delivering for the Boston  
5 market?

6                   DR. KNOBLAUCH: I don't know that for a  
7 fact, but I would expect that to be the case.

8                   MR. BESHORE: How about for the New York  
9 City market?

10                  DR. KNOBLAUCH: Likely, yes.

11                  MR. BESHORE: And were there farms here  
12 in the western part of New York state that may  
13 have delivered their milk to Buffalo or that  
14 area?

15                  DR. KNOBLAUCH: Yes.

16                  MR. BESHORE: Okay. Now, if there is --  
17 under the federal minimum prices, whether it's  
18 uniform price or Class I price, if there is  
19 nearly a one dollar per hundredweight difference  
20 in the applicable price of delivery, the  
21 applicable price between Boston or New York City  
22 and Buffalo, wouldn't that be pertinent to use  
23 in such a comparative exercise as this exhibit?

24                  DR. KNOBLAUCH: Again, I put it in for  
25 perspective, not to say that this is the price

1 farms receive or -- because it doesn't have  
2 marketing costs or those types of things  
3 included, or premiums; just for perspective as a  
4 benchmark for the costs, nothing beyond that.

5 MR. BESHORE: Okay. Let's -- I want to  
6 talk about your -- ask you a few questions about  
7 the comments you make concerning the farm  
8 price -- milk price differences at the farm.

9 And you begin your discussion on milk  
10 price differences on page 3 of your -- of  
11 Exhibit 90, with this opening sentence: The  
12 case that Federal Milk Marketing Orders provides  
13 uniform milk prices for all producers is just  
14 plain wrong. Do you see that?

15 DR. KNOBLAUCH: Yes.

16 MR. BESHORE: That's your opening  
17 sentence in this discussion, and that's your --  
18 your major proposition here, I take it?

19 DR. KNOBLAUCH: That's correct.

20 MR. BESHORE: Okay. Can you tell me  
21 who -- who is making the case, or where did you  
22 determine that you should be contesting the case  
23 that Federal Milk Marketing Orders provide  
24 uniform milk prices for all producers? Where  
25 did you get your point of departure there?

1 DR. KNOBLAUCH: That would have been in  
2 conversation with counsel, that that was one of  
3 the factors that was anticipated to be raised,  
4 brought up, discussed in the hearing.

5 MR. BESHORE: Okay. Was that Mr. Miltner  
6 or Mr. Ricciardi or both or another counsel?

7 DR. KNOBLAUCH: One or the other or both.  
8 I don't recall.

9 MR. BESHORE: Did they give you any other  
10 information with respect to who was -- who they  
11 asserted was making the contention that the case  
12 that Federal Milk Marketing Orders provide  
13 uniform milk prices for all producers?

14 DR. KNOBLAUCH: No.

15 MR. BESHORE: So, let me understand --  
16 see if I understand this correctly,  
17 Dr. Knoblauch. You were asked by counsel to  
18 provide an analysis of and testimony with  
19 respect to this proposition, quote, Federal Milk  
20 Marketing Orders provide uniform milk prices for  
21 all producers. Is that correct?

22 DR. KNOBLAUCH: It's just plain wrong.

23 MR. BESHORE: That's your conclusion, I  
24 understand. I understand your conclusion --  
25 your conclusion. But the proposition that you

1           were to analyze and test, okay, I want to make  
2           sure I've got this right. The proposition that  
3           you were to analyze and test is this  
4           proposition, quote -- these are your words --  
5           Federal Milk Marketing Orders provide uniform  
6           milk prices for all producers, close quote.  
7           That's the proposition you were to analyze and  
8           test for your testimony here?

9                     DR. KNOBLAUCH: Well, with the caveat  
10           that we already knew the answer to that question  
11           before I prepared this report based on our work,  
12           not only in dairy farm business summaries but  
13           more importantly the work that Dr. Stephenson  
14           has reported. So I really did no analysis  
15           beyond what had already been done.

16                    MR. BESHORE: Okay. Now, so you were  
17           asked, then, to present testimony to debunk the  
18           proposition that, quote, Federal Milk Marketing  
19           Orders provides uniform milk prices for all  
20           producers?

21                    DR. KNOBLAUCH: With the caveat, debunk  
22           was never included in the discussion.

23                    MR. BESHORE: But just plain wrong, are  
24           those yours words?

25                    DR. KNOBLAUCH: Yes.

1                   MR. BESHORE: Now, let's look at -- let's  
2 look at Exhibit 91 and some of that data, but  
3 before that, I want to understand what you  
4 understand when you say this was just plain  
5 wrong. Do you understand that Federal Milk  
6 Market Order uniform milk prices are varied for  
7 location of delivery of the milk?

8                   DR. KNOBLAUCH: That's correct.

9                   MR. BESHORE: So there's a different --  
10 you understand now there's a different price in  
11 every county -- or there's a price established  
12 for every county in the state of New York under  
13 the Federal Milk Marketing Order? Do you  
14 understand that?

15                  DR. KNOBLAUCH: Yes.

16                  MR. BESHORE: And that even though those  
17 prices are different, what the federal  
18 uniformity requirement is, is that producers or  
19 cooperatives acting in the -- standing in the  
20 shoes of the producers, delivering at those  
21 locations, must receive a uniform minimum price.  
22 You understand that?

23                  DR. KNOBLAUCH: Correct.

24                  MR. BESHORE: And even though the price,  
25 in terms of Class I differential -- do you know

1                   what I mean by that, the Class I differential?

2                   DR. KNOBLAUCH: The premium for fluid  
3 milk, yes.

4                   MR. BESHORE: Under the Federal Milk  
5 Marketing Order?

6                   DR. KNOBLAUCH: Yes.

7                   MR. BESHORE: Let's just talk about that.  
8 Even though the Class I differential for  
9 Buffalo -- what county is that, by the way?

10                  DR. KNOBLAUCH: Erie County.

11                  MR. BESHORE: Erie County, New York may  
12 be \$2.30, okay? Do you understand that?

13                  DR. KNOBLAUCH: Well, I don't know the  
14 specific number.

15                  MR. BESHORE: You'll accept that for a  
16 moment?

17                  DR. KNOBLAUCH: Sure.

18                  MR. BESHORE: And the differential for  
19 Boston, Massachusetts, may be \$3.25. You'll  
20 accept that?

21                  DR. KNOBLAUCH: That's reasonable.

22                  MR. BESHORE: Do you understand that  
23 under the Federal Orders, the producer getting  
24 the 2.30 differential delivering to Buffalo and  
25 the producer getting the 3.25 differential

1 delivering to Boston, they would be receiving  
2 uniform minimum prices, as that terminology  
3 works in the federal system. Do you understand  
4 that?

5 DR. KNOBLAUCH: Yes.

6 MR. BESHORE: Do you also understand that  
7 uniform prices under the Federal Order system  
8 vary for the components of the milk?

9 DR. KNOBLAUCH: Yes.

10 MR. BESHORE: And that the minimum price  
11 for milk of 4.0 percent butterfat is different  
12 than the minimum price for 3.9 percent butterfat  
13 milk? Do you understand that?

14 DR. KNOBLAUCH: Yes.

15 MR. BESHORE: And do you understand that  
16 the minimum prices under Federal Orders vary for  
17 the protein, true protein, content of the milk?

18 DR. KNOBLAUCH: Yes.

19 MR. BESHORE: And so that the producer  
20 with 3.1 percent true protein is entitled to a  
21 different price than a producer with 2.9 percent  
22 protein?

23 DR. KNOBLAUCH: Yes.

24 MR. BESHORE: And you understand, then,  
25 the minimum federal prices also vary according



1 to the other solids content in the milk? You're  
2 aware of that?

3 DR. KNOBLAUCH: Yes.

4 MR. BESHORE: Are you aware of the  
5 variations in minimum uniform payments for milk  
6 of differing somatic cell count?

7 DR. KNOBLAUCH: I'm not sure there's  
8 gradations. I think there's what's acceptable,  
9 unacceptable somatic cell count. I'm not  
10 certain how that works.

11 MR. BESHORE: Okay. You just don't know?

12 DR. KNOBLAUCH: I know what the limit is,  
13 but what the gradations and premiums or  
14 discounts or adjustments are, I don't know.

15 MR. BESHORE: Okay. Now, let's look at  
16 Exhibit 91.

17 JUDGE CLIFTON: Before we leave  
18 Exhibit 90, if I might, Mr. Beshore?  
19 Dr. Knoblauch, you made a -- on the last page,  
20 the page that has the chart, you made a slight  
21 modification to the record copy of that exhibit  
22 at the top. And I just want everyone here to  
23 know what you did on the copy that Kate Fisher  
24 has so they'll be aware of that.

25 DR. KNOBLAUCH: Okay. What I did is

1 underline the herd size categories across the  
2 top. Drew a line from above cash, above  
3 purchased inputs, continuing through above total  
4 cost for each of the herd size categories to  
5 make the reader more easily identify that there  
6 were three categories under each herd size.

7 JUDGE CLIFTON: Good. So it's just an  
8 underline under each of those headings, but it  
9 helps keep the data that is meant to be with  
10 that heading recognizable.

11 All right. Thank you, Mr. Beshore.

12 MR. BESHORE: Dr. Knoblauch, if we look  
13 at Exhibit 91.

14 DR. KNOBLAUCH: Could you bear with me  
15 just a moment?

16 MR. BESHORE: Yes.

17 DR. KNOBLAUCH: I don't seem to have  
18 that. I did at one time. Yes, I have it.

19 MR. BESHORE: Okay. I would like to look  
20 at the -- there are three separate charts, which  
21 vary according to how the sorting has been --  
22 has been done. I would like to look at the one  
23 that says, Deciles Sorted by Net Pay. Do you  
24 have that one?

25 DR. KNOBLAUCH: Yes, I do.

1 MR. BESHORE: And on the -- on the line  
2 for net pay, which is the second to the last  
3 line in the table, it shows variation in the  
4 first decile of average net pay of 17.41. Do  
5 you see that?

6 DR. KNOBLAUCH: Yes.

7 MR. BESHORE: And in the tenth decile, an  
8 average net pay of 19.67, \$19.67. Do you see  
9 that?

10 DR. KNOBLAUCH: That's correct.

11 MR. BESHORE: Okay. And those are pay  
12 per hundredweight, correct?

13 DR. KNOBLAUCH: Yes.

14 MR. BESHORE: Now, your comments are --  
15 and I'm not quoting any now -- but I think your  
16 testimony is that this information shows --  
17 supports your conclusion that Federal Milk  
18 Market Orders provide uniform milk -- that  
19 Federal Milk Market Order uniform -- Federal  
20 Milk Market Orders do not -- back up a second.  
21 That federal uniform minimum prices don't have  
22 anything to do, in essence, with producer pay  
23 prices. Is that fair? You say, it's just plain  
24 wrong to say that federal prices lead to  
25 uniformity in producer payments, just plain

1 wrong, right?

2 DR. KNOBLAUCH: I'm not sure those are my  
3 exact words.

4 MR. BESHORE: Plain wrong, just plain  
5 wrong?

6 DR. KNOBLAUCH: That they provide uniform  
7 milk prices for all producers?

8 MR. BESHORE: Is just plain wrong?

9 DR. KNOBLAUCH: That's correct.

10 MR. BESHORE: Let's look at the  
11 difference here. And this, you say, supports  
12 that proposition?

13 DR. KNOBLAUCH: Yes, there are very  
14 dramatic differences.

15 MR. BESHORE: Okay. So let's look at the  
16 difference, and just take the biggest  
17 differences from, you know, the lowest pay to  
18 the highest pay. First of all, 1,741 producers,  
19 their butterfat test is 3.58 percent, correct?  
20 Average butterfat, the top line, correct? First  
21 decile, average butterfat test, 3.58 percent.

22 DR. KNOBLAUCH: Yes.

23 MR. BESHORE: Okay. Now, the -- in the  
24 tenth decile, the average butterfat test is,  
25 however, 3.89 percent, correct?

1 DR. KNOBLAUCH: Yes, that's correct.

2 MR. BESHORE: Okay. Now, do you  
3 understand that there is a mandated minimum  
4 federal price difference between milk of  
5 3.58 percent butterfat and milk of 3.89 percent  
6 butterfat?

7 DR. KNOBLAUCH: Yes.

8 MR. BESHORE: And therefore that mandated  
9 minimum differential and those prices explains a  
10 portion of the difference in those pay prices,  
11 does it not?

12 DR. KNOBLAUCH: A portion, yes.

13 MR. BESHORE: Did you consider how much  
14 difference that makes?

15 DR. KNOBLAUCH: No.

16 MR. BESHORE: Okay. Let's look at the  
17 second line, True Protein Test. Now, you see  
18 that the low pay decile is 2.97 percent true  
19 protein. Do you see that?

20 DR. KNOBLAUCH: Yes.

21 MR. BESHORE: And the high pay is  
22 3.23 percent protein. Do you see that?

23 DR. KNOBLAUCH: Yes.

24 MR. BESHORE: And there are minimum  
25 mandated federal differences in payment for

1           those component values of those pay prices, do  
2           you understand that?

3                     DR. KNOBLAUCH:  Yes.

4                     MR. BESHORE:  And therefore those  
5           differences, those minimum mandated federal  
6           differences, explain, in part, the differences  
7           in those pay prices, correct?

8                     DR. KNOBLAUCH:  A portion, yes.

9                     MR. BESHORE:  Okay.  Other solids.  The  
10          low decile, 5.64 percent, the high decile,  
11          5.67 percent.  Again, mandated minimum federal  
12          differences in those -- those solids values, do  
13          you understand that?

14                    DR. KNOBLAUCH:  Yes, those happen to be  
15          very close between the low and high decile.

16                    MR. BESHORE:  Nevertheless, the high  
17          decile would be required to be paid a higher  
18          minimum price under the Federal Order, correct?

19                    DR. KNOBLAUCH:  I don't know if  
20          .03 percent is sufficient to cause that to  
21          happen or not.

22                    MR. BESHORE:  You don't know?

23                    DR. KNOBLAUCH:  I don't know.

24                    MR. BESHORE:  Now, let's go down a few  
25          more.  You have a total line under the component

1 values. Do you see those lines?

2 DR. KNOBLAUCH: Yes.

3 MR. BESHORE: Okay. 16.35 for the lowest  
4 decile and 17.77 for the highest decile. Do you  
5 see that?

6 DR. KNOBLAUCH: 16.35 and 17.77, yes.

7 MR. BESHORE: Okay. What do those  
8 numbers represent?

9 DR. KNOBLAUCH: The value of the  
10 components.

11 MR. BESHORE: So that -- how did you  
12 determine the value of the components?

13 DR. KNOBLAUCH: Added then up from the  
14 milk checks.

15 MR. BESHORE: Do you know if they were  
16 paid at minimum federal values or other values?  
17 They were paid at least minimum federal values,  
18 I assume?

19 DR. KNOBLAUCH: That was my assumption,  
20 yes.

21 MR. BESHORE: So just on the basis of  
22 component values, you've got a mandated  
23 difference in prices, federal prices. You've  
24 got \$1.42 in difference there, correct?

25 DR. KNOBLAUCH: That's correct.

1                   MR. BESHORE: Okay. Now, wouldn't it be  
2 fair to say, Dr. Knoblauch, that those are  
3 differences that are mandated by federal  
4 regulations, as opposed to differences that show  
5 the federal regulations do not provide  
6 uniformity?

7                   DR. KNOBLAUCH: That's correct.

8                   MR. BESHORE: Okay. Now, the producer  
9 price differential, which is the next line, that  
10 is also a function of the -- do you understand  
11 how producer price differentials vary -- under  
12 the minimum producer price differential values  
13 vary under the Federal Order?

14                  DR. KNOBLAUCH: I know they vary, but the  
15 mechanism by which they vary, no.

16                  MR. BESHORE: Okay. You didn't take that  
17 into account in analyzing the differences in  
18 these producer pay prices?

19                  DR. KNOBLAUCH: That's correct. It was  
20 whatever was on the milk check.

21                  MR. BESHORE: Okay. So just to get to  
22 the end, basically what you did was just analyze  
23 the milk checks, irrespective of what federal  
24 minimum values applied to those checks, and  
25 said, they're not the same, and therefore the



1 federal minimum uniform prices don't establish  
2 uniform prices. Isn't that what you said?

3 DR. KNOBLAUCH: Could you repeat that  
4 again? I'm not certain I follow that.

5 MR. BESHORE: Basically what your  
6 analysis did was take these producers'  
7 paychecks -- producers who delivered to all  
8 sorts of different plants with minimum federal  
9 location prices, correct?

10 DR. KNOBLAUCH: That's correct.

11 MR. BESHORE: Producers that had all  
12 different butterfat tests with different minimum  
13 federal values, correct?

14 DR. KNOBLAUCH: They could have had  
15 different butterfat tests.

16 MR. BESHORE: They did have different  
17 butterfat. That's what your data shows,  
18 correct?

19 DR. KNOBLAUCH: Oh, I was speaking of  
20 individual farms could have the same -- could  
21 have had the same test, but yes --

22 MR. BESHORE: Okay.

23 DR. KNOBLAUCH: -- these individual  
24 deciles did have different tests.

25 MR. BESHORE: And the -- and the

1 producers had different protein tests --

2 DR. KNOBLAUCH: Across the deciles, yes.

3 MR. BESHORE: -- right? And other silage  
4 tests, right?

5 DR. KNOBLAUCH: Yes.

6 MR. BESHORE: And you took all those  
7 different checks -- producers that had different  
8 PPD -- minimum federal PPD values in their  
9 checks?

10 DR. KNOBLAUCH: Yes.

11 MR. BESHORE: Okay. You took all those  
12 checks, without analyzing what the minimal  
13 federal values were, you concluded that the  
14 checks generated different prices and therefore  
15 the case that Federal Milk Marketing Orders  
16 provide uniform milk prices for all producers is  
17 just plain wrong, that was your analysis?

18 DR. KNOBLAUCH: That's correct.

19 MR. BESHORE: Okay.

20 MR. BOSCH: Page 5 of Exhibit 91, you  
21 make the assertion --

22 DR. KNOBLAUCH: I'm sorry, which exhibit  
23 are we on?

24 MR. BESHORE: Page 5, on -- I misspoke.  
25 Your testimony, 90. I'm sorry. You make the

1           assertion -- this is the first full paragraph at  
2           the top. The additional burden of contributing  
3           equalization payments to the pool and the  
4           associated paperwork would certainly put some  
5           folks out of business.

6                     Now, who are the some folks you're  
7           talking about there?

8                     DR. KNOBLAUCH: Some producer-handlers.

9                     MR. BESHORE: Okay. Were they the  
10           producer-handlers in the Nicholson and  
11           Stephenson study?

12                    DR. KNOBLAUCH: No, this was a generic  
13           statement.

14                    MR. BESHORE: Okay. Well, who -- do  
15           you -- do you have any -- in making that  
16           statement, did you take into account how the  
17           Proposals 1, 2 and 26 put forward as a package  
18           by Dr. Cryan and the National Milk Producers  
19           Federation -- did you take into account how they  
20           would -- who they would affect and who they  
21           would not?

22                    DR. KNOBLAUCH: No. The assumption here  
23           is that businesses, especially businesses close  
24           to the margin or currently losing money in the  
25           current situation, and you add additional cost

1 to those, and certainly some of those folks will  
2 be put out of business. It will be the  
3 proverbial straw that broke the camel's back.

4 MR. BESHORE: But you -- you don't have  
5 any particular businesses in mind when you make  
6 this -- when you made that statement?

7 DR. KNOBLAUCH: That's correct.

8 MR. BESHORE: Okay. Do you understand  
9 that the National Milk Producers Federation  
10 Proposals 1, 2 and 26, to the best of our  
11 knowledge, and there have been a number of  
12 producer-handlers from the Northeast come in and  
13 testify, would not change the current regulation  
14 of any of those entities? Are you aware that?

15 JUDGE CLIFTON: I'll hear your objection,  
16 Mr. Ricciardi.

17 MR. RICCIARDI: Absolutely. At this  
18 point, your Honor, he's asking him to assume  
19 facts that aren't true in this record.

20 We have specifically, for example,  
21 Mr. Hatch, who has indicated that if, in fact,  
22 regulations were put on with regard to either  
23 Proposal 1, or even 26, that his business would  
24 be affected, particularly with regard to  
25 Proposal 1. So there's been testimony in this

1 record that, in fact, businesses would be  
2 affected in Order 1, including Mr. Hatch.

3 JUDGE CLIFTON: Before I hear from you.  
4 Mr. Miltner.

5 MR. MILTNER: I would just add -- I would  
6 just add, your Honor that while 1, 2, and 26  
7 have been discussed as a package, Proposal 1 is  
8 for the elimination of the producer-handlers.  
9 And the Department and the Secretary may decide  
10 that that proposal stands alone and, based on  
11 the record, could adopt Proposal 1 alone. And I  
12 believe Dr. Knoblauch said this is -- his  
13 statement affects and is addressed to the  
14 elimination of producer-handler status, not to  
15 any package of producers.

16 JUDGE CLIFTON: Mr. Beshore, just start  
17 with a new question, if you will.

18 MR. BESHORE: If the effect -- if the  
19 adoption of -- if you assume with me -- by the  
20 way, did you hear Dr. Cryan's testimony or read  
21 it?

22 DR. KNOBLAUCH: I believe I read it. I  
23 did not hear it.

24 MR. BESHORE: Okay. But you did have the  
25 chance to read it then? If you assume with me

1           that as he testified, the implementation of  
2           Proposals 1, 2 and 26, which is what the  
3           National Milk Producers Federation requests, we  
4           understand the Secretary can -- will make up his  
5           own mind, the Department will make up their  
6           mind. But if our proposals were adopted, assume  
7           with me, it would not require contributing  
8           equalization payments to the pool by any current  
9           producer-handler in the Northeast, to the best  
10          of our knowledge.

11                         JUDGE CLIFTON: Who was a  
12           producer-handler during 2008?

13                         MR. BESHORE: Who was a producer-handler  
14           during 2008, or is now for that matter, any  
15           current -- you don't know of any new ones that  
16           would not be exempt. If that were to happen,  
17           there would not be any requirement for any  
18           equalization payments from any producer-handler  
19           in the Northeast. Accept that. Then certainly  
20           it would not put any of them out of business,  
21           wouldn't you agree with that?

22                         DR. KNOBLAUCH: Well, if I accept your  
23           assumption, which I have no knowledge of --

24                         MR. BESHORE: Okay.

25                         DR. KNOBLAUCH: -- then certainly the

1 conclusion, based on that assumption that I have  
2 no knowledge of, would be true.

3 MR. BESHORE: What producer-handler --  
4 what folks -- what folks are you aware of, in  
5 any part of the country, who are on the edge who  
6 would be put out of business if 1, 2 and 26 were  
7 adopted?

8 DR. KNOBLAUCH: Again, I would reiterate  
9 my previous statement that it's a generic  
10 statement. That those that are -- and I would  
11 assume there's a distribution across  
12 profitabilities and costs. Those that are on  
13 the edge, an additional cost, I believe, my  
14 words are, would certainly put some folks out of  
15 business. If those costs were required and  
16 they're on edge now, it may be the straw that  
17 broke the camel's back.

18 MR. BESHORE: So for that conclusion, in  
19 your testimony you're willing to make the  
20 assumption, without any knowledge base, that  
21 there are some folks out there somewhere who are  
22 in that economic condition?

23 DR. KNOBLAUCH: It would be a rare  
24 industry in which no one in that industry was in  
25 that category.

1 MR. BESHORE: Well, if there are, in  
2 fact, only perhaps six entities in the country  
3 who would be affected by 1, 2 and 26, do you  
4 know -- are you aware of that?

5 DR. KNOBLAUCH: I'm sorry, what's the  
6 question?

7 MR. BESHORE: Are you aware that there  
8 are only perhaps six producer-handlers in the  
9 country that would be impacted by National Milk  
10 Producers Federation 1, 2 and 26, impacted in  
11 terms of being pooled and required to make  
12 equalization payments?

13 DR. KNOBLAUCH: The number, no.

14 MR. BESHORE: So you didn't make any  
15 effort -- you were retained by AIDA?

16 DR. KNOBLAUCH: That's correct.

17 MR. BESHORE: Okay. And they didn't  
18 provide you with any business with respect to  
19 their financial -- whether they're teetering on  
20 the brink to give you some factual basis for  
21 making this statement?

22 DR. KNOBLAUCH: That was, shall we say,  
23 assumed to be confidential information.

24 MR. BESHORE: Okay.

25 DR. KNOBLAUCH: So the answer to your



1 question is no.

2 MR. BESHORE: Now, have you done any  
3 study of the cost of production of dairy farms  
4 1,250 cows and higher?

5 DR. KNOBLAUCH: I'm sorry, I didn't quite  
6 hear that question.

7 MR. BESHORE: Have you done any studies  
8 of the cost of production of milk on dairy farms  
9 with 1,250 or more cows?

10 DR. KNOBLAUCH: There are farms in our  
11 dairy farm business summary with more than 1,250  
12 cows, yes.

13 MR. BESHORE: Have you aggregated their  
14 cost of production and analyzed them as a  
15 separate group?

16 DR. KNOBLAUCH: I have no memory of it.  
17 My response would be there's generally too few  
18 observations out there to draw any meaningful  
19 conclusions.

20 MR. BESHORE: Okay. The plant cost  
21 studies done by Mr. Stephenson and some others  
22 at Cornell, Erba -- Erba, Aplin and Stephenson,  
23 and the subsequent Stephenson and Nicholson  
24 study, you did not personally participate in  
25 those studies, is that correct?

1 DR. KNOBLAUCH: That's correct.

2 MR. BESHORE: Thank you. Dr. Knoblauch,  
3 if you would pass the microphone to Dr. Knutson?

4 JUDGE CLIFTON: While he's doing that,  
5 Mr. Beshore, would you spell the Erba, Aplin  
6 study that you just referred to?

7 MR. BESHORE: It is referred to in --  
8 on -- in Dr. Knoblauch's testimony. Erba is  
9 E-r-b-a. Aplin, A-p-l-i-n.

10 Good afternoon, Dr. Knutson.

11 MR. KNUTSON: Good afternoon.

12 MR. BESHORE: You've referenced a Nourse  
13 report, quoted it a few times, but I didn't -- I  
14 don't think you relied on it, or quoted it with  
15 respect to the individual handler pool issue.  
16 Am I correct?

17 DR. KNUTSON: No, I did not.

18 MR. BESHORE: And that's because the  
19 Nourse report did not endorse, as a general  
20 matter, individual handler pools. In fact, it  
21 was very critical of them, isn't that correct?

22 DR. KNUTSON: That isn't why I didn't. I  
23 was not asked to analyze the marketwide pool  
24 concept --

25 MR. BESHORE: Well --

1 DR. KNUTSON: -- per se. I was asked to  
2 analyze the individual handler pool concept.

3 MR. BESHORE: Okay.

4 DR. KNUTSON: That's what the proposal's  
5 concerning.

6 MR. BESHORE: And you do endorse the  
7 individual handler concept?

8 DR. KNUTSON: I don't endorse. I don't  
9 endorse. I'm an economist, I'm a policy person.  
10 I don't endorse any particular one of these  
11 alternatives. What I say is that they all are  
12 relevant for consideration. But I don't say,  
13 you know, that the individual handler pool is  
14 the best option. I look at the economic impacts  
15 of these alternatives.

16 MR. BESHORE: Would you agree, then, with  
17 this observation made in the Nourse report?  
18 Roman numeral III-22 is the portion of the  
19 report.

20 JUDGE CLIFTON: Let's go off record while  
21 Dr. Knutson finds in his copy the place you're  
22 referring to. If you would come alongside him,  
23 Mr. Beshore.

24 (Off the record.)

25 JUDGE CLIFTON: All right. We're back on

1 record at 2:34. Mr. Beshore, I'm sorry that you  
2 couldn't line up the language that you have  
3 found with the volume that the witness has  
4 brought. I have more confidence in the volume  
5 that the witness has brought because it has a  
6 later date. So let's continue to try to match  
7 them, and I'll have you come back to this later,  
8 if you will.

9 MR. BESHORE: Okay. I'm working from  
10 the -- the copy of the witness' references,  
11 which his counsel provided the participants.  
12 Just so there's no question about that.

13 MR. MILTNER: Which was provided by  
14 Cornell University.

15 MR. BESHORE: Which is published on the  
16 Cornell University website, yes.

17 Let me ask a question or two of  
18 Dr. Knutson, with respect to your comments on --  
19 comments on premiums and that subject a little  
20 bit.

21 Would you agree with me that dairy  
22 markets -- that the federal dairy policy today,  
23 because of changes in the support price program  
24 primarily, is much different than it was in 1972  
25 or the early '70s when it was being reviewed by

1 the Milk Pricing Advisory Committee at which you  
2 chaired?

3 DR. KNUTSON: Yes, certainly the milk  
4 price support policy was substantially  
5 different. It provided a floor on the market  
6 price.

7 MR. BESHORE: So, I mean, in the early  
8 1970s and until 1980 or close there, the federal  
9 government was obligated under the price support  
10 law to support the price of milk at a bracket  
11 between 75 percent and 90 percent of parity,  
12 correct?

13 DR. KNUTSON: Yeah, I forget exactly what  
14 year, but there was a period of time when that  
15 was the case.

16 MR. BESHORE: And that was the case when  
17 the 1972 report and analysis was done, was it  
18 not?

19 DR. KNUTSON: Yes. I believe it was,  
20 yes.

21 MR. BESHORE: Well, and during those  
22 years, of course the support price being higher  
23 than it is presently, the Federal Order prices  
24 did not have the volatility that they do today?

25 DR. KNUTSON: That is correct, yes.

1           MR. BESHORE: Now, currently, of course,  
2           the support price is at roughly 990 a  
3           hundredweight or something in that vicinity,  
4           milk price equivalent. It's now just on  
5           products, not on milk, per se --

6           DR. KNUTSON: Yes.

7           MR. BESHORE: -- correct? And that's --  
8           that's even -- probably even lower on an  
9           absolute basis than it might have been at some  
10          time during the years when the price -- during  
11          the '70s even. That doesn't matter, whether  
12          that's lower or not, but it's -- it's -- it has  
13          a much different relationship to market prices  
14          than the support price did in the '70s, correct?

15          DR. KNUTSON: Correct.

16          MR. BESHORE: Doesn't that fact alone  
17          tend to lead to there being more room for market  
18          forces to lead to transaction prices higher than  
19          Federal Order minimum prices today?

20          DR. KNUTSON: Yes, I -- I would think  
21          that's right. Yes.

22          MR. BESHORE: Now, but your thesis, if  
23          I -- if I understand it, is that cooperative  
24          premiums today are evidence of and the product  
25          of cooperative market power?

1 DR. KNUTSON: Absolutely.

2 MR. BESHORE: Now, I just wonder if you  
3 could turn to -- turn to your tables, exhibits  
4 that show some of the Class I premiums,  
5 announced prices at selected cities. It's table  
6 4 and 5 --

7 DR. KNUTSON: Okay.

8 MR. BESHORE: -- attached to Exhibit 89.  
9 If -- if premiums are a manifestation of market  
10 power, would -- you would expect that premium  
11 level would correlate to the -- to the market  
12 share of the dominant cooperative, would you  
13 not?

14 DR. KNUTSON: It depends upon what  
15 specific markets are you talking about.

16 MR. BESHORE: I'm not talking about any  
17 specific market, I'm talking about a market. If  
18 premiums in a market are the product of market  
19 power, doesn't that necessarily mean that there  
20 must be a dominant entity exercising that market  
21 power and therefore imposing that premium?

22 DR. KNUTSON: My answer is -- the reason  
23 I asked what specific market is, Chicago might  
24 be an exception to that rule. And there you  
25 have the give-up charge phenomena operating in

1           that particular market.

2                   MR. BESHORE:   Okay.

3                   DR. KNUTSON:   So that's a good example of  
4 a case where, you know -- whether you attribute  
5 it to one cooperative or not, there's more than  
6 one cooperative that operates in Wisconsin.

7                   MR. BESHORE:   So if you look at Table 4  
8 of your exhibit --

9                   DR. KNUTSON:   Yes.

10                  MR. BESHORE:   -- Exhibit 89, Table 4, in  
11 fact the highest premiums, annual average, for  
12 the years -- for the nine-year period, 2001  
13 through 2009, the highest or second highest  
14 average premium is in Chicago?

15                  DR. KNUTSON:   Yes.

16                  MR. BESHORE:   And is it your testimony  
17 that those -- that high level of premiums is not  
18 a product of cooperative market power?

19                  DR. KNUTSON:   Oh, well, it's a product of  
20 give-up charges that are charged by  
21 cooperatives.  And those give-up charges are  
22 cooperative market power phenomena.

23                  MR. BESHORE:   Well, now, I believe --

24                  DR. KNUTSON:   They don't serve -- they  
25 don't serve the market.  They are not serving as



1 the Federal Orders desire that they do, the  
2 Class I market. I mean, that's the principal  
3 advantage of individual handler pooling.

4 MR. BESHORE: You talk about give-up  
5 charges. You have -- as you've testified, you  
6 have no data -- there's no published data with  
7 respect to give-up charges, correct?

8 DR. KNUTSON: No. No, but generally  
9 speaking, as I said, economists view the higher  
10 premiums in Chicago as being a reflection of  
11 give-up charges.

12 MR. BESHORE: I -- I hear that testimony,  
13 but what my question is, to make sure there's no  
14 question about it, that there is no published  
15 data or study on give-up charges?

16 DR. KNUTSON: That's precisely right.

17 MR. BESHORE: So we do not know, in terms  
18 of having factual data before us, basically  
19 anything about those give-up charges?

20 DR. KNUTSON: Well, I think we do know  
21 about those give-up charges, it's just that they  
22 are not publicly reported. We have -- for  
23 example, I cited Bob Cropp as saying those  
24 give-up charges may be as high as \$5 a  
25 hundredweight or higher, I think he said.

1           So, you know, the other -- the other  
2           factor here is that we have talked in the  
3           Cornell group about give-up charges and the fact  
4           that they are not publicly reported. And that's  
5           where the conclusion comes from, that the best  
6           measure of the give-up charge is that Chicago  
7           premium.

8           MR. BESHORE: So the Chicago premium,  
9           that's -- and that is the price over the minimum  
10          Federal Order price that's charged for Class I  
11          milk to dairies in Chicago?

12          DR. KNUTSON: Exactly.

13          MR. BESHORE: Now, do you know -- is it  
14          your contention that cooperatives -- what basis  
15          do you have for asserting that cooperatives in  
16          Wisconsin, I assume -- is it Wisconsin,  
17          Minnesota? Where are these cooperatives that --

18          DR. KNUTSON: In the Upper Midwest,  
19          Wisconsin and Minnesota, primarily, but they  
20          may, you know, end up being on the southern  
21          fringe states as well. But they tend to be in  
22          the Upper Midwest.

23          MR. BESHORE: Do you know what the  
24          proportion of proprietary manufacturing  
25          capacity -- by the way, give-up charges are

1 charges made by plants, right?

2 DR. KNUTSON: Yes.

3 MR. BESHORE: And if there are --  
4 proprietary plants that are made by  
5 privately-owned companies, correct?

6 DR. KNUTSON: Yes.

7 MR. BESHORE: And give-up charges are  
8 made by proprietary plants in Wisconsin, are  
9 they not?

10 DR. KNUTSON: They may be, yes.

11 MR. BESHORE: Well, do you know?

12 Dr. KNUTSON: Sure.

13 MR. BESHORE: And they are?

14 DR. KNUTSON: Yes.

15 MR. BESHORE: Okay. And, in fact,  
16 there's a -- in terms of cheese manufacturing  
17 capacity, the portion of proprietary  
18 manufacturing capacity in Wisconsin is very  
19 substantial, is it not?

20 DR. KNUTSON: I can't answer because I  
21 don't know what you mean by very substantial.

22 MR. BESHORE: Well, do you know the  
23 proportion of cooperative plant capacity versus  
24 proprietary plant capacity at this time?

25 DR. KNUTSON: No, I do not.

1                   MR. BESHORE: On Table 4 of -- Table 4 of  
2                   Exhibit 89, are you aware of the -- the  
3                   lowest -- lowest premium structure here is in  
4                   Phoenix, correct?

5                   DR. KNUTSON: Right.

6                   MR. BESHORE: And in Phoenix, a single  
7                   cooperative in that marketplace -- a single  
8                   cooperative has more than 90 percent of the  
9                   market, isn't that correct?

10                  DR. KNUTSON: I don't know that, but let  
11                  me explain what I said in my testimony.

12                  MR. BESHORE: Well, first, let me  
13                  answer --

14                  DR. KNUTSON: Okay.

15                  MR. BESHORE: -- ask some questions and  
16                  get your answers. You've called that a  
17                  monopolistically dominated market, have you not?

18                  DR. KNUTSON: On both the buyer and the  
19                  seller. Both the co-op and the proprietary  
20                  side, yes.

21                  MR. BESHORE: And so the cooperative has  
22                  market power in the Phoenix market, as the  
23                  seller?

24                  DR. KNUTSON: Yes, yes.

25                  MR. BESHORE: And the premium that they

1           have extracted with that market power is  
2           averaging 25 cents per hundredweight for the  
3           years 2001 through 2009, correct?

4           DR. KNUTSON: Yes. Can I explain why?

5           MR. BESHORE: If your counsel asks you  
6           that, you can, but I have some other questions  
7           for you.

8           DR. KNUTSON: I have explained why in the  
9           testimony.

10          MR. BESHORE: Well, is your testimony  
11          because it's next to California? Is that your  
12          explanation?

13          DR. KNUTSON: That's part of the reason,  
14          yes.

15          MR. BESHORE: Okay. Now, I have maybe  
16          just one final question or area, Dr. Knutson.  
17          Paragraph 29, your heading is, Assertion Versus  
18          Reality, Who Sets the Producer Blend Price.

19          DR. KNUTSON: Yes.

20          MR. BESHORE: What is the assertion that  
21          you are -- that you are addressing here with  
22          reality?

23          DR. KNUTSON: The assertion is that the  
24          Federal Order set the blend price. I thought  
25          you were talking with Dr. Knoblauch about that.

1 MR. BESHORE: Okay. Well, now, I  
2 think -- it's your contention that if one  
3 asserts -- if I make the statement that the  
4 Federal Order establishes a uniform -- a minimum  
5 uniform price for all producers in the pool, are  
6 you contending that that is not correct?

7 DR. KNUTSON: Oh, no. I said in the  
8 testimony that the Market Administrator does  
9 indeed calculate a uniform price.

10 MR. BESHORE: I didn't -- I wasn't saying  
11 whether he calculates a price. Don't they  
12 establish and administer, enforce a minimum  
13 uniform price to be paid to all producers in the  
14 pool?

15 DR. KNUTSON: And it's a minimum, yes.

16 MR. BESHORE: Okay. And therefore, since  
17 it's a minimum, prices can be paid over and  
18 above that, and that's not violative of the  
19 federal minimum prices?

20 DR. KNUTSON: No, I didn't say it was.

21 MR. BESHORE: Okay. So what is the  
22 assertion which you are debunking?

23 DR. KNUTSON: The assertion is that the  
24 Federal Orders establish the minimum price. And  
25 I'm -- and I'm saying -- excuse me. The

1           assertion is that Federal Orders establish the  
2           blend price. That's the assertion.

3           MR. BESHORE: Isn't blend --

4           DR. KNUTSON: And my -- the reality is  
5           that the cooperatives establish the blend price.

6           MR. BESHORE: Well, when you say, blend  
7           price, is that synonymous with minimum uniform  
8           Federal Order price, or do you mean something  
9           different?

10          DR. KNUTSON: No, I mean -- when you  
11          say -- you know, the reason this is relevant  
12          here is because you say that uniform blend price  
13          ought to be the base for determining the -- the  
14          payment by producer-handlers.

15          MR. BESHORE: That's why it's relevant.

16          DR. KNUTSON: That's why it's relevant  
17          here. And the implication is that that price  
18          exists in the marketplace. And what I'm saying  
19          the fact is, that that price doesn't exist in  
20          the marketplace.

21          MR. BESHORE: But let's explore just very  
22          briefly, and then I'm done, how that's relevant.  
23          Isn't that minimum uniform price under the Order  
24          the -- the price which is used by the Market  
25          Administrator to determine what every pool

1 handler's obligation is to the producer  
2 settlement fund?

3 DR. KNUTSON: Yes, yes.

4 MR. BESHORE: So the blend price is a  
5 price that's meaningful in determining what must  
6 be paid into the pool by a handler, correct?

7 DR. KNUTSON: Yes. But it's not the  
8 price that is paid producers.

9 MR. BESHORE: But I'm not sure who said  
10 it was. You said it was.

11 DR. KNUTSON: Well, the implication is --  
12 the implication of Dr. Cryan's testimony is that  
13 it is. I mean, they said the producer is paid,  
14 you know.

15 MR. BESHORE: Well --

16 DR. KNUTSON: And when you say that, to  
17 me, that means the milk check.

18 MR. BESHORE: Isn't the difference  
19 between a regulated distributing plant's monthly  
20 financial obligations under the Federal Order  
21 and the non-obligation of a producer-handler a  
22 calculation that's done by the Market  
23 Administrator on the basis of the difference  
24 between the uniform price in the order and the  
25 class value of the handler's use?



1 DR. KNUTSON: Yes, it is.

2 MR. BESHORE: And the minimum federal  
3 prices are in fact the determinants of that  
4 financial obligation?

5 DR. KNUTSON: Yes.

6 MR. BESHORE: Thank you very much,  
7 Dr. Knutson.

8 JUDGE CLIFTON: Dr. Knutson, I would like  
9 you to talk for a little bit about the various  
10 factors at work that establish the price paid to  
11 the farmer. Because we've had testimony from  
12 more than 50 witnesses during the last two  
13 weeks, many of them who were farmers, and no one  
14 is feeling particularly flush. It seems to me  
15 that if the co-ops establish the prices, they  
16 would be higher. So what other factors are at  
17 work?

18 DR. KNUTSON: Let me explain to you why  
19 no one says they're flush. First of all,  
20 farmers never say they're flush. I mean,  
21 that's -- that's a given. Farmers are never  
22 happy with what they're currently getting. But  
23 if you had talked to them a year ago, you know,  
24 when the price was what I would say sky high --  
25 and that's why it's so low now -- if you talked

1 to them then, you would have gotten a different  
2 story, you know.

3 Now, if you say, well, what is it? What  
4 I testified to in here, that it's rather amazing  
5 to me, when you talk about cooperative power,  
6 that we have all of this milk now, you know, and  
7 low prices and low demand, and yet the  
8 cooperatives are able to garner large premiums.  
9 In fact, larger than last year, over Federal  
10 Order prices. And we see that in -- in these  
11 tables here, that they're able to do that. Now,  
12 that's, to me, the best indication of market  
13 power.

14 Then the second issue is -- which is a  
15 different issue -- is, how is that divided among  
16 producers, okay? And that's what this table of  
17 Mark Stephenson is about, how it's divided among  
18 producers.

19 Now, we heard testimony earlier by  
20 Dr. Knoblauch that, you know, a substantial  
21 portion of this producer return is dictated, in  
22 effect, by the order, by butterfat content, by  
23 protein content, and so forth.

24 What wasn't said is that there is a  
25 substantial margin left over from that. And --

1           and -- and -- and that margin is also in here.  
2           That was not mentioned. And it varies from  
3           9 cents to -- under premium values, it varies  
4           from 9 cents up to \$1.31 a hundredweight.

5           Now, that's a wide range of differences  
6           in prices. And the factors that account for  
7           that, are volume, quality, market, that are not  
8           related. The market item, is interestingly  
9           enough, a residual. And it varies from zero to  
10          79 cents a hundredweight. So it is substantial.

11          People talk about the price would be  
12          higher in the pool. Well, you've got this -- if  
13          we had producer-handlers contributing -- and  
14          they talk about 1 or 2 cents. Well, here we're  
15          talking about 79 cents difference among the  
16          producers related to values that we can't  
17          account for. And when you get into the  
18          details -- and I can understand why I'm not  
19          being asked -- when you get into the details of  
20          that item, then the decrease starts to bother  
21          you as to what accounts for that variation among  
22          producers.

23          So there's ethical questions raised and  
24          so forth and so on when you get into details of  
25          this. So that -- that range is -- is very

1 significant in the scheme of things, your Honor.

2 JUDGE CLIFTON: Thank you, Dr. Knutson.  
3 Dr. Knoblauch, did you by any chance find in the  
4 report there the section we were looking for?

5 DR. KNOBLAUCH: I did not.

6 JUDGE CLIFTON: Okay. Did you,  
7 Mr. English? Can you help us with that?

8 MR. ENGLISH: I was wondering if I could  
9 look at that.

10 JUDGE CLIFTON: Yes. Would you please  
11 look at the original and see if you can match up  
12 those sections?

13 JUDGE CLIFTON: Now, I know that if we're  
14 going to have Dr. Knutson on a 5:35 plane, we  
15 should probably have him leave this room by  
16 what, about 3:30?

17 DR. KNUTSON: 4.

18 JUDGE CLIFTON: Okay. So we have another  
19 hour, but I want to leave some time for  
20 redirect.

21 MR. MILTNER: Thank you.

22 JUDGE CLIFTON: So if we could  
23 concentrate, as we continue the questions, on  
24 Dr. Knutson to the extent possible, we have  
25 Dr. Knoblauch for a little bit longer.

1                   Let's take a break before we do our next  
2                   examination, and Mr. Yale, you'll go next.  
3                   Let's take ten minutes. Please be back and  
4                   ready to go at 3:08.

5                   (A recess was taken from 2:58 to 3:10.)

6                   JUDGE CLIFTON: All right. Let's go back  
7                   on record. We're back on record at 3:10.  
8                   Mr. Beshore.

9                   MR. BESHORE: Yeah, I would just like to  
10                  note that I'm not going to ask Dr. Knutson any  
11                  more questions or read these into the record,  
12                  but the passages of the Nourse report concerning  
13                  individual handler pooling that I was looking  
14                  for, the particular one is on page 97. There's  
15                  another one on page 64. And I just reference  
16                  them for counsel and the record's information.  
17                  The comment would be --

18                  DR. KNUTSON: 97 and 64, did you say?

19                  JUDGE CLIFTON: And which version are  
20                  they, those pages?

21                  MR. BESHORE: Those papers are the later  
22                  dated publications which Dr. Knutson has in  
23                  front of him. The verbiage is identical. The  
24                  particular -- the ones I've compared, and every  
25                  comparison we've made, they appear to be

1 identical. But those are the pages in the later  
2 dated one.

3 JUDGE CLIFTON: And what pages are they  
4 in the version that is now on the Cornell  
5 website?

6 MR. BESHORE: Well, these pages are  
7 not -- they are not numbered. However, the page  
8 97 corresponds to Roman numeral III-22. The  
9 page that has that sort of a paragraph or a  
10 semi-page numbering, if I could say, it's in the  
11 middle of the text. Page 64 has the reference  
12 point of II-4-12. I guess it's maybe double II.  
13 Roman II-4-12. Thank you.

14 JUDGE CLIFTON: Thank you, Mr. Beshore,  
15 all right. Who next will cross-examine? Let's  
16 see. I told Mr. Yale that he would be next.

17 CROSS-EXAMINATION

18 BY MR. YALE:

19 MR. YALE: Benjamin F. Yale, Continental  
20 Dairy Products and Select Milk. Your Honor, in  
21 light of the time frame, what I would like to do  
22 is focus on Dr. Knutson, and then if everybody  
23 else is done with him, that way, if I have some  
24 questions -- and I do have a few of  
25 Dr. Knoblauch, that way I don't interfere with

1 the time frame. Is that appropriate?

2 JUDGE CLIFTON: That's exactly how I  
3 would like everyone to proceed. Just from now  
4 on, questions only of Dr. Knutson until we  
5 release him, and then we'll turn to  
6 Dr. Knoblauch.

7 MR. YALE: Okay. Good afternoon.  
8 Dr. Knutson, you're welcome to sit up there and  
9 watch, you know, sit in the choir. You can sit  
10 in the pew. I don't care.

11 DR. KNOBLAUCH: If this is going to be a  
12 long-time event, I will take your advice.

13 MR. YALE: Maybe he needs a few amens  
14 from here. I don't know. I've just got a  
15 couple topics that I want to go through and  
16 there's not any real plan, so they're just notes  
17 that I took as I went.

18 During your testimony, you talked about  
19 the fact that this recent legislation dealing  
20 with forward contracting was inconsistent with  
21 one of your studies, either the Market -- Milk  
22 Marketing Committee or the Nourse report. Do  
23 you recall that, about forward contracting --  
24 allowing forwarding contracting of pricing?

25 DR. KNUTSON: No. I think you're

1                   confusing me with somebody else. Because I've  
2                   said nothing about forward contracting --

3                   MR. YALE: Okay.

4                   DR. KNUTSON: -- I don't think.

5                   MR. YALE: Maybe I misunderstood it.

6                   DR. KNUTSON: Forward pricing?

7                   MR. YALE: Forward pricing.

8                   DR. KNUTSON: Oh, well, that's different.

9                   MR. YALE: Okay. Then tell me how it's  
10                  different.

11                  DR. KNUTSON: Well, forward contracting  
12                  deals with making a contract which allows you to  
13                  price in the future.

14                  MR. YALE: Okay.

15                  DR. KNUTSON: Forward pricing is the  
16                  situation where you price -- you -- your price  
17                  today is really from two -- Class I price today  
18                  is really from two months earlier. And it's  
19                  what results in this inversion and depooling.

20                  MR. YALE: Okay. We don't -- we don't  
21                  need to go there. I misunderstood the comment  
22                  that you made. I appreciate the explanation.

23                  Let's get down -- I think, really, kind of  
24                  the issue, you would agree, would you not, that  
25                  where you have a regulated market, as we have



1           here, that it would be inappropriate for the  
2           market to provide benefits, significant  
3           benefits, to one group of parties over another,  
4           in general? Isn't that kind of a fair  
5           statement?

6           DR. KNUTSON: Yeah, I -- I don't -- I  
7           hesitate to answer either -- either yes or no to  
8           that, for this reason. The -- you've got to  
9           know, in my view, whether the treatment is  
10          equitable in terms of the objectives of the  
11          Agricultural Marketing Agreement Act.

12          So that ends up being, you know, in my  
13          view, the crucial issue. So maybe you want to  
14          go from there, in terms of your questioning. I  
15          mean, I don't want to put anybody out of  
16          business. That's -- that's been a principal  
17          concern that I have.

18          MR. YALE: Let me phrase it this way. I  
19          think you would agree, and I think everybody  
20          would agree there appears to be a division in  
21          the house that there are two types of handlers.  
22          There are those who acquire their milk by  
23          purchase, which has minimum prices, and without  
24          regulation, and then you have those who acquire  
25          it by production, of their own production,

1 right? Do you understand that distinction?

2 DR. KNUTSON: Yes, yes.

3 MR. YALE: We'll call the latter  
4 producer-handlers and the other regulated  
5 handlers --

6 DR. KNUTSON: Yes.

7 MR. YALE: -- seems to be the labels that  
8 are used, right?

9 DR. KNUTSON: Yes, yes.

10 MR. YALE: Okay. And the question that's  
11 really before the Secretary is -- or that's been  
12 presented, is that the regulatory scheme,  
13 because it regulates purchases but not  
14 production, that that therefore -- I think  
15 almost ipso facto -- but at least results in an  
16 advantage of the production versus the purchase.  
17 I think that's the underlying premise. Does  
18 that -- is that a fair statement, as you  
19 understand it?

20 DR. KNUTSON: Yes.

21 MR. YALE: Now, as I understand your  
22 testimony, is that under the Agricultural  
23 Marketing Act and the policies, is that the  
24 question is not so much the equity, if we use  
25 that word, or equality under the thesaurus, it

1 is whether or not the consuming public is  
2 receiving milk in a sufficient supply at a  
3 reasonable price. That's the question that has  
4 to be answered?

5 DR. KNUTSON: That's the Agricultural  
6 Marketing Agreement Act's question. Is there an  
7 adequate supply of milk coming to consumers or  
8 not?

9 MR. YALE: As a I kind of summarized your  
10 testimony -- we'll try to be quick because you  
11 have less time. What you're saying is, if that  
12 that's the test, then there's no evidence that  
13 that milk isn't getting to the consuming public  
14 in a sufficient quantity at a reasonable price,  
15 is that --

16 DR. KNUTSON: That's certainly the case,  
17 yes.

18 MR. YALE: All right. Now, let's take  
19 the next step. Let's take the position that  
20 that's really not the way the Department's going  
21 to look at it, but they're going to look at it  
22 on this issue of equity or equality, okay,  
23 between handlers, okay, however one wants to  
24 label it, all right?

25 DR. KNUTSON: Yes, yes.

1 MR. YALE: Level playing field or  
2 whatever the case is.

3 DR. KNUTSON: Yes, yes.

4 MR. YALE: And we have on the one hand,  
5 the model of an acquisition by purchase. We  
6 know what that transfer price is because it is  
7 actually a transfer price that's labeled, right?

8 DR. KNUTSON: Exactly.

9 MR. YALE: All right. And we don't know  
10 what -- we don't have the beauty of an express  
11 price for the production, is that fair?

12 DR. KNUTSON: Exactly, yes.

13 MR. YALE: Okay. And as I understand --  
14 so I guess the first question is, to determine  
15 whether it's level or not between the two, we  
16 need to know what the transfer prices are,  
17 right? And we need to know what the transfer  
18 price is for the producing unit and we need to  
19 know what the transfer price is for the  
20 purchasing unit, right? If we want to determine  
21 whether they're equal or not, right? Is that  
22 correct?

23 DR. KNUTSON: Yes.

24 MR. YALE: All right. And that would be  
25 the first step. And then if it's unequal, then

1           you could decide how you want to equalize it  
2           through some kind of compensatory payment  
3           system, right?

4           DR. KNUTSON: Right.

5           MR. YALE: Okay. So the first step is to  
6           determine whether it's equal or not. And,  
7           really, the first step is to know what those  
8           transfer costs are, is that a fair statement?

9           DR. KNUTSON: Yes.

10          MR. YALE: All right. And as I  
11          understand your testimony, is that the use of  
12          the difference between the Class I and the  
13          uniform price, which is part of the regulatory  
14          side, cannot be used as a proxy that has any  
15          reality to the transfer price in the producing  
16          side, is that --

17          DR. KNUTSON: For the producer-handler.  
18          Because the producer-handler is not under a  
19          level playing field, it's got restrictions on it  
20          in terms of what milk it can buy. And it's got,  
21          you know, implied restrictions over what it can  
22          sell. Because if it starts selling -- if they  
23          start telling too much, then they know that  
24          someone's going to be down their neck for  
25          dumping milk on the market. So this

1 producer-handler is in a unique position.

2 In addition, the producer-handler, in  
3 many cases as we've seen, is producing for a  
4 niche market, which is an inherently higher cost  
5 kind of situation. So, you know, that's why I  
6 say the cost is a relevant factor here for how  
7 equity should be measured in the case of the  
8 producer-handler.

9 MR. YALE: Cost is relevant or  
10 irrelevant?

11 DR. KNUTSON: Is the relevant.

12 MR. YALE: Okay. That article helps a  
13 lot.

14 DR. KNUTSON: Is the relevant.

15 MR. YALE: Okay. So it's not so much  
16 you're saying that maybe there aren't  
17 compensatory payments that are appropriate, it's  
18 just that the methodology that's being proposed  
19 doesn't address accurately or reality -- in a  
20 sense of reality what those payments ought to  
21 be?

22 DR. KNUTSON: Yeah. All I'm saying is  
23 that the proposal is not an appropriate way of  
24 looking at the compensatory payment issue.

25 MR. YALE: Okay. Now, I want you to look

1 at Dr. Knoblauch's -- there a table at the end  
2 of his -- do you have that available, his  
3 testimony?

4 JUDGE CLIFTON: Let me hand you this.

5 MR. YALE: If you look at this, it does  
6 do a comparison between a Class I and a uniform,  
7 which is the proposed compensatory system,  
8 right?

9 DR. KNUTSON: Right.

10 MR. YALE: And is there any correlation  
11 between that -- and I think your testimony is it  
12 ought to be the cost --

13 DR. KNUTSON: Yes.

14 MR. YALE: -- right? And he's identified  
15 five different measurements of cost in this  
16 table. Is there a correlation between that -- a  
17 compensatory payment based upon Class I to  
18 uniform, and I guess it would be Class I to --  
19 well, let me back up. Is Class I even an  
20 appropriate number as the basis? How would  
21 one -- how would one determine the -- I guess  
22 you look at the transfer cost, it's whatever  
23 their cost of production is, and then substitute  
24 that for the minimum price?

25 DR. KNUTSON: Well, that's a very

1 interesting question. I didn't get into that  
2 issue of whether even the Class I is the right  
3 measure because of the premium issue. And so  
4 that's, you know, part of the mix. This is --  
5 this is a very complex industry in terms of  
6 pricing --

7 MR. YALE: Right.

8 DR. KNUTSON: -- as you recognize.

9 MR. YALE: Sure. Let's go back.

10 Assuming that Class I would be the marker, is  
11 there a correlation between the Class I -- for a  
12 compensatory payment, the Class I and the  
13 uniform, is there a correlation between it and  
14 the Class I and the various proposed costs of  
15 production or -- yeah, cost of production?

16 DR. KNUTSON: No. Let me modify that  
17 slightly by saying, you know, California  
18 generally has a lower cost of production. And  
19 so that influenced the western side of the  
20 industry. And I was asked early about premiums  
21 on the western side of the industry and the  
22 California prices' influence, the size of the  
23 premiums on the western side of the industry as  
24 a competitive factor.

25 MR. YALE: Which would suggest that maybe



1 the compensatory payment might differ from  
2 region to region?

3 DR. KNUTSON: Yeah. Well, you know, I  
4 think this whole idea of compensatory payments  
5 for producer-handlers is a pretty ludicrous  
6 idea.

7 MR. YALE: For the moment, whether it's  
8 ludicrous or not, it's on the table, and we have  
9 to discuss it.

10 DR. KNUTSON: Sure.

11 MR. YALE: So I need to pursue this. I  
12 think you would agree -- we don't know to the  
13 extent, but I think we agree that there's  
14 economies of scale, both in size of production  
15 units at the farm -- that as one gets larger,  
16 that there's some scale that helps them reduce  
17 those prices, right?

18 DR. KNUTSON: Right.

19 MR. YALE: So the cost of acquisition or  
20 production for a producer-handler could be lower  
21 as they got larger, right?

22 DR. KNUTSON: Right.

23 MR. YALE: Okay. As the plants get  
24 larger, there's a cost of processing and the  
25 like that also has an economy of scale, right?

1 DR. KNUTSON: Right.

2 MR. YALE: Okay. So to the degree that  
3 at a smaller level, that transfer cost -- I mean  
4 smaller size operation, couple million pounds  
5 for some of the smaller ones, the transfer cost  
6 could be much -- could be such that the  
7 compensatory payment may, in fact, change the  
8 dynamic by being -- putting that  
9 producer-handler that's actually paying more for  
10 their milk than the person who's purchasing it,  
11 right?

12 DR. KNUTSON: Yes.

13 MR. YALE: All right. But it's possible,  
14 as size goes, you might reach a point where that  
15 won't happen, that you might actually have an  
16 economies of scale of a producer buying it that  
17 the compensatory payment may be such that it's  
18 still able to be -- it can absorb all that?

19 DR. KNUTSON: Yeah. What happens,  
20 though, when you -- when you eliminate the --  
21 the regulation, is that the whole adjustment --  
22 there's a whole process of adjustment of the  
23 nature of the operation itself. I was asked  
24 about the Sarah Farms case. You know, what I  
25 wasn't able to say, there was the tremendous

1 adjustments that were made by Sarah Farms to  
2 serve under an unregulated market.

3 And so, sure, some of these guys might  
4 survive, they might grow. Some of them don't  
5 survive, like Smith Dairy didn't survive. I  
6 mean, that's -- that's the kind of -- Smith made  
7 the decision, obviously, you know, that they  
8 weren't going to put up with the combination of  
9 production and processing, which is, you know, a  
10 complex business to run, as we heard from both  
11 Braum's and from Aurora, a very complex  
12 business.

13 MR. YALE: So what you're suggesting is,  
14 then, it's just not by imposing a transfer cost  
15 to create some equity, at whatever that level  
16 is, is that the very process of doing that  
17 changes the model so much that it's difficult to  
18 really know -- you don't know what you're going  
19 to wreak or wrought as a result of this?

20 DR. KNUTSON: You certainly do not. And  
21 I would be willing to bet that Dean's is a  
22 little bit surprised about what they got.

23 MR. YALE: I want to move to another  
24 topic, kind of -- just another topic. I want to  
25 talk about transparency. Would you agree that

1           the Federal Order with its announced minimum  
2           prices, in at least some of the documentation we  
3           get from Dairy Market News, and it reflects  
4           cooperatives and over-order premiums and the  
5           like, that there's a certain level of  
6           transparency in the pricing of what Class I is?  
7           I mean, we have some idea of what plants are  
8           being obligated to pay for Class I. Is that a  
9           fair statement?

10                   DR. KNUTSON: Yes. The premiums are  
11                   there and Class I price is there, yes.

12                   MR. YALE: And would you also agree that  
13                   that transparency benefits the producers because  
14                   their potential buyers don't take the risk of  
15                   paying a price that is totally different from  
16                   that of their competitor? Is that a fair  
17                   statement?

18                   DR. KNUTSON: Yes.

19                   MR. YALE: So when it comes to  
20                   producer-handlers, we don't know what that  
21                   acquisition cost is, right?

22                   DR. KNUTSON: Right.

23                   MR. YALE: Okay. So it is understandable  
24                   why some people may feel that lack of  
25                   transparency adds risk to the pricing, and

1                   therefore can change the dynamic in the market.  
2                   Is that a fair statement?

3                   DR. KNUTSON:    Sure, sure.

4                   MR. YALE:    Okay.    And I want to go into  
5                   another issue dealing with, you know, one of the  
6                   dynamics.    First of all, let's talk about the  
7                   plants.

8                   You talk about the change in the number  
9                   of plants and their relative size; and the  
10                  change in producers and their relative size; and  
11                  the change of producer-handlers and their  
12                  relative size; and then the relative size of one  
13                  to the relative size of the other during the  
14                  period of, I think, 15 years or whatever, right?  
15                  I mean, you've got some tables that show that.

16                  DR. KNUTSON:    Yes.

17                  MR. YALE:    Now, those tables, though,  
18                  talk about physically located plants.    I mean,  
19                  or -- or farms.    So you might have four farms at  
20                  a thousand cows each, but if they're owned by  
21                  the same person, the statistics show four farms,  
22                  they don't show one farm, right?    They don't  
23                  show it as under one unit, is that a fair  
24                  statement?

25                  DR. KNUTSON:    You know, I must say I'm

1 not sure. I don't know how exactly they count.

2 MR. YALE: Okay. But if that were the  
3 case, there may be more concentration going on  
4 at the plant and farm level than even shows up  
5 in the study?

6 DR. KNUTSON: Oh, absolutely. We know  
7 that Dean, for example, has a large number of  
8 plants. Most of them, I presume, are being  
9 counted as individual handlers. So there's a  
10 higher level of concentration.

11 MR. YALE: Than would show up in those  
12 numbers?

13 DR. KNUTSON: Sure, absolutely.

14 MR. YALE: Now, there's also been a  
15 concentration that's taken place in the buyers  
16 of milk. Is that a fair statement?

17 DR. KNUTSON: I thought we were talking  
18 about buyers.

19 MR. YALE: Buyers of retail wholesale  
20 bottled milk, processed milk.

21 DR. KNUTSON: Oh, yes, retailers,  
22 certainly.

23 MR. YALE: Has it reached the point that  
24 it may be reaching an oligopsony, or a -- o-l --  
25 o-l-i-g-o-p-s-o-n-y. He wrote it down. And

1           what's an oligopsony? I apologize.

2           DR. KNUTSON: A few buyers.

3           MR. YALE: A few buyers?

4           DR. KNUTSON: Yes.

5           MR. YALE: It's the same as an oligopoly,  
6 where there's a few sellers, right? And it's  
7 the opposite of monopoly and monopsony and  
8 oligopoly and oligopsony, right?

9           DR. KNUTSON: My dissertation for my  
10 Ph.D. was on bilateral oligopsony in the milk  
11 industry.

12          MR. YALE: So you got to write it enough  
13 times you know how to spell it?

14          DR. KNUTSON: Yes.

15          MR. YALE: Okay. And so have we reached  
16 the point in the retail market for milk that we  
17 have an oligopsony of buying of retail milk?

18          DR. KNUTSON: Yes, we have. But it's  
19 more complex than that, simply because some of  
20 those buyers are also processors, like Kroger,  
21 Safeway and those people. So there -- they buy  
22 milk from cooperatives, their processors. They  
23 compete in the retail market.

24                 So, you know, like I say, it's  
25 considerably more complex than just bilateral

1           oligopsony. And, in fact, if I went back and  
2           did my dissertation over, I would do it  
3           different today than I did when it was written.

4           MR. YALE: Because things have changed or  
5           you know more?

6           DR. KNUTSON: No. Well, no -- well, both  
7           probably. Probably just because things have  
8           changed substantially.

9           MR. YALE: All right. So let me take  
10          this another step. And that is, part of the  
11          thing that's happened -- we talk about big box  
12          stores and discounters and stuff, and one of the  
13          things that they have been famous for or  
14          notorious, however one wants to look at it, is  
15          to try to remove inefficiencies out of the  
16          supply chain of their products. Is that a fair  
17          statement?

18          DR. KNUTSON: Absolutely.

19          MR. YALE: There has been testimony that  
20          suggests that some of these have gone to  
21          processors or producers and say, if you become a  
22          producer-handler, they identify this transfer --  
23          presumed transfer of costs of Class I to uniform  
24          as an inefficiency, and by becoming a PD, you  
25          can remove that inefficiency and we can capture



1           that for the benefit of our customer?

2           MR. MILTNER: Your Honor --

3           JUDGE CLIFTON: Mr. Miltner.

4           MR. MILTNER: I don't object to the  
5           question. I don't know that that's been  
6           testified to -- I don't know that's been  
7           testified to in the record. I don't have a  
8           problem with the question, but the premise that  
9           that is in the record, I'm not certain about and  
10          don't think that should be represented.

11          MR. YALE: That's a fair statement.

12          JUDGE CLIFTON: Let's go off record just  
13          a moment.

14          (Off the record.)

15          JUDGE CLIFTON: Mr. Yale.

16          MR. YALE: Well, anyhow, assuming for the  
17          moment that they see that as an inefficiency,  
18          okay? First of all, it would be natural for  
19          them to try to get rid of that, right? Is that  
20          a fair statement?

21          DR. KNUTSON: Sure.

22          MR. YALE: Okay. But the fact that they  
23          have not been successful in that as they have in  
24          other industries, is the fact maybe evidence  
25          that that inefficiency, when you really look at

1           the total cost, may not be as great as what's  
2           presumed by looking at this transfer cost or  
3           Class I to uniform? Is that -- can we make that  
4           conclusion or is that going too far?

5           DR. KNUTSON: I don't think I can answer  
6           that question.

7           MR. YALE: All right.

8           DR. KNUTSON: I don't know.

9           MR. YALE: I'm not going to ask you any  
10          more questions. So thank you.

11          JUDGE CLIFTON: That would be good for  
12          your doctoral thesis, Mr. Yale, that question.

13          All right, Mr. Carroll, quickly as you  
14          can, because whatever time you take, Mr. Tosi  
15          will not have.

16          MR. CARROLL: I don't want to take from  
17          any of Mr. Tosi's time. And I haven't got very  
18          many.

19                                    CROSS-EXAMINATION

20   BY MR. CARROLL:

21                   MR. CARROLL: You've heard a lot of  
22                   cross-examination today, Doctor, and I want to  
23                   ask you if you've changed your opinion as a  
24                   result of the questions asked in the matters  
25                   that have been brought to your attention, or do

1           you leave with the same opinion that you set  
2           forth in your paper and your earlier testimony?

3           DR. KNUTSON: I stand by the same  
4           opinion. Nothing has changed my mind here.

5           MR. CARROLL: And directing your  
6           attention to the fact that there are, I believe,  
7           eight regional orders at the present time, do  
8           you favor one National Milk Marketing Order for  
9           producer-handlers?

10          DR. KNUTSON: Well, that's a complex  
11          question. I favor -- I favor treating things  
12          more as a national market for milk. I think we  
13          need a national policy that's rational, that  
14          cuts across all of the orders. So -- but, you  
15          know, I don't -- I don't make those kinds of  
16          judgments.

17          MR. CARROLL: Should it be based on  
18          findings in each order?

19          DR. KNUTSON: Well, it should be based  
20          upon -- the answer to that question should be  
21          based upon some research that I have not done.

22          MR. CARROLL: Okay. And then directing  
23          your attention to the Nourse report, you had  
24          that at your number 10 and your number 42  
25          paragraphs, two points.

1 Am I correct as I read your answer that  
2 you feel that preserving an exemption for  
3 producer-handlers is in keeping with the Nourse  
4 report and with the policies of the Department  
5 today?

6 DR. KNUTSON: Yes.

7 MR. CARROLL: That's all. Thank you.

8 JUDGE CLIFTON: Thank you, Mr. Carroll.  
9 That was excellent and very concise. Mr. Tosi.

10 MR. TOSI: Your Honor, I remember earlier  
11 that there was some -- in trying to decide which  
12 version of the Nourse report to cite from, I  
13 remember some others needed time. I'm happy to  
14 yield that time to them, and if there's still  
15 time, then I have a couple of questions.

16 JUDGE CLIFTON: All right.

17 Mr. Beshore --

18 MR. TOSI: I can wait.

19 JUDGE CLIFTON: -- do you just want to  
20 ask the questions or do just want to have that  
21 addressed in briefs?

22 MR. BESHORE: I'm satisfied with the page  
23 references and the document will certainly be  
24 noticed.

25 JUDGE CLIFTON: So, Mr. Tosi, in the

1 version that Dr. Knutson has, that later  
2 version --

3 MR. TOSI: The December --

4 JUDGE CLIFTON: The December version, the  
5 two pages are page 64 and page 97. And in the  
6 one on the website, they are Roman number  
7 III-22, and that's the one that corresponds to  
8 page 97. And Roman numeral II-4-12. I think  
9 that will do, and everyone can just comment on  
10 it.

11 MR. TOSI: Okay, your Honor. And I also  
12 found -- I also was researching through the  
13 April version, and I'm at a loss as to know how  
14 to ask my questions in light of that.

15 JUDGE CLIFTON: If you have questions  
16 about that, I would ask Mr. Beshore to come back  
17 to the podium and address it as he would have.

18 MR. TOSI: Well, I cannot consult with  
19 Mr. Beshore.

20 JUDGE CLIFTON: No, I was asking if  
21 Mr. Beshore could ask the questions that he had  
22 in mind. I think you sat down just to save  
23 time, didn't you, Mr. Beshore?

24 MR. BESHORE: I have no other questions.

25 JUDGE CLIFTON: Okay. Do you want -- do



1 relates to issues relating to orderly marketing  
2 and --

3 JUDGE CLIFTON: Mr. Tosi, could you pull  
4 that microphone so that it's between you and the  
5 witness? I think that will pick up your voice  
6 better. And you have to pull the cord over so  
7 that it doesn't --

8 MR. TOSI: Your testimony seems to draw  
9 on very important themes from the Nourse  
10 Commission report.

11 With respect to individual handler  
12 pooling, I just want to read something as to  
13 what it says. It says, individual handler  
14 pooling, though possibly desirable in certain  
15 isolated situations, appears to be incompatible  
16 with marketwide pooling, which is an essential  
17 feature of most orders and tends to defeat the  
18 basic purpose of uniform reform to producers.  
19 The Committee recommends that this method of  
20 pooling be provided for or continued only in  
21 exceptional cases where it appears to be  
22 especially needed and where it will not tend to  
23 cause unfair discrimination against producers or  
24 handlers in other markets.

25 DR. KNUTSON: I'm aware of that.

1 MR. TOSI: Okay. In another section,  
2 it -- the Nourse Commission report says, the Act  
3 providing for Federal Orders recognized these  
4 forms of Market Administration. And I'm -- I  
5 appreciate you don't have the previous context,  
6 but it continues to read: The marketwide pool,  
7 with a producer settlement fund for equalizing  
8 of handler accounts goes directly to the  
9 objective of uniform prices to producers,  
10 whether association members or not. Individual  
11 handler pools in this sense are anachronisms to  
12 the extent they result in different levels of  
13 payout to producers supplying different  
14 handlers, they provide the incentives to lower  
15 paid producers to move their supplies to higher  
16 paying outlets.

17 However, such shifts are frequently  
18 difficult or impossible. Moreover, it is easier  
19 to move money than milk and more often conducive  
20 to orderliness and market efficiency. It also  
21 goes on to say, even -- even though marketwide  
22 pooling has certain disadvantages, this method  
23 of distributing payments to producers is an  
24 essential feature of the regulatory program for  
25 most Federal Order markets where substantial



1           quantities of milk are handled by operating  
2           cooperatives or by producer-handlers, or where  
3           there are relatively large surpluses of milk  
4           unevenly distributed amongst -- excuse me, among  
5           the handlers. It would be practically  
6           impossible to maintain orderly marketing without  
7           marketwide equalization unless the Class I  
8           price were to be kept -- were kept so low as to  
9           make the regulation ineffective. The minimum  
10          Class I prices fixed by the order mean little to  
11          an operating cooperative or to a  
12          producer-handler, unless these handlers are  
13          required to equalize through a producer  
14          settlement fund.

15                 DR. KNUTSON: I'm aware of that. The  
16                 only comment that I would make is that the  
17                 market situation, you know, with expansion of  
18                 dominant cooperatives, the increase in premiums  
19                 is different than it was at the time of the  
20                 Nourse report.

21                 And the other comment I would make is  
22                 that the problem of getting milk to Class I  
23                 plants has become more complex than it appeared  
24                 to be at that point in time.

25                 MR. TOSI: Well, I just wanted to -- I

1 appreciate that, but your statement encouraged  
2 the Department to be -- continued to be guided  
3 by the Nourse Commission report. I'm not  
4 exactly sure what all those fine words meant,  
5 but it didn't seem to be very supportive of  
6 marketwide pooling -- excuse me -- individual  
7 handler pooling.

8 DR. KNUTSON: Yes. And I'm aware of  
9 that.

10 MR. TOSI: Okay. And are you -- are you  
11 endorsing Proposals 23, 24, 25, any of the  
12 Proposals offered by AIDA?

13 DR. KNUTSON: What I said is that these  
14 proposals are better than flat elimination, you  
15 know, of the producer-handler exemption. You  
16 know, that's what I said in my testimony.

17 MR. TOSI: Okay. And to the extent that  
18 there had been many Federal Order decisions  
19 written by the Secretary, is there a reason why  
20 you chose not to draw upon any past decisions of  
21 the Secretary to arrive at your positions? And  
22 you seem to rely very heavily on the Nourse  
23 Commission report in '62 and your milk pricing  
24 recommendation study of 1972.

25 DR. KNUTSON: Yes. And the reason is

1           this. Because as I read those decisions, they  
2           spend very little time talking about what is  
3           disorderly marketing. I mean, this is a -- it's  
4           somebody says, I know it when I see it kind of  
5           concept. And I'm -- what I'm saying is that if  
6           you go back to the Nourse report, it provides  
7           some useful guidance. And I would say it  
8           provides useful guidance not only to -- with  
9           respect to the individual handler pool versus  
10          marketwide pooling as well, as you read. So I  
11          don't have any problem with that. I do have a  
12          problem with the conclusion in the 2005 or 2006  
13          decision. I -- I have a very serious problem --

14                 MR. TOSI: You disagree with that one?

15                 DR. KNUTSON: Oh, yes, definitely.

16                 MR. TOSI: And in other decisions where  
17          the explanation of what was disorderly about the  
18          issues --

19                 DR. KNUTSON: Yes. Only to the extent  
20          that it does not say specifically, well, what  
21          was there about this that was disorderly? You  
22          know, are you looking at this issue of Class I  
23          utilization and the movement of products to  
24          consumers -- I mean to plants? Are you looking  
25          at the fact that, you know, there is an adequate

1 supply of Class I milk? Obviously.

2 So what I -- what I'm saying when I  
3 critique the administration, in terms of their  
4 decisions, is I would simply say, you know, it's  
5 a matter of really not defining what is the  
6 disorder that you're talking about that serves  
7 as a basis for the decision. That's -- that's  
8 all I'm saying.

9 MR. TOSI: And you feel that's been the  
10 case, then, in all the Secretary's decisions?

11 DR. KNUTSON: Oh, no, no, not all of  
12 them. I haven't read all of them, no. I'm just  
13 saying that's my principal concern and that's  
14 why I haven't referenced these decisions, is  
15 because they don't spend much time talking --  
16 identifying specifically what is the disorder.  
17 I mean, it's kind of like the 2005 decision.  
18 What exactly was the disorder that you were  
19 concerned about in that instance? And was it  
20 really a disorderly marketing or was it just  
21 competition?

22 MR. TOSI: Okay. Would you agree with  
23 respect to producer-handlers that their farm  
24 size becomes the controlling factor for the  
25 volume of milk that they can possibly dispose of

1 as Class I milk on routes?

2 DR. KNUTSON: I guess I don't understand  
3 the question, I'm sorry.

4 MR. TOSI: Would you agree that with  
5 respect to producer-handlers --

6 DR. KNUTSON: Okay.

7 MR. TOSI: -- that the farm size of a  
8 producer-handler becomes the controlling factor  
9 for the volume of milk that that  
10 producer-handler will be able to distribute on  
11 routes as Class I milk?

12 DR. KNUTSON: Yes. Because they can't  
13 buy, so farm size is the critical factor, yes.

14 MR. TOSI: And given that the definition  
15 of a large producer has been defined by the  
16 Small Business Administration as a farm having  
17 sales in excess of \$750,000, without -- without  
18 naming AIDA, which you said you serve -- how  
19 many members of AIDA would have farm sales in  
20 excess of \$750,000?

21 DR. KNUTSON: I don't -- I never asked  
22 them what their sales were. I -- I asked them  
23 what their volumes were. So I don't know the  
24 answer to that question. And I've never done  
25 the calculation. Let me make one other comment.

1 MR. TOSI: Sure.

2 DR. KNUTSON: You know, I understand this  
3 definition of what a small business is. And to  
4 me, it's ludicrous, really, to say that. You  
5 know, Aurora and Dean are -- are -- are, you  
6 know, both large businesses. I mean, you know,  
7 like I say, it's relative size that really makes  
8 a difference in the marketplace here.

9 And that's my problem with -- with this  
10 small business definition. I would hope that  
11 when the USDA submits its impacts on small  
12 business, that it's more rational than to accept  
13 what another government agency is defining as a  
14 small business, because there's a big  
15 difference, obviously.

16 MR. TOSI: I'm sure Mr. Vetne will be  
17 happy to know that that was your testimony.  
18 He's very good at bringing the Department to  
19 task on --

20 DR. KNUTSON: I'm sorry. I'm just  
21 saying, you know, you've got to be realistic  
22 about what a small business is versus a big  
23 business.

24 MR. TOSI: That's all I have for you, and  
25 I appreciate that you took the time to come

1           here.

2                   DR. KNUTSON: Thank you.

3                   JUDGE CLIFTON: Thank you, Mr. Tosi.

4           Mr. Brian Hill.

5                   CROSS-EXAMINATION

6 BY MR. HILL:

7                   MR. HILL: Yes. I have only one  
8           question, so this will be quick. I noted when  
9           you were asked about proposals from the AIDA,  
10          that you mentioned that they were preferable to  
11          Proposals 1 and 2. But you stopped short of  
12          endorsing them. So my question --

13                   DR. KNUTSON: Go ahead.

14                   MR. HILL: So my question is,  
15          essentially, would you prefer the status quo to  
16          the AIDA proposals?

17                   DR. KNUTSON: You know, I don't -- I  
18          don't think that as an economist that it's my  
19          place to say which one of these. You know,  
20          I'm -- I'm a policy person. I evaluate impacts  
21          of policy changes. I think I've done that.

22                   JUDGE CLIFTON: Assuming no more  
23          cross-examination, and looking at only six  
24          minutes left for redirect, I will call on  
25          Mr. Miltner unless there's serious objection.

1           There is none. Mr. Miltner.

2                           REDIRECT EXAMINATION

3 BY MR. MILTNER:

4           MR. MILTNER: I need a minute just to  
5           prioritize here.

6           Dr. Knutson, Mr. English referred to  
7           you -- to a 1997 article by the AFPC. Do you  
8           recall that question?

9           DR. KNUTSON: Yes.

10          MR. MILTNER: And as my notes indicated,  
11          the statement in that article which you  
12          coauthored, but weren't the lead author on, was  
13          that if there were no Federal Milk Marketing  
14          Orders there would be no marketwide pool. Do  
15          you recall that?

16          DR. KNUTSON: Yes.

17          MR. MILTNER: Do you see a distinction  
18          between that statement and the statement that if  
19          there's no marketwide pool, there would be no  
20          Federal Order?

21          DR. KNUTSON: Yes, very different  
22          statements.

23          MR. MILTNER: In the Nourse report where  
24          they talk about individual handler pools and the  
25          relative merits of marketwide pooling versus



1 individual handler pools, do you recall that  
2 some of the context of that discussion is -- is  
3 the operation of individual handler pools  
4 alongside marketwide pools?

5 DR. KNUTSON: Yes.

6 MR. MILTNER: Okay. And would you expect  
7 there to be a different analysis if there were  
8 individual handler pools operating exclusively  
9 with no marketwide pools?

10 DR. KNUTSON: Versus?

11 MR. MILTNER: Individual handler pools  
12 operating alongside marketwide pools. Is that a  
13 different economic dynamic?

14 DR. KNUTSON: Yes.

15 MR. MILTNER: Would you expect the  
16 overall conditions to be more orderly if  
17 everything operated as an individual handler  
18 pool versus a situation where an individual  
19 handler pool operated alongside a marketwide  
20 pool?

21 DR. KNUTSON: I think that's a  
22 researchable question, and I'm not prepared to  
23 answer that question.

24 MR. MILTNER: Where the Nourse report  
25 talks about producer -- uses

1 producer-distributors, had a chance to look at  
2 that language earlier and get some context to  
3 it? Does it refer to that in terms of  
4 disorderly marketing at all?

5 DR. KNUTSON: No.

6 MR. MILTNER: Is it your opinion that  
7 producer-distributor or producer-handlers,  
8 however you want to refer to them, contribute to  
9 disorderly marketing in the Federal Orders?

10 DR. KNUTSON: No.

11 MR. MILTNER: If I summarize the field of  
12 economics as measuring the responses of human  
13 beings, as rational individuals, in such a way  
14 that they maximize the good derived out of a  
15 limited set of resources, does that sound like  
16 an accurate summary of economic theory?

17 DR. KNUTSON: That's -- you will find  
18 that definition of economics in the beginning of  
19 many introductory textbooks.

20 MR. MILTNER: Maybe where I recalled that  
21 from, I'm not sure. If there were huge gains to  
22 be made by being a producer-handler as opposed  
23 to operating as a regulated plant, and rational  
24 people will maximize the economic good from  
25 their limited resources, even taking into

1 account their assessment of regulatory risk,  
2 would we not expect there to be an actual  
3 proliferation of producer-handlers rather than  
4 mere speculation about proliferation of  
5 producer-handlers?

6 DR. KNUTSON: I would, yes.

7 MR. MILTNER: The Random House Dictionary  
8 defines equity in its first definition as the  
9 quality of being fair or impartial, fairness,  
10 impartiality. And the second definition is  
11 something that is fair and just. Is that  
12 different from your concept of equal?

13 DR. KNUTSON: Yes.

14 MR. MILTNER: Okay. Mr. English had some  
15 discussions with you about the volumes of milk  
16 from producer-handlers that are now regulated  
17 handlers in the Pacific Northwest and Arizona.  
18 Based on the data that's available to you from  
19 USDA, is there any economically sound or  
20 reasonable way to add or subtract plant volumes  
21 to do any type of analysis that's justifiable?

22 DR. KNUTSON: No, there isn't.

23 MR. MILTNER: Okay. You cite to the  
24 Nourse report in your testimony and you relied  
25 on its findings in some respects, but have you

1           also relied on your experience as an  
2           agricultural economist for over more than 40  
3           years?

4           DR. KNUTSON: I have, yes.

5           MR. MILTNER: Real world experience in  
6           studying and observing milk markets?

7           DR. KNUTSON: Yes.

8           MR. MILTNER: You -- in testimony from  
9           representatives of the United Dairymen of  
10          Arizona -- that you've not had a chance to  
11          review, is that correct?

12          DR. KNUTSON: I have not reviewed any  
13          testimony from United Dairymen.

14          MR. MILTNER: He describes that Sarah  
15          Farms, who's been referenced during your  
16          testimony, now buys and sells milk from the  
17          United Dairymen of Arizona. Given your  
18          knowledge of how Sarah Farms operated in 2003,  
19          would that not be a substantial change in its  
20          business structure and operations based on your  
21          historical knowledge?

22          DR. KNUTSON: Yes.

23          MR. MILTNER: Based on your analysis -- I  
24          think this is my last question -- does a  
25          producer-handler, whether it's serving a niche

1 market as you've defined it in your  
2 testimony, or not, have a price advantage by  
3 virtue of its regulatory status as a  
4 producer-handler?

5 DR. KNUTSON: No.

6 MR. MILTNER: Ten seconds, please.  
7 That's it.

8 JUDGE CLIFTON: Mr. Miltner, thank you.  
9 I realize I didn't give you much time, but you  
10 used it very ably.

11 MR. MILTNER: That's okay. I wanted to  
12 make sure that everybody else had a chance to  
13 cross, so not a problem. Thank you.

14 JUDGE CLIFTON: Thank you. All right.  
15 Dr. Knutson, I think if you gather your  
16 materials and leave right now, you will not miss  
17 your plane. I need two exhibits back.

18 DR. KNUTSON: Uh-oh.

19 JUDGE CLIFTON: I think it's  
20 Dr. Knoblauch that has them. They are 90 and  
21 91.

22 DR. KNUTSON: I see 91.

23 JUDGE CLIFTON: All right. And is there  
24 any objection to the admission into evidence of  
25 Exhibit 89? There is none, Exhibit 89 is hereby

1 admitted.

2 Please take a five-minute stretch break,  
3 but don't go very far. We'll go back on record  
4 at 4:07.

5 (A recess was taken from 4:03 to 4:08.)

6 JUDGE CLIFTON: Let's go back on record,  
7 we're back on record at 4:08.

8 We have the remaining cross of  
9 Dr. Knoblauch and any testimony of Mr. Carman  
10 that you want to fit in before 5:00. So we'll  
11 see how long the remainder of Dr. Knoblauch's  
12 testimony requires. Who would like to -- let's  
13 see. Mr. Yale, you would be the person who has  
14 not had a chance to cross-examine Dr. Knoblauch.

15 RECROSS-EXAMINATION

16 BY MR. YALE:

17 MR. YALE: I've got another report. I  
18 want to look, if you would -- if you would look  
19 at your -- I think it's Exhibit 91, and this is  
20 the Stephenson, Comparing Your Milk Check.  
21 There's something I don't quite understand. So  
22 in terms of the tables --

23 JUDGE CLIFTON: Where do you want him to  
24 look, Mr. Yale?

25 MR. YALE: I want you to look -- there's

1 three tables at the back, and one of them is  
2 Deciles Sorted Independently. And can you  
3 explain to me how that sort -- what do they mean  
4 by that? Do you know what that means?

5 DR. KNOBLAUCH: I was looking for a quote  
6 or a source in the document, and I think the  
7 best one, although not directly applicable to  
8 this table, is that each line item in the report  
9 was calculated independently. So this -- for  
10 example, category number 1 is the low decile,  
11 but it's the low decile for butterfat; and then  
12 calculated again, the low decile for true  
13 protein test; and so on down the various  
14 categories.

15 MR. YALE: Okay. And then -- well, let  
16 me get some explanation of the next two, and  
17 then I'll come back to that because I have some  
18 questions on that.

19 The next one is, Sorted by Net Pay.  
20 Now -- and this one here -- let me go back --  
21 the one that's independent, that doesn't  
22 represent any farm exactly at all, right? I  
23 mean, it's like the lowest butterfat, the lowest  
24 protein, the lowest -- so you might have a guy  
25 that had low butterfat and high protein, and

1           those numbers get placed in different places on  
2           that chart, on the one that was started  
3           independently?

4           DR. KNOBLAUCH: I think I agree with you.  
5           I'm just not certain what different places  
6           means.

7           MR. YALE: Well, my point is, is that if  
8           I -- if you had a database and I could actually  
9           go in and say, okay, I'm going to put in Farm A,  
10          and show me where it shows up in that report, he  
11          may be -- different aspects of his costs may be  
12          scattered throughout different columns,  
13          depending on whether he had a high protein or  
14          low protein or high butterfat, right?

15          DR. KNOBLAUCH: That's true, yes.

16          MR. YALE: Okay. So when we come to the  
17          one that is sorted by net pay; these, in fact,  
18          are the producers -- this is the net pay that --  
19          if I had the highest net pay and I was in the  
20          top 10 percent, all of my data would be in that  
21          column, would be reflected in that column with  
22          the other people that are in that column?

23          DR. KNOBLAUCH: Would be included in the  
24          average, yes.

25          MR. YALE: Right. Okay. And then the



1 same thing for my net marketing value, right?

2 DR. KNOBLAUCH: Yes.

3 MR. YALE: Okay. And the decisions -- or  
4 the comments you were making were dealing with  
5 the net pay, not the net marketing value, is  
6 that correct? When you were talking about the  
7 variability of prices and income to the farms  
8 or --

9 DR. KNOBLAUCH: In my direct testimony?

10 MR. YALE: Yes.

11 DR. KNOBLAUCH: Yes.

12 MR. YALE: Okay.

13 DR. KNOBLAUCH: Well, I think I also  
14 talked about the net marketing value.

15 MR. YALE: If you would look at the one  
16 that is sorted by net pay, and you'll notice in  
17 column 1, you have a butterfat test of  
18 3.58 percent and a protein of 2.97, and another  
19 cell, it's 5.64. And if you compare that to  
20 column 5, they are relatively close, are they  
21 not?

22 DR. KNOBLAUCH: Yes. I haven't looked at  
23 each number, but they appear to be.

24 MR. YALE: And then --

25 DR. KNOBLAUCH: Well, some of them are

1 not. For example, the premium values are about  
2 51 cents different.

3 MR. YALE: I want to get to there. I'm  
4 talking about the differences in the butterfat,  
5 the component tests.

6 DR. KNOBLAUCH: I'm sorry.

7 MR. YALE: All right. You're ahead of  
8 me. And then the total component value is  
9 relatively close. It looks like 20 -- 23 cents,  
10 right?

11 DR. KNOBLAUCH: 24 cents.

12 MR. YALE: Yeah. Which is probably  
13 reflective of the fact that the one is just  
14 slightly higher protein than the other?

15 DR. KNOBLAUCH: In marginal butterfat,  
16 yes.

17 MR. YALE: In marginal butterfat. Okay.  
18 But when you come down to the net pay, there's a  
19 much bigger difference, is there not?

20 DR. KNOBLAUCH: That's correct.

21 MR. YALE: So this would indicate that --  
22 as an economist, that the net pay -- there  
23 clearly is a disconnect what the net pay  
24 producers get, in part due to factors other than  
25 the component prices that they have?

1 DR. KNOBLAUCH: I'm not certain I would  
2 characterize it as a disconnect, but there are  
3 factors other than components which have a large  
4 impact on the net pay price, yes.

5 MR. YALE: Other than component prices.

6 DR. KNOBLAUCH: Other than component  
7 prices, yes.

8 MR. YALE: And then going back to the  
9 sorted by, independent, the lowest components  
10 compared to the value from the highest  
11 components is how much did they net, difference,  
12 in their price?

13 DR. KNOBLAUCH: You're talking about  
14 components in the lowest decile of \$16.08 --

15 MR. YALE: Yes.

16 DR. KNOBLAUCH: -- versus the highest  
17 decile of \$18.02?

18 MR. YALE: Yes.

19 DR. KNOBLAUCH: Should be just a little  
20 bit under \$2.

21 MR. YALE: Okay. If you would, look at  
22 the table you have attached to your summary,  
23 Exhibit 90, I guess it is. Did you do any  
24 research to see if there was a correlation  
25 between the Class I to uniform price, and the

1 Class I to cost of production?

2 DR. KNOBLAUCH: No.

3 MR. YALE: Does the chart seem to  
4 indicate whether there is one or not?

5 DR. KNOBLAUCH: A very cursory visual  
6 observation would tend to support that, yes.

7 MR. YALE: But it's a different spread?

8 DR. KNOBLAUCH: I didn't look into the  
9 magnitude.

10 MR. YALE: Okay. Okay. I don't have any  
11 other questions.

12 JUDGE CLIFTON: Thank you, Mr. Yale. Who  
13 next would like to cross-examine? Mr. Carroll,  
14 you may proceed.

15 RECROSS-EXAMINATION

16 BY MR. CARROLL:

17 MR. CARROLL: Doctor, I met you, but I  
18 want to introduce myself on the record. I'm  
19 John Benjamin Carroll. I'm an attorney for the  
20 New England Producer-Handlers Association, two  
21 individual producer-handlers, one in the state  
22 of Vermont and one in the state of Connecticut,  
23 and another one in Virginia who hopes to be a  
24 producer-handler.

25 Looking at your statement, I wanted to

1 ask you if you could give us, from your resume,  
2 the honors and awards you've had from the  
3 American Society of Agricultural Engineers.  
4 Could you explain that award?

5 DR. KNOBLAUCH: The award from the  
6 American Society of Agricultural Engineers was  
7 for -- I believe my memory is correct -- quality  
8 of communication. I had a publication that I  
9 put together with some colleagues and we tried  
10 to make it very clear and useful to farmers, and  
11 that organization provided us an award for that  
12 publication.

13 MR. CARROLL: Was that called Farming  
14 Alternatives Guidebook?

15 DR. KNOBLAUCH: That's correct.

16 MR. CARROLL: And then did you have an  
17 award from the Community and Rural Development  
18 Institute for innovation, the innovator award?

19 DR. KNOBLAUCH: That's correct.

20 MR. CARROLL: Was that for farming  
21 alternatives program?

22 DR. KNOBLAUCH: Yes, that was for the  
23 broad program.

24 MR. CARROLL: Can you tell me what the  
25 farming alternatives program consisted of?

1 DR. KNOBLAUCH: I think, first of all, I  
2 should say that the program is not an  
3 alternative to farming, but alternatives that  
4 farmers could pursue as a means of adding to  
5 their existing farm operation. And I believe  
6 the example that we had in the publication was  
7 adding a cut flower operation to a dairy farm.  
8 So it's not alternatives to farming, but  
9 alternative farming operations or enterprises  
10 that could be added to existing farms.

11 MR. CARROLL: In other words, how to  
12 increase farm income?

13 DR. KNOBLAUCH: How to increase farm  
14 income, how to bring second generation or next  
15 generation into the business.

16 MR. CARROLL: Would you turn to page 3 of  
17 your statement, and the last paragraph, which  
18 asks the question: What would producers gain by  
19 producer-handlers being pooled? You have some  
20 statements there I want to ask you about.

21 The second -- the third sentence, rather,  
22 starts, the producer-handler volume in 2008 was  
23 about 1.5 percent of Class I sales. Can you  
24 tell me the source of that figure?

25 DR. KNOBLAUCH: I believe that came from

1           one of Dr. Knutson's charts.

2           MR. CARROLL: From one of the charts?

3           DR. KNOBLAUCH: Yes.

4           MR. CARROLL: I think there's one in  
5 evidence that says that, and we'll all find  
6 that. But that's what you relied on, at any  
7 rate?

8           DR. KNOBLAUCH: Yes.

9           MR. CARROLL: Then you go on to say, if  
10 we assume the average Class I differential that  
11 would have been paid by producer-handlers was  
12 between \$2 to \$3 per hundredweight, and then you  
13 go on to make some other calculations.

14           Can you tell us the source of the 2 to \$3  
15 assumption? What was the basis for that  
16 assumption; that is, the 2 to \$3 per  
17 hundredweight.

18           DR. KNOBLAUCH: Right now, I can't give  
19 you a specific source.

20           MR. CARROLL: But there is a figure of  
21 that type for the Northeastern Order. Actually,  
22 it's over \$2 for the last -- for the year 2008.  
23 You recognize, I take it, that Class I prices  
24 aren't stable --

25           DR. KNOBLAUCH: That's correct.

1 MR. CARROLL: -- they move? And this 2  
2 to \$3, does it represent the higher -- your idea  
3 of the higher level of the Class I price? In  
4 other words, the -- in doing this study, you  
5 determined what you thought would be a  
6 reasonably high figure for a Class I return?

7 DR. KNOBLAUCH: Yes, in recognizing that  
8 it's going to be a variable number.

9 MR. CARROLL: All right. Now, based on  
10 those assumptions, you've -- you made a  
11 determination, as the sentence continues, that  
12 there would be 1 to 2 cents per hundredweight  
13 difference in the -- in the uniform price on  
14 those assumptions.

15 DR. KNOBLAUCH: That's correct.

16 MR. CARROLL: And then you continue on to  
17 say that -- skipping a sentence, the next to the  
18 last sentence says, producers are not losing  
19 significant revenues because producer-handlers  
20 are not contributing to the pool. Just to put  
21 this in perspective, this is well below the 4 to  
22 5 cents of administrative costs required in most  
23 Federal Orders that producer-handlers would have  
24 to pay.

25 DR. KNOBLAUCH: Would have to pay



1 under --

2 MR. CARROLL: All right. So are you  
3 saying by those two comparisons that there's  
4 nothing to be gained by regulating  
5 producer-handlers in terms of dollars for  
6 producers and some loss for the regulatory  
7 system?

8 DR. KNOBLAUCH: I'm saying that the  
9 amount that would be gained due to the payments  
10 would be very small, perhaps rounding error, no  
11 guarantee that farmers would actually receive  
12 those additional monies as well, and that the  
13 cost to the individual producer-handler, if they  
14 became regulated, could be substantial.

15 MR. CARROLL: Thank you. Directing your  
16 attention to page 5 of your report, under Cost  
17 of Processing, you refer to, in the -- in the  
18 last sentence of the first full paragraph, under  
19 Cost of Processing, you refer -- you say, See  
20 RB97-03, Erba, Aplin and Stephenson. Now, can  
21 you tell me what that study consisted of?

22 DR. KNOBLAUCH: Well, I can perhaps do  
23 better than that. I have it right -- I did have  
24 it -- this was RB97-03. This is a study that  
25 was done of 35 fluid milk plants. The

1 processing -- the actual title is, An Analysis  
2 of Processing and Distribution Productivity and  
3 Costs in 35 Fluid Milk Plants.

4 MR. CARROLL: And who are Erba, Aplin and  
5 Stephenson, if you know?

6 DR. KNOBLAUCH: Oh, I know. Eric Erba  
7 was a graduate student in our department. He  
8 was my teaching assistant for one semester.  
9 Dick Aplin was a long-time professor of  
10 agricultural economics, did a lot of work in  
11 milk markets and policy. And Dick Aplin has  
12 since retired. Mark Stephenson is a colleague  
13 of mine, still actively on the faculty, who was  
14 referred to many times in these proceedings.

15 MR. CARROLL: Are the last two qualified  
16 economists?

17 DR. KNOBLAUCH: They're all three  
18 qualified economists.

19 MR. CARROLL: All three qualified. Okay.  
20 Now, directing your attention to some of their  
21 findings. Eventually -- skipping over, because  
22 I don't want to take the time of everyone with  
23 what they already know. About in the middle you  
24 have a sentence that starts, this provides  
25 evidence that plants in the 15 to 30 million

1 pounds of milk per month are still finding  
2 substantial returns to scale and have not yet  
3 reached the, quote, flat portion, close quote,  
4 of the cost curve which occurs after  
5 30 million pounds of milk per month.

6 I want to ask you, was the 30 million  
7 ponds per month that you referred to in that  
8 sentence, was that abstracted from the studies  
9 of Erba, Aplin and Stephenson?

10 DR. KNOBLAUCH: Yes, it was.

11 MR. CARROLL: And can you tell us on a  
12 yearly basis what that figure would be then, how  
13 many pounds per year?

14 DR. KNOBLAUCH: You mean multiply  
15 30 million times 12?

16 MR. CARROLL: Yeah.

17 DR. KNOBLAUCH: It's late in the day.  
18 Please allow me to use a calculator.

19 MR. CARROLL: All right.

20 DR. KNOBLAUCH: That looks like  
21 360 million, correct? Somebody check my math.

22 MR. CARROLL: No, I think that it has to  
23 be close. Then you continue to say, the  
24 assertion that fluid bottling plants reach a  
25 level of efficiency at 3 million pounds of

1           Class I volumes each month sufficient to compete  
2           on a level playing field with larger regulated  
3           handlers is simply untrue. Why do you say that?

4           DR. KNOBLAUCH: Because of the decrease  
5           in costs continuing way beyond 3 million pounds  
6           per month. And I might add that I did talk in  
7           detail with Mark Stephenson about this, and he  
8           would not disclose who the handlers were, but  
9           indicated that those economies were still being  
10          reached at 40 million pounds and more per month  
11          based on data in the study.

12          MR. CARROLL: In other words, they're  
13          current studies, is that what you're saying?

14          DR. KNOBLAUCH: No, that was this study.

15          MR. CARROLL: That's this study?

16          DR. KNOBLAUCH: But due to disclosure,  
17          they did not include that in --

18          MR. CARROLL: Include that in --

19          DR. KNOBLAUCH: You can surmise it from  
20          one of the tables, but it's not included  
21          specifically.

22          MR. CARROLL: I understand. Now, that  
23          study was done 12 years ago, you said?

24          DR. KNOBLAUCH: That's correct.

25          MR. CARROLL: Is that correct? Adjusted

1           for age, would that figure be larger today? I  
2           mean time, not age, I guess.

3                     DR. KNOBLAUCH: I would be speculating on  
4           that.

5                     MR. CARROLL: Well, you say, it is likely  
6           the scale of economies have moved to even larger  
7           volumes since then, in your report.

8                     DR. KNOBLAUCH: Oh, I'm sorry. I thought  
9           you asked a different question, I apologize.  
10          No, I think the scale economies are continuing  
11          to increase. I thought you were asking whether  
12          the difference between 30 and 40 million or  
13          whatever, the two points was changing.

14                    MR. CARROLL: Is there anything to  
15          indicate the extent of the increase or the rate  
16          of increase?

17                    DR. KNOBLAUCH: I have done no work on  
18          that.

19                    MR. CARROLL: Then you continue on to  
20          say, producer-handlers, even those processing  
21          volumes of milk at the upper end of levels  
22          estimated by the Niagara -- I'm sorry, by  
23          National Milk -- do you see where I am? I'm  
24          still home -- National Milk Producers Federation  
25          and its economic testimony are simply not in the

1 range of the scale to compete with equal milk  
2 costs of large fully regulated plants. Is that  
3 your opinion?

4 DR. KNOBLAUCH: Yes.

5 MR. CARROLL: Can you explain your  
6 opinion?

7 DR. KNOBLAUCH: Because large plants do  
8 have sufficient economies of scale that are not  
9 reached by small processing plants. And that's  
10 clear from reading the Erba, Aplin and  
11 Stephenson study.

12 MR. CARROLL: That's all. Thank you.

13 JUDGE CLIFTON: Thank you, Mr. Carroll.  
14 And thank you for keeping that so brief. Who  
15 will next cross-examine this witness? Mr. Tosi,  
16 do you have any questions?

17 MR. TOSI: No, your Honor, we have no  
18 questions. And we would like to thank you, sir,  
19 for coming and participating in this proceeding.  
20 Thank you.

21 DR. KNOBLAUCH: Thank you.

22 JUDGE CLIFTON: Thank you, Mr. Tosi.

23 Mr. Miltner, any redirect?

24 MR. MILTNER: On a couple of points, your  
25 Honor.

## 1 FURTHER REDIRECT EXAMINATION

2 BY MR. MILTNER:

3 MR. MILTNER: Dr. Knoblauch, can you pick  
4 up RB 2006-07? That's the financial performance  
5 and other characteristics of on-farm dairy  
6 processing enterprises?

7 DR. KNOBLAUCH: Yes.

8 MR. MILTNER: I've tabbed mine here, and  
9 I want to look at a couple of statements on  
10 page 16. I believe Mr. English asked a question  
11 or two of Dr. Knutson about this, and  
12 Dr. Knutson is no longer here. You're familiar  
13 with this study as well, correct?

14 DR. KNOBLAUCH: Yes.

15 MR. MILTNER: Cited it in your statement?  
16 If you could look at the first full sentence on  
17 that page? It says, when the farm sold raw milk  
18 in addition to processing, the transfer value  
19 was the milk price received. It continues on:  
20 If the farm did not sell raw milk, they were  
21 asked to provide a value at which they believed  
22 the milk could be sold and this value is used to  
23 calculate the transfer value.

24 Now, I want to ask you, how is this  
25 transfer value referred to in this study

1 different from a transfer value that Dr. Knutson  
2 had referred to, and I believe you had referred  
3 to, for the purposes of assessing a  
4 producer-handler operation in the context of  
5 this hearing?

6 DR. KNOBLAUCH: That's an interesting  
7 question. Let me see if I can take it one part  
8 at a time and see if I end up being responsive  
9 to your question.

10 MR. MILTNER: Okay.

11 DR. KNOBLAUCH: First of all, in this  
12 study, their objective was to determine the  
13 profits, not only of a dairy farm but the  
14 on-farm processing.

15 And in order to do that, they needed to  
16 have a price for raw milk going into the  
17 processing. And where there was not one, they  
18 asked the farmer what would you expect to  
19 receive for the milk, because they needed a  
20 price to determine the profitability of the  
21 dairy production and the dairy processing. So  
22 that's the reason why they asked the farmer that  
23 question if they were, in fact, not selling raw  
24 milk in the market.

25 So the term -- let's see. They actually



1           used the term, transfer value, where they did  
2           have to value, provide an opportunity cost on  
3           that milk as it went into processing. Now, the  
4           transfer price in these hearings -- I guess I'll  
5           be honest. I'm not certain I understand exactly  
6           how, why and where these are being calculated,  
7           the rationale of the difference between a  
8           Class I price and uniform price -- or uniform  
9           price. I guess I don't understand the  
10          rationale.

11                 I don't think I can be really helpful on  
12           that. I think we're talking about valuing milk  
13           as it comes out of the dairy farm. But the  
14           objective of this study and what's going on in  
15           this hearing I think are very, very different  
16           ideas and very, very, very different uses of the  
17           concept of transfer value or transfer price.

18                 MR. MILTNER: Is there a single correct  
19           or universally applicable way to determine a  
20           transfer price in all situations?

21                 DR. KNOBLAUCH: It depends on what  
22           question you're trying to answer, what issues  
23           you're trying to solve, what the appropriate  
24           transfer price may be.

25                 For example, Dr. Stephenson and his

1           colleagues in this study said it was what the  
2           farmer's opinion was that they would receive for  
3           milk, that was the appropriate transfer price.

4           It's a conditional response. You need to  
5           know how the value is going to be used and all  
6           of the implications before you can determine  
7           what is the best, if any, transfer price or  
8           transfer value.

9           MR. MILTNER: So at the risk of what may  
10          sound like a stupid question, what may be an  
11          appropriate transfer price or transfer value in  
12          one situation may be completely inappropriate  
13          for another?

14          DR. KNOBLAUCH: Absolutely.

15          MR. MILTNER: If the purpose is to  
16          determine whether a milk plant -- a plant  
17          processing milk into fluid milk products, that  
18          pays a Class I regulated price, is at a  
19          disadvantage to a producer-handler plant that  
20          bottles the milk produced on its own farm, is it  
21          economically sound and rational to use the cost  
22          of milk production for the producer-handler  
23          plant as its transfer price?

24          DR. KNOBLAUCH: To use its full cost of  
25          production, I think that's reasonable.

1 MR. MILTNER: Okay.

2 DR. KNOBLAUCH: You might also add the  
3 caveat that operating a farm, you would like to  
4 have profits above just covering all your costs.  
5 So in some circumstances, you could say that it  
6 should be the cost of production plus some  
7 value. And we could talk about what or how you  
8 might calculate what that some value may be.

9 MR. MILTNER: Now, changing gears on us a  
10 little bit. I want to return to Exhibit 91,  
11 which is the Comparing Your Milk Check Study,  
12 okay?

13 Mr. Yale had asked you some questions  
14 about the prices on the tables that are not  
15 related to Federal Order component prices and  
16 other regulated items.

17 I want to ask specifically about a  
18 spread you referred to in your testimony. You  
19 state -- you testified that there is an -- also  
20 a \$2 spread in what we call the net marketing  
21 margin, which takes the producer price  
22 differential plus all premiums, minus all  
23 expenses. Now, I want to focus just on the all  
24 premiums minus all expenses part of that. Has  
25 Cornell and Dr. Stephenson and you, in some

1 respects, observed a broad spread in just that  
2 submeasure from farm-to-farm across all farms  
3 for the same months?

4 DR. KNOBLAUCH: Yes.

5 MR. MILTNER: And can you state generally  
6 what that spread is from high to low?

7 DR. KNOBLAUCH: If we are including  
8 premiums, that premium spread from the lowest  
9 decile to the highest decile in September of  
10 2008 was from 9 cents per hundred to \$1.31 per  
11 hundredweight. In terms of expenses, that range  
12 was -- again, from the lowest to highest decile,  
13 was from 52 cents to \$1.80.

14 MR. MILTNER: So I want you to take this  
15 hypothetical situation. I want you to assume  
16 that there are two dairy farms in New York  
17 state, side by side, with the same number of  
18 cows and the same components, both pool  
19 producers in Federal Orders, even shipping to  
20 the same plant. Will those producers receive  
21 the same price?

22 DR. KNOBLAUCH: In my experience, it's  
23 very doubtful.

24 MR. MILTNER: Now, even if the handler  
25 accounts to the producer in the context of the

1 cooperative, okay? If the handler, the plant  
2 buying the milk, pays the cooperative according  
3 to all regulations, okay, are producers in  
4 reality receiving uniform mailbox -- when it  
5 gets to their mailbox, are producers receiving  
6 uniform prices?

7 DR. KNOBLAUCH: You mean uniform price as  
8 defined under the Milk Marketing Order? I'm not  
9 certain I'm understanding that part.

10 MR. MILTNER: Okay. Let me back up a  
11 little bit. There was some questions with  
12 Mr. Beshore about whether the handler accounts  
13 to the cooperative as the producer pays a  
14 producer based on uniform component values,  
15 okay?

16 DR. KNOBLAUCH: Yes.

17 MR. MILTNER: On minimum component  
18 values, I should say. And what you're looking  
19 at are not what the cooperative gets paid by the  
20 handler, but what the farmer receives?

21 DR. KNOBLAUCH: That's correct.

22 MR. MILTNER: Okay. And so there's a --  
23 an additional layer that was discussed in those  
24 series of questions between the handler and the  
25 producer, right? There's a cooperative involved

1           there, right?

2                   DR. KNOBLAUCH:  Yes, there can be.

3                   MR. MILTNER:  But at the end of the day,  
4           it's the farmer that receives the check in the  
5           mailbox, correct?

6                   DR. KNOBLAUCH:  Yes.

7                   MR. MILTNER:  That's what you were  
8           analyzing?

9                   DR. KNOBLAUCH:  That's all we were  
10          analyzing, yes.

11                  MR. MILTNER:  And based on the data that  
12          you've seen and you worked with with  
13          Dr. Stephenson in these studies, after you strip  
14          out variations in the butterfat and the protein  
15          and the other solids, the somatic cell count and  
16          the producer price differential, you strip all  
17          that out, are those producers in reality  
18          receiving a uniform price for their milk?

19                  JUDGE CLIFTON:  Before you answer, let me  
20          hear Mr. Beshore.

21                  MR. BESHORE:  Yes.  I have a very  
22          specific objection to that very precise  
23          question.  The Agricultural Marketing Agreement  
24          Act, in 7 U.S.C. Section 608(c)(5)(f), states  
25          unequivocally that cooperatives have the right

1 to divvy up the funds among their farmers in any  
2 way they see fit and the Secretary has nothing  
3 to do with it. That is -- the question posed to  
4 Dr. Knoblauch now is, have you observed how the  
5 cooperative has divvied up the funds among its  
6 members. He's probing into a statutory  
7 prerogative that the Secretary cannot disturb.  
8 I object.

9 MR. MILTNER: I heard --

10 JUDGE CLIFTON: Mr. Beshore, don't leave.  
11 Even if that's true, that the Secretary can't  
12 disturb it, is the question that seeks the  
13 factual information objectionable?

14 MR. BESHORE: Yes.

15 JUDGE CLIFTON: Why?

16 MR. BESHORE: Well, it's information that  
17 cannot possibly have any pertinence to the  
18 Secretary exercising his -- his authority here.  
19 He cannot interfere in any way with that. If  
20 he's going to act on it, he would be interfering  
21 with it.

22 JUDGE CLIFTON: Well, I don't think any  
23 of the proposals under consideration here would  
24 have the Secretary meddle with the way the  
25 cooperative members are paid.

1 MR. BESHORE: I think proponents would.

2 MR. MILTNER: There's no evidence as to  
3 that, Mr. Beshore. And while I did hear some  
4 statements that would be great on brief, I did  
5 not hear an actual objection and a basis for one  
6 in that either.

7 MR. BESHORE: Objection is to relevance.

8 JUDGE CLIFTON: No. I'm glad that you  
9 stated your objection and I'm glad that you made  
10 that clear. But the facts that this witness is  
11 testifying about that are revealed in this study  
12 can still be probed without the Secretary trying  
13 to meddle based on that information. It has  
14 relevance for other consideration of the  
15 proposals.

16 MR. BESHORE: I take that to be a ruling.

17 JUDGE CLIFTON: Yeah, I -- otherwise,  
18 yeah. I think he can -- I think he can try to  
19 establish these facts.

20 MR. MILTNER: Do you recall my question,  
21 Dr. Knoblauch?

22 DR. KNOBLAUCH: I am going to apologize.  
23 Could we either have it read back or you say it  
24 again so I may make sure I'm answering the right  
25 question?



1 MR. MILTNER: If I could have it read  
2 back, that would great.

3 (The record was read.)

4 DR. KNOBLAUCH: Those two producers are  
5 hypothetical. In reality, if that makes sense,  
6 the answer is no. I have received many phone  
7 calls from farmers that get the copies of their  
8 data sent back and the comparison to the three  
9 closest neighbors, and when they start comparing  
10 it on the basis that you're talking about,  
11 they're rather irate, first with us, and then  
12 with who they're selling their milk to, because  
13 they're not getting the same prices.

14 MR. MILTNER: I think that's all, thank  
15 you.

16 JUDGE CLIFTON: Thank you, Mr. Miltner.  
17 Are there any other questions of Dr. Knoblauch?  
18 There are none. Thank you so much,  
19 Dr. Knoblauch. Appreciate very much your work  
20 here.

21 DR. KNOBLAUCH: Thank you.

22 JUDGE CLIFTON: You may step down. All  
23 right. Let's talk about whether we want  
24 testimony from Mr. Carman? We do have 15  
25 minutes. Will it help you?

1 MR. RICCIARDI: Judge, I am reporting on  
2 behalf of the group that we are done.

3 MR. CARMAN: Good, I won't be here  
4 Monday.

5 MR. ENGLISH: Yes, you will be.

6 JUDGE CLIFTON: All right. Let me tell  
7 you what I think we have for Monday. I think we  
8 have Mr. Carman's cross-examination; I think we  
9 have Warren Taylor, who is from the Snowville  
10 Creamery exempt plant; I think we have David  
11 Boyd, I think who is from Heartland Creamery in  
12 Missouri. Is that right? No, Heartland  
13 Creamery in Missouri is Charles Sharp and Tim  
14 Button.

15 MR. RICCIARDI: Boyd is from Colorado.

16 JUDGE CLIFTON: Oh, Boyd is from  
17 Colorado. I think we have Dr. Carolyn Orr. I  
18 think we have whatever Vetne is going to put on,  
19 whatever Mr. Carroll will put on, and eventually  
20 Mr. Hollon on rebuttal. So it is possible that  
21 we could finish Monday?

22 MR. YALE: We still have surrebuttal.

23 MR. ENGLISH: No, sir.

24 JUDGE CLIFTON: All right. Is there  
25 anything else to put on record before we go home

1                   for the weekend? Thank you, Mr. English.  
2                   Everyone have a good weekend. I'll see you all  
3                   Monday at 8:00 a.m. We go off record at 4:47.

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PROCEEDINGS ADJOURNED AT 4:47 P.M.

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C E R T I F I C A T E

I, Linda S. Mullen, RPR, RMR, CRR, the undersigned, a court reporter for the State of Ohio, do hereby certify that at the time and place stated herein, I recorded in stenotypy and thereafter had transcribed into typewriting under my supervision the foregoing pages, and that the foregoing is a true, complete and accurate report of my said stenotype notes.

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Linda S. Mullen, RPR, RMR, CRR