UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

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In re:	)	[AO]
	)	Docket No. 15-0071
	)	
Milk in California	)	
_____	)	

VOLUME XXII

TRANSCRIPT OF PROCEEDINGS

October 23, 2015

Myra A. Pish, CSR No. 11613
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7

8   BEFORE U.S. ADMINISTRATIVE LAW JUDGE
                     JILL S. CLIFTON
9
                 Friday, October 23, 2015
10
                       9:00 a.m.
11

12   PICCADILLY INN AIRPORT HOTEL
                 5115 E. McKinley Ave.
13   Fresno, California 93727

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16   TRANSCRIPT OF PROCEEDINGS

17   VOLUME 22

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23   Reported by:

24   Myra A. Pish CSR
     Certificate No. 11613
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 1   APPEARANCES:

 2   U.S. DEPARTMENT OF        Office of the General Counsel
     AGRICULTURE:             BY: BRIAN HILL, ESQ.
 3                                RUPA CHILUKURI, ESQ.

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     U.S. DEPARTMENT OF        WILLIAM RICHMOND, Dairy
 5   AGRICULTURE:                 Product Marketing Specialist
                              LAUREL MAY, Marketing Specialist
 6                            PAMELA ELLIOTT, Marketing Specialist

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     CALIFORNIA DAIRIES,      Law Offices of Marvin Beshore
 8   INC., DAIRY FARMERS      BY:  MARVIN BESHORE, ESQ.
     OF AMERICA, INC.,        Hanson Bridgett, San Francisco
 9   LAND O'LAKES, INC.:      BY:  MEGAN OLIVER THOMPSON, ESQ.

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     DAIRY INSTITUTE OF       Davis Wright Tremaine
11   CALIFORNIA:              BY:  CHIP ENGLISH, ESQ.
                                   ASHLEY VULIN, ESQ.
12
     LEPRINO FOODS:           SUE TAYLOR, Vice-President
13                            Dairy Economics and Policy

14   DEAN FOODS COMPANY:      ROB BLAUFUSS

15
     HILMAR CHEESE            JOHN VETNE
16   COMPANY:                 JAMES DEJONG

17
     CALIFORNIA PRODUCER      Stoel Rives
18   HANDLERS ASSOCIATION:    BY:  NICOLE HANCOCK, ESQ

19
     SELECT MILK PRODUCERS:   MILTNER LAW FIRM, INC.
20                            BY:  KRISTINE REED, ESQ.

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1   FRIDAY, OCTOBER 23, 2015 - - MORNING SESSION

        2   JUDGE CLIFTON: We're back on record. It is

        3   October 23, 2015. It's Friday, it is 9:00 in the morning.

        4   This is Day 22 of the milk hearing. We are in Fresno,

        5   California, at the Piccadilly Inn Airport.

        6   My name is Jill Clifton. I'm the United States

        7   Administrative Law Judge who is to assigned to take in the

        8   evidence, that is the testimony and the exhibits, and then

        9   certify those for the record. What happens after the hearing

       10   is, parties will submit proposed corrections to the transcript,

       11   and once I have determined how the transcript should read, and

       12   have identified the exhibits, my work is done. The parties

       13   will submit briefs. Anyone may submit a brief. Those are all

       14   filed with the Hearing Clerk, and I'm sure you will exchange

       15   them electronically, and that they will be posted on the

       16   website. They still have to be filed with the Hearing Clerk

       17   for the purposes of any appeals. So I would like now to take

       18   appearances of my fellow USDA employees.

       19   MR. HILL: Happy Friday. My name is Brian Hill, I'm an

       20   Attorney with the Office of the General Counsel's Marketing

       21   Regulatory and Food Safety Programs Division.

       22   MS. CHILUKURI: Good morning, Rupa Chilukuri, that's

       23   R-U-P-A, C-H-I-L-U-K-U-R-I, and I'm also with the Office of the

       24   General Counsel.

       25   MR. RICHMOND: Good morning, William Richmond,

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1   R-I-C-H-M-O-N-D, with USDA's Agricultural Marketing Service

2   Dairy Programs, part of the Order Formulation and Enforcement

3   Division.

4   MR. CARMAN: Good morning, welcome to the last day of the

5   fifth week. Clifford Carman, C-A-R-M-A-N. Assistant to the

6   Deputy Administrator Dairy Programs.

7   MS. MAY: Good morning, Laurel May with USDA AMS Dairy

8   Program, I'm also with the Order Formulation and Enforcement

9   Division.

10   MS. ELLIOTT: Hello, I'm Pamela Elliott, E-L-L-I-O-T-T, I'm

11   a Marketing Specialist with the USDA AMS Dairy Program.

12   MR. SWENSON: Good morning, Virgil Swenson, V-I-R-G-I-L,

13   S-W-E-N-S-O-N, I'm the Assistant Market Administrator for the

14   Central Marketing Order, and I'm on detail with USDA AMS Dairy

15   Program.

16   MR. SCHAEFER: Henry Schaefer, H-E-N-N-R-Y,

17   S-C-H-A-E-F-E-R, Agricultural Economist for the Upper Midwest

18   Milk Marketing Order Federal Order 30, here on detail for AMS

19   Dairy Programs.

20   MR. BESHORE: Good morning, Marvin Beshore, M-A-R-V-I-N.

21   B-E-S-H-O-R-E, Counsel for the Proponents of Proposal Number 1,

22   California Dairies, Dairy Farmers of America, and Land O'Lakes.

23   MS. OLIVER THOMPSON: Good morning, Megan Oliver Thompson,

24   Megan is M-E-G-A-N, I'm an Attorney with the law firm Hanson

25   Bridgett in San Francisco, H-A-N-S-O-N, B-R-I-D-G-E-T-T, and I

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am co-counsel for the Proponents of Proposal Number 1.

MR. SCHAD: Good morning, my name is Dennis Schad, S-C-H-A-D, I work for Land O'Lakes.

MR. ENGLISH: Good morning, your Honor, my name is Chip English, C-H-I-P, E-N-G-L-I-S-H, I'm with the law firm of Davis, Wright, Tremaine, my office is in Washington, DC, I'm here on behalf of the Dairy Institute of California.

Ashley Vulin, V-U-L-I-N, is in production mode. I think the copier wasn't working this morning so she had to go out -- she's also with the law firm of Davis, Wright, Tremaine, and she'll be in later to enter her appearance directing the exam of Mr. Newell.

MS. KALDOR: Good morning, Rachel Kaldor, R-A-C-H-E-L, K-A-L-D-O-R, Executive Director of Dairy Institute of California.

MR. DRYER: Good morning, Greg Dryer, G-R-E-G, D-R-Y-E-R, Senior Vice President Industry and Government Relations for Saputo Cheese USA and member of the Dairy Institute of California.

MS. TAYLOR: Good morning, Sue Taylor, Leprino Foods, L-E-P-R-I-N-O, Vice President of Dairy Economics and Policy.

MR. NEWELL: Good morning, Michael Newell, N-E-W-E-L-L, Director of Sales, HP Hood.

MR. RAMIREZ: Good morning, Miguel Ramirez, R-A-M-I-R-E-Z, Leprino Foods, Denver, Colorado.

1   MR. ZOLIN: Good morning, Alan Zolin, A-L-A-N, Z-O-L-I-N,

2 Consultant representing Hilmar Cheese.

3   MR. DeJONG: James DeJong, D-e-J-O-N-G, Dairy Policy

4 Economic Analyst with Hilmar Cheese Company, producer owned

5 manufacturer of cheese, whey, and milk products.

6   MR. VETNE: John Vetne, representative for Hilmar Cheese

7 Company.

8   MS. HANCOCK: Nicole Hancock, H-A-N-C-O-C-K, with Stole

9 Rives, S-T-O-E-L, R-I-V-E-S, representing the California

10 Producer Handlers Association and Ponderosa Dairy.

11   MR. VANDENHEUVEL: Rob Vandenheuvel,

12 V-A-N-D-E-N-H-E-U-V-E-L, here on behalf of Milk Producers

13 Council, a dairy farmer trade association.

14   MS. REED: Good morning, Kristine Reed, K-R-I-S-T-I-N-E,

15 R-E-E-D, I'm an attorney for Select Milk producers.

16   JUDGE CLIFTON: Is there anyone who has not yet come to the

17 podium that would like to be identified at this time? There is

18 not. Let us now take announcements and other preliminary

19 issues.

20   MS. MAY: Good morning, Laurel May.

21   Welcome back. We're going to see if I can do this from

22 memory as I don't know what happened to my cheat-sheet.

23 Everybody is welcome to testify if they would like to, and you

24 can just let us know that you want to and we'll get you on the

25 list. Anybody is also welcome to cross-examine any of the

1 witnesses if they would like to, and you can do that by

2 approaching the podium and having the Judge acknowledge you.

3   We are doing a live audio feed again, and the link for

4 that is www.ams.usda.gov/live.

5   The court reporter is doing the hearing record for us

6 and transcripts and exhibits from this hearing are available

7 approximately two weeks after the end of each hearing week.

8 You can access those, I'm going to read you the website just so

9 that you can find the official versions of these transcripts:

10 www.ams.usda.gov/rules-regulations/moa/dairy/ca. And that's,

11 if you get to that site, then you click on hearing record, and

12 under hearing record there are two buttons, one for transcripts

13 and one for exhibits, and those will get you to the official

14 copies that we have posted there.

15   Okay. Let's see. This is our last day here, so once

16 again today we'll have to pack up everything and take it back

17 with us, and we go back over to Clovis Veterans Memorial

18 District, where we will pick up where we left off, next Monday.

19   Yesterday we ended the day by Mr. Dryer being on the

20 stand under cross-examination, and I believe Chip English

21 intends to put him back on the stand this morning to continue

22 that.

23   JUDGE CLIFTON: The docket number that is used by the

24 Hearing Clerk within the US Department of Agriculture is, in

25 brackets, [AO] docket number 15-0071.

1   A few weeks back I mentioned that I was happy that

2   there would be a website where we could actually go back and

3   see some of the audio feed captured, recorded, and it hasn't

4   been operational, but it's about to become operational. This

5   is not an official USDA website, but nevertheless it will be

6   very useful, not only to outsiders who are trying to keep

7   abreast, but even those of us who have been here who want to go

8   back and hear portions of the testimony. The website is

9   mydairyman.com. So it's: www.my-dairyman.com, so there are

10   two advantages that is offered by this private enterprise firm

11   that we are unable to offer through the USDA, and that will be

12   they have recorded the live feed so you will be able to go back

13   and find oral testimony. It's not official, it's not the

14   transcript, but nevertheless it will be useful, I think. The

15   other advantage is that they have been gathering exhibits as

16   they can when they come to the hearing and pick up copies.

17   Those are not the final version of some of those exhibits,

18   because as we all know who have been here, we make corrections

19   as we go. But nevertheless, you can get them earlier than two

20   weeks after the proceeding that identifies them. So I pass

21   that along for the use of anyone who would like to use it. It

22   is open to all, for which I thank the company that has made it

23   available.

24   All right. What other preliminary matters are there?

25   MR. ENGLISH: Your Honor, Chip English. As Ms. May

1 indicated, we're going to begin today with Mr. Dryer continuing

2 with his cross-examination and any other examination. When

3 that is completed, we intend to put Mr. Newell on the stand. I

4 am assuming by that time the production issues that Ms. Vulin

5 is involved in will be completed so that she will be back for

6 that. And then after that, James DeJong for Hilmar Cheese we

7 expect to be on the stand. And that's the production issues

8 that are going on right now.

9   We don't have any other witnesses, but also we have

10 every reasonable belief that that will take us through the end

11 of the day.

12   JUDGE CLIFTON: Remind me please what Mr. Newell's

13 testimony will be about?

14   MR. ENGLISH: It is orderly marketing. We're trying to

15 stay within that framework still, the one deviation had been

16 ESL, but we're still on the orderly marketing side of things.

17 That's a good question, your Honor, thank you. And that would

18 be today.

19   JUDGE CLIFTON: Very good. Are there any other preliminary

20 items? Ms. May?

21   MS. MAY: I forgot to mention one thing, this is Laurel

22 May. The other day somebody had, somewhere in

23 cross-examination we were discussing Exhibit 9, which is all of

24 USDA's data tables, and we have run out of copies, so I brought

25 a pile of those in today. But if anybody would still like to

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1 have one of those, please help yourself, they are in the back

2 of the room.

3   JUDGE CLIFTON: Excellent. Thank you. That was quite a

4 photocopying job, I'm sure. Good. All right.

5   Any other preliminary matters? None. All right.

6 Then, Mr. Dryer, you may retake the witness stand. Mr. Dryer,

7 you remain sworn, but I would like you again to state and spell

8 your name.

9   MR. DRYER: Greg Dryer, G-R-E-G, D-R-Y-E-R.

10   CROSS-EXAMINATION

11 BY MR. BESHORE:

12   Q. Marvin Beshore.

13   Good morning, Mr. Dryer.

14   A. Good morning.

15   Q. Okay. I'd like to maybe try to pick up where, a little

16 bit where we left off yesterday, and then continue on with a

17 few more questions about some of your testimony in Exhibit 91.

18 We had been reviewing lots of very useful information about

19 Saputo's operations in your plants and what they produce,

20 plants in various locations, basically Wisconsin and

21 California. For these products that are produced in Wisconsin

22 but not in California, cheese products, and I'm talking just

23 about cheese not about Class II operations now, are they

24 marketed nationally?

25   A. Yes.

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1   Q.   Okay. And I didn't keep a comprehensive list of those,

     2   I don't think, but they are -- the record will show what they

     3   are, but gorgonzola and blue cheese, and other products.

     4   A.   Quite a variety.

     5   Q.   Quite a variety, yes. Okay. Is Saputo the second or

     6   third largest cheese producer? I ask that because you said

     7   among the top three, and I have seen some recent publications

     8   specifically from the column from Mr. Umhoefer, who is the

     9   Executive Director of Wisconsin Cheese Makers who says, I know

    10   the list, here it is, top five, Leprino number 1, Saputo number

    11   2. Are you 2 or 3? Just wondering.

    12   A.   The information isn't public, so, you know, we can't

    13   claim ownership of number 2. And the fact is that Glanbia and

    14   Hilmar are growing so rapidly it is hard to keep pace with who

    15   is in second and who is in third.

    16   Q.   Okay.

    17   JUDGE CLIFTON: Mr. Beshore, a name that sounded kind of

    18   like Umhoefer?

    19   MR. BESHORE: U-M-H-O-E-F-E-R. Close?

    20   MR. DRYER: Correct.

    21   BY MR. BESHORE:

    22   Q.   So turning to page 2 of Exhibit 91. You pose a

    23   question, right about the middle of the page under the heading,

    24   Orderly Marketing of Milk in California. You say, "The

    25   question for USDA to ponder in the decision to promulgate a new

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Federal Order for the State of California, whether the petition

seeks to resolve conditions of disorderly marketing where it's

simply an attempt at achieving government-mandated price

enhancement."

     Now, I take it from that sentence that you would not

consider achieving government-mandated price enhancement to be

a legitimate objective here?

A. Well, I don't have any expert. My understanding,

though, is in order to justify creation of a promulgation of a

new Order, you need to demonstrate disorderly marketing.

Q. Okay.

A. That's my understanding.

Q. But do you -- do you understand, what's your

understanding with respect to whether producer price

enhancement is a legitimate object of Orders?

A. That may be.

Q. It may be a legitimate object?

A. Yeah, I guess -- I guess I'm not -- I'm not an expert

in the arena of Federal Order regulations, but it seems to me

that I have heard that somewhere along the line, that that's

one of the --

Q. So if, for instance, the -- one of the said in the

reports from the Act that was passed said, in part, "the

essential purpose of these agreements and orders is to raise

producer prices." If that's stated to be one of the purposes,

1 if the Government, when it ponders this, would have to take

2 that into account, would it not?

3   MR. ENGLISH: Objection. Not only clearly calls for legal

4 conclusion, but it is an incorrect statement of the law with

5 respect to statutory construction, and I object.

6   JUDGE CLIFTON: The objection is noted, the witness may

7 respond to the question.

8   MR. DRYER: Can you just replay the last part?

9 BY MR. BESHORE:

10   Q. If raising producer prices is one of the purposes of

11 the law, that's something that USDA would have to ponder in the

12 decision making, wouldn't you agree?

13   A. If I understand that correctly, if you have an Order

14 then you would consider that, but whether you have an Order or

15 not, it seems to me from what I understand, you need to

16 demonstrate disorderly marketing.

17   Q. All right. So your understanding, if you have an

18 Order, you can consider, in essence, prices, but if you don't

19 have one, you can't.

20   A. Well, if you don't have one, there's no question,

21 there's no USDA involved.

22   Q. You can't consider that with respect to the decision of

23 whether to promulgate one?

24   A. I'm not saying you can't, but it is my understanding

25 you have to demonstrate disorderly marketing.

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1   Q. Let's talk about, I'm going to go on to page 4 of your

2   statement, Exhibit 91. At the very bottom, the very last

3   phrase, or last sentence you make the comment that "it is

4   important to recognize that the enormous increase in

5   production," you are talking about California over some period

6   of time, "was not demand driven."

7   What do you mean by that?

8   A. What I'm implying, through my research I was trying to

9   understand why we experienced the explosion in production in

10 California. And to me, it was related to the efficiencies that

11 California producers were able to achieve through their

12 enormous scale. So I think they were in a competitive

13 advantage over the rest of the country that encouraged them to

14 produce more milk. It wasn't milk necessarily that was being

15 asked for from the market, so part of in conjunction with the

16 growth, that plants had to be constructed that could store

17 product for some period of time so that eventually the market

18 could absorb it.

19   Q. So basically your thesis is that California producers

20 just produced milk and expanded production willy-nilly,

21 irrespective of whether there was any demand for it?

22   A. I wouldn't characterize it that way, no.

23   Q. Okay. Let's stay on stay on page 4 here and talk about

24 the paragraph in which that's the last sentence, kind of

25 starting from the end, I want to move forward. You are talking

1 about your concerns with the proposed pooling requirements of

2 the Order, okay? Is that a yes?

3   A. Yes.

4   Q. Thank you.

5   A. I was waiting for you to finish this time.

6   Q. Thank you. We'll get that worked out at some point.

7   I want to make sure that you understand when you are

8 analyzing the issue, what's involved here. And let me just

9 preface that with saying, you and I are roughly contemporaneous

10 in this business, I have been at it for 35 plus years, so maybe

11 I have got a couple of years on you.

12   A. I doubt that.

13   Q. But, you know, it's -- the pooling provisions proposed

14 for this Order are different. And old dogs, new tricks, it

15 takes awhile to get your head around those things, and it took

16 me a little while really to think this all through and think it

17 all through, and I have been at it longer than you have, and I

18 have been looking at it and analyzing it longer than you have.

19   A. Agreed.

20   Q. So, first of all, you understand that this isn't being

21 proposed for any other part of the country, only California.

22 You understand that?

23   A. I understand that. Unprecedented.

24   Q. And not applicable anywhere else.

25   A. Well --

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1   Q. I mean, you are talking about consequences --

2   A. I think if it happens in California, there may be

3 people that would like to see it happen in other parts of the

4 country.

5   Q. Well, have you -- have you been listening to the

6 presentation which has talked about the fact that it's

7 tailored, and in fact, required simply by characteristics that

8 are present here in California that don't exist anywhere else?

9 Have you heard that testimony?

10   A. I heard that, but that doesn't mean that other people

11 won't try to justify it in their region.

12   Q. They might have a hard time though, if they don't have

13 a quota program, though, right?

14   A. I can't answer that. I don't know the answer to that.

15   Q. So we're talking about here in California, in

16 California only. Let me say, I don't know anybody who is ready

17 to propose it anywhere else. Do you accept that?

18   A. Yes.

19   Q. Okay. Now, of course two of the three proponents are

20 national dairy cooperatives, correct?

21   A. Correct.

22   Q. Okay. Now, do you understand that mandatory pooling

23 does not mean mandatory buying?

24   A. Yes.

25   Q. Okay. So assuming that Proposal 1 was adopted, Saputo

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1   in California is free to buy as much milk or as little milk as

2   it chooses.

3   A. Yes.

4   Q. You understand that?

5   A. Absolutely.

6   Q. Okay. And the Saputo supply in California, is it

7   primarily, but not exclusively, Cooperative supply?

8   A. Primarily, not exclusively.

9   Q. You do have some independent producers?

10   A. Correct.

11   Q. Okay. And would you agree with me that it is the

12   universal practice of proprietary firms when purchasing from

13   independent producers and the Cooperatives, if they choose, if

14   they don't, they want to reduce their purchases, the co-op

15   purchases get reduced first?

16   A. They can unless they have a contractual relationship

17   that requires them to take the milk.

18   Q. But that's basically the practice in the industry?

19   A. Yes.

20   Q. So if Saputo, California, you know, in a system of

21   where its plants are pool plants, just has to purchase what it

22   wants at the minimum regulated price, is that going to create

23   disorder in Saputo's purchases?

24   A. I'm not sure I understood that question.

25   Q. Well, I'm not sure I understand the concern. Okay? So

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1 you have indicated that you understand under a mandatory, I'll

2 use the word you guys like to use, mandatory pooling. Under

3 mandatory pooling, that you only have to purchase whatever you

4 want to purchase, correct?

5   A. That's right.

6   Q. Right. And you would have a minimum price, you know

7 what that price is, correct?

8   A. Today.

9   Q. Right. And if the -- if the Proposal 1 was in effect,

10 you would know what it was, correct?

11   A. Yes.

12   Q. Okay. Based on national product markets, etcetera,

13 correct?

14   A. Yes.

15   Q. Okay. And of course, the price would be less than you

16 are paying for milk up in the Wisconsin plants, correct?

17   A. Remains to be seen.

18   Q. Well, how could it be, why would it be anything, if

19 there's one uniform national price, it couldn't be more, right?

20   A. You said it was less.

21   Q. But since you are paying, since you testified yesterday

22 you pay substantial premiums on your milk up in Wisconsin, you

23 would be paying less in California if you were buying it closer

24 to minimum price, correct?

25   A. What I testified yesterday was, you showed me a listing

1 of premiums in Wisconsin and you asked me if they looked

2 representative and I said yes. I didn't say what we were

3 paying. And who knows what prices will be going forward in

4 California relative to Wisconsin. I can't answer that.

5   Q. Well, if the minimum price is in the same in

6 California, okay -- so are you saying that you think you might

7 have to be, you might be required to pay more in California

8 than you pay in Wisconsin?

9   A. I doubt that. But if you are asking me to speculate,

10 and I don't -- you know.

11   Q. Well, I thought that's what your testimony was about,

12 you are speculating about what would happen if Proposal 1 was

13 adopted.

14   A. Well, I know if Proposal 1 were adopted you would have

15 the Class III price as a minimum price in California, under

16 which we could never pay.

17   Q. As for what you bought. You could not pay less?

18   A. That's right.

19   Q. Okay.

20   A. In Wisconsin we can.

21   Q. Now, you can pay less?

22   A. We can pay less.

23   Q. Yeah. But your average price in Wisconsin is

24 substantially more than the minimum, isn't that true?

25   A. I can, you know, I, off the top of my head, I can't say

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1 what our average price in Wisconsin is.

2   Q. Well, didn't you tell me yesterday that mailbox milk

3 prices show the, are good indicators of the purchase prices in

4 Wisconsin?

5   A. Mailbox milk prices are mailbox milk prices. That's

6 what farmers are receiving in Wisconsin, that has nothing to do

7 with what we're paying individually.

8   Q. Do you know what your average cost of milk in Wisconsin

9 plants is?

10   A. If I, you know, had access to the files to look at, I

11 do, but I don't off the top of my head.

12   Q. You don't know?

13   A. Pardon?

14   Q. You don't know what it is with respect to the minimum

15 Class III price, whether it's higher or lower?

16   A. Well, it is higher. Definitely higher than the minimum

17 price.

18   Q. Okay.

19   A. We pay higher than the minimum price in California.

20   Q. Are you aware that under mandatory -- by the way, do

21 you -- do you have any pool, are any of your plants pool plants

22 in Wisconsin?

23   A. I believe so.

24   Q. Okay. So if the pool plants that, for all the milk

25 that's pooled, you are obligated at least at the minimum price,

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1   correct?

2   A. Correct.

3   Q. Okay. If you have, and you have milk that's subject to

4   your marketing control, then, if they are pool plants, correct?

5   A. Yes.

6   Q. I guess you do at nonpool plants, too, but at least at

7   the pool plants you do?

8   A. Yes.

9   Q. Okay. Now, if at a pool plant in Minnesota or

10 Wisconsin under Proposal 1, if it has milk, proprietary pool

11 plant, that it looks to sell to another proprietary dairy or

12 even a Cooperative, that transaction is not subject to minimum

13 order pricing?

14   A. Correct.

15   Q. You understand that under Proposal 1 it would not be

16 subject to minimum order pricing?

17   A. If a nonpool plant sells to a nonpool plant, is that

18 what you are saying?

19   Q. No, I'm sorry. If a pool plant, you know, a

20 proprietary pool plant, sells milk to, it has pooled, okay? To

21 another buyer, whoever it might be, that transaction is not

22 subject to minimum pricing. Do you understand that?

23   A. I certainly wouldn't argue against it. It is not clear

24 to me.

25   Q. Okay. Well, if you assume with me that that's correct.

1   A. Yeah.

2   Q. Okay?

3   A. I don't see that happening in the market. I mean, in

4 my experience, in California would never see milk traded at

5 below the regulated price, in our experience.

6   Q. Okay. But just assume with me that you would be able

7 to do that under Proposal 1. Okay? You would have to pool the

8 milk, but if, by the way, you have heard the testimony in the

9 last couple of days, like with Dr. Schiek, that when prices are

10 low, are soft, when the market's long with milk, that what

11 companies, the best way to maximize the value of that milk is

12 to pool it, and then if you don't have a good use for it, or,

13 well, you don't want to process it yourself, is to sell it to

14 someone else. You understand that?

15   A. I heard that, yes.

16   Q. All right. Do you agree with that?

17   A. Seems reasonable to me.

18   Q. Okay. So if under Proposal 1 milk was long in

19 California and you pooled it, and you wanted to, say, in the

20 first thing you did, if milk was long and you didn't want to

21 buy it, you would turn it back to the co-op, right?

22   A. It depends on what your arrangement with the

23 Cooperative is.

24   Q. Okay. Well, let's assume that you are, that you wanted

25 to dispose of some your producer milk, you understand that you

1 could pool it, get the draw, whatever it might be, since milk's

2 long, and manufacturing prices are lower, and sell it to

3 another party for whatever you could agree to sell it for.

4   Do you understand that?

5   A. Yes.

6   Q. Just like in, just like in Wisconsin.

7   A. Yes.

8   Q. Okay. On page 6 of Exhibit 91, the first line of the

9 final paragraph you use the phrase "California has

10 predominantly enjoyed a milk surplus." Whose enjoyed a milk

11 surplus in California?

12   A. Again, I'm stating there because milk production has

13 grown so dramatically, that typically supply has at least met,

14 if not exceeded demand most of the time.

15   Q. So who enjoys that situation is my question?

16   A. Well, it's growth for the industry, you know, farmers

17 got to sell more product that they produced, and, you know, so

18 I, that was the context of "enjoyed".

19   Q. Well --

20   A. -- the growth.

21   Q. Well, when supply is long, don't buyers really, aren't

22 they the ones --

23   A. Not really having a minimum price --

24   Q. -- who really enjoy --

25   A. -- this time I missed.

1   Q.   When supply is long, the buyers are the ones who enjoy

2   that situation the most, isn't that true?

3   A.   Not in the situation where you can't pay less than the

4   minimum price.

5   Q.   And has that been the case in California?

6   A.   Yes.

7   Q.   So, therefore, buyers haven't enjoyed the supply

8   conditions in California?

9   A.   Correct.

10   Q.   You have not enjoyed them?

11   A.   Enjoy is, I mean, it is kind of a nebulous term.

12   Q.   It is your word, that's why I'm asking.

13   A.   We have enjoyed the fact that we have no difficulty in

14   meeting our demands for milk.

15   Q.   Let me turn to your discussion of the three largest

16   cheese plants. The three large cheese plants in California,

17   and I'm on page 16 of 19.

18   A.   I'm sorry, which page?

19   Q.   16.

20   A.   16.

21   Q.   Okay. So this information was taken from, I think you

22   have indicated from CDFA data, a June hearing; is that correct?

23   A.   That's correct.

24   Q.   Okay. Is Saputo one of those three plants? Is one of

25   your plants one of those three plants, do you think?

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1   A. I, well, they didn't disclose which the three plants

2 were, so it is difficult to say.

3   Q. Okay. You are not sure?

4   A. No, I'm not sure.

5   Q. Okay. So you don't know if your plant's one of those,

6 any of your plants, are one of those plants or more than one of

7 those, but you have made some assertions about the ability of

8 those plants, the profitability of those plants under a

9 Federal Order like Proposal 1.

10   A. Correct.

11   Q. So what do you know about the, since you don't know if

12 any of those are your plants or not, what do you know about the

13 profitability of those plants and their ability to be viable

14 under Proposal 1?

15   A. I just know that the magnitude of the requested

16 increase is so large, based on my experience of operating the

17 cheese business all these years, that it's not realistic.

18 Because I know what cheese margins are as a competitive

19 business, and what this amounts to is an enormous increase in

20 cost.

21   Q. How long has Saputo been producing cheese in

22 California?

23   A. Saputo acquired Stella Foods in 1997, and Stella Foods

24 had two California operations at the time, so since 1997.

25   JUDGE CLIFTON: Are you saying Stella?

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1   MR. DRYER: Stella, S-T-E-L-L-A.

2   JUDGE CLIFTON: Thank you

3 BY MR. BESHORE:

4   Q. Now, has California, California operations been

5 profitable all these, over the years?

6   A. Can't answer that.

7   Q. Saputo has continued to acquire and expand its

8 California operation since the first --

9   A. Correct.

10   Q. Okay. Prior to 2009, isn't it the case that the spread

11 between California 4b price and the Federal Order Class III

12 price was much, much, much less than it's been since 2009?

13   A. That's correct. California had a hearing in 2007 that

14 changed the fundamentals.

15   Q. So when you are saying that California can't, the

16 biggest plants in California can't possibly afford to be closer

17 to match the national prices, you were real close for years and

18 years and years before 2007, correct?

19   A. Well, the Class III price and the Class 4b price were

20 closer than they are today.

21   Q. Well, they were much less than 10 cents a pound apart,

22 10 cents, value of 10 cents a pound of cheese apart, much less

23 than that apart, right?

24   A. Right.

25   Q. And of course now they are, they have been much more

4294

1 than 10 cents a pound apart, correct?

2   A. That's right.

3   Q. Since what, 2007, '08, or '09, that period of time,

4 correct?

5   A. Yes, historically the value of whey was much, much

6 lower than it's been in recent years. When the whey price came

7 up, given the milk price formula in the former California

8 system, in the USDA system, put tremendous pressure on cheese

9 makers.

10   Q. So the three biggest cheese makers in California all

11 process their own whey, correct? The three largest plants?

12   A. Yes, I think so.

13   Q. Okay. Well, we can put this in the record if it is not

14 already in. The exhibit that CDFA that you testified from,

15 shows that they all process their own whey. Remember that?

16   A. Yes.

17   Q. So whey value for them, whatever is there in the market

18 for whey, they are processing it and getting it, right?

19   A. Correct.

20   Q. But they have enjoyed a price that doesn't factor the

21 value of that whey into the raw milk cost, isn't that true?

22 That's one of the main reasons why we're here, correct?

23   A. Companies compete on the basis of their overall

24 economics so conditions are competitive, and they may enjoy

25 revenues from whey, in fact, they may be losing money on whey,

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1 but competition takes into account all those factors. So it

2 may be accounted for in the price of cheese or competitive

3 premiums or whatever. So it's not segmented that we look at

4 whey independent from cheese or whatever.

5   Q. But -- but the price of your raw milk is segmented, is

6 it not?

7   A. The price of raw milk is --

8   Q. Is segmented in its build up, correct?

9   A. Yes, correct.

10   Q. And the segmenting in California has not included any

11 substantial value for whey for since 2007, '08, '09, correct?

12   A. By today's standard it is very substantial in terms of

13 what whey is worth versus what we're paying for it in milk.

14   Q. No, my question, Mr. Dryer, was, just to be clear, did

15 milk, the raw milk price is built in segments, correct?

16   A. Yes.

17   Q. And since 2007 in California, the segment of the raw

18 milk price, valuing whey has been very, very minimal in

19 California; isn't that true?

20   A. Again, that's subject to interpretation. To me, it's

21 not minimal, it's substantially different than the USDA other

22 solids factor. The question is, which one is more appropriate,

23 which is a question I raised in my testimony.

24   Q. Well, from a buying perspective, you would much prefer

25 the lower California value, right?

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1   A.   Yes.

        2   Q.   On page 17 in your concluding pages of testimony, 17,

        3 18, 19, you make some assertions, and I'm just interested in

        4 your wording. When people, you or I, have different opinions

        5 about things, I probably say you are wrong and you say I'm

        6 wrong commonly, right?

        7   A.   Yes.

        8   Q.   But in pages 17, 18, 19, when you are looking at the

        9 arguments made in support of California Order, you haven't said

       10 they are wrong, you have said they are false.

       11   A.   I apologize if the choice of words is offensive, it

       12 wasn't the intent.

       13   Q.   Well, it was very intentional choice of words however,

       14 was it not?

       15   A.   It was just my word, which I tried to say that what was

       16 being said wasn't supported by the facts was what I'm

       17 interpreting that false to mean.

       18   Q.   You don't mean intentionally, I'm sure.

       19   A.   No, I don't.

       20   Q.   Okay. Thank you. I don't have any other questions at

       21 this time.

       22   JUDGE CLIFTON: Thank you, Mr. Beshore. Who next will

       23 question Mr. Dryer?

       24   CROSS-EXAMINATION

       25 BY MR. VETNE:

                                    4297

1   Q.   John Vetne for Hilmar Cheese.

2   Do you still have Exhibit 94 in front of you? It is

3   the map of the Saputo plants.

4   A.   Yes.

5   Q.   There are three gray icons under the heading,

6   Distribution Centers. What are those places? What happens

7   there?

8   A.   So cheese is essentially accumulated into those

9   facilities for shipment out to end-users, so it may come from a

10   variety of plants and it's aggregated there.

11   Q.   Cheese in what form is accumulated at those

12   distribution centers?

13   A.   At the distribution centers, it is finished product,

14   and cases, and pallets of finished product.

15   Q.   Finished product in consumer-type packages?

16   A.   Consumer, if -- if it's consumer food service or, yeah.

17   Q.   Okay. And then from those locations it is marketed to

18   wholesale buyers; is that correct?

19   A.   Yes.

20   Q.   Wholesale buyers, like, for example, Costco, and

21   Wal-Mart, and Kroeger, and stores that have warehouses that

22   distribute it further; is that correct?

23   A.   That's correct.

24   Q.   Okay. Sysco, S-Y-S-C-O, is one of the major food

25   service distributors in the country. That would be the kind of

1 customer?

2   A. Absolutely.

3   Q. And there are other food service buyers that, in turn,

4 distribute to their customers, correct?

5   A. Correct.

6   Q. Okay. Is -- are the products that Saputo makes

7 distributed directly from, to customers from the plants on the

8 list on Exhibit 94, or do they all go to your distribution

9 centers first?

10   A. I believe that there's some customers that are shipped

11 direct from the plant, but quite a bit goes through a

12 distribution center.

13   Q. And you listed, as I recall, and you reminded me,

14 there's a couple of plants listed that do not receive milk, one

15 in Green Bay, Wisconsin, and one of the three plants in Tulare,

16 California; is that correct?

17   A. That's correct.

18   Q. Okay. Those plants, correct me if I'm wrong, receive

19 cheese in some bulk form from a plant that makes cheese,

20 correct?

21   A. Correct.

22   Q. So let me see if I have the flow correct here. Raw

23 milk comes to a cheese plant, which produces cheese in bulk

24 form, step 1. Step 2 is, cheese in bulk form goes to some

25 processing or converting or cut and wrap plant, and from the

1 cut and wrap or converting plant, it is sold to wholesale

2 markets like Costco, Wal-Mart, Sysco, Kroeger, and from those

3 wholesalers, it gets to stores or institutions. Do I have the

4 flow correct?

5   A. That's correct.

6   Q. That's correct. Okay. At any of your converter

7 plants, cut and wrap, shred plants, do you, on occasion,

8 receive bulk products from sources other than Saputo cheese?

9   A. Yes, they are.

10   Q. So when you receive bulk cheese products, to be an

11 efficient and profitable marketer, you need to price the

12 product, you need to find out what's the most effective and

13 profitable source, correct?

14   A. That's correct.

15   Q. So if the same product is available, bulk cheese

16 product, is available from two different plants, you are not

17 going to pay more for cheese from one plant simply because it

18 is further away, are you?

19   A. No.

20   Q. No. You will pay a price that represent, from either

21 location, that represents the same delivered cost to you; is

22 that correct?

23   A. That's correct.

24   Q. And then when you further distribute from the

25 converter, cut, wrap, shred plant, your customers go through a

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1 similar process. If they are looking for wrapped consumer

2 cheese products, they will go through a process that measures

3 the price you are offering against the price some other

4 converter is offering, and they are not going to pay more for

5 product from somebody simply because there is more

6 transportation, they are looking for the lowest delivered cost;

7 is that correct?

8   A.   That's correct.

9   Q.   And when you, when Saputo receives milk or bulk cheese

10 from its own plants, the pricing source equation may be a

11 little bit fuzzy, but ultimately, when it gets to the price

12 that wholesalers are willing to pay, it all comes together so

13 that your plants, even though they go through your

14 distribution, is competing with cheese from some other plants

15 that go through a distribution to the buyer, the wholesaler

16 like Wal-Mart, Costco, Sysco, etcetera?

17   A.   That's correct.

18   Q.   In California, at the California cheese making plants

19 that Saputo operates, as I understand your answers to questions

20 from Mr. Beshore, you do process your own whey into whey

21 products; is that correct?

22   A.   We do. We have one facility that has the capability of

23 drying product, which is where the potential for value is

24 added, and then we are congregating whey from other plants into

25 that facility.

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1   Q. All right. Okay. What whey products are produced at

2   that whey -- is it a separate facility, first of all?

3   A. We produce WPC 80, dry whey, lactose, and dry permeate.

4   Q. Okay. Just one WPC protein standardized product?

5   A. I believe in that plant we typically just do WPC 80, or

6   dry whey, and a limited amount of dry whey.

7   Q. Okay. And is that a that whey plant a plant that is

8   essentially separate from your cheese plant?

9   A. It's attached.

10   Q. It is attached. Okay.

11   JUDGE CLIFTON: Mr. Dryer, would you go back? You

12 mentioned three products, and I didn't quite catch it. WPC 80,

13 and what were the other two?

14   MR. DRYER: Dry whey -- dry sweet whey -- lactose,

15 L-A-C-T-O-S-E, and there's a lot of names for the other

16 product. I called it dry permeate, deproteinized whey, there's

17 a number of names for it.

18   JUDGE CLIFTON: Dry permeate or deproteinized whey?

19   MR. DRYER: Correct.

20   JUDGE CLIFTON: Okay. Thank you.

21 BY MR. VETNE:

22   Q. The whey processing facility, as I understand, as I now

23 understand, receives whey from your cheese plant at that

24 location and receives whey from other sources.

25   A. From other of our cheese plants.

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1   Q. From your other cheese plants?

2   A. Right.

3   Q. So you have a cheese plant that does not have a whey

4   processing?

5   A. The whey may be processed to some extent, but not to

6   the full extent.

7   Q. Not processed to the extent of having some water

8   removed?

9   A. Correct.

10   Q. And then it is put in a truck and shipped to -- where

11   is the plant that --

12   A. It is in Tulare.

13   Q. In Tulare? Are both plants in Tulare?

14   A. Well, we have a number of plants, one in Los Angeles

15   area, one in Newman, California.

16   Q. At which --

17   A. Are shipping whey.

18   Q. So a cheese product is produced, there is no whey

19   processing facility at those locations that make a commercial

20   whey product, so whey, or water-reduced whey, is transferred

21   all to Turlock; is that correct?

22   A. To Tulare.

23   Q. Tulare.

24   A. Tulare.

25   Q. Okay. So your cost to make whey products includes the

4303

1 cost of transporting bulk whey from a cheese plant that doesn't

2 make commercial whey products, to a whey plant that does make

3 commercial whey products; is that correct?

4 A. That's correct.

5 Q. Does your whey, commercial whey product plant, receive

6 whey from any other cheese makers other than the Saputo plants?

7 A. No.

8 Q. Are there plants in California of which you are aware

9 that do receive bulk whey from cheese plants in converted into

10 products?

11 A. Yes.

12 Q. Mr. Beshore read you a little bit of legislative

13 history on the Agricultural Marketing Agreement Act and when it

14 was created, and described a report that said the Congressional

15 objective was to raise producer prices. Do you recall that

16 exchange?

17 A. Yes.

18 Q. And does your review of the history, is it such that

19 you are aware that the problem back in the '20's and '30's was

20 that there was a glut, an overabundance, of a lot of

21 agricultural products producing low prices?

22 A. I'm not aware.

23 Q. You are not aware. Okay. Is it not true in your

24 experience, however, that low prices for milk and other

25 commodities are frequently the result of an overabundance of

1 that commodity searching for a market?

2   A. Absolutely.

3   Q. Can you conceive of any circumstance in which the

4 solution to low prices in that case, was to raise prices? What

5 would that do to the overabundance?

6   A. That's what I was referring to in my testimony, that

7 would be disorderly.

8   Q. Thank you very much.

9   JUDGE CLIFTON: Mr. Dryer, on page 4 of your testimony, you

10 refer to a whey protein concentrate that contains 34 percent

11 protein, and that's a WPC 34?

12   MR. DRYER: Correct.

13   JUDGE CLIFTON: And then you mentioned that one of your

14 plants makes a WPC 80.

15   MR. DRYER: That's right.

16   JUDGE CLIFTON: And that's an 80 percent protein

17 concentrate?

18   MR. DRYER: That's right. It refers to the concentration

19 of the level of protein in the finished product. So 34, more

20 or less mimics milk. Milk is about that percentage of protein.

21 And 80 is a more refined, higher value product, typically.

22   JUDGE CLIFTON: So does it always cost more to produce a

23 higher protein value of whey or a higher protein concentrate of

24 whey?

25   MR. DRYER: Yes, because the yield of product, resulting

product that you get, is much lower. So you get less product

to sell, and the value is higher, the cost per unit is higher.

JUDGE CLIFTON: Now, you used some words when Mr. Beshore

was asking you about having to pay more, that is, the cost is

higher than the value of whey in some circumstances. Could you

explain that to me? What are you talking about?

MR. DRYER: In the milk price formula for both USDA and

California, there's a factor and an element that's tied to the

value of dry whey. And there are times when the value that you

are paying in the milk is higher than what you can recover in

the market for the actual product. If you have even the

ability to produce the products, many cheese plants don't

recover any value from whey. But at times like right now, the

world market is depressed, a lot of our whey products are

exported, and the values are way down, and sometimes even below

the cost to produce the product. And yet you are paying a

positive value in the price of milk, so that's what I was

referring to.

JUDGE CLIFTON: What solution would you propose for that

problem?

MR. DRYER: Well, one thing we believe, and it's in the

document that you graciously allowed us to include, would be to

change the way that value is attributed in the cost of milk.

The one that's based on the sale of liquid whey products as

some relationship to the value of 34 percent whey protein

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concentrate. We think that's a more realistic value and it

takes into account the fact that most cheese plants don't enjoy

the benefit from their whey that the milk price formula

assumes. So one of the things that we anticipate proposing is

that we look at changing, or at least for the California Order,

if there is one, a different whey factor, calculate on a

different basis than what we have today.

JUDGE CLIFTON: This may have nothing to do with that, but

I don't know. What is dry permeate?

MR. DRYER: When you make whey protein concentrate, there's

a filtration process that segregates the protein portion of the

whey from the remaining portion. The remaining portion is

primarily made of lactose. And so when you have a filtration

process, you have what's called a reten date, which is a

product you are trying to capture, and you have a permeate, a

product that is a byproduct more or less. That product, at

times, has value, at other times is a cost. But it is

primarily a lactose product. So we refer to that as lactose

permeate or deproteinized whey.

JUDGE CLIFTON: Thank you. Mr. Vetne?

BY MR. VETNE:

Q. Thank you. You asked some questions and I had a note

that I forgot one or two.

The transaction that we discussed a little bit for

Saputo, the transfer of whey, either bulk or some water-reduced

1   to your whey plant, and the practice of other cheese plants

2   that don't make whey products, similarly taking their whey

3   byproduct of cheese and selling it to a whey specialty plant

4   that makes products, aggregates whey from a lot of sources.

5   Would it be that type of transaction from a cheese plant in

6   liquid form to a whey specialty plant, that that transaction

7   should be the one that you suggest ought to be looked at as may

8   be a place, a transaction place, at which to fix a whey price

9   chargeable to the cheese plant, and the cheese plant chargeable

10   to producers for the milk price?

11   A.   I agree.   And in the document that was provided by

12   Wisconsin Cheese Makers Association, they basically get into

13   that issue, because the vast majority of their members don't

14   realize much of any benefit from whey.   And as a consequence,

15   those that have survived have had to switch to try to add more

16   value to their basic cheese products.   So more than 75 percent

17   of the plants in Wisconsin now make a specialty cheese, and

18   probably almost all of the plants make some kind of added value

19   cheese and they need creativity and innovation and extra

20   marketing to accomplish that.   But instead of being able to

21   keep the fruits of those efforts, they are forced to pay it in

22   the cost of milk for a product that they don't produce in the

23   form of whey.

24   Q.   So there are a number of plants in the country that

25   specialize in receiving whey byproduct from cheese plants, and

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1 converting that whey byproduct to whey products, correct?

2   A. Correct.

3   Q. And those transactions from the cheese plant to the

4 whey plant produce a price that can be surveyed and an average

5 price obtained that produces a value of the whey factor of

6 cheese, correct?

7   A. Correct.

8   Q. And the plant that receives the whey, in turn, can then

9 respond to the marketplace, and whey, and make whey protein

10 concentrates, dry whey, whatever, whatever the marketplace

11 demands at that particular period of time, without tying the

12 whey value attributable to cheese plants to a particular

13 product, correct? Because those products vary.

14   A. Correct. If you just surveyed absolute price per unit

15 of solids, I guess you could.

16   Q. And Mr. Beshore asked you some questions about, you

17 know, what do you do if the price in California goes up and you

18 think it's not good for you to receive all that milk. Well,

19 let me ask you a question about that.

20   The plants that you have purchased, I assume, worked on

21 approved, maintained in California, at some cost, correct?

22   A. Correct.

23   Q. In your business plan, you have some investment-backed

24 expectation of being able to produce cheese, operating those

25 plants at a certain level of efficiency; is that correct?

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1   A. Absolutely.

2   Q. Absolutely. So that, and although you might decide to

3   buy half the milk in the future, if prices are bad for making

4   cheese, if you retain just half the milk, what does that do to

5   your per unit cost, your competitiveness, and your

6   investment-backed expectation?

7   A. That's -- that's a terminal decision. In other words,

8   if you make the decision not to supply your customers at some

9   moment in time, you are basically out of business then going

10 forward.

11   Q. Thank you.

12   JUDGE CLIFTON: Who next has questions for Mr. Dryer?

13   CROSS-EXAMINATION

14 BY MR. VANDENHEUVEL:

15   Q. Rob Vandenheuvel, Milk Producers Council.

16   Good morning, Mr. Dryer.

17   A. Good morning.

18   Q. So, first off, I guess I should warn you, you'll

19 probably get an invoice for the royalties due to my Chairman

20 for using his column from a few years back. It was pulled off

21 the website and we'll confirm that.

22   Your commentary, or the part of your testimony that

23 starts on page 5 on Exhibit 91 is where you include these

24 statements from the Milk Producers Council Newsletter, a column

25 specifically by our Chairman Mr. Vander Dussen, but there was

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1 no real closing comments at the end of the quote, where it ends

2 on page 6. So I guess my question is, what were you trying to

3 convey by including these in your testimony?

4   A. I was, I guess trying to portray the reason perhaps

5 that milk prices tend to be lower in California than in other

6 regions of the country, and relates to the supply and demand

7 balance in California. And most of these comments are talking

8 about supply and the excessive supply, or the demand that

9 exists, and the difficulty co-ops have in negotiating higher

10 prices as a result of that.

11   Q. So notwithstanding the communication that producers

12 have amongst ourselves of how we can better, do a better job of

13 managing our supplies to meet the available demand, Saputo did

14 not have any periods of time during this OA period where they

15 couldn't find a milk supply; is that correct?

16   A. Correct.

17   Q. So in terms of whatever, the producers were discussing

18 there was an adequate milk supply for your plant at a

19 contracted price?

20   A. Absolutely. And I would say, I would give a compliment

21 to the co-ops in California for providing excellent service and

22 making sure we always have the milk we need.

23   Q. They do -- the cost of balancing that the co-ops do is

24 a valuable service that you would have?

25   A. Yes.

1   Q. And would you -- would you admit that the Federal Order

2 system, and by the same token, the California system, are not

3 designed, at least there's no language in statute that says

4 they are designed to limit production to make sure that we

5 never produce more milk than is demanded?

6   A. I'm not aware of that being the case.

7   Q. You are not aware of any statute that states that --

8   A. That says -- no.

9   Q. Let me go to page 17 of your Exhibit 91. Mr. Beshore

10 has talked a little bit about this with regard to the bullet

11 point items there that, where -- where you are making claims

12 that certain issues are false based on the facts you put

13 together in your testimony. Is that your explanation of that

14 page?

15   A. Yes. That they, those assertions weren't supported by

16 the fact.

17   Q. I would like to go through just a couple of those, if

18 we could.

19   The third bullet point you state that "the argument

20 that California milk production is declining because of cows,

21 because cows are leaving the state is false." You were here

22 yesterday during my cross-examination of Dr. Schiek where we

23 discussed the reliability of the production numbers that USDA

24 had and that those are very reliable figures? Do you recall

25 that?

1   A. I do.

2   Q. And that the estimated cow numbers in the national herd

3 or the state herd in California, are based on a somewhat less

4 reliable survey with a certain sample size limitation?

5   A. I would say that I rely heavily on the information that

6 USDA provides, and I would give credit to USDA. I think it is

7 one of the finest things they do for the industry is the

8 quality of information. And I look at it and use it everyday,

9 and I don't differentiate that this is going to be relied on

10 and that can't be relied on. If someone were to show me a

11 better source, I might consider it. But at this point, I think

12 USDA information is fantastic.

13   Q. Well, and you understand this is not a critique of

14 USDA, but rather a statement about the limitations of having,

15 the difference in the reliability of the figure where there is

16 a report where they track for checkoffs and production, very

17 reliable, whereas you are relying on surveys, it is a

18 difference in reliability, regardless of who is doing that?

19   A. Right. But it is all there is, so that's all I can

20 base my conclusions on.

21   Q. But the use of the word "false" there, a very

22 definitive word. What you are saying is, we do have

23 limitation --

24   A. Based on those facts.

25   Q. -- based on the --

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1   A.   That's correct. Of the chart I concluded show cow

2 numbers being pretty flat.

3   Q.   And I'll try to slow down because I think we are

4 starting to talk over each other.

5   The next statement in your, or the next bullet in that

6 document, "the argument that producers in other parts of the

7 country have caught up to California production proficiency is

8 false."

9   What you are saying there is that if anyone's made the

10 argument that all producers in the U.S. have caught up to

11 California's production proficiencies, that's false. Is

12 that --

13   A.   I heard a producer here testify early on in the

14 proceeding, that producers in the rest of the country have

15 caught up to us and we no longer have an advantage, so it was

16 kind of in response to that testimony.

17   Q.   Okay. But you would -- you would agree that -- and

18 what you are saying there is that you would agree that some

19 producers in the United States have adopted the economies of

20 scale and large efficiencies of the California dairy, but not

21 all of them?

22   A.   Totally agree. But the chart I put up showed 1200 cows

23 per herd in California versus 200 or less in the rest of the

24 country. That's still the case.

25   Q.   That table that you included in the chart was limited

                              4314

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1 to just the dairies with 500 or more herds, correct?

2   A. Yes, there are other states that have large herd

3 numbers. Correct. But smaller numbers of farms.

4   Q. Okay. The next bullet, "the argument that California

5 producers have not been listened to is false."

6   Do you see that?

7   A. Yes.

8   Q. Let me ask, if you go to your boss and ask for what you

9 believe is a merit-based raise seven times, and he says no

10 seven times, do you feel you have been listened to?

11   A. I think I would be looking for a new boss.

12   Q. I think I'll leave that one right there.

13   The next bullet, "the argument that depooling does not

14 benefit FMMO buyers is false."

15   Do you see that bullet?

16   A. Yes.

17   Q. Would you agree that depooling, to the extent that it

18 occurs in the Federal Orders, can be done by either a

19 Cooperative or a proprietary processor, whoever is the handler

20 in that transaction?

21   A. Yes.

22   Q. And that when that depooling is done by a

23 producer-owned cooperative, while it has an impact on the pool,

24 it's producers that benefit from that decision?

25   A. Yes.

1   Q.   The producers of that co-op, that is, that benefit from

2   the decision?

3   A.   Yes.

4   Q.   And when it's done by a proprietary plant, while it may

5   benefit them, it is done to the detriment of pool producers in

6   that Order?

7   A.   That depends totally on what the plant chooses to pay.

8   Q.   Well, that plant is paying their own direct suppliers,

9   but what my question is, do you agree that when depooling is

10   done by a proprietary plant acting as a handler, that that

11   depooling has a detrimental impact on the pool producers that

12   are not selling to that plant?

13   A.   Agreed, yes.

14   Q.   The next bullet, "the argument that California cheese

15   plants can afford to pay the same price as those in the Midwest

16   is false," and then you go on and talk about some of the costs

17   of transporting and doing business in California.

18   Do you see that?

19   A.   Yes.

20   Q.   You do realize that between California and Wisconsin,

21   there are other states that operate in Federal Orders, such as

22   Arizona, Oregon, Washington, that also are subject to same

23   Class III price in the Federal Orders?

24   A.   Yes.

25   Q.   And those plants do, I mean, those Orders do include

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1 plants that manufacture cheese and purchase milk for the use in

2 cheese and whey?

3   A.   Yes.

4   Q.   The next page, page 18, the first bullet.

5   A.   I had the opportunity to depool or buy milk outside the

6 pool.

7   Q.   I'm sorry, what's that?

8   A.   I said those plants had the opportunity to depool or

9 buy milk outside the pool, whereas what you are proposing in

10 California would not allow for that.

11   Q.   Well, I, if you, what I was bringing to your attention

12 was a statement that "the argument that cheese California

13 cheese plants can afford to pay the same price as those in the

14 Midwest is false." And so I was merely asking if you were

15 aware of other Federal Order areas near, closer to California

16 than the Midwest, and you said that you are aware of Arizona,

17 states like Arizona, Oregon, and Washington?

18   A.   I'm aware, but I don't know what they pay relative to

19 the Midwest.

20   Q.   On page 18, the first bullet, "the inference that

21 California producers, under the California system, make less

22 net income than their western counterparts is false."

23   That claim in your testimony is based on some of the

24 accounting data, I presume, that you include from Genske,

25 Mulder, and Frazer, LLP?

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1   A.   Right.

2   Q.   To the extent that California producers, and I think

3   that there has been other testimony in this hearing that

4   California producers have struggled relative to some of our

5   neighboring states, but to the extent that we would agree that

6   California producers have been able to find efficiencies, do

7   you believe that entitles California's cheese plants to a lower

8   regulated minimum price than other regions of the country?

9   A.   I don't think the regulated price should set the milk

10   price, I think supply and demand should set the milk price, I

11   believe, in the free market.

12   Q.   So producers' success in finding economies of scale,

13   finding ways to produce milk more efficiently, you are not

14   testifying today that that somehow entitles our cheese

15   manufacturers, and our manufacture in general, to buying, to

16   the ability to buy milk cheaper than anywhere else?

17   A.   I think that supply and demand establishes the value of

18   the milk, and if a farmer is more efficient he'll make more

19   money than his neighbor that's not as efficient as him.

20   Q.   The next bullet, "the idea that mega cheese plants

21   consuming oceans of milk can compete on a milk price with

22   specialty plants buying small volumes of milk is false." Is

23   there any official definition of "oceans of milk"?

24   A.   This is kind of literary license only.

25   Q.   I was just trying to get a picture.

4318

1   A. I'm trying to paint a picture.

2   Q. Might these oceans of milk equate to the three plants

3 that we were talking about --

4   A. When you are talking 10 or 15 million pounds of milk a

5 day at a plant, to me that's an ocean of milk.

6   Q. And it's been established through your

7 cross-examination with Mr. Beshore, that those plants do have,

8 all have whey processing facilities, those three plants that --

9   A. Yes.

10   Q. -- and the specialty plants that buy small volumes of

11 milk, does Saputo operate any of those, any plants in

12 California that would be classified as a small plant buying, a

13 specialty plant buying small volumes of milk?

14   A. Everything is relative, what's a small plant in

15 California might be a medium to large plant in Wisconsin, so I

16 don't know what the definition of that is.

17   Q. Okay. But it was your characterization. There's the

18 ocean and then there's a specialty plant, so I --

19   A. I'm talking about Wisconsin-type plants, so these are

20 smallish, you know, by California standards. Very small

21 plants.

22   Q. These plants --

23   A. When you are responsible for selling pounds of cheese,

24 it's easier to get a high price than it is if you are

25 responsible for selling a million pounds of cheese.

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1   Q. Specialty plants that are buying small volumes of milk,

2   whether Saputo fits that category or not, are they typically

3   making value-added products above, that carry a higher market

4   price than cheddar cheese?

5   A. I would say so, yes.

6   Q. When they buy their milk from their buyer, and they

7   base it on a regulated minimum price, and whatever service

8   charges there are, and other premiums, over premiums, do they

9   have a higher regulated minimum price based on the type of

10   cheese that they are making versus same regulated milk price

11   based on --

12   A. No, as I said before, as a matter of survival, they had

13   to extract that value to be able to afford to pay for the whey

14   value that they weren't achieving.

15   Q. And the additional values that they are able to create

16   above the regulated minimum, the regulated prices that are

17   based on cheddar and dry whey, any value from the marketplace

18   above and beyond that they don't have to share in the pool,

19   correct?

20   A. Unless it is in the form of premiums.

21   Q. That's not shared with the pool, correct?

22   A. Correct.

23   Q. The last bullet on page 18, "the notion that

24   California's milk production will decline to the point it

25   cannot supply the fluid market is false." Just one clarifying

1   question. Your plants, the plants operated by Saputo in

2   California are not fluid plants, correct?

3   A. Well, Saputo Dairy Foods, a sister company, makes a

4   number of different higher class products, including little bit

5   of Class I product.

6   Q. The plants that Mr. Beshore had identified with you on

7   Saputo USA or Saputo Cheese USA, those are cheese plants?

8   A. Correct.

9   Q. So you're not, this bullet assumes that the only

10   concern you have is making sure that your fluid plant

11   colleagues have a supply of milk, you are not concerned about

12   your own plant supply of milk?

13   A. I'm very concerned, but the point is, my understanding

14   is that orderly marketing requires that the food market is

15   serviced. And again in earlier testimony I heard a producer

16   say that there was a realistic possibility that milk supply

17   could decline to the point where that wasn't being taken care

18   of. And I -- I would dispute that. I mean, there's so much

19   milk that it is -- Mr. Schiek, Dr. Schiek put up a chart

20   showing how much fluid milk demand, how what percentage of the

21   total milk supply that is, and it is so small compared to the

22   total milk supply. My point is that it is pretty unrealistic

23   to think the milk supply would ever shrink that far.

24   Q. And then the last bullet on page 19, "the argument that

25   raising the 4b," I believe that means the Class 4b milk price

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here in California, "by one or two dollars per hundredweight

will discourage dairy farms from converting to almonds, which

according to testimony, returns the equivalent of $40 per

hundredweight is false."

I may have missed it. Was there any specific testimony

in this hearing or other hearings that testified that the goal

of this hearing is to stop the conversion of almonds?

A. No, a producer early on in the testimony suggested that

there's a term for those farms that convert over to almonds

that it was a threat to milk production in the state because of

the high value of almonds. And he testified that it was worth

the equivalent of $40 a hundredweight. And the assumption

would be, if we raise the milk price we could delay, or deter,

or defer, or stop that from happening. That was the

implication of the testimony, I thought. It was my

interpretation.

Q. But you understand that the prices being proposed under

Proposal Number 1 are equal to the regulated minimum prices

that exist in the other ten orders, not nearing $40 a

hundredweight?

A. Right. And to me, they are not equal, because, again

you can't avoid the regulated price in California where in

every other Order you can.

Q. Well, the regulated minimum prices are equal. It's a

question of who that price applies to, is that what you are

1 saying?

2   A. The regulated price is the same. The price you end up

3 having to pay may be different.

4   Q. Okay. That's all I have. Thank you.

5   JUDGE CLIFTON: I'll call on Mr. Richmond unless there are

6 other questions first. Mr. Richmond?

7   CROSS-EXAMINATION

8 BY MR. RICHMOND:

9   Q. Bill Richmond, USDA.

10   Thank you, Mr. Dryer, for your testimony. We really

11 appreciate it. You bring a very unique perspective to this

12 hearing, being a --

13   JUDGE CLIFTON: Let me stop you. Can he point his

14 microphone in a different direction to avoid that feedback?

15 I need you to be loud enough.

16 BY MR. RICHMOND:

17   Q. We thank you, Mr. Dryer, for your testimony. You bring

18 a very unique perspective to this hearing.

19   A. I heard you, you're welcome.

20   Q. So as a dairy product manufacturer that operates in

21 both Federal Orders in California, and being a proprietary

22 company, we appreciate you being here.

23   One thing that really stuck out to us, page 16 of your

24 written exhibit, bottom paragraph it says, "Cooperative

25 organizations produce a vast majority of milk in the state --"

1   JUDGE CLIFTON: I'm not hearing you loud enough. Okay.

2   BY MR. RICHMOND:

3   Q. "They have more than enough bargaining power to

4   negotiate prices with the customers that are reflective of the

5   market conditions that exist in California."

6   And you mention that you pay above the minimum prices

7   in California, so you pay premiums. You also testified that

8   you pay premiums for milk in Wisconsin. Would you be willing

9   to perhaps describe the process by which premium that,

10 premiums, the level that premiums, describe to us kind of how a

11 negotiation perhaps occurs?

12   A. You know, it's just a, we buy milk in the California.

13 Two of the larger cooperatives, and it is a matter of sitting

14 down and negotiating a price based on the buyer of milk, and

15 their, it is like any negotiation, you agree on a volume and

16 whether you are going to take it on a level daily basis, and

17 basically arrive at a price that's relative to the minimum

18 regulated price.

19   Q. Okay. And so --

20   A. Because that's the given, you have to pay at least the

21 minimum.

22   Q. Right. Okay. And so because the cooperatives have

23 such bargaining power in California, they are able to arrive at

24 a premium level with you?

25   A. Well, surprisingly, it is almost like, reminds me of

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1 the airlines. Because the -- there's three main cooperatives

2 in California and they are all responsible for moving a lot of

3 milk. So they are all fearful of losing outlets for their

4 milk, so they are not as aggressive as you would expect on

5 raising prices because they are fearful of losing a customer.

6 So they, the three combined are 80 percent of the milk, and yet

7 they don't exert that power against the buyers of milk as much

8 as you might expect because of the obligation to move all of

9 that milk. So I mean, it is a fair negotiation I guess is what

10 I was saying.

11   Q. Thank you. We appreciate it. To revisit the

12 discussion on depooling a little bit. Just so everyone's

13 clear, dairy farmers here in California may not completely

14 understand what the term depooling, in fact, is.

15   Can you just walk us through the decision that Saputo

16 has to decide on in a typical Federal Order for a month, and

17 how the decision as to whether or not milk is going to be

18 pooled or not occurs?

19   A. Yeah. I mean, it is, in our particular company in our

20 instance, we have a large customer base, so in most cases we

21 lock in arrangements for milk so our opportunities for

22 depooling are somewhat limited. So we don't engage in

23 depooling very often at all in our company. But we do

24 occasionally take advantage of buying milk from Cooperatives at

25 below class prices, that's something that we have some

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1 experience with. So it's not really depooling, per se, but you

2 would depool in an instance where you would benefit by not

3 having to, you know, pay in money to the pool that you wouldn't

4 otherwise have to pay if you were in the pool. That's the

5 benefit of depooling.

6   Now, whether you keep that money or share it with the

7 producers, that depends on the competitive conditions, you

8 know. In some instances in the Midwest, people may depool, and

9 then they give the money to their farmers rather than pay it

10 into the pool and share it among all farmers.

11   Q. So is it a fair characterization to say that in, there

12 are certain amounts that Saputo may pool milk, that the direct

13 suppliers of milk to Saputo may, in fact, receive the same

14 price that they had been receiving all along, or would they,

15 perhaps, receive the lower price?

16   A. Yeah, you know, I can't recall the last time we

17 depooled milk.

18   Q. Okay.

19   A. So I mean, it's not -- it is not something that we

20 commonly do.

21   Q. That's fine. I think that's all we have. Appreciate

22 it very much. Thank you.

23   A. Just to clarify, we do buy milk at under class prices,

24 occasionally.

25   Q. Thank you.

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 1                    CROSS-EXAMINATION

 2   BY MR. HILL:

 3      Q.  Brian Hill.

 4          Just a real quick point of clarification.  Can you

 5   please look at page 7 where you have a chart?  I'm going to ask

 6   you about the chart.  Just a point of clarification.  This

 7   chart is only trying to show the cows per licensed dairy herd;

 8   is that correct?

 9      A.  That's correct.

10      Q.  It's not making any characterization or representations

11   of millions of pounds being produced by cows?

12      A.  No.

13      Q.  If you look at the Y axis, the vertical axis, it does

14   say millions pounds per farm; is that just incorrect?

15      A.  That's incorrect.

16      Q.  Okay.  So what --

17      A.  I should have had you proofread my document for me.

18      Q.  What do you want that to say?

19      A.  That is cows per herd.

20      Q.  Okay.

21      A.  Cows per licensed herd.

22      Q.  Okay.  I just wanted to make sure.

23      A.  I appreciate that -- not the embarrassment, but the

24   correction.

25       JUDGE CLIFTON:  So let us make that change.  And thank you


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so much, Mr. Hill. I read that over there and I thought it

meant what it said, so I would have been misled by that.

        Ms. Elliott, do you see on page 7, the vertical axis on

the chart?

    MS. ELLIOTT: Yes.

    JUDGE CLIFTON: Will you strike the words there that say,

million pounds per farm?

    MS. ELLIOTT: Okay.

    JUDGE CLIFTON: And would you just write in similar

fashion, it will be outside the margin of the document, but

what is shown as the title of it, cows per licensed dairy herd.

    MS. ELLIOTT: Okay.

    JUDGE CLIFTON: So you are just repeating what the title of

it is. But since we have stricken words, I think we should

repeat the words that are the title.

    MS. ELLIOTT: Okay.

    JUDGE CLIFTON: Cows per licensed dairy herd. Now, before

we have redirect, I would invite any additional questions.

        Mr. Beshore?

                    CROSS-EXAMINATION

BY MR. BESHORE:

  Q. Marvin Beshore. A couple of follow ups, Mr. Dryer, to

questions from others and from myself, too.

        Let me show you a document that I'm going to ask -- ask

to be marked with the next consecutive number, if we could,

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1 your Honor.

2   JUDGE CLIFTON: Let us do that. Ms. Elliott, I'm thinking

3 this would be Exhibit 96; is that correct?

4   MS. ELLIOTT: That's correct.

5   JUDGE CLIFTON: And I have had a request for a break. So,

6 don't leave until you have gotten your copy of 96, and then you

7 may start your break. It's approximately, it is almost 10:40,

8 so please be back and ready to go at 10:55. 10:55.

9   (Whereupon, a break was taken.)

10   JUDGE CLIFTON: We're back on record at 10:56. Has

11 everyone got a copy of Exhibit 96? If you do not, raise your

12 hand. It appears no hands are raised. Mr. Beshore, you may

13 proceed.

14 BY MR. BESHORE:

15   Q. Thank you, your Honor.

16   And do you have Exhibit 96, Mr. Dryer?

17   A. Yes, I do.

18   Q. And that's the exhibit, the information that you

19 referred to in your prepared statement about the three largest

20 plants, etcetera?

21   A. Yes.

22   Q. Did you -- I think you testified in response to

23 questions from Mr. Vetne perhaps, that there are some plants

24 that process whey in California which purchase concentrated,

25 whey concentrate, liquid whey from other plants. Did I

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1 understand that right?

2   A. Yes.

3   Q. Okay. Does Saputo, is Saputo one of those?

4   A. No.

5   Q. But there are -- do you know how many there might be in

6 California? How many plants?

7   A. I can't say how many. I don't think it's a huge number

8 I think it is more difficult to sell liquid whey in California

9 than other regions, but there -- there are some.

10   Q. More than one?

11   A. I think more than one.

12   Q. Okay.

13   A. I'm familiar with one.

14   Q. Okay. You are familiar with anymore than one?

15   A. I think there's more than one, I'm familiar with one.

16   Q. Okay. So when we look at Exhibit 96, we could -- we

17 would know that the plants, the small plants which do not

18 process their own whey, have some outlets available within the

19 state to, if they choose, to sell the liquid whey?

20   A. In the form of whole whey, correct.

21   Q. In the form of whole whey, you mean --

22   A. Non-concentrated.

23   Q. Not concentrated.

24   A. Or dispose of.

25   Q. What?

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1   A.   If they can't find an outlet for their whey, they would

2 have to, they would be faced with disposing of it.

3   Q.   Yeah, I understand. But there are some outlets, some

4 outlets for plants that don't have their own processing plants.

5   A.   I don't know how many outlets there are for single

6 strength, whole whey, unconcentrated whey. There are outlets

7 for RO'd and UF'd whey that have gone through some degree of

8 concentration.

9   Q.   Okay.

10   A.   I'm not familiar with other outlets.

11   Q.   Okay. RO being reverse osmosis?

12   A.   Correct.

13   Q.   And UF being ultrafiltrated?

14   A.   Correct.

15   Q.   And those are technologies that are less expensive than

16 evaporators, for instance?

17   A.   When we get to the evaporators and dryers, then you are

18 talking major capital investment.

19   Q.   Okay. But it is possible for smaller cheese processors

20 to invest in RO or UF equipment, and concentrate some of their

21 whey if they choose that --

22   A.   Correct, if you think $4 or $500,000 is small.

23   Q.   Okay. That's the cost of what UF or RO equipment --

24   A.   RO's somewhere in that --

25   JUDGE CLIFTON: Mr. Dryer, you are the guilty party here,

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1 beginning to answer too soon.

2   MR. DRYER: Sorry, your Honor.

3   JUDGE CLIFTON: Thank you.

4   MR. DRYER: Did I answer too soon?

5   JUDGE CLIFTON: Yes, twice.

6 BY MR. BESHORE:

7   Q. What is the -- what did you mention as being the cost

8 of UF or RO equipment?

9   A. I just said if, you know, we said that it is a small

10 investment, but it is hundreds of thousands of dollars. I was

11 throwing out numbers, 3, 4, $500,000.

12   Q. Depending on --

13   A. The size of the --

14   JUDGE CLIFTON: Do you want me to stand next to Mr. Beshore

15 with a stop sign?

16   MR. DRYER: I'm sorry, your Honor, he signaled with his

17 hand and I thought that was asking for me to say something.

18   JUDGE CLIFTON: No, no, his hands are part of his

19 expression of the question.

20   MR. BESHORE: Should I keep my hands on the podium?

21   MR. DRYER: He looks Italian.

22   MR. BESHORE: I'm sorry.

23 BY MR. BESHORE:

24   Q. I don't know whether we got that answer or not. Okay.

25 We got it.

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1   Okay. Just a couple other things on whey. In the

2   Federal Order whey formula, it's true, is it not, that it can

3   go negative?

4   A. That's correct.

5   Q. Okay. So that -- and by that we mean that in some

6   cases that it's happened, the contribution of whey, of the

7   value of whey in Class III, in the minimum cheese price in

8   Federal Orders is actually a negative amount, correct?

9   A. That could happen.

10   Q. Well, it has happened?

11   A. It has happened.

12   Q. In fact, during 2008, '09, there was six, eight months

13   when it was negative consistently for those periods of time,

14   correct?

15   A. Correct.

16   Q. Okay. And presently, it's, the value is very, very

17   minimal on the positive side, correct?

18   A. Correct. The make allowance is just a hair under 20

19   cents, so if the cost falls below 20 cents, it is negative.

20   Q. Okay. That's a formula that works pretty well in terms

21   of reflecting the value, wouldn't you agree?

22   A. Historically, but in recent times the value of whey has

23   vastly exceeded the make allowance and it puts pressure on

24   plants to be able to afford a price.

25   Q. By that you just find -- when the whey value is up and

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therefore, it is generating a positive value, but on the buy

side, you don't like it that way so much.

A. If you look at my document that you objected to, only

six percent of the plants in the country make dry whey of the

cheese plants. So most of the plants are making other products

and the relationship between products is not consistent.

Q. Okay. So let's just talk about that a little bit. If

you are going to use -- okay. So when you use product prices

to generate minimum milk prices in the Federal Order system or

in California State Order system, you need various factors to

get from product price to milk price, correct?

A. Correct.

Q. Okay. You need, first of all, information about what

the product price is, correct?

A. Correct.

Q. And you know, for these various whey products, that's

various non-dry whey products, that's basically, there's not

much out there, true?

A. True. I liked Mr. Vetne's idea about surveying prices.

I thought that was interesting.

Q. Right. That's not being done now?

A. No.

Q. Okay. And if you were doing, if just a follow through

on Mr. Vetne's idea, okay? If you were surveying those prices,

hypothetically -- we're not -- but if you did, if you surveyed

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1 those prices into that plant that then has the choice of making

2 all these multiple different products, what would, what yield

3 factor would you use? By the way, yield factor is another

4 thing you need to get from a survey product price to a producer

5 price, you need -- that was a -- you were nodding

6 affirmatively?

7   A. I'm waiting. Are you -- I don't want to violate my

8 jumping in too soon.

9   Q. Thank you. To get from -- let's just go through the

10 whole thing, then. To get from product price to producer

11 minimum milk price, you need the product price information, you

12 need a yield factor, and you need a make allowance, correct?

13   A. The way the system works today, yes.

14   Q. Okay. And when you are, in Mr. Vetne's hypothetical,

15 you are selling to somebody that can make it into the, whatever

16 product the market, that works best for the market as he

17 hypothesized, how do you know what the yield factor is or the

18 make allowance?

19   A. Because if Mr. Vetne's idea were employed, in the milk

20 formula you have, on USDA side, 5.9 pounds of whey solids, and

21 you and value those at the survey prices being received for

22 whey prices, so you don't need yield factors, or make

23 allowances or any of those complications.

24   Q. Just take the gross price, you would be satisfied to

25 work it that way?

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1   A. Is the survey price of what whey solids are being

2 traded for in the market, in liquid form or whatever form.

3   Q. Okay. That would be one way --

4   A. It is an intriguing thought, that's all.

5   Q. -- one way to do it. Okay. Do you, do you export

6 products from the processing manufactured in California?

7   A. Yes.

8   Q. Do you care to tell us what percentage or range of

9 California production is exported?

10   A. No.

11   Q. In response to a question from Mr. Richmond, I think

12 you indicated, I just want to be clear, that in most of your

13 negotiated contracts with Cooperatives, the terms include and

14 setting aside price, the terms include volumes of agreed

15 purchases and sales, correct?

16   A. Correct.

17   Q. Okay. And delivery schedules?

18   A. Yes.

19   Q. Okay. Price, of course?

20   A. Yes.

21   Q. Quality stipulations?

22   A. Yes.

23   Q. Are there other components to those negotiated

24 contracts that I'm missing?

25   A. I don't think so.

1   Q. Okay. And you said that, in response perhaps to

2 Mr. Richmond or someone else, that you do, at some Saputo

3 plants, purchase milk for less than class price.

4   A. Correct.

5   Q. Now, those, of course, those purchases are not through

6 any of your negotiated contracts, correct?

7   A. Correct.

8   Q. They are off the spot market?

9   A. Correct.

10   Q. Okay. So what percentage of your milk outside of

11 California, the Wisconsin plants, what percentage of your milk

12 supply in those plants is purchased on the spot market as

13 opposed to from your independent producers or under Cooperative

14 contracts?

15   A. I can't disclose that.

16   Q. Can you give us some idea of the -- it is in the single

17 digits of percentages?

18   A. I can't comment on that.

19   Q. You can't comment at all?

20   A. It's -- it is not in the public domain.

21   Q. That I understand, but isn't it correct, isn't it true

22 that the great majority of your milk is purchased under

23 negotiated contracts with Cooperatives and/or directly from

24 independent dairy farmers?

25   A. I'm not comfortable answering that given the directives

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1 that I received about public information.

2   Q. Okay. Can you -- can you talk about the average price

3 under class that you experience when you purchase spot sales in

4 the distressed market?

5   A. As I did with mailbox milk prices, I would point you to

6 industry information, and the best source for that that I know

7 of is Dairy Market News that reports on those sales.

8   Q. Okay. Mr. Vetne asked you about acquiring a product at

9 your distribution centers. Do you recall that?

10   A. Yes, I do.

11   Q. Okay. And you said you sometimes acquire products from

12 other than Saputo sources. Did you -- did I understand you

13 correctly or not?

14   A. I think that's mixed a little bit. I think he was

15 asking if, you know, packaging or processing facility, if we

16 acquire a product to utilize with our own product, and I said

17 yes. He didn't ask whether we were receiving finished product

18 at a distribution center, to my recollection.

19   Q. Okay. So your distribution centers, it is all Saputo

20 branded?

21   A. Well, no. We -- we distribute other cheese companies

22 products as well, so, yeah, I guess. But he didn't ask me

23 that.

24   Q. But those are what, cheeses you don't make yourselves,

25 correct?

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1   A. Correct.

2   Q. I think that's all I have. Thank you very much,

3 Mr. Dryer.

4   JUDGE CLIFTON: Mr. Beshore, stay, thank you. Do you,

5 Mr. Beshore, intend to introduce into evidence the three

6 exhibits that you had him identify?

7   MR. BESHORE: I do. I would so move.

8   JUDGE CLIFTON: All right. Let's deal with that now and we

9 can see if there's any objection. Let me start with

10 Exhibit 94. Exhibit 94 is the Saputo map and list of

11 distribution centers and plants. Does anyone wish to ask

12 Mr. Dryer any questions about Exhibit 94 before determining

13 whether you have any objections to it being admitted? No one.

14 Are there any objections to the admission into evidence of

15 Exhibit 94? There are none. Exhibit 94 is admitted into

16 evidence.

17   (Thereafter, Exhibit Number 94

18   was received into evidence.)

19   JUDGE CLIFTON: Exhibit 95 is the graph showing Saputo

20 plants in Wisconsin and county producer pay price premiums, and

21 the source is indicated at the bottom. Does anyone wish to

22 question Mr. Dryer before determining whether you have any

23 objection for the admission into evidence of Exhibit 95? No

24 one. Is there any objection to the admission into evidence of

25 Exhibit 95? There are none. Exhibit 95 is admitted into

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 1  evidence.

 2          (Thereafter, Exhibit Number 95 was

 3           received into evidence.)

 4     JUDGE CLIFTON:  With regard to Exhibit 96, which is the one

 5  we just looked at, does anyone wish to question Mr. Dryer about

 6  this document before determining whether you object?  No one.

 7  Is there any objection to the admission into evidence of

 8  Exhibit 96?  There are none.  Exhibit 96 is admitted into

 9  evidence.

10          (Thereafter, Exhibit Number 96 was

11           received into evidence.)

12     JUDGE CLIFTON:  Mr. Beshore?

13     MR. BESHORE:  Your Honor, I'm sorry.  I -- I went back to

14  my desk and looked at my notes.  I forgot one question for

15  Mr. Dryer, if I might.

16  BY MR. BESHORE:

17     Q.  In California, do you, does Saputo supply information

18  to AMS for the NDPSR reports?

19     A.  Yes.

20     Q.  Thank you.

21     JUDGE CLIFTON:  Redirect?

22                     REDIRECT EXAMINATION

23  BY MR. ENGLISH:

24     Q.  Thank you, your Honor.  Chip English.

25          Let me start a little bit, not where that question was,
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1 where the others were, and just make something clear for the

2 record. When you said that you had instructions from higher up

3 about what you could testify about, you were referring to the

4 obligations that you, as an employee, have regarding the kinds

5 of statements that a public company can make outside of the

6 statements it makes regulated by the Securities and Exchange

7 Commission; is that correct?

8   A. That's correct.

9   Q. So, for instance, there is, since 2000 and the passage

10 of Sarbanes and Oxley in 2002, that is S-A-R-B-A-N-E-S,

11 O-X-L-E-Y -- significant and severe restrictions, literally

12 criminal rules with respect to what you could be permitted to

13 say, correct?

14   A. That's correct.

15   Q. Okay. So it's not a matter of choice, you are not

16 telling Mr. Beshore, "I choose not to tell you," you are

17 saying, "because of the selective disclosure rules that came

18 about in 2000 regulations, and their further enforcement under

19 Sarbanes and Oxley," that you are literally limited on what you

20 can say?

21   A. That's right.

22   Q. Thank you. So I just have three quick areas to discuss

23 with you.

24   First, you had a discussion led by Mr. Vandenheuvel

25 about an employee going to his employer making merit-based

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1 arguments for a raise.

2   Do you remember that?

3   A. Yes, I do.

4   Q. Now, if those merit-based arguments, in this

5 proceeding, of course, it is not going to your, you know, your

6 boss, there's a third party out there you are going to,

7 correct?

8   A. That's right.

9   Q. And, you know, if you make that argument seven times to

10 a third party, and if you go to court once because you don't

11 like what the third party's done, and you lose all seven times

12 before the third party, and you lose before the court, would

13 you maybe consider your merit, reconsider your merit-based

14 argument?

15   A. I certainly would think about it.

16   Q. And Mr. Vandenheuvel, I think, sort of implied that

17 that, and perhaps I'm not sure quite what I understood, but I

18 want to understand some of the things Saputo has done in

19 California for the dairy industry.

20   You purchased plants from Land O'Lakes that

21 Land O'Lakes chose not to continue investing in; is that

22 correct?

23   A. Correct. It was, the company was called Cheese and

24 Protein International, which was owned by Land O'Lakes.

25   Q. And Saputo came in and purchased those plants, and we

4342

1　can't talk about how much, but you've made some investments in

2　those plants, correct?

3　　A.　That's correct.

4　　Q.　Was there also a company called F and A Cheese?

5　　A.　That's right.

6　　Q.　Can you tell me something about what was going on with

7　F and A Cheese and what Saputo did?

8　　A.　F and A Cheese was one of the victims of the whey price

9　run up that occurred in 2007.　They were fortunate to have a

10　whey dryer with their facility, so they did realize benefits

11　from selling dry whey, but what happened was, when the price

12　ran up as high as it did, which was a record at the time, they

13　were unable to sell the product so they built huge inventories.

14　And finally the price came back down substantially, and they

15　were in a position where they were unable to pay their bills,

16　they were unable to pay their farmers, and they were defaulting

17　on their payroll obligations.　And so we came in and bought the

18　company and provided them with enough money to pay back all

19　their creditors and farmers, and we have provided a home then

20　for those producers going forward.　And saved the jobs for

21　those employees.

22　　Q.　Now, looking at Exhibit 96, which Mr. Beshore has

23　helpfully put into the record, I would like to discuss that a

24　little bit.

25　　　Does this, first of all, in the sort of middle column,

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1 number of plants that process whey, there's a footnote 3. So,

2 first, let's talk about the fact that 13 out of 57 of the

3 plants, according to CDFA, somehow process whey, which means

4 that 44 of the total plants don't process whey at all, correct?

5   A. Correct.

6   Q. Now, of those 13, how many, to your knowledge, on a

7 regular basis, process and make dry whey?

8   A. To my knowledge, one.

9   Q. Okay. And this range of products in footnote 3 could

10 be any, I mean, obviously could be more than one, but it could

11 be limited to just one of those products, correct?

12   A. Correct.

13   Q. And for instance, when you look at dry whey

14 (animal/human) it would be making dry whey just for animal

15 consumption, correct?

16   A. That's correct. But like I said, I only know of one

17 plant that dries whey on a regular basis.

18   Q. Dry whey. I guess what I was getting at, I'm sorry, I

19 apologize, I should have focused on that one. So concentrated

20 whey, the last one, the very last one, some of that

21 concentrated whey is being made, according to CDFA, for animal

22 consumption, correct?

23   A. According to this document, yes.

24   Q. Okay. And I think you answered this question with

25 Mr. Beshore, did the investment in any kind of whey processing

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1 facility, is, I think you said a major investment.

2   A. Especially when you get into drying products,

3 evaporating and drying them, now you are talking major, major

4 investments. In fact, the investment in whey processing for a

5 large scale plant is often higher than the investment in the

6 cheese plant that it is attached to.

7   Q. Thank you. That's all I have.

8   JUDGE CLIFTON: Mr. Dryer, is there anything you would like

9 to add before I invite you to step down?

10   MR. DRYER: There's only one thing I wanted to correct.

11 And Mr. Beshore asked me about how long it's been since I was

12 responsible for procuring milk for the company, and I looked

13 and it was February of 2010. And I think I had said four

14 years, so it's more like five and a half years. That's a

15 correction.

16   JUDGE CLIFTON: Thank you. Mr. Dryer, thank you so much

17 for what you have added to the proceeding. Is he going to

18 testify again, Mr. English?

19   MR. ENGLISH: I don't know.

20   JUDGE CLIFTON: All right. Thank you. Thank you very

21 much. You may step down.

22   All right. Let's see, Ms. Vulin is asking questions of

23 the next witness; is that correct?

24   MS. VULIN: Yes, your Honor.

25   JUDGE CLIFTON: All right. You may distribute your

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1 documents. And everyone else, once you have gotten your copy

2 of the document you may have a five-minute stretch break. But

3 please remain seated to facilitate the distribution of this

4 next one.

5   Ms. Elliott, I think this next one will have a number

6 of 97; is that correct?

7   MS. ELLIOTT: That's correct.

8   JUDGE CLIFTON: All right. You may number your document

9 97. Thank you.

10   (Thereafter, Exhibit Number 97 was marked

11   for identification.)

12   JUDGE CLIFTON: All right. Let's go back on record. It is

13 11:24. Mr. Newell, is this your first time testifying in this

14 proceeding?

15   MR. NEWELL: Yes, it is.

16   JUDGE CLIFTON: All right. I'll swear you in in a seated

17 position. If you would raise your right hand.

18   Do you solemnly swear or affirm under penalty of

19 perjury that the evidence you will present will be the truth?

20   MR. NEWELL: I do.

21   JUDGE CLIFTON: Thank you. Please state and spell your

22 name.

23   MR. NEWELL: Michael Newell, N-E-W-E-L-L.

24   JUDGE CLIFTON: Thank you. Ms. Vulin, you may proceed.

25   MS. VULIN: Ashley Vulin. And your Honor, we'd ask that

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1 Mr. Newell's testimony be marked as the next exhibit, I believe

2 Exhibit 97.

3   JUDGE CLIFTON: Yes, it has been so marked.

4   DIRECT EXAMINATION

5 BY MS. VULIN:

6   Q. Mr. Newell, will you please read your statement into

7 the record?

8   A. Hello, my name is Michael Newell and I'm currently

9 employed by HP Hood, LLC, as a Director of Sales for the

10 Western United States. I obtained my -- I obtained a Bachelor

11 Degree in Economics from UC Berkeley in 1987, and a MBA from

12 the Wharton School of Business in 1991. From 1987 until May of

13 2007, I worked in a variety of positions with Crystal Cream &

14 Butter Company, my family's milk processing business which is

15 located in Sacramento, California. Relevant to today's

16 testimony are my -- are the positions I held as a Sales

17 Marketing Analyst from 1991 until 1997, Vice President of

18 Marketing from 1997 to 2003, and Company President from

19 February of 2003 through October 2007. In May of 2007,

20 Crystal's dairy assets were sold to HP Hood, and on November 1,

21 2007, HP Hood sold the Crystal brand and its conventional milk

22 business to Foster Farms Dairy in Modesto, California. At that

23 time, I transitioned to my present position at HP Hood. The

24 purpose of my testimony is to discuss the difficulties that

25 Crystal had in balancing its milk supply in the years leading

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1 up to the sale of the company and the part, that a combination

2 of mandatory pooling and high whey value played in creating

3 these disorderly market conditions.

4 Overview of Crystal Cream & Butter Co.

5   Crystal Cream & Butter Company was founded in

6 Sacramento in 1901. The Hansen family owned the business from

7 1921 until its sale in 2007. Crystal based its business on

8 core principles of quality, service, integrity and competitive

9 pricing. Crystal built an extremely strong brand name in the

10 Sacramento Valley by consistently advertising on radio,

11 television, and print media from the late 1950's through the

12 early 2000's. A key component of Crystal's success was its

13 high quality milk supply, which was almost entirely purchased

14 directly from independent dairy farmers located within 70 miles

15 of the Sacramento processing facilities. We took great pride

16 in having a direct relationship with our milk producers and

17 felt that working with them to maximize the quality helped set

18 us apart from our competition.

19   Between 1990 --

20   JUDGE CLIFTON: Let me stop you. You omitted one word, and

21 I want to know whether you want to re-read that to include it,

22 it was the word local.

23   MR. NEWELL: Yes, I want to re-read that.

24   JUDGE CLIFTON: All right.

25   MR. NEWELL: We took great pride in having a direct

relationship with our local milk producers and felt that

working with them to maximize quality helped set us apart from

our competition.

Between 1990 and 2006, Crystal's annual milk purchases

ranged from 45 million to 60 million gallons. During this

period, Crystal had between 400 and 500 employees. For most of

its business life, Crystal was a full line manufacturer

producing fluid milk, cultured products, ice cream, butter, and

nonfat dried milk. Until 1996, all of these products were

produced at Crystal's downtown plant in Sacramento. In 1996,

Crystal opened a state-of-the-art milk bottling facility on

Belvedere Avenue in Sacramento, which also incorporated ESL

pasteurization capabilities.

MS. VULIN: And I'll stop you right there. You had said a

state-of-the-art milk bottling facility on Belvedere Avenue.

Would you like to add the word "milk" to the testimony?

MR. NEWELL: I would like to add the word "milk" to the

testimony.

JUDGE CLIFTON: All right. Ms. Elliott, on page 2, first

full paragraph, fifth line down, near the end of that line

we're going to add the word "milk" before the word "bottling",

and would you read that sentence again, please, Mr. Newell?

MR. NEWELL: In 1996, Crystal opened a state-of-the-art

milk bottling facility on Belvedere Avenue in Sacramento, which

also incorporated ESL pasteurization capabilities. Fluid milk

1 accounted for approximately 65 percent of Crystal's 140 to 180

2 million of annual sales.

3   MS. VULIN: So there also you would like to add an

4 apostrophe s after Crystal, so it reads "65 percent of

5 Crystal's $140 to $180 million.

6   MR. NEWELL: I would.

7   JUDGE CLIFTON: Ms. Elliott, thank you.

8 BY MS. VULIN:

9   Q. Thank you, your Honor.

10   I'll have you read that sentence again, if you will,

11 and then continue.

12   A. Fluid milk accounted for approximately 65 percent of

13 Crystal's 140 to 180 million of annual sales.

14   JUDGE CLIFTON: Million what?

15   MR. NEWELL: Million dollars of annual sales.

16   JUDGE CLIFTON: Okay. One more time.

17   MR. NEWELL: Fluid milk accounted for approximately 65

18 percent of Crystal's $140 to $180 million of annual sales.

19   Crystal served the full gamut of customers, schools,

20 restaurants, independent distributors, convenience stores --

21 and I want to add an "S" after "stores" -- other processors and

22 grocery stores from San Joaquin County, north to the Oregon

23 border.

24   JUDGE CLIFTON: And thank you, Ms. Elliott, for adding that

25 "S" to store to make it plural.

1   MR. NEWELL: In the late 1990's, Crystal decided to exit

 2 the manufacturing of nonfat dry milk due to the age and

 3 inefficiency of its powder operations. This decision made

 4 balancing the independent raw milk supply a very important part

 5 of running our business, especially when schools were out of

 6 session during holiday and summer breaks. To balance our raw

 7 milk supply, our Vice President of Producer Relations created

 8 productive relationships with other processors and milk

 9 cooperatives in order to place excess milk in times of slow

10 demand, or obtain additional milk in times of high demand.

11 Although Crystal's milk supply contracts with the independent

12 dairy farmers had specific -- sorry, let me read that sentence

13 again.

14   Although Crystal's milk supply contracts had, with the

15 independent dairy farmers had specific volume caps,

16 historically these quantities were never enforced.

17 BY MS. VULIN:

18   Q. Can I stop you? Can you just tell me a little bit more

19 about what a specific volume cap is?

20   A. So our contracts said we would contract, we would

21 purchase a thousand gallons of milk a day would be what we

22 would agree to buy from the dairy. But we didn't hold them to

23 those contracts. So if milk production exceeded that, we would

24 pick up the milk.

25   Q. Okay. So so even though were you contracted to take on

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the milk because of the relationships you had with your

suppliers, you would take whatever they produced?

A. Right. Precisely.

JUDGE CLIFTON: Now, I wondered if -- if you want me to

have the record copy of this exhibit add the word "raw" about

five lines up from the bottom. The sentence says "to balance

our milk supply" and the way you read it was to balance our

"raw" milk supply. Do you want us to insert "raw" on the

record copy?

MR. NEWELL: Sure, I mean, that would be, be more specific.

JUDGE CLIFTON: I am going to ask that "raw" be added

between the word "our" and the word "milk". Thank you.

BY MS. VULIN:

Q. I'll have you pick up again in the part of the sentence

on bottom of page 2.

A. We would take all the milk -- we would -- would take

all the milk that our producer partners could produce. We

viewed our producers as a key part of our success and wanted to

have the most productive relationship we could.

As we move through the early 2000's, it became

increasingly difficult to balance our independent milk supply,

as finding a home for our extra raw milk became more

problematic. The excess production capacity in the Northern

California market grew progressively tighter as milk production

grew. Our VP of Producer Relations had to look beyond Northern

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1 California to Southern California, and out-of-state, to place

 2 our milk. She related --

 3   Q. Can I ask you to read that sentence one more time?

 4   A. Our VP of Producer Relations had to look beyond

 5 Northern California to Southern California, and out-of-state,

 6 to place our excess milk. She related stories of other

 7 companies having similar difficulties and of milk moving

 8 out-of-state to Idaho and beyond. Finally, before the summer

 9 of 2006, we made the difficult decision to enforce the volume

10 caps in our milk supply contracts. The tight capacity

11 situation in Northern California left us no choice. Those

12 producers which exceeded their contracted volume had to find

13 another home for their extra milk. This created quite a stir

14 in the producer community. I recall attending a dairy council

15 meeting in June of 2006, and one of the long-time producer

16 board members approached me and wanted to know "what in the

17 hell we were doing" by capping our producers. I didn't realize

18 the significance of our decision at the time, but we were

19 really on the leading edge of a change in the marketplace.

20 Within a year or two, the oversupply conditions in the state

21 had reached the point that the large cooperatives had to

22 institute their own base plans because they, themselves, did

23 not have processing capacity for the milk produced by their

24 members.

25   Q. So when you used the phrase "on the leading edge of a

1 change in the marketplace," are reaching to a change where

2 producers had to start limiting how much milk they could take

3 on?

4   A. Yes. It was -- it was not always easy to find a home,

5 but you could find a home if you had extra milk. At least that

6 was our experience.

7   Q. But you hit a point where that was just no longer the

8 case. And you are saying you saw that, not only internally,

9 but heard anecdotally that's also what was happening to other

10 companies, including cooperatives?

11   A. Yes.

12   Q. Thank you. You may continue.

13   A. At the time Crystal experienced its milk balancing

14 challenges and had to take drastic steps to limit its milk

15 supply, I viewed it as a Crystal issue and I did not realize

16 the macro causes. With hindsight and the discussion around

17 adopting a Federal Order in California, I have come to

18 appreciate the part that our mandatory minimum regulated policy

19 played in creating those conditions. The adoption of the whey

20 factor formula by the California pricing system in 2003, and

21 the escalation of the value of the whey factor for less than 50

22 cents per hundredweight in late 2004, to over $3.00 per

23 hundredweight in mid-2007, helped encourage the rapid milk

24 supply increases which strained the capacity of California's

25 production assets. In late 2007, the CDFA fixed the value of

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1 | the whey factor to a much lower value in an effort to protect

 2 | its small cheese makers and to make its milk market perform in

 3 | a more orderly fashion. I firmly believe that if a Federal

 4 | Milk Marketing Order were adopted in California that included

 5 | mandatory pooling, the industry would, again be -- so I have a

 6 | typo there. After would, I want to remove the first "be".

 7 | JUDGE CLIFTON: All right. Thank you, Ms. Elliott. So we,

 8 | on that line, which is page 4, up about seven lines from the

 9 | bottom, we have just stricken "be" and would you read the

10 | sentence again?

11 | MR. NEWELL: I firmly believe if a Federal Milk Marketing

12 | Order were adopted in California that included mandatory

13 | pooling, the industry would again be setting itself up for an

14 | oversupply situation like we faced in the mid to late 2000's.

15 | This situation could be exacerbated by cheese manufacturers

16 | deciding not to reinvest in the manufacturing assets they have

17 | in the state. I encourage the USDA to incorporate in a

18 | California Federal Milk Marketing Order, the ability for the

19 | lower classes of milk to depool to help create a stable orderly

20 | market for raw milk. Depooling is a mechanism that helps

21 | stabilize other Federal Order, Federal Milk Marketing Order

22 | regions, and based on past history in California, it seems that

23 | it will be greatly needed in California, should a Federal Milk

24 | Marketing Order with higher whey value be adopted.

25 | BY MS. VULIN:

1   Q. Thank you, Mr. Newell. Is there anything else you want

2 to share with us in addition to what you have read in your

3 testimony?

4   A. Well, not -- just to maybe elaborate on the last

5 paragraph, and I think I have learned something about depooling

6 now that I have watched Greg Dryer's testimony, testify. And,

7 you know, whether it's depooling or the ability to have a

8 cheese maker buy milk at a less than regulated price, some sort

9 of mechanism to help constrain volume. And in California we

10 have had the ability to have hearings to adjust pricing, and I

11 know that doesn't exist in the -- let's say, a hearing that is,

12 renders a relatively quick decision does not exist in the

13 Federal Order system.

14   Q. And you are, you are saying your experience in the CDFA

15 system, when they fixed the whey factor at a lower level in

16 response to what was happening in 2006 and 2007, you are saying

17 that was an effective way for them to address this surplus milk

18 situation?

19   A. It helped to address the situation.

20   Q. I would like to move to admit Exhibit 97, please?

21   JUDGE CLIFTON: Yes, there was only one other little tiny

22 change that I think you wanted us to make. Mr. Newell, on

23 Page 3, the second line, the word "want" you read as "wanted"

24 because it's about something that happened in the past; is that

25 correct? Or do you want to leave it as read?

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 1      MR. NEWELL:  I want it to be "wanted".

 2      JUDGE CLIFTON:  Wanted?

 3      MR. NEWELL:  Yes.

 4      JUDGE CLIFTON:  I'm going to ask Ms. Elliott just to add an

 5  "ED" to the word "want", second line, page 3

 6          Does anyone wish -- Mr. Hill?

 7      MR. HILL:  On that -- Brian Hill.

 8          On that same page just two lines further down, the line

 9  that starts "independent milk supply as finding a home for our

10  extra raw milk because more problematic" I think it is became,

11  I'm assuming.

12      JUDGE CLIFTON:  Became.

13      MR. NEWELL:  It is became.

14      JUDGE CLIFTON:  Good.  Thank you.  We're just changing the

15  word "because" to "became".  Thank you, Ms. Elliott.  Good.

16          Is there anyone who wishes to question Mr. Newell

17  before determining whether you have any objection to the

18  admission of Exhibit 97?  No one.  Is there any objection to

19  the admission into evidence of Exhibit 97?  There are none.

20  Exhibit 97 is admitted into evidence.

21          (Thereafter, Exhibit Number 97 was

22           received into evidence.)

23      JUDGE CLIFTON:  Who will ask the first questions of

24  Mr. Newell?  It is going to be Mr. Beshore, even though he's

25  not ready.  Oh, it's not?  It is going to be
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1 Ms. Oliver Thompson.

2   CROSS-EXAMINATION

3 BY MS. OLIVER THOMPSON:

4   Q. Good morning, Mr. Newell.

5   A. Good morning.

6   Q. Megan Oliver Thompson.

7   So in describing the situation back in 2006, in your

8 testimony you talk about a point where the large cooperatives

9 instituted their own base plans. To your understanding, was

10 that effective in dealing with the situation, dealing with the

11 supply situation.

12   A. Well, so that occurred later, after 2006, so 2007,

13 2008, by that time we had sold the company so I wasn't really

14 involved on the, in that part of the business. I was really

15 focused on the sales side of the business after we got out. So

16 I can't speak to how it effective that was. But I think if I

17 was a milk producer and was told that I, you know, couldn't

18 ship all the milk I would produce, then I would, you know,

19 curtail my production.

20   Q. Do you have any reason to think that today cooperatives

21 wouldn't be effective in handling the supply situation,

22 handling supply?

23   A. I would think that they would react in a similar

24 fashion. I think they do react in a similar fashion.

25   Q. After you finished reading the written testimony, you

                          4358

1　essentially clarified your understanding of depooling. Does

2　that, and its relation to supply, does that mean that is, that

3　a clarification of the written testimony that you provided on

4　that relationship?

5　　　A. No, it's just an expansion.

6　　　Q. Okay. So are you saying that your written testimony as

7　provided is accurate in your mind?

8　　　A. Yes.

9　　　Q. Okay. Now, Hood, as a Class I plant, can't depool; is

10　that right?

11　　　A. That's true.

12　　　Q. And so why would supply be an issue for Hood?

13　　　A. Well, Hood runs its business differently than Crystal

14　did, so we have independent shippers, but we also have quite a

15　bit of cooperative milk that we use to balance. So for us it

16　may or not be an issue of supply. But I think I was just

17　trying to illustrate a point in the past where we had a

18　situation where the milk production in the state really

19　exceeded what the production assets had the ability to handle.

20　　　Q. Okay. And for the company you are working for today,

21　Hood, as you said, the fact that you are receiving milk from

22　cooperatives who would essentially be responsible for dealing

23　with an oversupply situation, that would create a balancing

24　effect, and so you wouldn't have, you wouldn't necessarily have

25　the same problem that you ran into with Crystal many years ago?

1   A. Correct. We wouldn't -- unless we had a significant

2 decrease in demands, then, we, you know, could counter that

3 issue. I know there are other Class I processors who have

4 independent milk supplies that could run into similar

5 situations.

6   Q. Does the Hood California facility process anything

7 other than dairy milk?

8   A. Yes.

9   Q. What other products?

10   A. We process ice cream mix, we process lactose-free milk,

11 we process almond milk.

12   Q. Are you able to say what percentage of the product you

13 are producing is regular fluid milk?

14   A. Not off the top of my head. I haven't looked at the

15 numbers in that way. It's a significant number.

16   Q. I'm sorry.

17   A. We produce almond beverage -- shame on me.

18   Q. It depends on your audience, doesn't it? Any other

19 nondairy products --

20   A. No.

21   Q. -- other than the almond milk -- that's what it says on

22 the package. Any juices?

23   A. We do not process any juices in the plant. Just to

24 clarify, we do do some nutri-ceutical products on our aseptic

25 line. So things like -- and I guess I shouldn't expand on

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1 that, because those go back to relationships that are

2 proprietary. So we do produce some, maybe like whey protein

3 type beverages as well.

4   Q. The powders or the actual fluid beverage?

5   A. The actual fluid beverages.

6   Q. Okay. Thank you. That's all I have.

7   JUDGE CLIFTON: Who next would like to ask questions of

8 Mr. Newell?

9   CROSS-EXAMINATION

10 BY MR. VANDENHEUVEL:

11   Q. Rob Vandenheuvel, Milk Producers Council.

12   Good morning, Mr. Newell.

13   A. Good morning.

14   Q. I just wanted to maybe set a couple things straight for

15 the record and maybe expand on a couple of things. There seems

16 to be, and you can maybe correct me if I'm reading this wrong,

17 but there seems to be an attempt to correlate the whey factor

18 decisions by the California Department of Food and Agriculture

19 and the oversupply situations or surplus milk situations you

20 faced in 2006. Am I reading too much into the testimony?

21   A. I guess what I'm saying is that it helped encourage

22 more milk production, so that was my intent.

23   Q. In 2006, are you aware that the average dry whey price

24 in the first six months leading up to that June 2006 point that

25 you mentioned, the average dry whey price was around 33 cents a

4361

1 pound?

2   A. I think I said around 50 cents.

3   Q. Well, we're talking about two different things, the

4 price per pound of dry whey and the value per hundredweight to

5 the ultimate formula. So if I, if I told you that the average

6 dry whey price in the first six months of 2006 was around 33

7 cents a pound, you would have no reason to disagree with that?

8 You don't have --

9   A. You probably looked it up.

10   Q. I did look it up. I don't have a printer in my

11 computer, otherwise I would show you.

12   A. Okay.

13   Q. And in January of 2006, the Department of Food and

14 Agriculture instituted a manufacturing allowance in the 4b,

15 Class 4b formula of about 27 cents, just a tick under 27 cents

16 a hundredweight, which I'm not going to ask you to do the math

17 we went through yesterday, so I will just tell you that the

18 contribution that dry whey was contributing to the Class 4b

19 price for those six-month period, was roughly less than 40

20 cents per pound. You can do the math, but would --

21   A. I'll take your word for it.

22   Q. Okay. Thank you. So it is difficult, I mean, when you

23 are looking at the much larger impacts that the dry whey price

24 and the dry whey markets had on the Class 4b formula, it was

25 after the period of time that you are talking about in 2006.

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1   2007, that's when we held a hearing, late in 2007, so I just

2   wanted to kind of clarify that, since it seemed like there was

3   a correlation in the testimony.

4   JUDGE CLIFTON: So what was your question to him?

5   BY MR. VANDENHEUVEL:

6   Q. My question was, did -- my question would have been, do

7   you agree with the numbers on the page had I printed it out,

8   but my --

9   MR. ENGLISH: I object.

10   MR. VANDENHEUVEL: Okay. I don't have my law degree so I

11   will try to rephrase this in the form of a question. Has

12   anything I have said so far run contrary to what numbers you

13   have seen for that period of time?

14   MR. NEWELL: I haven't --

15   MR. VANDENHEUVEL: Is it possible -- let me rephrase --

16   JUDGE CLIFTON: Wait, wait, wait, let him finish. I

17   haven't --

18   MR. NEWELL: Yeah, I'm sorry. I haven't seen numbers. I

19   mean, you have mentioned numbers.

20   BY MR. VANDENHEUVEL:

21   Q. So is it possible that the production increases, or the

22   surplus production that you referenced in your testimony,

23   around June 2006, when you referenced that point in time, was

24   not due to an escalation in dry whey markets contributing to a

25   higher Class 4b price than --

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1   A. Well, I mean, from what you have indicated, I suppose

2 so.

3   Q. Okay. I would like to move on.

4   JUDGE CLIFTON: Yeah, the two of you handled that fine. It

5 just invites everyone to look it up for themselves, which is

6 fine.

7   MR. VANDENHEUVEL: Next time I will have him make the

8 calculation on a piece of paper.

9   JUDGE CLIFTON: No, you did it fine.

10 BY MR. VANDENHEUVEL:

11   Q. Okay. I'm going to show the witness an exhibit from

12 Mr. Schiek's testimony, and for those of you that have copies

13 of it, it is page 1 of Exhibit 80, and it is figures and tables

14 for testimony of Dr. William Schiek. I'll just give it to the

15 witness, I'm sure he didn't bring it up with him.

16   This is Figure 1 of Exhibit 80, and this is a graph

17 compiled by Dr. Schiek, I presume. I don't see any other

18 source, it is his testimony. And this shows two lines, one

19 being the darker line which shows the whey value in the Federal

20 Order Class III formula, and the lighter line showing the

21 California whey value in the California Class Arabic 4b

22 formula. Do you see that?

23   A. Yes.

24   Q. And if you look at the period of mid-2006, you can see

25 that at that particular moment, dry whey was contributing below

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1 50 cents per hundredweight to the Class 4b price.

2   A. But looking at the graph I would -- I would go back to

3 starting in 2004 and note a general upward trend, and then we

4 did have a drop off heading toward 2007, and then we had a huge

5 peak. But I think the general trend during the period I

6 referenced in my testimony is upward, which would have, I

7 think, encourage the, help encourage additional production,

8 just one part of it.

9   Q. It is not noted on the table here, but looking at the

10 history of the regulatory formula in the Class 4b, well, I take

11 that back. There's a notation above the line around 2006 that

12 says, "a CDFA staff panel recommends removing the dry whey

13 factor from the formula. If not, increase the make allowance,

14 the Secretary increase the make allowance for dry whey."

15   Do you see that notation?

16   A. I see that.

17   Q. Okay. And that's -- that's the increase of the dry

18 whey make allowance that I referenced earlier setting it at

19 26.7 cents per pound?

20   A. So I -- I have never been associated with the hard

21 cheese manufacturing business, so I mean, my testimony is

22 really referencing just an increasing difficulty of trying to

23 place milk between 2004 and 2007. So, I mean I -- I understand

24 what you are saying. I think what influenced us was just a

25 timing relationship between available processing access and

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1 milk that was being produced here. So I think what you are

2 saying is that the CDFA had the flexibility to help try to

3 maybe take some air out of, help try to control a situation

4 that was becoming a problem, obviously with the spike in the

5 whey value. It didn't, and the increasing worsening situation

6 of an oversupply of milk making, it didn't help resolve it.

7   Q. Well, going back to the point in your testimony that

8 the State Order has the ability to respond more quickly, this

9 could be an area where they attempted, they being the

10 Department of Food and Agriculture in California, attempted to

11 respond to an issue they saw by increasing the make allowance

12 for dry whey, would that be consistent with your testimony?

13   A. Yeah, that would be.

14   Q. And so following that logic down, this occurred in

15 early 2006. By mid-2006, it obviously was not effective enough

16 to the point where you actually, or your company actually had

17 to enforce some caps on volumes purchased, correct?

18   A. Yes. Yeah. And we -- this isn't really dated, but it

19 looks like it occurred in mid-2006, or, I don't know what the,

20 it's hard to interpret the exact date. I, you know, we saw

21 the, serving a lot of schools, we saw the situation coming

22 because we had to deal with schools going out for summer break

23 every year, so I mean, we probably made the decision very early

24 in the year that we were going to have too much milk and we

25 would need to do something.

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1   Q. Well, I guess the point I'm trying to get to in my

2   question is, would you agree that whatever steps were taken by

3   CDFA earlier, or before the June 2006 period you mentioned

4   where you had to implement caps, those steps by CDFA were not

5   effective enough to curtail production and you, and --

6   A. I --

7   Q. I'm sorry -- Crystal creamery required enforcing some

8   volume restrictions?

9   JUDGE CLIFTON: Now, you started to answer him while he was

10   still mid-question, and now that he has completed his question,

11   I would like to you answer him.

12   MR. NEWELL: Sorry. So can you ask the question again?

13   BY MR. VANDENHEUVEL:

14   Q. Yeah, I will ask it and revise it to be accurate.

15   Despite the action taken by the Department of Food and

16   Agriculture to increase the make allowance and thereby lower

17   the Class 4b price, Crystal Creamery still felt -- still had

18   the need to enforce some volume restrictions later that year?

19   A. Yes, we did.

20   Q. And so would it be fair to say that industry based

21   supply restrictions are more effective, a more effective method

22   of aligning an individual handler's supply and demand than

23   regulatory pricing?

24   A. I think in a regulated system it is helpful to have

25   both, but I think if you are, I mean, it's your business, so

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1 you need to make some tough decisions to be able to react more

2 quickly.

3   Q. The reference on page 3 of your Exhibit, of your

4 written testimony, talks about the implementation or the

5 enforcement of volume restrictions or volume caps. Were those

6 volume caps based on a contracted volume with each individual

7 producer?

8   A. Yes, we had contracts with each individual producer

9 that's specified, and I can't recall if it was, you know, daily

10 volume or monthly volume. Most likely it was daily volume.

11   Q. And does that practice continue today through either on

12 your Cooperative contracts or individual contracts, there is a

13 volume component?

14   A. I can't -- I don't have direct knowledge of that.

15 Mike Suever would have been the one to ask that question of.

16 I'm not on that side of the business.

17   Q. So is it possible that HP Hood, in its contracts, has

18 agreed to buy every pound of milk that it is co-ops or

19 individual producers want to send it?

20   A. Well, certainly --

21   JUDGE CLIFTON: Wait, wait, now, I really need you to let

22 him finish. Now, we had a witness yesterday who said the

23 reason I started answering is while I can still remember the

24 question.

25   MR. NEWELL: I won't make that sentiment.

1   JUDGE CLIFTON: Start again, please, Mr. Vandenheuvel.

2   BY MR. VANDENHEUVEL:

3   Q. Is it -- you had mentioned that you weren't aware of

4   the language of contracts. Is it, then, your testimony that

5   it's possible that HP Hood's contract with its milk suppliers

6   have no volume requirements, and therefore, would agree to buy

7   as much volume of milk as the co-op or individual wants to send

8   it?

9   A. I think that would be absurd.

10   Q. I would agree. So by default, wouldn't there be an

11   assumption that those contracts include some sort of volume

12   identification?

13   A. I don't know for certain, but I think that would be a

14   fair assumption.

15   Q. When California dairy farmers, whether that milk is

16   marketed directly to a plant or through a Cooperative, when

17   that production exceeds the available capacity, is HP Hood

18   under any obligation to buy more milk than it can, that it

19   wants to? I mean, I'm sorry --

20   A. Than it is contracted for.

21   Q. Than it is contracted for?

22   A. No.

23   Q. And so any balancing requirements, any additional

24   measures to dispose of or alternatively market surplus milk is

25   a cost borne by the producers, either through their

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1 cooperatives or individual?

2   A. Yes.

3   Q. And so is it your testimony here today, about the

4 concerns with overproduction really aimed at helping

5 cooperatives do a better job of managing their surplus?

6   A. My aim is actually, I'm thinking more of the Class I

7 producer who may have, be in a similar situation that I was in

8 at that time, and more of the industry as a whole.

9   Q. But as your testimony indicates, when you hit a surplus

10 period such as mid-2006, Crystal, at that time, began enforcing

11 volume limits that were in the contract, and therefore, only

12 purchased the milk that they contracted for, correct?

13   A. True.

14   Q. And any milk above that volume, Crystal was not under

15 any obligation to buy, correct?

16   A. Correct. And it was not a decision we took lightly.

17 That was really the relationship we had had with our producers.

18   Q. And you are aware that the three cooperatives that have

19 proposed Proposal Number 1 that bear the cost in the event of a

20 surplus supply of their members' milk of disposing of that

21 milk, that they represent approximately 75 percent of the milk

22 in the state?

23   A. I have heard that, yes, in testimony.

24   Q. And it's a significant volume of milk in the state.

25 And that they have endorsed, and actually proposed Proposal 1,

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1   and fully support that proposal?

 2   A.   I'm aware of that.

 3   Q.   That's all I have. Thank you.

 4   A.   Thank you.

 5   JUDGE CLIFTON: Who next will ask questions of Mr. Newell?

 6   Ms. Elliott?

 7   CROSS-EXAMINATION

 8   BY MS. ELLIOTT:

 9   Q.   Hello. Pamela Elliott with USDA.

10   How are you?

11   A.   Very good.

12   Q.   Good. Good. Okay. I just have one question. If you

13   look at the very last sentence of your testimony. Okay? You

14   say, and I quote, "Depooling is a mechanism that helps

15   stabilize other FMMO regions." Can you please be a little more

16   specific as to how depooling stabilizes these regions?

17   A.   So this is where I elaborated on my statement earlier.

18   I think the ability of a cheese manufacturer, if there

19   is an oversupply of milk, to buy milk outside the pool at a

20   less than regulated price, you know, could help reduce milk

21   supply, you know, over the medium term in an overproduction

22   situation.

23   CROSS-EXAMINATION

24   BY MR. RICHMOND:

25   Q.   Bill Richmond, USDA. Thank you for that, Mr. Newell.

                              4371

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1 We appreciate it.

 2   I just had kind of a hypothetical question, and it is

 3 really just to try to take advantage of your expertise in the

 4 fluid milk business as the director of fluid milk sales. And

 5 this is really, I guess in thinking about the overall intent

 6 and the future of the Federal Milk Marketing Order program in

 7 general. Since we have Exhibit 80 in front of us and we're, I

 8 guess really stuck with me over the last week, especially if

 9 you look at Figure 12 and you look at declining fluid milk

10 sales, especially in the State of California, and I understand

11 part of this isn't the scale of the graph, but if you look at

12 from 2009 to 2014, you see a pretty significant decline of

13 fluid milk sales. I was just wondering if you could offer some

14 commentary on the state of the market and kind of what you're,

15 what you're envisioning for the future. I understand it is

16 difficult question.

17   A. Boy, that's a big question. I mean, I think what we

18 have seen in the beverage industry is, you have seen more and

19 more alternatives so we know that fluid milk is losing or

20 losing some consumers who are going to other beverages, and

21 they may or may not come back to milk. People's breakfast

22 habits are changing, so maybe they are not consuming cereal in

23 the morning, so all of those pressures are, I think there's

24 just a lot more alternatives out there for consumers.

25   I think that the great thing about milk is it offers

nutritional components that the competitive beverages don't.

And I think it's a whole food, which is increasingly popular.

So, I mean, I -- I think in the -- I'm hopeful that, you know,

you see maybe things that were popular in the past coming back

in vogue, and I hope that the great nutritional value of milk

helps fluid milk regain its step. I know the industry is

trying really, really hard to get us back there.

Q. We're right along with you.

A. I mean, McDonald's was dead five months ago, and now

their stock prices is a directed price, I can't believe

breakfast turned it around that quickly, but --

Q. We appreciate that.

A. I know the industry as a whole is working really hard

to help pump fluid milk back up.

Q. Thank you. I think that's it. That's all we have,

thank you.

JUDGE CLIFTON: Mr. Vetne?

CROSS-EXAMINATION

BY MR. VETNE:

Q. John Vetne for Hilmar Cheese. Mr. Richmond's question

stimulated a question for me.

You understand that both in the California State Orders

system and the Federal Orders system, for, you know, about 80

years, regulated prices have had price discrimination whereby

milk that goes into a bottle has a higher price in general than

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1 milk goes into cheese or powder, correct?

2   A. Yes.

3   Q. Okay. And that price discrimination, among other

4 things, was strongly premised on the notion that, a notion of

5 fluid milk price inelasticity. That is, consumers will buy

6 milk even if the price goes up, that there's a benefit, a net

7 benefit if prices increase, the income benefit will be greater

8 than lost sales from the price increase.

9   Do you understand that concept?

10   A. Yes.

11   Q. Okay. And do you have any comments, to follow

12 Mr. Richmond's line there, of whether the historical notion of

13 inelasticity in the fluid milk prices is a good notion to

14 follow the way it was thought to be a good notion 20, 50, 80

15 years ago? You sold products, you have seen consumer response.

16 Do you have a comment on that?

17   A. I guess I would make the comment that maybe milk isn't

18 as inelastic as once thought. When prices get high, people

19 will seek alternative beverages, or I mean, I recall, this is

20 years ago, but, I mean, they will buy fruit punch. And we had

21 a, one of our employees was in a store once and there was a mom

22 buying, shopping and she grabbed some fruit punch off the shelf

23 and said, "I'll buy you red milk," which just seemed like an

24 absurd notion, but it kind of speaks to the effect of when

25 fluid milk prices are very high.

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1   I think that, I mean, I assume that the reason that

2   Class I producers, the reason the system has placed a higher

3   value on Class I, is that way we're sure that we will get milk

4   in a bottle and get it out to the stores. But I think the

5   pooling kind of, you know, eliminates that direct relationship

6   between the producer and the milk bottler, so we pay the

7   premiums on top of it to ensure our milk supply.

8   Q. Okay. That's good. Thank you.

9   A. I did have another thought on Mr. Richmond's question

10 about milk. And I guess one point I would want to make is, we

11 have got a lot of research showing that maybe dairy fat is not

12 so bad for you. But we still have this kind of absurd thing

13 where we continue to push nonfat and lowfat products in

14 schools, or through the Women, Infant, Children program, and it

15 really struck me that Time Magazine had, you know, butter on

16 the cover last summer, or summer of 2014. And I think the

17 mandatory change in the WIC program to remove 2 percent as kind

18 of the the default milk item, and which made 1 percent the

19 default milk item, occurred maybe two or three months after

20 that. And we saw a big spike in the lactate 1 percent milk

21 that we sell because of that. But, you know, meanwhile, it, we

22 just seem to lag so far behind what the newest research is

23 showing us. And it would be nice if maybe we could move a

24 little bit quicker with our policies to bring people back to

25 milk, because I think that taste is a reason why we, part of

1 the reason why we lose consumers to other products. Thank you.

2   JUDGE CLIFTON: Are there any other questions before I

3 invite redirect? None. Ms. Vulin?

4   MS. VULIN: No, thank you.

5   JUDGE CLIFTON: Mr. Newell, thank you so much. You know,

6 I'm amazed. We have been here five weeks. We keep getting new

7 perspectives and I appreciate that very much.

8   MR. NEWELL: Thank you very much, your Honor.

9   JUDGE CLIFTON: Okay. Mr. English, I know you like to go

10 to lunch late so that the afternoon goes more quickly. Do you

11 want to consider a lunch break or what do you want to do? It's

12 12:17.

13   MR. ENGLISH: I would leave it to the group, but I would

14 point out that it is Mr. Vetne and Mr. DeJong who will be

15 taking this, but I certainly think it makes sense to keep

16 moving, and I think this is a place where, even as the last

17 testimony, I think we had an absolute agreement on getting back

18 to milk. I think we also agree on going forward.

19   JUDGE CLIFTON: Well, I'm glad we agree on the big chunks.

20 So Mr. Vetne, this is your witness, is this correct?

21   MR. VETNE: That's correct, your Honor.

22   JUDGE CLIFTON: All right. And will there be any exhibit

23 to distribute?

24   MR. ENGLISH: Oh, yes.

25   JUDGE CLIFTON: Then let us stay seated until we have our

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1   exhibit, then I'm going to have a five-minute stretch break

          2   before we begin the examination.

          3   (Whereupon, a break was taken.)

          4   JUDGE CLIFTON: We're back on record now at 12:27.

          5   Mr. Vetne, let's start by identifying and numbering these

          6   exhibits.

          7   MR. VETNE: That would be good. I think they all been

          8   passed out. There are four items that need numbering. The

          9   first one has a word on it called "Introduction", that would be

         10   Mr. DeJong's statement. That would be the next consecutive

         11   exhibit, which would be 98.

         12   JUDGE CLIFTON: I believe this would be 98. So we'll mark

         13   the multi-paged document, which is entitled "Introduction" in

         14   bold as Exhibit 98.

         15   (Thereafter, Exhibit Number 98 was marked

         16   for identification.)

         17   MR. VETNE: Thank you. And the next document has a bar

         18   graph on the cover page, Figure 1, that would be Exhibit 99.

         19   JUDGE CLIFTON: All right. We'll mark that as Exhibit 99,

         20   the top line says "Figure 1:"

         21   (Thereafter, Exhibit Number 99 was marked

         22   for identification.)

         23   MR. VETNE: And the next document to be referenced is a

         24   two-page, double-side printed document, header at the top,

         25   "United States Department of Agriculture" and in the middle of

                                      4377

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the document it says "Federal Order Number 124, 2014" and the

date is March 2015.

JUDGE CLIFTON: Yes. We will mark that document as

Exhibit 100.

        (Thereafter, Exhibit Number 100 was marked

        for identification.)

MR. VETNE: And finally, there's a one-page, double-sided

document with red coloring on it, that would be Exhibit 101.

JUDGE CLIFTON: Very well. We'll mark that Exhibit 101.

        (Thereafter, Exhibit Number 101 was marked

        for identification.)

JUDGE CLIFTON: Mr. DeJong, you have faithfully

participated for five weeks now. I think this is the first you

have testified; is that correct?

MR. DeJONG: That is correct.

JUDGE CLIFTON: All right, then. If you will raise your

right hand, I'll swear you in in a seated position.

        Do you solemnly swear or affirm under penalty of

perjury that the evidence you will present will be the truth?

MR. DeJONG: Yes.

JUDGE CLIFTON: Thank you. Please state and spell your

name.

MR. DeJONG: James DeJong, J-A-M-E-S, D-e-J-O-N-G.

JUDGE CLIFTON: Thank you. Mr. Vetne, you may proceed.

MR. VETNE: Okay.

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 1                    DIRECT EXAMINATION

 2   BY MR. VETNE:

 3       Q.  And Mr. DeJong, it says here you are testifying for

 4   Hilmar Cheese.  I think we know, the record might know, but

 5   where is Hilmar Cheese located?

 6       A.  Hilmar Cheese is located in the kind of Central to

 7   Northern area of the Central Valley.  I would say it is close

 8   to Turlock, California, just South of it.

 9       Q.  Okay.  And what is the business address of

10   Hilmar Cheese?

11       A.  Oh, shoot, I would have to pull up my -- pull out my

12   business card.  I don't mail things to the company.

13       Q.  Okay.  Hilmar, California is a small town with one main

14   street, and you are at the Southern end of that main street; is

15   that correct?

16       A.  Yes, so go down Lander Avenue, you can't miss the

17   plant.

18       Q.  Okay.  Lander Avenue in Hilmar, California.  And do you

19   have a prepared statement for this right here?

20       A.  Yes, I do.

21       Q.  Please proceed.

22       A.  My name is James DeJong and I'm currently the Dairy

23   Policy and Economic Analyst nor Hilmar Cheese Company (HCC),

24   whom I am representing today.  I have worked for HCC since

25   April, 2014.  My main responsibilities include providing
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internal analysis on dairy markets, understanding dairy policy

issues, and connecting the economic and policy side in a way

that helps HCC make informed business decisions. Prior to

that, I worked for Rabobank's Food and Agricultural Research

and Advisory as an Agricultural Analyst for over three years.

I specialized in California dairy industry economics, general

California agricultural economics, economics in the North

American forest products, and U.S. row crops.

Q. Let me stop you there. That's the extent of your

prepared testimony description of your background. Could you

elaborate a little bit what your education was and what you've

done since you finished school?

A. I think my real relevant experience to my work

currently at Hilmar Cheese started at, well, I'll start with my

education and experience. I have a Bachelor's Degree in Social

Science and a Master's Degree in Public Administration, with

undergraduate and graduate level course work in Economic

Statistics, Finance, Quantitative Analysis, and Administrative

Law.

Q. Okay. And was the Rabobank your first significant

employment out of school?

A. Yeah, I did work for the USDA's Farm Service Agency for

I think it was like seven months or something like that, in

Oregon. And a position was available in Fresno to work for

Rabobank's Food and Agriculture Research and Advisory and

4380

1 allowed me to move closer to home, so I took that position.

2   Q. Okay. Well, tell us a little bit more about what

3 Rabobank does and your role in their business.

4   A. Okay. Rabobank is one, is a multi-national bank. It

5 is one of the largest, if not the largest, agricultural lender

6 in the world. And inside Rabobank they have a special group of

7 analysts who focus on agricultural economic issues,

8 approximately 80 of them, and I would was one of those --

9   Q. Excuse me, 80 issues or 80 analysts?

10   A. 80 analysts.

11   JUDGE CLIFTON: Mr. DeJong, I'll train you while you are

12 young. Don't talk over Mr. Vetne, which requires that you

13 watch him and listen carefully and wait until his voice dies

14 away before you answer him.

15   MR. VETNE: And I'll try to do the same thing, your Honor.

16 BY MR. VETNE:

17   Q. Go ahead. So 80 analysts, correct?

18   A. Yes. So I was one of these analysts. And the analysts

19 have different areas of focus. Like I said in my opening

20 statement, mine was primarily dairy; and then secondarily,

21 things like forest products and row crops.

22   Q. And in the course of your employment with Rabobank did

23 you author and prepare or submit any publications?

24   A. Yes, I was the lead author or contributing author on

25 three major publications.

4381

1   Q.   And what did they deal with?

        2   A.   One of them was on the U.S. Rice Industry, one of them

        3 was on the North American Forest Industry, and one was

        4 specifically on the California Dairy Industry.

        5   Q.   Okay. And was the -- what was the title of the

        6 document on California Dairy Industry, if you recall?

        7   A.   I believe it was "California Dairies Getting More

        8 Moolah."

        9   Q.   Moolah?

       10   A.   Rabobank likes cute titles.

       11   Q.   That would be M-O-O-L-A-H. Was that publication

       12 reviewed by others with expertise in the field?

       13   A.   Yes. My co-author was Vernon Crowder, who is a Senior

       14 Agricultural Economist for Rabobank, and it was also

       15 peer-reviewed by Tim Hunt, who is the Senior Dairy Agricultural

       16 Economist for Rabobank for the entire world. And while I was

       17 working on this, it was peer-reviewed by two outside sources,

       18 David Ahlem, who is now the CEO of Hilmar Cheese, and

       19 Dr. Eric Erba with CDI.

       20   Q.   Continue reading with your second paragraph.

       21   JUDGE CLIFTON: I'm sorry, I need some spellings. So

       22 Vernon Crowder?

       23   MR. DeJONG: V-E-R-N-O-N, Crowder is C-R-O-W-D-E-R.

       24   JUDGE CLIFTON: And Tim Hunt?

       25   MR. DeJONG: T-I-M, H-U-N-T.

                              4382

1   JUDGE CLIFTON: David Ahlem?

2   MR. DeJONG: D-A-V-I-D, A-H-L-E-M.

3   JUDGE CLIFTON: Thank you.

4 BY MR. VETNE:

5   Q. Please proceed.

6   A. As for the background of our company, HCC is a cheese,

7 whey, and soon-to-be milk powder manufacturer with processing

8 locations in California and in Texas, which operates under the

9 Southwest Federal Milk Marketing Order (FMMO).

10   Q. Stop right there, please. The concluding clause "which

11 operates" refers to the plant in Texas; is that correct?

12   A. Correct.

13   Q. Thank you.

14   A. Our primary product lines include natural hard American

15 style cheeses, such as cheddar, Colby, and Monterey jack, while

16 some of our main whey products include whey protein concentrate

17 80 (WPC 80), whey protein isolate (WPI), whey protein

18 hydrolysate (WPH), different grades of edible lactose, and our

19 newest plant in Turlock will focus on making skim milk powder

20 (SMP) for international customers. The Turlock plant will

21 begin operating late this year. We employ about 1,000 people

22 in California, and sell finished products domestically and

23 internationally to over 50 countries around the world.

24   Q. Let me stop you there. Going back to the whey

25 products. Is that produced at a plant adjacent to the Hilmar

4383

1 Cheese plant in Hilmar, California?

2   A. Yes, it is.

3   JUDGE CLIFTON: Now, which do you prefer at the bottom of

4 page 1, do you want to call that plant "our new plant" or "our

5 newest plant"?

6   MR. DeJONG: It doesn't really matter, I suppose. Is there

7 a distinction?

8   JUDGE CLIFTON: So do you want to leave it our "new

9 newest?"

10   MR. DeJONG: Yeah, that's fine.

11   JUDGE CLIFTON: Okay.

12   MR. DeJONG: Typo.

13 BY MR. VETNE:

14   Q. And at the whey products facility in Hilmar,

15 California. Does that plant manufacture whey powder, dry whey?

16   A. It does not make dry whey.

17   Q. Is it constructed so within, with your current

18 equipment you can make dry whey?

19   A. No.

20   Q. And were you to make dry whey, you would have to make a

21 considerable new investment?

22   A. Correct.

23   Q. And the products that you do make, do you make those

24 because that is where plant management believed the market is?

25   A. Absolutely.

4384

1   Q.   Okay.   Continue reading, please.

2   A.   Hilmar Cheese Company was started in 1984 by a group of

3   innovative and market orientated dairymen who wanted to

4   maximize their return on their high quality milk. The company

5   was founded on an idea that producers should receive a

6   competitive price for their milk and one that is driven by

7   actual market conditions. Milk producers continue to own the

8   company and manage its business as active corporate board

9   members.

10   Our Hilmar, California cheese and whey manufacturing

11   site processes 12 percent of the state's milk, which is

12   purchased directly from over 200 independent dairies, most of

13   whom are not affiliated with any cooperative. This represents

14   the largest share of non-cooperative controlled milk in the

15   state. Further, as HCC's processing volume has grown,

16   owner-producers and non-owner producers have shared in growth

17   opportunities. At the Hilmar plant, 18 percent of the milk

18   supply is from producers who are owners in the company. The

19   rest of our milk supply, 82 percent, is from non-owner

20   independent dairymen. 80 percent of our volume contract

21   increases with the non-owner dairymen over the last several

22   years.

23   Next section: There is no disorderly marketing in

24   California

25   There is no disorderly marketing. HCC is not having

4385

1 any trouble sourcing milk or fulfilling commitments in 2015,

2 despite total state milk production being down in 2015. HCC's

3 Hilmare milk supply is actually up again in 2015, year-to-date

4 through August, compared to 2014 (Figure 1) --

5   Q. Continue that sentence, and then let's go to Figure 1.

6   A. -- which was comparing against one of the most

7 profitable years ever for California producers and a strong

8 milk production year.

9   Q. Okay. If you will turn to Figure 1 in the document

10 with the blue bar graph, which we have marked as Exhibit 99.

11 Describe what's in Figure 1.

12   A. This is Hilmar's plant milk intake 2011 through 2015,

13 with year over year percent growth overlaid on the blue bars.

14 And the Y axis is milk pounds, but we chose not to share our

15 exact milk volumes, so took, we took off the scale.

16   Q. Okay. Continue with your prepared testimony, starting

17 with the sentence beginning Figure 1.

18   A. Figure 1 also shows we have not had any trouble

19 sourcing milk in recent history for our Hilmar plant. However,

20 HCC had to ship 400 loads out of the state this spring because

21 we were unable to find available processing capacity and

22 willing buyers. Furthermore, a discussion with our milk

23 procurement manager indicated we have had no instances where we

24 were asked to give up milk for a fluid plant in recent memory

25 or at any indication of a fluid plant being short of milk.

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1   And I would like to stop at this particular part,

2   because as we wrote this and printed it, we got an e-mail from

3   a Class I plant this morning saying that they needed a few

4   extra loads of milk. And we had wiggle room in our capacity,

5   and we were sending them that milk. But, so just to be clear

6   for the record, this is the first time we have had to do this

7   in awhile.

8   Q. In awhile meaning many years?

9   A. Many years as long as we can remember.

10   Q. We meaning --

11   A. Hilmar Cheese.

12   Q. Your memory since you have only been there since 2014,

13 and you asked others at Hilmar if this has happened before, and

14 you're reporting the results of those conversations.

15   A. Correct.

16   Q. Okay. Please continue.

17   A. The last major incidence of disorderly marketing, from

18 HCC's business perspective, occurred in 2007 as a result of the

19 California Class 4b whey factor. At the time, the whey factor

20 used in the 4b price was determined by taking the Dairy Market

21 News dry whey price, minus a $0.67 per pound make allowance --

22   JUDGE CLIFTON: Let me have you look at that number and see

23 if what you --

24   MR. DeJONG: Oh, I misstated it. Minus a 0.267 per pound

25 make allowance.

4387

1   JUDGE CLIFTON: Now, when you say, minus a 0.267, is that

 2 some percentage of a dollar?

 3   MR. DeJONG: Yeah, that is approximately 26.7 cents.

 4   JUDGE CLIFTON: All right. Go ahead then, per pound make

 5 allowance.

 6   MR. DeJONG: Would it be better, I'm going to be using

 7 numbers like this in the future, should I just say how many

 8 cents?

 9   MR. VETNE: You may read it, and my preference is, dollars

10 or cents, and --

11   MR. DeJONG: Okay.

12   MR. VETNE: And to me, your Honor, if I may, it doesn't

13 matter if the way he describes it in his testimony is slightly

14 different than the way it appears in print, as long as his

15 testimony is understandable in the transcript. The exhibit may

16 show something different words, but the exhibit hopefully will

17 also be part of the record. So we don't have to make his

18 testimony conform precisely to the exhibit, or presumably both

19 will be part of the record. Thank you.

20   JUDGE CLIFTON: And I agree with you. But I do think if

21 the figure does refer to pounds, we should have an indication

22 of pounds. Hundredweight, we should have an indication of

23 hundredweight. Dollars or cents, some indication that it's

24 money. That's my only --

25   MR. VETNE: Absolutely. Thank you. And I thank you. Good

4388

1 catch. Go ahead.

2   JUDGE CLIFTON: All right. So Mr. DeJong, whichever is

3 easier for you in expressing the monetary figure is good, just

4 so long as you make it clear that it's either dollars or cents

5 that you are describing.

6   MR. DeJONG: Understood.

7   JUDGE CLIFTON: All right. So at the bottom of page 3, do

8 you want to just continue on?

9   MR. DeJONG: Yes, I will start that with that again.

10   Minus a 26.7 cent per pound make allowance, and

11 multiplied by a yield factor of 5.8. This resulted in a whey

12 factor roughly in line with the one currently used in the FMMO

13 Class III formula.

14   When the price of dry whey rapidly increased from 2006

15 to 2007, HCC's Hilmar plant California Class 4b pool obligation

16 whey cost went up from a low of 2 million per month, to over

17 12 million per month. Despite being on the forefront of whey

18 processing --

19   JUDGE CLIFTON: Let me stop you, 2 million what?

20   MR. DeJONG: $2 million, I'm sorry.

21   MR. VETNE: Yes, in both cases.

22   JUDGE CLIFTON: Go ahead then and just read the last part

23 about whey costs went up from a low of --

24   MR. DeJONG: Whey cost went up from a low of $2 million per

25 month to over $12 million per month. Despite being on the

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1 forefront of whey processing technologies, having invested

2 hundreds of millions of dollars to date, the operating, and

3 operating in some of the highest price whey protein and lactose

4 markets in recent memory, this aggressive whey factor caused

5 substantial financial losses for our whey ingredients business.

6   While this period was difficult for HCC's whey

7 ingredient business, the previous CDFA whey factor was also too

8 aggressive before the dry whey price skyrocketed. In fact,

9 prior to CDFA changing the 4b whey factor back to a fixed

10 amount, HCC's ingredient business operated at a loss relative

11 to the whey factor for nearly the previous three years straight

12 prior to the hearing in 2007, again, despite the massive

13 investments made to capture the value of whey.

14   At the same time, there were widespread reports of milk

15 supplies exceeding California plant capacity (or at least

16 willing capacity) as milk was sold to calf ranches, simply

17 dumped or shipped out-of-state to distant manufacturing plants.

18 HCC had to ship over 340 loads of milk at a weighted average

19 discount below Class 4b of $2.24 per hundredweight.

20 BY MR. VETNE:

21   Q. Let me stop you there. In that sentence and the

22 sentence which follows, you are referring to the period just

23 prior to 2007 and during 2007?

24   A. That is correct.

25   Q. Okay. Go ahead.

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1   A. Of these 340, 17 of those loads we had to sell at $8.50

2 per hundredweight below 4b.

3   Q. 4b price?

4   A. Yeah, the California 4b price.

5   With many more in the 3 to 5 per hundredweight -- $3 to

6 $5 per hundredweight range under the California Class 4b. Of

7 course, transportation costs added to the discount price

8 losses. Towards the end of this crisis when our Texas plant

9 began operating in September 2007, we began shipping our

10 distressed loads there at great transportation costs. Also,

11 hundreds of loads from California cooperatives were purchased

12 by HCC's Dalhart, Texas plant at steep discounts because

13 California cooperatives were unable to sell milk below class in

14 California. They were unable to sell this milk below class to

15 our Hilmar plant, but they could sell it to our Texas facility.

16 This benefitted out-of-state processors and hurt California

17 producers.

18   Q. Let me just stop you right there for a second. Near,

19 just above the middle of page 40 you refer to Dalhart, Texas.

20 I think that's a useful insert into the Exhibit copy.

21   JUDGE CLIFTON: Thank you. Ms. Elliott, on page 5, down

22 about eight lines from the top we're going to insert "Texas" in

23 between the word "Dalhart" and "plant".

24   MS. ELLIOTT: Okay.

25   MR. VETNE: I think that's -- that's a useful insert, your

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1 Honor, because the witness will be referring to Hilmar, which

2 is a company; and Hilmar, which is a cheese plant at a location

3 in California. We don't want confusion there, so hopefully the

4 testimony and record will be clear when Hilmar is a reference

5 to a plant in Hilmar, California, as Dalhart is a clear

6 reference to a plant in the State of Texas, both of which are

7 owned by Hilmar Cheese Company. Okay.

8 BY MR. VETNE:

9 Q. Let me ask you about the plant in Dalhart, Texas.

10 Apparently at some point prior to 2007, Hilmar Cheese Company

11 made a decision to build another cheese plant and decided that

12 that plant should be located in the State of Texas. Could you

13 describe a little bit more of your knowledge of how that came

14 to be?

15 A. To my knowledge, the decision to build a cheese plant

16 in Hilmar, Texas, I mean in Dalhart, Texas, those plants were

17 arranged in the mid to early 2000's when the dry whey factor in

18 California was very high. Looking at the mandatory pooling

19 nature of the California Order and the inability to escape

20 those high dry whey prices, we made made the decision to invest

21 in Texas instead of more in California.

22 Q. Okay. And to your knowledge, at that time, Hilmar

23 Cheese was contemplating building a new cheese-making capacity,

24 correct?

25 A. Yes.

4392

1   Q.   And its considerations include constructing that

2 capacity in California or constructing it elsewhere, correct?

3   A.   Correct.

4   Q.   And a decision was made not to build that plant and

5 capacity in California, in significant part because of the

6 pricing system that Hilmar was observing in California?

7   A.   That was a major factor.

8   Q.   Okay. Please keep reading.

9   A.   Fortunately, CDFA was able to hold a hearing on the

10 issue in October 2007, where their panel recommended, based on

11 the evidence brought forth, to reduce the whey factor down to a

12 fixed 10 cents per hundredweight. Though the Secretary of

13 Agriculture ultimately decided to set a fixed factor of 25

14 cents per hundredweight, CDFA was able to address the problem.

15   Q.   In that you've referred to the Secretary of

16 Agriculture, you are remaining the California Secretary of

17 Agriculture as it appears in the printed text?

18   A.   Yes.

19   Q.   Thank you. Please proceed.

20   A.   HCC fears the way factor in FMMO Class III will again

21 substantially overvalue the whey product stream in California,

22 overvalue the price of cheese versus prices we actually

23 receive, and use a make allowance that does not cover our

24 costs. This is expected to cause negative returns for our

25 Hilmar plant and long-term marketing disorder of the kind we

4393

1 experienced in California during 2007. For example, this year

2 the price of lactose, the largest part of our whey stream in

3 terms of volume, has been at such low levels it does not cover

4 the cost of production, and we are losing money on every pound

5 produced. The Class III "other solids" value does not

6 recognize this because it is driven by dry whey. This will

7 only encourage HCC to continue to push processing investment

8 out-of-state, such as in our plant in Texas, due to the

9 Southwest FMMO's ability to allow milk to escape the pool to

10 clear market. In fact, since CDFA's recent temporary price

11 increase to the whey factor in 4b this year, HCC has again

12 decided to expand our Dalhart, Texas facility by 20 percent,

13 instead of directing those investments to our Hilmar facility

14 or a new cheese facility in California.

15   HCC will not invest in California cheese and whey

16 processing, if overaggressive milk pricing, and inability to

17 provide a market clearing function with a reasonable return on

18 investment, continue to present a danger. If minimum prices

19 are set above market clearing levels for both our cheese/whey

20 and our milk powder plant in California, and there is no escape

21 valve through depooling or other policy remedy, HCC would be

22 forced to idle capacity to minimize business losses.

23   Next title: We believe 2015 milk production is down in

24 California for reasons not related to 4b versus Class III milk

25 pricing

4394

1   All dairy commodity prices are significantly down from

2 their 2014 highs, especially milk powders, which have a huge

3 impact on California overbase prices due to their large portion

4 of the milk pool. NFDM prices dropped to their lowest level

5 ever this summer, according to USDA price report survey data

6 going back to 1998. This huge price crash was led by a global

7 demand disruption and bountiful supplies worldwide of milk

8 powder, which hit California 4a and overbase milk prices hard.

9 Given that California produces about 40 percent of all milk

10 powder in the U.S., while accounting for 20 percent of U.S.

11 milk production, Class 4a plants utilize about 33 percent of

12 all milk, and the fact that NFDM is a pricing component in

13 California Class 2 and 3, and sometimes 1 pricing, it is not

14 surprising minimum overbase prices would take a large hit in

15 the state. Therefore, California's recent milk production flow

16 down is an expected response given the global oversupply of

17 milk powder and lower California Class 4a price.

18   Q. Let me stop you there. The prior, on page 7, and on

19 one prior page, page 7 in particular, you have a number of

20 footnotes. Those footnotes provide to the reader, and anyone

21 who wants to check, the source of the summary or assertion you

22 are making in the text of your prepared statement; is that

23 correct?

24   A. Correct, that's why I reference those.

25   Q. Thank you. Please proceed.

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1   A.   As other witnesses have noted, other factors such as

2   drought, tighter environmental restrictions, and competition

3   for land from lucrative alternative uses, including tree nuts,

4   have put pressure on the industry that is not related to milk

5   prices. These forces represent evolving structural changes in

6   California's agricultural economy that have made alternative

7   land uses increasingly attractive relative to dairy. If these

8   structural changes continue on their present course, California

9   milk supplies for manufacturing uses will move from surplus to

10   deficit, thereby forcing plants to pay above California minimum

11   prices to the extent supply and demand allow.

12   Q.   Stop right there for a second. You use a phrase from

13   surplus to deficit. My experience in the Federal Milk Order

14   program may use the term deficit in a way different from your

15   use of the word deficit. You don't mean deficit to mean short

16   of milk for a fluid use; is that correct?

17   A.   That is absolutely correct.

18   Q.   It's deficit to total demand for milk for fluid, as

19   well as soft product, as well as cheese, and the class, or the

20   dry, butter powder uses, correct?

21   A.   Yeah.

22   Q.   Thank you. Please continue.

23   A.   Looking for my spot again.

24   Q.   This can happen.

25   A.   This can happen more efficiently and effectively

4396

1 without regulatory involvement in minimum milk prices.

2 However, there is a danger in setting mandatory minimum milk

3 prices too high, resulting in above-market clearing prices. In

4 such instances, processing capacity can be needlessly shut

5 down, resulting in loss of investment, lost jobs for plant

6 workers, and lost avenues for dairymen to orderly and

7 economically market their milk. Furthermore, producer

8 consolidation in California is not unique and reflective of the

9 rest of the U.S. and the world. (Figures 2 and 3).

10   Q. And let's go to Exhibit 99 and look at Figures 2 and 3.

11 Just briefly indicate what you have put there and how it

12 illustrates your point.

13   A. Figure 2 shows the change in number of licensed dairies

14 from 2010 to 2014. And I chose these two years because this is

15 when the Cooperatives have been arguing that the whey values

16 first started becoming a problem. So in all fairness, I chose

17 those two years as a reference of comparison. And it shows

18 that the California rate of consolidation is actually lower

19 than that of the average U.S.

20   Q. As well as lower than the traditionally high milk

21 production states of Minnesota and Wisconsin?

22   A. Correct.

23   Q. Thank you. Please continue -- and you look at Figure 3

24 also. What do you have in Figure 3 there?

25   A. Thanks for reminding me.

4397

1   Q.   Something else. Something we haven't seen before.

2   Reference to "EU" whatever that is, and "NZ" whatever that is.

3   A.   So producer consolidation is not unique around the

4   world. I received this chart from IDFA, and it has the number

5   of dairy farms changing from 1992 to 2000 to 2009. Looking at

6   the U.S., the EU 15, so the European Union.

7   Q.   European is only 15 countries?

8   A.   Yes, 15 countries. CA, which Canada; and New Zealand.

9   Q.   NZ is New Zealand.

10 A.   And looking at this consolidation in the U.S. is

11 comparable to the EU and Canada.

12 Q.   Okay. New Zealand hasn't, as a trend, apparently

13 hasn't lost, doesn't have the rate of dairy farm decline much

14 lower, correct?

15 A.   Correct.

16 Q.   Okay. And New Zealand, to your knowledge, doesn't have

17 any form of regulated classified minimum and pool prices; is

18 that correct?

19 A.   To my knowledge, they have nothing that regulates

20 minimum prices or pooling.

21 Q.   Thank you. Please proceed with your text.

22 A.   California's percent change in the number of licensed

23 dairies, 2010 to 2014 ranks below the U.S. average, compared to

24 other major dairy states, Texas, Minnesota, and Wisconsin, all

25 had required rates of consolidation (loss in percentage of

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farms), despite all having growing milk production. According

to CDFA 2014 fourth quarter cost of production feedback data,

similar type dairies (dairies in the North and South Valley fat

test less than 3.9 percent non-organic), show cost of

production varies by about $4.00 per hundredweight, with some

dairies even beyond this range. Consolidation can therefore be

expected to continue.

     Q. And you have referenced in there, after the word

"beyond this range" to Figure 4, which is on the second page of

Exhibit 99. Can you explain to us what is shown on those dots

on Figure 4?

     A. Sure. Cost of production varies between California

producers. Total cost of production for conventional farms in

CDFA's cost of production feedback, Q 4-2014. And this shows

how the total cost of production varies between an unweighted

average, based on the dairies that I filtered from the total

database. And I would add that this is very similar to what

Dr. Schiek presented recently. The only difference is, I

believe, his showed margin. This is just focusing on cost of

production. But it is just to illustrate that dairies do have

different costs of production. And as long as that is true,

consolidation would likely continue.

     Q. So the factual information in Figure 4 came from CDFA,

and the actual figure was your assembly and presentation of

that information, correct?

4399

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 1     A.  Yes.  I wanted to have an apples to apples comparison

 2  and not include things like organic cost of production or very

 3  high component cost of production, which would skew the

 4  numbers.

 5     Q.  Thank you.  Please continue.

 6      JUDGE CLIFTON:  Mr. English?

 7      MR. ENGLISH:  I just wondered, I know I'm going into the

 8  afternoon, but it is now five after one, and I wondered whether

 9  we should take lunch now.

10      JUDGE CLIFTON:  Okay.  We have a consensus and the answer

11  is yes.  All right.  So, thank you, Mr. Vetne.  So do you

12  remember where we are?

13      MR. VETNE:  We are at page 9, we're going to start with

14  CDFA, minimum prices.

15      JUDGE CLIFTON:  Very good.  So it's 1:05, please be back

16  and ready to go at 2:20.  2:20.

17      (Whereupon, the lunch recess was taken.)

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1   FRIDAY, OCTOBER 23, 2015 - - AFTERNOON SESSION

         2   JUDGE CLIFTON: We're back on record at 2:21. Mr. Vetne?

         3   MR. VETNE: John Vetne for Hilmar Cheese. And Mr. DeJong

         4   is still on the witness stand, and he's going to continue with

         5   his prepared testimony, starting at the bottom of page 9.

         6   JUDGE CLIFTON: All right. So we're in Exhibit 98.

         7   MR. DeJONG: CDFA minimum prices are only minimums

         8   Like in FMMO's, California minimum milk prices are only

         9   minimums, so Cooperatives have the ability to ask for higher

        10   prices from their proprietary plant customers. Cooperative

        11   members can also expect cooperative plants to enhance producer

        12   revenue if the plants are making market-orientated and well

        13   managed -- market-orientated and well managed. Though the

        14   three cooperatives who are part of Proposal 1 report themselves

        15   to control over 75 percent of the state's milk supply, they

        16   have not disclosed premiums charged for milk or identified any

        17   disorderly marketing practice that inhibits their ability to

        18   bargain for higher prices. In the last CDFA hearing in June of

        19   2015, Pete Garbani, VP of Member Relations for Land O'Lakes,

        20   when asked by CDFA what prevents them from getting what they

        21   think 4b milk is worth, he appropriately replied, "supply and

        22   demand".

        23   Cheese processors already do pay premiums for milk over

        24   4b minimums, with HCC paying over 120 million over the last

        25   several years. These premiums are primarily --

                                    4401

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1   JUDGE CLIFTON: Just to be clear, that's 120 million what?

2   MR. DeJONG: Dollars. I need to re-train myself.

3   These premiums are primarily based upon high component

4 and high quality factors and are adjusted for market-based

5 factors, including prices of CME block cheddar, lactose prices,

6 and whey protein prices. These premiums are made to give our

7 producers a milk price more representative of the value they

8 create and actual marketplace for our products. However, since

9 CDFA has temporarily changed the 4b formula, our premiums for

10 high component, high quality milk, have gone down, while

11 minimum prices for low test milk have gone up. In addition,

12 the new temporary 4b minimum prices that are more linked to dry

13 whey prices, have damaged returns for our ingredient business

14 and further disconnected our regulated milk price (and milk

15 premiums) from our actual markets.

16   If cheese milk yielded significantly higher returns, as

17 proponents of Proposal 1 have inferred, it is natural to assume

18 cooperatives would have invested more in cheese processing

19 compared to powder. However, the opposite has been true.

20 Cooperatives today only have a very small footprint in

21 California cheese making.

22   The following is a list of cooperative plant closings,

23 all were cheese plants:

24   DFA Cheddar Cheese Plant, Petaluma - closed 5/2004.

25   Q. 5 meaning the month of May?

4402

1   A.   Correct.

2   Q.   Please continue.

3   A.   Golden Cheese (DFA), Corona - closed December, 2007.

4   Land O'Lakes Cheese Plant, Tulare - closed September,

5   2010.

6   Below is a list of cooperative plant openings or major

7   expansions, all were butter/powder plants:

8   DFA butter/powder plant expansion, Hughson - 2008,

9   that's a town in California.

10   CDI new butter/powder plant, Visalia -- also in

11   California -- opened 2008.

12   Land O'Lakes butter/powder plant expansion, Tulare,

13   California, 2009.

14   CDI's butter/powder plant expansion, Visalia 2015.

15   Producer risk management is effective in California.

16   Only using Class III is an outdated approach

17   Proponents of Proposal 1 have suggested risk management

18   for California producers is ineffective because of the

19   difference between the California 4b price and the FMMO

20   Class III. There are several issues with this claim.

21   First, although using Class III features to hedge

22   producer blend prices in California is not ideal, compared to

23   other top dairy states, California is neither the best nor the

24   worst. Figure 5 shows the difference between the maximum and

25   minimum prices versus Class III from 2010 through 2015, half

4403

1 one each year, (2015 is weighted by half) then averaged for

2 these years.

3   Q. Stop there and go to Figure 5, which is in the third

4 double-sided page of Exhibit 99. Explain what's there, please.

5   A. Okay. The California NASS all milk price basis range

6 compared to Class III is comparable to other major dairy states

7 in 2010 through 2015, half one. Calculated, well, this is

8 dollars per hundredweight, it is measuring difference. It is

9 calculated by taking the spread between the minimum and maximum

10 range between the NASS all milk price for each state, compared

11 to Class III for each year, 2010 to 2015, half one.

12   Q. Half one meaning half a year?

13   A. Yes.

14   Q. Thank you.

15   A. Then taking those max spreads for each year and

16 averaging them. For example, if in the year 2010, the state's

17 all milk price had a minimum of a 25 cent per hundredweight

18 spread --

19   Q. That would be negative 25 cents per hundredweight?

20   A. Negative 25 cents per hundredweight spread to Class III

21 in one month, and a maximum price spread of $1 per

22 hundredweight to Class III in another month, for the year the

23 max range in the spread would be $1.25 per hundredweight. This

24 is done for every year in average with one half weighting for

25 2015 because it is a half year.

4404

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1   And I would add that this analysis was inspired by a

 2   hearing in, a CDFA hearing in May 31, 2012, and if you go to

 3   CDFA's hearing matrix for that date, there is an exhibit by

 4   Kraft Foods that has the Excel file. And what I did was I took

 5   his Excel file, or one presented by Mike McCully for Kraft

 6   Foods, and I updated it with the latest numbers. And I also,

 7   in later figures, I added a Class III and IV element using

 8   exactly the same analysis.

 9   JUDGE CLIFTON: May I get Mike McCully's name spelled,

10   please?

11   MR. VETNE: M-C, C-U-L-L-Y.

12   JUDGE CLIFTON: C-U-L-L-Y?

13   MR. VETNE: Yes.

14   JUDGE CLIFTON: Good. Thank you both.

15   MR. VETNE: Please proceed.

16   JUDGE CLIFTON: Now, I assume THAT the half year for 2015

17   was January through June; is that correct?

18   MR. DeJONG: That is correct.

19   JUDGE CLIFTON: Okay.

20   MR. DeJONG: In this example, California ranks fourth of

21   ten in basis risk (ten being the most risk). Using another

22   measurement, Figure 6 shows that average spread between the

23   California all milk price and the Class III over the same time

24   period. In this measurement, California ranks first among the

25   top, other top ten dairy states.

                                 4405

1   Q. So we have Figure 6. What's shown there, which is the

2   fourth page of the two-sided pages in Exhibit 99?

3   A. Average price spread versus Class III shows California

4   ranks first 2010 to 2015, half one. This is, again, measured

5   in dollars per hundredweight. It is calculated by taking the

6   spread between the all milk price between Class III for each

7   month from 2010 to 2015, half one, then averaging the spread.

8   Q. Okay. And this came from, source data from?

9   A. This was also, the original, the basis of the original

10   analysis was also from Mike McCully's spreadsheet in the CDFA

11   exhibit.

12   Q. Okay. He inspired this exhibit but you carried it

13   forward?

14   A. Yes, I updated it and also added a Class IV element

15   later on.

16   Q. Thank you. Please proceed.

17   A. A third measurement (Figure 7) is to take the R-squared

18   coefficient between California mailbox prices and Class III

19   over the same time period, which is meant to show how well

20   California producer prices correlate to Class III.

21   Q. Okay. So we have a Figure 7, again, on page 4 of

22   Exhibit 99. What's there?

23   A. California mailbox prices correlate to Class III,

24   similar to other major dairy regions. R-squared coefficient

25   January 2010 to May 2015. So this essentially compared the

4406

1 mailbox prices over this time period to the Class III price,

2 using an R-squared correlation. And I did this for other dairy

3 states as well. And the R-squared coefficient is measured on

4 the Y axis, vertical axis.

5   Q. Okay. Tell us a little bit more. Is better correlated

6 higher number?

7   A. Yes, the higher the correlation, the less risk there is

8 for producers to hedge. So California doesn't rank the worst,

9 but it is not the best either.

10   Q. Okay. Please proceed.

11   A. In this measurement, California ranked 6 of 9 (Idaho

12 mailbox price was not available for comparison of top dairy

13 states).

14   The other major issue in claiming Class III features

15 are not effective in California is that cheese milk by itself,

16 is not representative of the entire California milk pool. In

17 rough terms, the California Milk Pool is represented by half

18 cheese milk and half butter/powder milk. As such, it would

19 make sense to manage risk for producers in a way that reflects

20 utilization of the milk pool. Even DFA recognizes this, and

21 offers their producers comprehensive tools that can target a

22 blend price for a specific milk shed. DFA's website states,

23 and I quote:

24   "DFA Risk Management offers the Target Blend

25   pricing product to allow members to manage the

4407

1   risk associated with the blend price received on

2   your milk check. The target blend pricing product

3   goes a step further than traditional Class III

4   pricing products by utilizing a calculated blend

5   price.

6

7   With the Target Blend pricing product, DFA members

8   have the ability to contract beyond the

9   traditional Class III or IV pricing product,

10   reducing the price swings associated with major

11   changes in the blend price basis."

12   End quote. This sort of approach offered by DFA is

13 also available for producers at third party risk management

14 firms, and may even be available by other cooperatives who are

15 part of Proposal 1.

16   The effectiveness of adding a butter/powder influence

17 into the California producer risk management equation is

18 illustrated by adding a Class IV futures contract in

19 combination with Class III. Using the same analysis as above,

20 but using a 50/50 blend of Class III and IV, shows California's

21 producer risk management effectiveness is substantially

22 improved over using only Class III. (Figures 8 through 10).

23   Q. So I guess you will have to go through a few figures in

24 Exhibit 99, that would be on pages 5 and 6.

25   A. Again, just to preface this. This is, it's using the

4408

1 same methodology as the previous three charts. The only

2 difference is that instead of comparing strictly to Class III,

3 it is using a 50/50 blend of Class III and Class IV.

4   I will start reading the heading now. The California

5 NASS all milk price basis range compared to a Class III and

6 Class IV 50/50 split, compares favorably to other major dairy

7 states, 2010 through 2015, half one. Calculated by taking the

8 spread between the minimum and maximum price range between the

9 NASS all milk price for each state compared to a Class III and

10 IV 50/50 split for each year, 2010 to 2015, half one, then

11 taking those max spreads for each year and averaging them. For

12 example, if in the year 2010 the state's all milk price had a

13 minimum of negative 25 cents per hundredweight spread to a

14 Class III and Class IV 50/50 split in one month, and a maximum

15 price right at $1 per hundredweight to a Class III and IV 50/50

16 split in another month, for the year that max range in the

17 spread would be $1.25 per hundredweight. This is done for

18 every year and averaged, with one half weighting for 2015,

19 because it is a half year.

20   Q. So could you explain for me in dollars per

21 hundredweight, does a lower number or a higher number show

22 better tracking or --

23   A. The lower number shows better tracking.

24   Q. Okay. And therefore, presumably less risk involved

25 in --

4409

1   A. Correct.

2   Q. Thank you. And let's see. You also referred to the

3   next two figures, 9 and 10. What's there?

4   A. Figure 9, average price spread versus Class III, I

5   believe this should say, Class III and IV, 50/50 split. I

6   believe I forgot to include that.

7   Q. May the exhibit be corrected to show that, your Honor?

8   JUDGE CLIFTON: Yes. So, Ms. Elliott, we are in

9   Exhibit 99, page 6, at the top, and we're looking at Figure 9,

10   and we're changing the title of that figure. And I'm going to

11   ask please, that Mr. DeJong tell us again how it should read

12   slowly, so that we can copy it into our copies.

13   MR. VETNE: Let me suggest, your Honor, that it should read

14   exactly as the figure below that, Class III and IV, 50/50

15   split. Is that correct, Mr. DeJong?

16   MR. DeJONG: Correct.

17   JUDGE CLIFTON: That's very helpful. Thank you. That's

18   what we'll do. Do you see, Ms. Elliott, where we're copying

19   from just below on Figure 10?

20   MS. ELLIOTT: So we're getting rid of the entire 10?

21   JUDGE CLIFTON: No, no, no. So when you look at Figure 9,

22   go to the word Class Roman III, and then look just below that

23   in Figure 10 to the number, class Roman numeral III, and add

24   what you see from Figure 10 into figure 9's title.

25   MS. ELLIOTT: Okay.

4410

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1   JUDGE CLIFTON: So you will be adding and IV, 50/50 split.

2   MR. VETNE: Exactly.

3   JUDGE CLIFTON: And then we're good.

4   MR. VETNE: Thank you.

5   JUDGE CLIFTON: Mr. Vetne, thank you. It's so much easier

6   if you see it.

7   BY MR. VETNE:

8   Q. Okay. So you were describing?

9   A. Yes. So again, this is measured in dollars per

10 hundredweight. It is calculated by taking the spread between

11 the all milk price between Class III, and also again, should

12 say and IV, 50/50 split, so exactly the same mistake.

13   Q. Okay. And the asterisk?

14   A. Yes.

15   Q. Underneath that table, the smaller print should show

16 exactly the same words. And Roman numeral IV, 50/50 split.

17   JUDGE CLIFTON: So you are there, Ms. Elliott?

18   MS. ELLIOTT: Yes.

19   JUDGE CLIFTON: Good.

20   MR. DeJONG: For each month from 2010 to 2015, half one,

21 then averaging the spread.

22 BY MR. VETNE:

23   Q. And Figure 10?

24   A. Again, this is using the similar methodology where we

25 talked about the R-squared coefficient before. Figure 10,

4411

1 mailbox price correlation to a Class III and IV 50/50 split

2 shows California risk management can be effective by adding a

3 butter/powder element. Not surprisingly, Wisconsin shows a

4 weaker correlation using Class IV, meaning that Class III only

5 is more appropriate R-squared coefficient, January 2010 to May

6 2015, and the higher the R-squared coefficient suggests the

7 closer the relationship between the two numbers.

8   Q. Thank you. Please continue with your text.

9   JUDGE CLIFTON: Before he does, I need to just figure this

10 out. So in order to see why it's different for Wisconsin, I

11 just look at both Figure 9 and Figure 10?

12   MR. DeJONG: I would compare Figure 10 to Figure 7.

13   JUDGE CLIFTON: Okay. Good. Thank you.

14 BY MR. VETNE:

15   Q. Figure 7, Mr. DeJong, shows how well using just

16 Class III --

17   A. Yes.

18   Q. -- hedging, and it works in Minnesota and Wisconsin.

19 And California doesn't perform quite as well --

20   A. Yes.

21   Q. -- just Class III. But if you add a Class IV element,

22 equally proportioned, California does really well, but it

23 doesn't work in Minnesota and Wisconsin because there's not

24 much Class IV products being produced there.

25   A. Exactly. You want to use the risk management tools to

4412

1 target a blend price. In Wisconsin, there's a lot of cheese

2 milk, so it makes sense. You want to use a factor that more

3 closely represents that.

4   California is more of a blend of butter and powder,

5 therefore, you would want to diversify your risk strategy by

6 adding some risk management tools for butter and powder.

7   Q. Okay. Continue with the prepared testimony after your

8 reference to Figures 8 through 10.

9   A. Besides Class III and IV, risk management professionals

10 can also use cheese, butter, and powder features to target

11 mailbox prices, as DFA is likely doing with their risk

12 management programs. Open interest in these future contracts

13 has increased dramatically in recent years (Figures 11 and 12).

14   Q. And what is shown, then, on the Figure 11 and 12 on

15 page 7 of Exhibit 99? What is shown in those line graphs?

16   A. Open interests in butter and NFDM futures has expanded

17 rapidly in recent years, offering producers more effective risk

18 management options. And this graph is Y axis, vertical axis is

19 measuring open interest per day for these contracts.

20   Q. What the heck does "open interest" mean? People will

21 want to know that.

22   A. Open interest is the amount of contracts that are

23 available in a given day for a given product. For example, if

24 we look at butter open interest for the very last time in this

25 chart, so the very end in 2015, it shows approximately 6500

4413

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1 open contracts. The more contracts there are, the better.

2 Because buyers can get in and out of the market and add

3 liquidity, meaning the risk management tools, more effective.

4   Q. Would it be useful to characterize increasing open

5 interest, that is increasing activity in the market, as a

6 market that is more robust?

7   A. It is more robust and it can work better for producers

8 the more open interest there is.

9   Q. Producers or anybody?

10   A. Or anybody, manufacturers.

11   Q. Yes. Thank you.

12   A. And then I believe I mentioned Figure 12 also.

13   Q. Yes.

14   A. Open interest in cheddar cheese futures has also

15 expanded rapidly, thereby increasing California producers risk

16 management effectiveness. Again, this shows the same thing,

17 open interest per day, so the number of contracts that are

18 available in a day, or on the market, this also shows an

19 overall rapid increase in and out of liquidity in the market.

20   Q. Please continue.

21   A. Furthermore, one can argue that mandatory pooling makes

22 basis risk harder for producers to manage, compared to a plant

23 that is not pooled. For example, in Texas, we can develop any

24 risk management mechanism we want, as long as the producer

25 agrees to it. In effect, this means the producer has zero

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1 basis risk versus the risk management mechanism. Milk pools

2 introduce more variables into their price that are harder to

3 manage. Mandatory pooling will further limit risk management

4 opportunities.

5   Producers in Federal Milk Marketing Orders do get paid

6 below minimums

7   In order for milk to clear the market and find willing

8 buyers, milk does sell below minimum prices in FMMO's. This

9 typically happens as a result of distressed milk being sold on

10 the spot market, cooperatives reblending losses to their

11 producers(as happened to Darigold in the Pacific Northwest in

12 2014), milk that is contracted under class between non-pooled

13 and another entity that is pooled, and non-pool plants buying

14 milk directly from producers below class. Looking just at spot

15 loads from November 2014 through May 2015 in the Dairy Market

16 News, showed that the 28 editions during this time, there were

17 25 editions that had examples where milk was sold under class.

18 The amounts varied from barely under class to $10 per

19 hundredweight under. In our Dalhart, Texas facility, we have

20 purchased many such distressed spot loads, and have done so to

21 help clear the market of milk.

22   Besides spot leads purchased under class at our Texas

23 plant, billions of pounds of other milk has been purchased

24 under Class III in the last twelve months alone. This is

25 simply an economic reality of the milk shed. Despite having

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1   lower energy costs, labor costs, development and regulatory

2   costs, and receiving the Southwest market higher net cheese

3   price due to closer proximity to demand centers compared to

4   Hilmar, California, the Class III milk price is still not

5   always the market clearing price in the Southwest. Combined

6   with an outdated Class III make allowance, received cheese

7   plants that have been below the NDPSR price --

8   Q. Let me have you start that again, please, that

9   sentence.

10   A. Okay.

11   Combined with an outdated Class III make allowance,

12 received cheese prices that have been below the NDPSR price,

13 and the "other solids" value that is often disconnected and

14 overvalues whey relative what we recover at our modern whey

15 protein facility, it is difficult to consistently pay a

16 Class III price at our Texas plant.

17   Q. Let's stop there for just one second. Remind us please

18 what NDPSR stands for?

19   A. I believe it stands for the National Dairy Price Sales

20 Report.

21   Q. National Dairy Product Sales Report. Okay.

22   And when you used the word received cheese prices, you

23 mean the price paid to the manufacturer, cheese maker for

24 cheese. Is that what you are referring to?

25   A. Yes.

4416

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1   Q. And on the previous page at the bottom the word you

2   used, the phrase economic reality of the milk shed. Is the

3   milk shed there that were you referring to the milk shed for

4   the Southwest marketing area?

5   A. Yes. The Southwest, Texas panhandle area.

6   Q. Okay. And in particular, that portion of the Southwest

7   marketing area that is Western, Western Texas and extending

8   into New Mexico a bit?

9   A. Yes.

10   Q. Okay. I don't know if anybody has done this yet, your

11   Honor, so I'm going to have the witness do it -- what does milk

12   shed mean?

13   A. I would describe it as a geographical area where

14   there's a concentration of milk production and it is separated

15   by some distance between another area of concentrated milk

16   production.

17   Q. So we know what watershed means. When it rains, water

18   flows downhill towards a river and empties into the ocean. It

19   means something similar that milk flows from someplace towards

20   someplace?

21   A. Yes, that would be another way to say it.

22   Q. Okay. Thank you.

23   A. Further, our field staff regularly monitors past

24   producer pay prices of competitors in the region, including

25   cooperatives, and finds these are also often under Class III.

4417

Still, our Texas facility is extremely competitive with other

players in the region. Most producers in the Texas panhandle

are now better off, not worse off, that HCC has invested there,

and has been an underlying reason behind the rapid growth of

the entire milk shed -- referring to the Texas panhandle, and

that general area.

JUDGE CLIFTON: Could you help me understand that?

California milk is coming in to compete with that Texas milk,

but the Texas producers are better off? And how does that

work?

MR. DeJONG: Well, I would say that the Texas producers are

better off because we have invested there, we have created

demand for milk, and as evidenced by the rapid increase in milk

production, they must have a financial incentive to produce

more milk.

MR. VETNE: Okay. Your Honor, let me take that one step

further.

BY MR. VETNE:

Q. Judge Clifton understood that you implied that there

was some competition or interrelationship of milk produced in

California with milk produced in Texas. That's not what you

meant, was it?

A. No.

Q. No. You were describing how the Southwest market

functions in relation to production, pricing, pooling,

4418

1 depooling, decisions --

2   A. Yes.

3   Q. -- in order to make a comparison with how it might or

4 should function in California if we do or don't do something

5 similar there; is that correct?

6   A. Yes.

7   Q. Thank you.

8   JUDGE CLIFTON: Okay. But I remember that these loads left

9 California when there were lots of milk in California and they

10 went to this Texas plant. So that's why I asked my question.

11   MR. VETNE: Got it. Okay. He did say that.

12   JUDGE CLIFTON: And he did answer that. I'm perfectly

13 content. Now I understand. All this milk needs a processor.

14   MR. VETNE: Yes.

15   JUDGE CLIFTON: Okay.

16   MR. DeJONG: Yes.

17   JUDGE CLIFTON: Thank you.

18   MR. DeJONG: In addition to our own experience in Texas,

19 there is also strong evidence of milk selling below class in

20 New Mexico and Michigan. (Figure 13).

21   JUDGE CLIFTON: Below class what?

22   MR. DeJONG: Below Class III in New Mexico and Michigan

23 BY MR. VETNE:

24   Q. And below Class III, you mean Class III prices.

25   A. Yes.

4419

1   Q. As in the federally regulated Class III price.

2   A. Exactly.

3   Q. Okay. Let's go to Figure 13 and tell us what you have

4 there.

5   A. Figure 13, producers in FMMO's are being paid.

6   Q. Insert the word paid, please.

7   JUDGE CLIFTON: All right. So Ms. Elliott, we're on page 8

8 of Exhibit 99, we're in the title of Figure 13, and we're just

9 inserting the word "paid" after the word "being" in the top

10 line.

11   MS. ELLIOTT: Okay.

12   JUDGE CLIFTON: And Mr. DeJong, if you'd just read again

13 the title of Figure 13.

14   MR. DeJONG: Producers in FMMO's are being paid under

15 Class III. NASS state all milk prices versus Federal Order

16 blend prices show negative premiums. Note: Calculated by

17 (NASS all milk price -(Class III at test + PPD 2)). Milk test

18 data for Texas and New Mexico was state specific. Michigan

19 used Order 33 test data. PPD prices for TX, meaning Texas, and

20 NM, New Mexico, used the Dallas location. MI used the -- I'm

21 not sure I can pronounce this -- Cuyahoga, Ohio location. And

22 this graph is measured in dollars per hundredweight, and is

23 meant to show in each of these three states, an estimate of

24 milk premiums relative to Class III. And it shows that these

25 premiums have gone down and are under Class III in these

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1 instances.

2   Q. And in this -- in this table you used the PPD, producer

3 price differential, as was announced by the Market

4 Administrator?

5   A. Correct.

6   Q. You understand that in those, in both of those markets,

7 there is an adjustment of the producer price differential

8 moving away from the market, usually to the north, but in Texas

9 moving towards the west, that you did not incorporate in this

10 exhibit.

11   A. Yes, that is correct.

12   Q. And so if somebody desires to get a more precise

13 relationship of milk prices to blend prices to see if and when

14 there were underpayments, they would have to make that

15 additional adjustment, correct?

16   A. Correct.

17   Q. Thank you. Please proceed.

18   A. In this analysis, the Class III price was calculated at

19 test for each of the three states. The PPD for the respective

20 FMMO was added to this amount, then compared this result to the

21 state's NASS all milk price. The results show Michigan, Texas,

22 and New Mexico producers are being paid below Class III. These

23 lower prices are not surprising given the Southwest's large

24 supply of milk and dairy products relative local demand, and

25 Michigan's rapid escalation in milk production without

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corresponding processing investment. If there were no longer

enough plants to take all of the milk in California because of

non-market clearing prices, you would be much worse than in

Michigan because the discounts would be deeper and all plants

would be accountable to the pool for the pool class price. In

this sense, Michigan would have a competing advantage over a

California FMMO with mandatory pooling.

Next section, Make allowances in Class III and IV are

inadequate to cover manufacturing costs, as the last available

audited CDFA manufacturing costs show

Current FMMO make allowances in the Class III and IV

formulas were implemented in October 2008, over seven years

ago. Furthermore, the data used in these allowances came from

a 2007 hearing, which relied on even older data. As such, the

current data is getting close to a decade old and new cost

studies are needed in the formula. HCC costs for cheese and

our expected costs for milk powder are not covered by these

make allowances, while dry whey is difficult to judge because

we make whey protein and lactose. Nonetheless, our lactose and

whey protein costs have gone up considerably over this time.

Compounding the problem, if a California FMMO is

created that has mandatory pooling, the need for updated make

allowances, and ones that are updated often is imperative

because there is no way for HCC milk to clear the market below

minimum cost. Other FMMO's can live with outdated make

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allowances because milk can clear the market outside the pool.

Realized manufacturer product prices are often higher (such as

the Upper Midwest which allows more wiggle room by adjusting

premiums), and cooperatives can simply reblend losses to

producers. The fact that the vast majority of cheese is being

produced by proprietary processors in California means this

regulated milk revenue cannot be reblend.

Q. I hate to interrupt at this point, but I think I must.

The second line down on page 18, well, the first line to

second, "nonetheless, our lactose and whey protein costs have

gone up considerably over this period of time." The costs that

you are referring to there is not your cost of acquisition of

lactose and whey protein, but the manufacturing, or make costs

that you incur to make the product; is that correct?

A. Yes, that's correct, I was inferring the make costs to

make those products --

Q. Please continue.

A. -- also manufacturing.

Q. Sorry to interrupt.

JUDGE CLIFTON: Shall we, just so that it's clear from the

exhibit, shall we just add after the word cost in parentheses,

something?

MR. VETNE: I think, Mr. DeJong, if we insert the word

"manufacturing" between the word "protein" and "costs", so our

lactose and whey protein manufacturing costs have gone up.

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1   MR. DeJONG: Yes, that would be appropriate.

2   JUDGE CLIFTON: Good. All right. So just one word, page

3 18, manufacturing.

4   MR. VETNE: Thank you.

5   JUDGE CLIFTON: Thank you.

6   MR. DeJONG: The ability of Darigold and Tillamook

7 operating primarily in Order 124 to navigate Class III and IV

8 is enhanced by their ability to reblend losses to member

9 producers, their smaller cheese production size versus their

10 population compared to California (we estimate Oregon and

11 Washington have a combined cheese production per capita of

12 38 pounds, compared to 63 pounds in California), their heavy

13 use of the Cooperatives Working Together program to subside

14 exports, which California proprietary cheese plants cannot use,

15 and that Darigold has historically depooled to help recover

16 losses from their Class III and Class IV plants. In 2004, a

17 witness for the Northwest Dairy Association (the cooperative

18 which owns Darigold) testified that their depooling helped

19 offset marketplace losses. This was summarized in the Federal

20 Register Final Decision on September 13, 2006

21 [71 Fed. Reg. 54136, 54140 (September 13, 2006) (Final

22 Decision, Upper Midwest Marketing Order.)].

23 BY MR. VETNE:

24   Q. Now you can proceed with the quote.

25   A. "The witness explained that NDA -- meaning Northwest

1 Dairy Association -- engages the practice of depooling in other

2 Federal Orders as a way to recover costs in their manufacturing

3 of butter and cheese because the Class III and IV make

4 allowances do not adequately reflect such costs. The NDA

5 witness was of the opinion that the practice of depooling

6 should be addressed at a national hearing that would also

7 consider other issues such as the make allowances used in.

8 Class III and IV price formulas." End quote.

9   Darigold and its sister cooperative, Tillamook,

10 continue to depool Class III milk when revenue opportunities

11 arise. Attached are pages 1 and 7 from the Pacific Northwest

12 Order's compilation of statistical material for 2014, showing

13 the pool status of cooperative plants, by month, and Class III

14 producer milk, by month.

15   Q. Let me stop you there. The text of your statement

16 refers to an attachment. But, in fact, you, we have marked as

17 Exhibit 100 the document that you are referring to; is that

18 correct?

19   A. That is correct.

20   Q. So, your Honor, I'm not sure what to do here, but for

21 the reader of the prepared text, it may be useful to substitute

22 for the word "attached" and insert instead "in Exhibit 100" at

23 the bottom of page 19 of the text. That way whichever version

24 you are looking at, whether it is the transcript or the

25 exhibit, there will be a clear connection.

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 1        JUDGE CLIFTON:  Yes.  So what you are saying, Mr. Vetne, is

 2   we strike the word "attached" and we insert "in Exhibit 100".

 3        MR. VETNE:  Yes.

 4        JUDGE CLIFTON:  Okay.  Thank you, Ms. Elliott.  This is at

 5   the bottom of page 19, and I'd ask that Mr. DeJong read that

 6   sentence for us.

 7   BY MR. VETNE:

 8        Q.  With the modification we have introduced, the last

 9   sentence of page 19.

10        A.  It is in parentheses, correct?

11        Q.  In that's substitute the word.  Let me just read it and

12   I'll ask you if that's correct.

13        A.  Okay.

14        Q.  The way it has been changed, is the this acceptable to

15   you?  In Exhibit 100 are pages 1 and 7 from the Pacific

16   Northwest Orders Compilation of Statistical Material for 2014?

17        A.  That is correct.

18        Q.  Okay.  Please continue with your written prepared

19   statement, but I think that explains the references and why we

20   included it.

21        A.  Note on page 1 that in February, October, and November,

22   the cooperative plants shown as Tillamook, Darigold

23   (Sunnyside), and Columbia River (a Tillamook plant) were not on

24   the pool plant list.  For April, two of the plants were off the

25   list.  On page 7, Class III pounds of producer milk for
```

1 February, April, October and November dropped substantially.

2   Q. Okay. So now we can have a, have you made that

3 observation? Let's confirm we can all find those observations

4 on the exhibit.

5   So Exhibit 100 does not contain all of the statistical

6 material that was published by the Market Administrator, but

7 only contains the cover page and pages that are numbered in

8 that document, pages 1 and 7, correct?

9   A. Correct.

10   Q. And the Table 1 of the Market Administrator's

11 publication includes a list of plants including on page 1 a

12 list of Cooperative pool manufacturing plants at the bottom,

13 correct?

14   A. Correct.

15   Q. And the Market Administrator on the right hand part of

16 that, indicates by one alphabetical letter, the months in which

17 they were pooled, J for January, F for February, M for March,

18 etcetera, and there was no monthly insert for the month of

19 February for three of those plants that you have referenced?

20   A. That's correct.

21   Q. And there's no letter inserted for the month of April

22 for two of those plants that you have referenced.

23   A. Correct.

24   Q. And there's no letter inserted, the O is not inserted

25 for three of those plants for the month of October?

1   A.   Correct.

2   Q.   And the same thing, the letter N was not inserted for

3   the month of November for those, each of those three

4   cooperative pool plants, correct?

5   A.   Correct.

6   Q.   And then if you go to the following page of your

7   exhibit, which would be page 7 of the Market Administrator's

8   publication, not surprisingly it shows a significant drop in

9   the volume of Class III producer milk and Class III butterfat

10   pounds in the months of February, April, October, and November,

11   of 2014.

12   A.   Those correspond, correct.

13   Q.   Okay. Please continue with your text.

14   A.   There are no milk order limitations -- is that where I

15   left off?

16   Q.   Yes, it is.

17   A.   There are no milk order limitations in the Pacific

18   Northwest as there are in the Upper Midwest, to limit the

19   volume milk that may be depooled and repooled from month to

20   month. Depooling also occurs in the Southwest and Arizona

21   markets where there are no depooling/repooling limits, as well

22   as in the Upper Midwest, Central and Mideast markets where

23   pooling restrictions apply.

24   JUDGE CLIFTON: Where what kind of restrictions apply?

25   MR. DeJONG: Repooling restrictions apply.

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1   JUDGE CLIFTON: Thank you.

2   MR. DeJONG: The markets where depooling occurred during

3 2014 are identified on page 2 of the Southwest Marketing

4 Administrator's report, published in April 2015, which is also

5 attached.

6   MR. VETNE: Again, we have probably a correction here

7 rather than attached, would you be comfortable, Mr. DeJong with

8 striking the word "attached" and inserting the words "which is

9 in Exhibit 101"?

10   MR. DeJONG: Yes.

11   MR. VETNE: Your Honor, is that acceptable?

12   JUDGE CLIFTON: Yeah. Do we need the word "in" or is it

13 Exhibit 101?

14   MR. VETNE: In, in would be fine.

15   JUDGE CLIFTON: Pardon?

16   MR. VETNE: We don't need the word "which". "April 2015,

17 in Exhibit 101" would be just fine.

18   JUDGE CLIFTON: Okay. I wondered if you needed "in". Is

19 Exhibit 101 entirely the report?

20   MR. VETNE: It is not the entire report. It is the cover

21 page and page 2 of that report, and contains the table of

22 interest for the purposes of this testimony.

23   JUDGE CLIFTON: So the report is not Exhibit 101. 101 is

24 just part of the report?

25   MR. VETNE: That is correct. It is the first 2 pages of a

1 longer report.

 2   JUDGE CLIFTON: All right. On page 2 of the report. I

 3 kind of think we should say, after April 2015, "a portion of

 4 which."

 5   MR. VETNE: No, page 2 is fully contained in Exhibit 101

 6 but the report is not.

 7   JUDGE CLIFTON: How about we say this.

 8   MR. VETNE: Showing --

 9   JUDGE CLIFTON: How about we end the sentence with "April

10 2015" period. And then say "see Exhibit 101".

11   MR. VETNE: That would be just wonderful.

12   JUDGE CLIFTON: Would that work?

13   MR. VETNE: Yes, that would work.

14   JUDGE CLIFTON: Let's do that. Ms. Elliott, do you see on

15 page 20 of Exhibit 98?

16   MS. ELLIOTT: Yes.

17   JUDGE CLIFTON: You see April 2015, which is near the end

18 of the next to the last paragraph?

19   MS. ELLIOTT: Yes.

20   JUDGE CLIFTON: All right. End that with a period, and

21 then strike "which is also attached".

22   MS. ELLIOTT: Okay.

23   JUDGE CLIFTON: And instead put "see Exhibit 101".

24   MS. ELLIOTT: Okay.

25   JUDGE CLIFTON: Okay. Thank you, Mr. Vetne.

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1 BY MR. VETNE:

2   Q. And if you will look on page -- well, continue reading

3 the rest of that paragraph, the one more sentence.

4   A. An estimated -- and I have another correction, instead

5 of 5.92 billion, change it to 11.4 billion pounds of milk were

6 depooled in all markets.

7   Q. So make that correction, your Honor?

8   JUDGE CLIFTON: Why don't we have Mr. DeJong show me how to

9 see that on Exhibit 101, if it is there?

10   MR. VETNE: Okay. Let's turn to page 2 of the report,

11 which is in Exhibit 101 -- Mr. DeJong, if you will follow with

12 me -- in the second column which is headed Order Number, there

13 are 1, 2, 3, 4, 5, 6, places where there is reference to a

14 footnote 3. Do you see that? On the second column, Upper

15 Midwest 030, footnote 3.

16   MR. DeJONG: Yes, I see that.

17   MR. VETNE: Okay. So you go down to footnote 3 and then

18 there's some text. Due to a disadvantageous relationship

19 between intra order class prices and the location of just

20 statistical uniform price in these markets, handlers elected

21 not to pool an estimated 11.390 billion pounds of milk that

22 normally would have been associated with these markets.

23   The table prepared by the Market Administrator relates

24 to annual for 2014, and that's what the 11.39 billion pounds

25 refers to. And that explains the correction in your text,

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1 rounding it up to 11.4 billion pounds; is that correct?

2   MR. DeJONG: That is correct.

3   MR. VETNE: Okay. And for those who might look further

4 down, the number 5.92 billion pounds was erroneously transposed

5 from this footnote, but that was 2013 data, not 2014. So you

6 have the depooled pounds for the system for both 2013 and 2014

7 in this one footnote.

8   JUDGE CLIFTON: Do you agree, Mr. DeJong?

9   MR. DeJONG: I agree.

10   JUDGE CLIFTON: Do you really want to -- let's see. Okay.

11 So you want to carry the decimal point, do you want to carry it

12 the same number of places that -- well, tell me, Mr. DeJong.

13 Looking at this 11.390 billion pounds, tell me what you want to

14 preserve.

15   MR. DeJONG: I think 11.4 proves the point well enough,

16 rounding to one decimal place.

17   JUDGE CLIFTON: Yeah, but you know, when you are talking

18 billion pounds of milk, rounding up like that is a lot. Why

19 don't we just use the precise number that comes from this?

20   MR. VETNE: Is that acceptable?

21   MR. DeJONG: I'm amenable to that.

22   JUDGE CLIFTON: Okay. Good. All right. So, Ms. Elliott,

23 on page 20 you are locking at 5.92, please strike that, and

24 write instead 11.390.

25   MS. ELLIOTT: Okay.

1   JUDGE CLIFTON: 11.390. Thank you. And then, Mr. DeJong,

2 will you read that sentence?

3   MR. DeJONG: Sure. An estimated 11.390 billion pounds were

4 depooled in all markets.

5 BY MR. VETNE:

6   Q. Please continue.

7   A. CDI has testified in the recent past on the need for

8 updated and accurate make allowances in the CDFA class prices,

9 despite these prices already being inherently lower than FMMO

10 class prices. In 2011, Dr. Eric Erba, representing CDI filed a

11 post-hearing brief to CDFA that read:

12   "At the forefront of the information available is

13   the manufacturing cost studies conducted by the

14   Department, which have been the cornerstone of

15   California's milk pricing foundation. The cost

16   studies have provided unparalleled credibility to

17   the milk pricing system in California, and their

18   importance to the milk pricing process is

19   unquestioned."

20   Again, in 2014, Dr. Eric Erba, representing CDI, filed

21 a petition for a hearing to update the make allowance. He

22 stated in this petition that, quote:

23   "As the largest butter and milk powder

24   manufacturer in the state, we cannot simply ignore

25   the fact that our processing costs are higher than

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1   the manufacturing cost allowances in the Class 4a

2   formula might suggest. We cannot overlook the

3   implications that the static manufacturing cost

4   allowance have on all California 4a and 4b

5   operations."

6   Given the mandatory pooling requirements of the current

7 California Order and Proposal 1, it makes the need for milk

8 prices to be set at market clearing prices all the more

9 imperative.

10   Cheddar cheese make allowance

11   CDFA audited manufacturing costs for 2013 show the

12 weighted average cost to produce one pound of cheddar cheese

13 was 22.91 cents versus 20.03 cents used in the Class III

14 formula. Plugging this difference into the Class III formula

15 represents 28 cents per hundredweight in manufacturing costs

16 that are not included in the current make allowance.

17   Dry whey make allowance

18   For dry whey, the last CDFA audited manufacturing cost

19 in 2006 showed a 30.99 per pound --

20 Q. 30.99 what?

21 A. Cents.

22 Q. Thank you.

23 A. 30.99 cents per pound for California plants, compared

24 to 19.91 cents per pound in the Class III formula. This

25 discrepancy represents a spread of 65 cents per hundredweight.

If dry whey is continued to be used as a barometer for whey

values (which does not track well with WPC and lactose), at a

minimum, a new dry whey cost study should be issued to find the

actual cost. From HCC'S experience manufacturing WPC 80, which

is our largest whey protein product by volume, our

manufacturing costs have increased nearly 40 percent per pound

from 2006 to 2014. Our other whey product manufacturing costs

have also had large cost increases.

NFDM make allowance

CDFA audited manufacturing costs for 2013 show the

weighted average cost to manufacture NFDM to be 19.97 cents per

pound compared to 16.78 cents per pound in FMMO Class IV. This

discrepancy represents 27 cents per hundredweight in the

Class IV formula that is not covered in the most recent CDFA

cost study. Analysis of our new milk powder plant suggests our

costs will be at least as high as the latest CDFA cost study.

Product prices in Class III and IV use higher levels

than the market value received by California plants

The Federal law which authorizes milk orders in Section

"(18) Milk Prices", instructs the Secretary to fix milk prices

that he finds which will reflect "economic conditions which

reflect market supply and demand for milk and its products in

the marketing area to which the contemplated [Marketing Order]

relates." (7 U.S.C. Section 608c (18)). So estimation of the

value of cheese, whey products, butter, and NFDM in California

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1 is unavoidable to fix reasonable prices for milk used to

2 produce these products.

3   Cheddar cheese prices

4   Based on HCC's past experience, the total spread

5 between our actual 40 block sales --

6 Q. 40 what block?

7 A. 40 pound block sales reported to NDPSR versus the NDPSR

8 block/barrel weighted average price, averaged 4 cents per pound

9 lower from 2010 through 2013. In the Class III formula, this

10 represents a discrepancy of about 39 cents per hundredweight.

11 Furthermore, comparing our NDPSR cheddar prices to the

12 Minnesota-Wisconsin cheddar price series, which was

13 discontinued in 2012, our prices often averaged 6 cents per

14 pound and 9 cents per pound lower from 2008 into 2012. This

15 difference in cheese sales prices between regions is a function

16 of the cost to move excess California cheese to population

17 centers further east. California produces roughly twice as

18 much cheese as it consumes, based on a 2014 population value of

19 30.8 million, ERS estimates --

20   JUDGE CLIFTON: What is the number there, the population

21 value?

22   MR. DeJONG: Population value of 30.8 million people.

23   JUDGE CLIFTON: Okay. Read it one more time.

24   MR. DeJONG: California produces roughly twice as much

25 cheese as it consumes, based on the 2014 population value of

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1   38.8 million people.

2   JUDGE CLIFTON: 38.8. Okay. Thank you.

3   MR. DeJONG: ERS estimates of cheese consumption per capita

4   (34.2 pounds per year, 2014) and NASS California cheese

5   production. A large majority of our cheese leaves the state

6   for marketing to large population centers to the east. Higher

7   transportation costs from California to market lowers the net

8   value of cheese HCC sells relative to CME and the NDPR prices.

9   This market reality has long been reflected in CDFA's Class 4b

10   prices for cheese, FOB point of California origin.

11   Furthermore, the historic 4 cents per pound price

12   difference between HCC and the NDPSR is actually understated,

13   because our cheddar cheese is made to very demanding

14   specifications, which increases its price and cost to

15   manufacture versus regular cheddar. For example, our cheddar

16   can be converted to a variety of difficult to process shapes,

17   including ultra-thin slices, which require higher protein

18   levels with lower moisture than typical cheddar, which

19   increases our milk cost and manufacturing cost. Our customers

20   pay more for these quality attributes, and this higher price is

21   captured by the NDPSR, but the Class III formula does not

22   account for these higher costs and lower yielding cheddar

23   makes.

24   NFDM prices

25   For NFDM, CDFA audited data shows the California

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1 weighted average price, or CWAP --

2 Q. Let me stop you there. What does CWAP stand for?

3 A. It stands for the California Weighted Average Price.

4 Q. Okay. Thank you.

5 A. -- averaged 4.67 cents less per pound less than the

6 NDPSR weighted price from 2010 to mid-August 2015. This

7 represents a 40 cent per hundredweight overstatement of value

8 in the Class IV formula if it were applied to California NFDM.

9 Specifications for the types of NFDM reported to CWAP and NDPSR

10 are similar, but not exact. For example, CWAP reports Extra

11 Grade and Grade A low, medium, and high heat, while NDPSR

12 excludes high heat from the reporting. Also, CWAP uses fixed

13 price contract sales within 150 days from first shipment date,

14 while the NDPSR limits this to less than 30 days.

15 Butter prices.

16 For butter, current CDFA pricing formulas currently

17 have a 4.85 cents FOB adjuster below CME spot butter to reflect

18 the value of commodity butter made in California plants. This

19 has been supported by the Cooperatives CDI and CDFA hearings.

20 Relative to NDPSR butter, this implies a 1.8 cent per pound

21 discount, 2010 to mid-August, 2015. In the Class IV price,

22 this amounts to 8 cents per hundredweight below the current

23 formula.

24 The most recent manufacturing plant cost studies and

25 use of CDFA's and HCC's best estimate of product prices for

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1 values California manufacturers actually receive, reveals a

2 difference of $1.31 per hundredweight for Class III and $.75

3 per hundredweight for Class IV. However, for Class III, the

4 dry whey make allowance needs to be updated with a new cost

5 study, or better yet, replaced with a new "other solids"

6 valuation factor that more accurately discovers whey value for

7 cheese plants and allows for a return on investment.

8   Increasing minimum prices will make us less competitive

9 in an already difficult global marketplace

10   The California market for milk and its products is

11 uniquely dependent upon product exports. In recent years,

12 nearly 30 percent of California milk solids have been exported,

13 which means California processors and producers are highly

14 dependent upon maintaining global competitiveness. HCC is no

15 exception. Last year, HCC exported nearly ten percent of its

16 cheese, 50 percent of its whey protein concentrates, and 95

17 percent of its lactose. HCC plans to export all of the SMP

18 produced at of Turlock plant that is nearing completion.

19 However, mandatory U.S.-centric milk pricing makes being a

20 consistent global supplier problematic.

21   For the last 18 months, international prices of cheese

22 and milk powder have not tracked favorably with U.S. prices.

23 The NDPSR cheddar cheese price has averaged higher than the DMN

24 (Dairy Market News) Oceania cheddar price 14 of the past 18

25 months, while the NDPSR NFDM prices have been higher than

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1   Global Dairy Trade (GDT) SMP prices 13 of the last 18 months.

2   And I have those in Figure 14 and 15.

3   Q. So let's look at Figures 14 and 15, which are on pages

4   8 to 9 of the double-sided document, Exhibit 99. Figure 14

5   first.

6   A. Figure 14. NDPSR cheese, which drives milk cost, is

7   often out of line with key international benchmarks, making

8   being a consistent U.S. supplier difficult.

9   And this is dollars per pound for U.S. NDPSR cheddar,

10   Oceania cheddar, and I also included German Gouda, which is

11   originally reported in Euros per kilogram, and it was adjusted

12   for currency and moved into pounds.

13   So the Oceania cheddar price is an important benchmark

14   in Asian markets, and it's a price that is often reflective of

15   competitive conditions in those markets for cheese. And I also

16   included the German Gouda price, because it is also a benchmark

17   in some markets where European prices compete.

18   And as you can see in recent history, the Oceania

19   cheddar and German Gouda price have been higher, I mean, have

20   been lower than the U.S. NDPSR price, which means that our milk

21   costs overestimate the value we can get for cheese exports.

22   Q. Let me ask you a little bit about that. So that there

23   is a source for price for Oceania cheddar and there is a source

24   for a price for German Gouda.

25   A. Yes.

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1   Q.   What does that price represent? Is it a price FOB

2   shipping point, price mid-ocean, price delivered? Do we know?

3   A.   I believe these are FOB prices.

4   Q.   Thank you. FOB, point of origin?

5   A.   Yes, point of origin.

6   Q.   Thank you. Please continue.

7   A.   Figure 15. NDPSR NFDM, which drives milk costs, can be

8   out of line with international SMP, making being a consistent

9   U.S. supplier difficult. And this is also measured in dollars

10 per pound. And it has the NDPSR nonfat dry milk price, and

11 also on the orange line, the GDT SMP average price. And as you

12 can see, over this time period the relationship has not tracked

13 very well. In some periods, it's been -- it's been beneficial

14 making SMP, and other times it has not. But because milk

15 prices are driven by the NDPSR price, it makes staying in this

16 market more difficult than if we could set our own milk price

17 or have flexibility to set our own milk price, relative the

18 value we actually receive for our products.

19   Q.   And if you could look at Figure 15 on -- I'm inferring

20 that the difficulty created by NDPSR pricing or nonfat dry

21 milk, has been acute for the last year and a half in

22 particular; is that correct?

23   A.   Yes, that is correct.

24   Q.   Thank you. Please continue.

25   JUDGE CLIFTON: You know, I'm trying to remember all these

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initials. So I'm guessing that SMP has to do something with

powder.

    MR. DeJONG: Yes.

    JUDGE CLIFTON: But I can't remember SMP and I don't know

GDT.

    MR. DeJONG: Okay. GDT is Global Dairy Trade. It's a

global auction where milk powder is sold, and it is probably

the most common export price benchmark for skim milk powder.

SMP means skim milk powder.

BY MR. VETNE:

    Q. And GDT, Global Dairy Trade, a reference to that is

made on page 27.

    A. Correct.

    Q. And refresh us, because a few days or weeks maybe, have

passed since we defined SMP in this record, it means skim milk

powder?

    A. It is skim milk powder. And it is similar to nonfat

dry milk, but not exact.

    Q. Not exactly meaning it is protein standardized?

    A. It's protein standardized, and it's made specifically

for international customers who are accustomed to using that

product?

    Q. So you can't take U.S., nonfat dry milk, produced for

domestic purposes and put it in a package and market it as SMP?

    A. Correct, you cannot do that.

1   Q.   Okay. Thank you. Please continue.

2   A.   These are key export price benchmarks, especially for

3   Asian markets. When U.S. regulated milk prices are set too

4   high and are mandatory, we have less wiggle room to withstand

5   global market downturns and be a consistent supplier to our

6   international customers. Margins for cheese, whey products,

7   milk powders are measured in mils and pennies, so even small

8   changes in mandatory milk prices can have a huge impact to our

9   business.

10   Q.   Let me -- let me take you back just for a second, so we

11   can look at, go back to Figure 15.

12   A.   Yes.

13   Q.   So look at, I'm not sure if it is September, November

14   of 2014, it looks like there is a spread of 20 or 30 cents per

15   pound; is that correct?

16   A.   That is correct.

17   Q.   And 20 or 30 cents per pound of a milk powder product

18   translates into what per hundredweight the way we usually think

19   of milk?

20   A.   You would typically, I would get an estimate by, it

21   would be roughly the price difference times 8.7. So 30 cents

22   times 8.7 would give you an approximate value per

23   hundredweight.

24   Q.   So 8.7, I round it up to 9. 9 times 30, $2.70 per

25   hundredweight?

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1   A. Correct.

2   Q. Please continue.

3   A. Even under the California Order, HCC export cheese

4 sales are down significantly year-to-date to avoid losses due

5 to U.S.-centric mandatory minimum milk prices. Sales of some

6 cheese export products have decreased by 50 percent year over

7 year, from 2014 to 2015. And by that I mean, our cheese sales

8 exports.

9   Q. Our meaning, Hilmar?

10   A. Yeah, Hilmar Cheese.

11   Q. Thank you.

12   A. To maintain a level of market share in today's market,

13 we are selling some cheese and lactose below cost. Further,

14 when our powder plant is running, we anticipate we may have to

15 switch from SMP to NFDM as a response to regulated prices.

16 This would reduce international sales and increase domestic

17 sales of NFDM, with the consequence of putting downward

18 pressure in NFDM in Class IV prices.

19   This is problematic because our global customers are

20 seeking a consistent supply from HCC, but mandatory

21 U.S.-centric milk pricing can force us out of the market and

22 make regaining that business difficult. If market clearing

23 milk prices are applied in California, we can more readily

24 maintain a consistent supply -- I believe that should be

25 supplier. I'm sorry, no, it is right. I misread it. I'll

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1 re-read the sentence.

2   If market clearing milk prices are applied in

3 California, we can more readily remain a consistent supplier

4 and simply blend gains or losses from exports relative domestic

5 prices into our producer milk price. In all other major dairy

6 exporting nations, processors are not regulated by mandatory

7 minimum prices, and instead, blend their actual product revenue

8 into their milk price, while allowing for local competitive

9 conditions. This is even true in other FMMO's where depooling

10 is allowed. Mandatory Class III and IV prices that are not

11 market clearing in California will create an export competitive

12 disadvantage for HCC compared to our domestic and international

13 competitors.

14   Class III "other solids" value is not good measure to

15 value whey stream.

16   The product revenue we generate from our plants in

17 Hilmar, California, and Dalhart, Texas, is not well correlated

18 to dry whey, and at times, greatly overvalues the whey stream

19 relative cheese milk prices. Figure 16 shows, on a protein

20 adjusted basis, that dry whey is a poor indicator of WPC

21 values.

22   Q. Let's go to Figure 16, which is on page 9 of

23 Exhibit 99, what's shown there?

24   A. Figure 16. NDPSR dry whey (adjusted from 12 percent to

25 34 percent protein) does not correlate well to WPC prices.

1   And in this graph I show the prices of dry whey being

2   adjusted from 12 percent to 34 percent using a mathematical

3   formula. And comparing that to the Dairy Market News WPC 34

4   mostly price. And the grayish area at the bottom, it shows the

5   difference, which in some months can vary as much as 50 cents

6   per pound.

7   Q. The label that you have given for the gray area in the

8   bottom of Figure 16, dry whey protein adjusted premium over

9   WPC-34. The word premium as used there, is that, are you

10   intended to convey there, that this is the price you are

11   charged for dry whey, that you can't recover from the WPC

12   market?

13   A. I believe that would be correct.

14   Q. Okay. So it's not premium as in terms of producer milk

15   premiums that are competitive but paid voluntarily, this is

16   essentially an overcharge?

17   A. Yes, correct. I perhaps could have more articulately

18   stated that.

19   Q. Thank you. That's fine. Please continue.

20   A. If anything, NFDM now tracks closer to WPC 34, but

21   again, this is not a strong correlation. The price spread

22   between protein adjusted dry whey and WPC 34 has reached as

23   high as 50 cents per pound, making the WPC production, making

24   WPC production risky relative to regulated milk costs. Since

25   milk powder prices have crashed this year, WPC prices have also

1 dropped substantially, while dry whey prices lagged behind.

2 Also, comparing dry whey to lactose (Figure 17), also shows a

3 disconnect.

4   Q. Okay. What's in Figure 17?

5   A. NDPSR dry whey (not protein adjusted), so we're just

6 looking at the raw number, does not correlate well to lactose

7 prices. Again, this is measured in dollars per pound, with the

8 gray area showing, and I use that word again premium, but it is

9 really showing the price difference, the premium dry, the price

10 difference between dry whey and lactose.

11   Q. So the portion of the shaded line above -- above zero,

12 which is maybe January 2014 forward, looks to me like the

13 formula charges you more than you recover for the lactose

14 portion, if you compared the two?

15   A. Yes, the dry whey price is higher than the lactose.

16   Q. And the shaded area going down actually shows a gain?

17   A. Yes.

18   Q. So it performs well sometimes, but it doesn't correlate

19 well.

20   A. Yes.

21   Q. And it is the lack of correlation that is a problem.

22   A. The lack of correlation is a problem.

23   Q. And let's refresh our memory as to what lactose, dry

24 lactose, is. When you make cheese, you bring in milk, put it

25 in a cheese maker, and you have a byproduct of liquid that

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1 comes out, it is called whey.

2   A. Correct.

3   Q. So whey is a byproduct of cheese making. And then you

4 take that whey over to, in Hilmar's case, to a whey plant and

5 your target is to make valuable commercial, the most valuable

6 commercial product, which you believe to be a whey protein

7 concentrate?

8   A. Yes.

9   Q. Correct? So you make valuable whey protein

10 concentrate, and then you produce an additional byproduct,

11 which is lactose containing little or no protein, correct?

12   A. Correct. It also has the minerals removed from it,

13 too, making it pure lactose, which is a large part of the cost

14 of making lactose.

15   Q. Okay. And this refers to the whey, that additional

16 byproduct component after it's gone through the whey plant?

17   A. Yes.

18   Q. So it is the second tier byproduct after you make

19 cheese, essentially?

20   A. Yes.

21   Q. Thank you. And it is also the least valuable of the

22 three products in the manufacturing chain, cheese being higher

23 value, whey protein concentrates next tier, and then lactose

24 being the least valuable, and often times costly to actually

25 make?

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1   A. Yes, it could be very costly to make. And I'll read my

2   next sentence.

3   Q. Thank you.

4   A. Currently, lactose prices are below cost of production,

5   whereas the Class III "other solids" value still implies that

6   value is being created.

7   Q. Okay. In the Class III price there is a component for

8   protein. Protein, in your manufacture, is a high value

9   component of milk that is contained both in cheese and in whey

10 protein concentrate?

11   A. Correct.

12   Q. And "other solids" is basically what's left, that would

13 be lactose, or the non-protein portion of cheese.

14   A. I would say most of the volume in the whey stream is

15 lactose.

16   Q. Okay. And let's, just to make sure we're not losing

17 part of the equation here. Some of the other solids in raw

18 milk coming to your plant are actually contained in the cheese,

19 cheese containing protein, fat, and moisture, correct?

20   A. Yes.

21   Q. And the less moisture that is contained in the cheese,

22 the more moisture comes out in the whey stream; is that

23 correct?

24   A. Yes.

25   Q. And also, the less moisture contained in the cheese,

1 the more that cheese costs to make and the less yield you get

2 per unit of incoming milk?

3   A.   Correct.

4   Q.   Okay. Got it. Thank you.

5   A.   An argument that Hilmar Cheese Company can simply raise

6 customer prices or move into specialty products to overcome

7 higher FMMO class prices, is not accurate.

8   HCC would have extremely limited ability to raise

9 customer prices to overcome higher mandatory FMMO Class III and

10 IV pricing for several reasons. First, the argument

11 irrationally suggests that HCC is leaving money on the table by

12 selling our products at prices less than the supply/demand

13 equilibrium. Even without the possibility of higher milk

14 costs, HCC is always evaluating supply and demand for our

15 products to see if there is more value to capture in the

16 marketplace. One cooperative witness suggested cheese plants

17 could simply switch to making higher valued specialty cheeses.

18 This is flawed reasoning because it fails to 1) greatly higher

19 make costs for specialty cheeses, 2) impact on specialty cheese

20 prices if these markets are flooded with additional product,

21 3) the large investment required to retool and redesign plants

22 to make these products, and 4) massive -- should be, the

23 massive marketing endeavor needed to bring these products to

24 consumers.

25   Additionally, almost all of HCC's primary products are

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1 sold into commodity markets, including virtually all of our

2 cheese, lactose, most of the volume of whey proteins, and soon

3 our milk powders. Given the national and global scale of these

4 commodity markets, there is very limited, if any, room to

5 increase customer prices without losing substantial market

6 share. For example, if a cheese price increase is pushed

7 through to buyers that is not competitive with market

8 conditions, the product will simply not clear the market and

9 will remain in HCC's cold storage. Unsold product that has

10 already been paid for through milk and manufacturing costs is

11 lost revenue, as the cost of storage. In the last 2015 CDFA

12 hearing, Pacific Cheese Company, a large buyer of California

13 hard cheeses, warned what could happen if costs from higher

14 mandatory milk prices are pushed through in the form of higher

15 cheese prices.

16   They stated, quote:

17   "If a large increase in the regulated milk price

18   paid by cheese makers were to translate into an

19   increase in the price we have to pay to procure

20   cheese, and we see that as a likely outcome of at

21   least one of the proposals (the producer trade

22   association proposal) under consideration at

23   today's hearing, the competitive nature of our

24   business would cause us to, in all likelihood,

25   reduce our purchases of California cheese and

1   increase purchases from high quality suppliers in

2   other states."

3   Furthermore, any price --

4   Q. Excuse me, after the words other state, that concludes

5 the quote?

6   A. Yes, that concludes the quote.

7   Q. Thank you.

8   A. Furthermore, any price increases for cheddar cheese

9 (our largest cheese product segment), NFDM, butter, or dry whey

10 meeting NDPSR reporting specifications, will feed back into the

11 milk price and reverse some of the additional revenue gains.

12 One of the best analogies to this, is a dog chasing its tail.

13   Finally, if HCC tried to throttle back production to

14 meet lower demand due to increasing our product prices, this

15 would result in large curtailment of our milk volume

16 requirements, causing inefficient and costly movement of milk

17 for producers, and less revenue to pay dairy farmers. Even

18 cutting one quarter of our Hilmar milk volume would cost three

19 percent of California's milk to have to find a new home. This

20 would cause widespread chaos and disorderly marketing. At the

21 same time, by HCC throttling back capacity, we would be running

22 our plants at less than economies of scale, which increases

23 fixed costs per unit of product and ultimately leads to more

24 business losses. Our Hilmar facility is designed to be

25 cost-effective at very large volumes. And combining that with

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1 a Class III make allowance that does not cover our current

2 cost, would be extremely damaging.

3   And I think the pages got out of order here, maybe, or

4 no, this is right. Sorry, this is right.

5   Conclusion: HCC expects that the current FMMO Class

6 III and IV pricing, if applied to a California Marketing Order,

7 combined with mandatory pooling, will result in extended

8 periods of net losses to California manufacturing plants, and

9 depressed prices for California milk producers

10   Based on internal analysis of Proposal 1, HCC believes

11 our Hilmar site's total business cost will exceed total revenue

12 for extended periods of time, despite being extremely

13 efficient, large scaled, and having some of the most advanced

14 whey processing in the industry. This is a result of Class III

15 and IV prices using unachievable commodity prices in California

16 for commodity cheeses, milk powder and butterfat, while also

17 using unachievable manufacturing costs for cheese, milk powder,

18 and whey products. Further, by increasing minimum prices, it

19 becomes much more difficult to manage margins for products that

20 do not track the commodities used in Class III and IV,

21 including whey protein, lactose, export cheese, and export skim

22 milk powder. HCC would not be able to pass on losses to

23 producers like a cooperative or depool to offset non-market

24 clearing milk prices like our counterparts in other FMMO

25 markets. And in turn, the processing environment in California

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1 would become very toxic.

2   The market valuation of plant processing assets would

3 plummet as they would have inadequate income to justify their

4 value. Banks would be on alert as to the value of the

5 processing customer's collateral, and may degrade their debt

6 ratings that result in higher interest rates or cut off

7 processing customers all together. Given that one of my prior

8 duties at Rabobank was to help evaluate industry and company

9 specific market risks, including for California milk

10 processors, I would be raising red flags to the credit decision

11 makers who closely watch the outcome of this hearing.

12   Q. Let me stop you for a second. You formerly had,

13 formerly had responsibilities to Rabobank, which included

14 watching the dairy industry. When you say "I would be raising

15 red flags", are you essentially putting yourself in the

16 position of somebody that worked for the banks, and "if I were

17 still in the banking business, here's what I would tell my

18 employers"?

19   A. Exactly.

20   Q. Okay. Thank you.

21   A. If there was a damaging recommended decision, and if

22 there was unlikely to be forthcoming, to be a forthcoming

23 policy remedy, HCC would be forced to idle some or all of its

24 cheese, whey, and powder capacity to stem losses. With the HCC

25 Hilmar plant being the largest cheese plant in the world, and

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1 processing roughly 12 percent of all of California's milk

2 supply, statewide disorderly marketing would be expected to

3 ensue. This course of action would not be taken lightly and

4 would be seen as a last resort. However, unlike cooperatives,

5 HCC cannot run plant assets at a loss or even low rates of

6 return indefinitely. All losses would be focused on our

7 dairymen owners, as there is no alternative to escape the

8 minimum prices.

9   Q. Mr. DeJong, look at the last sentence for a second.

10 The losses focused on our dairymen, you mean the dairy farmers

11 that own Hilmar Cheese Company?

12   A. Yes, the dairy farmers that own Hilmar.

13   Q. Which are roughly 12 percent of the supply to Hilmar,

14 correct?

15   A. I believe it was 18 percent.

16   Q. 18 percent of the supply. And your counterparts,

17 cooperative associations running manufacturing plants, would be

18 able to blend their losses to all producers supplying that

19 plant, as well as other plants, in all -- in the case of DFA,

20 for example, that loss could conceivably be blended across its

21 membership from California to New York?

22   A. I would agree with that.

23   Q. Thank you. Do you have any more comments you want to

24 make before I ask Judge Clifton if we can take a break?

25   A. I think I'm ready for a break.

1   Q. Please.

2   JUDGE CLIFTON: I agree. That was intense and very well

3 presented. I congratulate both of you.

4   So remind me when we get back we want to deal with

5 admitting them into evidence. But for now, we're going to take

6 a break. Please be back and ready to go at 4:10. That gives

7 you 16 minutes. 4:10.

8   (Whereupon, a break was taken.)

9   JUDGE CLIFTON: We're back on record at 4:10. Mr. Vetne?

10 BY MR. VETNE:

11   Q. Thank you. Mr. DeJong, I want to take you back just

12 for a moment to page 30 of your testimony, first full paragraph

13 beginning on that page. Say, additionally, almost all of

14 Hilmar cheese company's primary products are sold into

15 commodity markets, including virtually all of your cheese,

16 etcetera.

17   I understand that there are companies that specialize

18 in buying bulk commodity cheddar cheese and converting those

19 into consumer-type of food service type packaging and uses such

20 as shredding, cutting, wrapping, etcetera?

21   A. That is accurate.

22   Q. Is that the commodity markets to which you refer here

23 in your testimony?

24   A. Yes, for cheese.

25   Q. Okay. And when Hilmar, for example, sells to a

1 converter, we'll use that term, is that all right with you?

2   A. Yes.

3   Q. A cheese converter, it competes with all other makers

4 of commodity cheddar cheese in the country for bulk cheese

5 delivered to the same converter location, correct?

6   A. Correct.

7   Q. If you offered your cheese at a penny or two more than

8 they could get cheese from another location, you wouldn't have

9 a customer, would you?

10   A. Correct.

11   Q. Okay. And it's those transactions of bulk cheese in

12 the case of Hilmar, between Hilmar and a converter, that Hilmar

13 reports for NDPSR price survey purposes; is that correct?

14   A. Correct.

15   Q. Okay. And that would similarly be true of others that

16 compete for sales to those same buyers of bulk cheese, correct?

17   A. Correct.

18   Q. Okay. So the NDPSR prices are the aggregate of the

19 transactions to converters, and there are several places around

20 the country?

21   A. I would say that's accurate.

22   Q. Okay. Would you help us identify who they are? Who

23 are the the major converters in the United States and where do

24 they have conversion plants to which you may market your

25 product?

1   A.   Okay. So some of the companies that would take hard

2 cheeses similar to Hilmar Cheese, one company would be Pacific

3 Cheese, as I mentioned in my testimony.

4   Q.   Okay. And where do they have converting plants?

5   A.   They have converting plants in Reno, Nevada and

6 Amarillo, Texas. And also, Great Lakes Cheese.

7   Q.   Where do they have plants?

8   A.   Bellmore, Utah.

9   Q.   That's quite aways from the Great Lakes, isn't it?

10   A.   And they have several in Wisconsin, including in Wasau,

11 Seymore, La Crosse, and Plymouth. And also I believe they have

12 one in, Hiram, Ohio.

13   Q.   Hiram?

14   A.   H-I-R-A-M.

15   Q.   Okay.

16   A.   And Manchester, Tennessee.

17   Q.   Okay. Let's go back and do the spelling thing. Wausau

18 is spelled how?

19   A.   W-A-U-S-A-U.

20   Q.   And Seymour?

21   A.   S-E-Y-M-O-U-R.

22   Q.   And La Crosse is the same spelling as in the game?

23   A.   I believe so, L-A C-R-O-S-S-E.

24   Q.   And Plymouth, that's in Plymouth Colony in

25 Massachusetts?

1   A. Yes, P-L-Y-M-O-U-T-H.

2   Q. Okay. And anywhere else?

3   A. Yeah, as I mentioned, Hiram, Ohio, H-I-R-A-M; and

4 Manchester, Tennessee, M-A-N-C-H-E-S-T-O-R.

5   Q. ER or OR. It's ER, I think.

6   A. ER, sorry, bad handwriting.

7   JUDGE CLIFTON: Were all of those Great Lakes?

8   MR. DeJONG: Yes, those were all Great Lakes, the ones I

9 was just listing.

10 BY MR. VETNE:

11   Q. So far we have gone through a list of two purchasing

12 entities. Are there other entities?

13   A. Yes. Schreiber.

14   Q. Yes.

15   A. That is in, they have converter plants in Logan, Utah;

16 Missouri, I believe they have them in multiple locations, I'm

17 not sure of the exact town names; and Plymouth, Wisconsin also.

18   Q. Schreiber in Plymouth not in Green Bay?

19   A. They might have one there, too, if I missed that, I

20 don't have -- I must have missed.

21   Q. I'm sorry, Schreiber?

22   A. Yes, Schreiber.

23   Q. My recollection is that Schreiber has converter plants

24 in Green Bay, Richland Center, and West Bend, Wisconsin.

25   A. I believe that's correct. I believe I forgot to

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 1  include those.  That's right.

 2      Q.  Okay.

 3      A.  Then also -- should I keep naming?

 4       JUDGE CLIFTON:  Spell Schreiber for me.

 5       MR. VETNE:  S-C-H-R-E-I-B-E-R.

 6       JUDGE CLIFTON:  Thank you.

 7       MR. DeJONG:  Next company, Sargento, Plymouth, Wisconsin.

 8  BY MR. VETNE:

 9      Q.  Okay.  Is that maybe the location you confused with

10  Schreiber?

11      A.  It might be.

12      Q.  Okay.  And do they have any other plants that you are

13  aware of, converter plants?

14      A.  No.

15      Q.  Okay.

16      A.  Marathon; Medford, Wisconsin.

17      Q.  M-E-D-F-O-R-D; is that correct?

18      A.  Correct.  And Mountain Home, Idaho.

19      Q.  Okay.  So we have, one, two, three, four, five, six,

20  let's see -- Pacific Cheese, Great Lakes Cheese, anybody else?

21      A.  If there's any others, I forgot to get them on my list.

22       JUDGE CLIFTON:  Okay.  I need a spelling for Sargento.

23       MR. DeJONG:  Okay.  S-A-R-G-E-N-T-O.

24       JUDGE CLIFTON:  Thank you.

25  BY MR. VETNE:
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1   Q. And then of course, Mr. Dryer indicated that Saputo, at

2 least at one or more of their locations, receives bulk

3 commodity cheese. Are you aware if your cheddar cheese is one

4 of those products they buy in bulk?

5   A. I don't believe so, if they do I think it would be a

6 very small number.

7   Q. Okay. Would it be correct to say, well, you did say,

8 that almost all of your primary products are sold into

9 commodity markets. So for cheddar cheese, almost all of your

10 cheddar cheese would be sold in commodity markets, converters

11 such as these?

12   A. Yeah, I would say virtually all, with the exception of

13 exports.

14   Q. Okay. So if this also constitutes the markets for

15 other makers of commodity cheddar, bulk cheddar cheese with

16 which you compete, the NDPSR survey, would it in effect, be the

17 product of price negotiations between many food makers and

18 maybe seven, possibly eight converters that buy bulk commodity

19 cheddar cheese?

20   A. That sounds about right.

21   Q. Okay. That's all the direct I have, your Honor. I

22 would move admission of Exhibits 98, 99, 100, and 101.

23   JUDGE CLIFTON: Does anyone wish to ask Mr. DeJong any

24 questions about Exhibit 98 to determine whether you have any

25 objection? No one. Is there any objection to the admission

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1 into evidence of Exhibit 98? There is none. Exhibit 98 is

2 admitted into evidence.

3   (Thereafter, Exhibit Number 98 was

4   received into evidence.)

5   JUDGE CLIFTON: With regard to Exhibit 99. Does anyone

6 wish to ask Mr. DeJong any questions about it before

7 determining whether you object? No one. Is there any

8 objection to the admission into evidence of Exhibit 99? There

9 is none. Exhibit 99 is admitted into evidence.

10   (Thereafter, Exhibit Number 99 was

11   received into evidence.)

12   JUDGE CLIFTON: Exhibit 100. Does anyone wish to ask

13 Mr. DeJong questions about it before determining whether you

14 have objection? No one. Is there any objection to the

15 admission into evidence of Exhibit 100? There is none.

16 Exhibit 100 is admitted into evidence.

17   (Thereafter, Exhibit Number 100 was

18   received into evidence.)

19   JUDGE CLIFTON: Does anyone wish to question Mr. DeJong

20 about Exhibit 101? No one. Is there any objection to

21 Exhibit 101 being admitted into evidence? There are none.

22 Exhibit 101 is admitted into evidence.

23   (Thereafter, Exhibit Number 101 was

24   received into evidence.)

25   MR. VETNE: Thank you, your Honor. Mr. DeJong is available

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1 for cross the remainder of the day.

2   JUDGE CLIFTON: I do want to save a little time at the end

3 for announcements and a preview of Monday's work. So I doubt

4 that we'll finish Mr. DeJong's cross, but we'll try. All

5 right. Who will begin? Mr. Beshore.

6   CROSS-EXAMINATION

7 BY MR. BESHORE:

8   Q. Marvin Beshore.

9   Good afternoon, Mr. DeJong. I don't think we'll get

10 done today, your Honor.

11   A. Good afternoon.

12   Q. Let me first ask you. You were led by your

13 representative, Mr. Vetne, to make an assertion about how Dairy

14 Farmers of America might utilize any financial results to its

15 operations coming from this proposal; do you recall that?

16   A. Could you be more specific exactly what that was?

17   Q. Well, you were only asked one question about DFA,

18 right? Recently?

19   JUDGE CLIFTON: No, I don't think --

20   MR. BESHORE: In the last couple of minutes? When you

21 are --

22   JUDGE CLIFTON: Well, the last couple of minutes. What you

23 are asking him about, Mr. Beshore, is with regard to passing

24 back.

25   MR. BESHORE: That's correct.

1   JUDGE CLIFTON: Yes. Passing back. For example, if --

        2   MR. BESHORE: How it might handle the internal results of,

        3 financial results, of anything that came from this hearing. Do

        4 you recall that question?

        5   MR. DeJONG: I don't -- I'm still a little bit confused.

        6 What was the question -- was it related to? DFA financial

        7 results?

        8 BY MR. BESHORE:

        9   Q. Yeah. Gains or losses, losses in particular.

       10   A. For DFA?

       11   Q. Yes.

       12   A. I don't remember a specific question about DFA losses.

       13   JUDGE CLIFTON: Well, see if this jogs your memory.

       14   All the way from California back to some state in the

       15 East Coast, does that jog your memory about who might share in

       16 the lower return?

       17   MR. DeJONG: Oh, yes, I know exactly what you are talking

       18 about. I understand.

       19 BY MR. BESHORE:

       20   Q. So you now remember --

       21   A. Yes, I remember that question.

       22   Q. And you remember that you agreed with the assertion in

       23 the question that DFA may share the losses, as the Judge said,

       24 all the way from the West Coast to the East Coast or some such.

       25 Do you recall that?

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1   A. That is possible.

2   Q. Okay. What basis do you have of knowledge of DFA's

3   internal financial policy or other operations to make that

4   assertion?

5   A. I would say that I do not. You are correct. And I

6   will say that I was assuming, obviously incorrectly, if that is

7   your contention, that DFA can do that. So if I'm incorrect, I

8   will freely admit it.

9   Q. Thank you. What knowledge, if any, do you have of how

10   California Dairies might allocate or distribute or handle any

11   internal financial results from this hearing?

12   A. I do not have internal knowledge of that.

13   Q. Same question for Land O'Lakes?

14   A. True.

15   Q. Same answer?

16   A. Same answer.

17   Q. Thank you. There are on the, we have the Notice on the

18   matter of information on the list of cooperatives in California

19   and some of the Federal Orders. There are two cooperatives

20   based in Hilmar, California. Do you know anything about them?

21   A. I know a little bit about them. I would say Al Zolin

22   is extremely knowledgeable about those, and if you have

23   specific questions as to their set up and operation, I believe

24   he will be testifying next week, he can answer specific

25   questions regarding those.

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1   Q. Okay. Do you know anything about their relationship

2 with Hilmar Cheese Company?

3   A. I know there are two cooperatives related to Hilmar

4 Cheese Company.

5   Q. And they -- are they -- are the members among the 200

6 "independent" dairy farmers that supply Hilmar?

7   A. I believe some of them are.

8   Q. So they are not really what we would ordinarily call

9 independent. Members, they are members of what might be called

10 a captive co-op?

11   A. I don't know if you can make that characterization. I

12 would, again, defer some of these specific questions to

13 Al Zolin, he has a much more detailed knowledge of those

14 cooperatives and their set up and their make up.

15   Q. Okay. So what's his relationship to those

16 cooperatives, since you know that he has more detailed

17 knowledge of them?

18   A. From my understanding, he is knowledgeable about them,

19 he has worked for Hilmar Cheese as a consultant specifically in

20 regard to those, or at least he has much more detailed

21 knowledge of them than I do.

22   Q. Does he have a capacity with those cooperatives?

23   A. Define capacity.

24   Q. Any relationship? Any position with these

25 cooperatives?

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1   A. I don't think he has an official position, to my

2   knowledge, but you can ask him that when he's here.

3   Q. Does Hilmar buy cheese, buy milk from those

4   cooperatives?

5   A. I believe only milk.

6   Q. Yeah, I meant to say milk, sorry. In California,

7   Hilmar Cheese Company location?

8   A. Yes.

9   Q. And in Texas at the Dalhart location?

10 A. I'm not sure exactly how those cooperatives fit into

11 the Dalhart situation. Again, I would ask, when Al Zolin is on

12 the stand, he can answer those questions.

13 Q. Okay. Now, you were just, most recently, at the very

14 end of your direct examination from your representative,

15 Mr. Vetne, asked about NDPSR prices and sales of bulk commodity

16 cheese by Hilmar. Do you recall that?

17 A. Yes, I recall the question.

18 Q. Are you involved personally with reporting NDPSR prices

19 for Hilmar?

20 A. I am not personally the person who actually goes

21 through the spreadsheets, tallies them up, and sends them to

22 USDA. I'm not that person.

23 Q. Okay. Do you know anything about what's required to be

24 reported for those reports?

25 A. I have a general understanding. I do not have the

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1 entire list in front of me, those exact reporting

2 specifications, but I'm generally familiar with it.

3   Q. Okay. So Hilmar, obviously, is reporting cheddar

4 prices to NDPSR, correct?

5   A. Correct.

6   Q. Okay. And you don't make dry whey, if I understood you

7 correctly, so you wouldn't report any dry whey prices to NDPSR?

8   A. That is correct.

9   Q. Now, did you tell Mr. -- did you testify in response to

10 Mr. Vetne, that you were, your NDPSR prices were competing at

11 the long list of converter locations?

12   A. I don't know if -- that's not exactly how I understood

13 it. If Hilmar Cheese sells its product out and different

14 converters negotiate prices with cheese plants, and the prices

15 we negotiate and we sell our cheese for, assuming it meets

16 NDPSR specifications, that price is set for that cheese and it

17 is reported to NDPSR.

18   Q. Okay. What did the location of those converters have

19 to do with the NDPSR prices?

20   A. I believe it was to show that at different locations, a

21 lot of these cheese converters are in the Midwest, Upper

22 Midwest, and that in those locations that there will be

23 different product prices depending on where the product is

24 sourced from. For example, to buy, for a converter in

25 Wisconsin to buy cheese in California, they would expect a

1 lower price than if they were buying that locally because of

2 the transportation cost difference.

3   Q. Okay. So the converter buys your cheese in California

4 and takes it to their location, is that what you are saying?

5   A. The converter would buy our cheese and we would ship it

6 to their location.

7   Q. And are you selling at FOB their location or FOB your

8 location?

9   A. FOB our location.

10   Q. Okay. Do you ever sell FOB the converter locations?

11   A. Not to my knowledge.

12   Q. So do you know anything about the cost of transporting

13 from your location to Logan, Utah, for instance?

14   A. I have a general idea.

15   Q. What would that cost?

16   A. To us, Logan, Utah, you said?

17   Q. Yeah.

18   A. I don't know off the top of my head. I want to say

19 maybe 3 to 4 cents a pound.

20   Q. And what --

21   A. Depending on how you do -- I'm sorry. Depending on

22 rail or truck, if there's some differences.

23   Q. How about to Wisconsin locations?

24   A. I would say it would probably, depending on, depending

25 on whether it was truck or rail, rail is generally cheaper. I

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1 don't have the numbers in front of me, but I would be really

2 hesitant to speculate. I do know that by truck to the East

3 Coast is approximately 14 to 15 cents a pound to get it to

4 somewhere like Virginia.

5   Q. Okay. Do you sell from Hilmar to locations in

6 Virginia?

7   A. I don't remember Virginia specifically, but about that

8 distance, yes, we do.

9   Q. Okay. And that's what, cheddar cheese?

10   A. I believe so, or similar types of cheeses.

11   Q. So what do you think it costs, what's your best

12 estimate of what it costs to get your product to Wisconsin?

13   A. By which method of shipping?

14   Q. The least expensive, which is rail, I guess.

15   A. Again, I would be making an estimation. I don't have

16 those rate schedules in front of me, so I'm really hesitant to

17 give that specific number. I did remember a figure going to

18 the East, but I don't recall specifically going to Wisconsin.

19   Q. Okay. So it costs you 14 or 15 cents to East Coast

20 states. It would cost, you know, maybe what, half that to get

21 to Wisconsin? Two-thirds of that to get to Wisconsin?

22   A. By rail, maybe something like that.

23   Q. Half to get to Wisconsin, 7 or 8 cents?

24   A. Something like that.

25   Q. 70 or 80 cents a hundredweight equivalent of milk,

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1 price equivalent?

2   A. If you are using a yield multiple of ten, I would say

3 that would make mathematical sense.

4   Q. What's your yield of cheddar?

5   A. I don't recall that off the top of my head. I would

6 refer you to the CDFA manufacturing cost exhibits. They have

7 cheddar cheese yields on there, and Hilmar Cheese is part of

8 that manufacturing cost survey, so some of our yields would be

9 reflected in that.

10   Q. So if it costs, you know, 7 or 8 cents to get cheese to

11 Wisconsin, and at a yield of 10, that's 70 or 80 cents a

12 hundredweight, and your price, your raw milk price is

13 currently, let's just say $2.00 less than the cheese makers in

14 Wisconsin, you can be pretty competitive there, getting that

15 cheese, selling that cheese to Wisconsin, can't you?

16   A. Selling at our current prices we can be competitive

17 with Wisconsin.

18   Q. Yeah, very competitive.

19   A. I wouldn't use adjectives like that. We are selling

20 cheese there, so therefore, we are competing with them.

21   Q. Okay. And you can be competitive on the East Coast as

22 well, as you indicated.

23   A. To some extent, but I wouldn't say that for all of our

24 volume.

25   Q. So just get back to that. In the beginning of your

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testimony you gave some employment history, and some

educational background. And I missed, or didn't hear, or you

didn't state where you went to college, where got your degrees,

and in what years? What year?

A. I believe I finished my Bachelor's Degree in 2006 at

California State University Stanislaus. And I finished my

Master's Degree in Public Administration in 2009 from

California State University Stanislaus as well.

Q. Thank you. What portion of Hilmar's production is

cheddar versus other cheese varieties?

A. I don't have that number specifically in front of me,

but it's a substantial portion.

Q. More than half?

A. Again, I don't have that number in front of me. I know

it is a large volume, but I couldn't say one half or the other.

If I had seen that number, I would gladly tell you.

Q. Do you know, has Hilmar ever produced dry whey? Hilmar

Cheese Company, do you know?

A. To my knowledge, no. But their, and I haven't been

there since the inception, so if they have, it would be news to

me.

Q. When was it founded, when did it start?

A. I believe it was in mid-1980's, 1984 in my testimony.

Q. I see that now. Thank you.

A. Yes.

1   Q. Okay. So do you know if they have never, to the best

2   of your knowledge, never produced dry whey, do you know why

3   that is?

4   A. I believe, like any other cheese manufacturer, they

5   would look at the perspective returns in dry whey versus

6   alternative investments, whether it be WPC, lactose, etcetera,

7   and then make the determination where that investment would

8   best be placed.

9   Q. And to the best of your knowledge, they determined from

10   the very beginning that the higher, the other whey products had

11   a better return on investment?

12   A. At the time they invested in those assets, that was the

13   case, or decided to make the decision to invest in those

14   assets.

15   Q. Okay. Now, I need to ask a few questions about

16   Exhibit 99, because I, at least, and some of our team, can't

17   completely, haven't completely picked up your explanations or

18   didn't get them written down well enough or something. Okay.

19   So I want to start with, start with Figure 5 of Exhibit 99.

20   A. I'm there.

21   Q. So how did you -- did you convert -- the all milk price

22   is in that test price, correct?

23   A. Yes.

24   Q. So how is it, what did you do to convert it or compare

25   it to the Class III on this table?

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1   A. Yes, Class III and IV.

2   Q. So can you break that down for me? How are they

3 comparable?

4   A. How are -- well, when you buy a futures product, you

5 know, you buy Class III futures, Class IV futures.

6   JUDGE CLIFTON: Could you -- could we go back? We're

7 looking at Figure 5.

8   MR. DeJONG: Oh, I'm sorry, I thought it was Figure 8.

9   JUDGE CLIFTON: I don't -- aren't we on 5, Mr. Beshore?

10   MR. BESHORE: Yes, I'm on 5.

11   JUDGE CLIFTON: Okay. So go back to whether you think this

12 is Class III and IV.

13   MR. DeJONG: Okay. Sorry. I looked at the sister chart,

14 my mistake.

15   JUDGE CLIFTON: So what is Figure 5 comparing?

16   MR. DeJONG: It is comparing the NASS all milk price, which

17 Mr. Beshore pointed out, and correctly, that it is at test,

18 compared to Class III which is at a standard test. And in

19 Class III futures it is also priced at the standard test.

20 BY MR. BESHORE:

21   Q. And so what does Figure 5 compare, then?

22   A. It is comparing how those price differences have, let

23 me see.

24   Q. Well, let me just, is it comparing the all milk price

25 at test for the given state to a 35 Class III price?

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1   A. Yes, that's what it is doing.

2   Q. So it is just a -- just a straight subtraction?

3   A. Yes. And like I said, the table and the formulas used

4 to calculate this are available on CDFA's website, but that is

5 a correct generalization.

6   Q. And is that the spreadsheet that you talked about?

7   A. Yes, exactly.

8   Q. That was done by Mr. McCully, I think?

9   A. Yes.

10   Q. Is the Excel file itself downloadable?

11   A. Yes, it is.

12   Q. Do you happen to have the URL for that?

13   A. I would need to go to my laptop.

14   Q. I would really appreciate that.

15   JUDGE CLIFTON: I think it would be good for them to have

16 this over the weekend.

17   MR. BESHORE: That's where I was going.

18   JUDGE CLIFTON: So that they can see if they can reproduce

19 the results. So, how -- your laptop is in the room?

20   MR. DeJONG: Yes, it is.

21   JUDGE CLIFTON: Okay. Why don't we take --

22   MR. HOLLON: Wait, wait, wait, can we ask a few more

23 questions before we break so we don't come back to the laptop

24 and say --

25   JUDGE CLIFTON: Yeah, I'll repeat what Mr. Hollon said.

                              4475

1 Mr. Hollon suggested that we ask a few more questions before we

2 go to the laptop so we can see what else might be requested,

3 and I agree.

4   So help me manage our time here. It is 4:41. You can

5 ask no more than about 9 minutes worth of additional questions.

6   MR. BESHORE: Mr. Hollon has not entered his appearance

7 lately, because he's been occupied otherwise at the time of

8 that, but --

9   JUDGE CLIFTON: But you yield to him nevertheless.

10   MR. BESHORE: I yield to him nevertheless.

11   JUDGE CLIFTON: Mr. Hollon, you may proceed.

12   MR. HOLLON: Elvin Hollon, Dairy Farmers of America,

13 E-L-V-I-N H-O-L-L-O-N.

14   CROSS-EXAMINATION

15 BY MR. HOLLON:

16   Q. Mr. DeJong, let me assure you, I know how it makes your

17 stomach feel when somebody asks you how to do that table. And

18 so all I really want to know is how you did it.

19   A. Yes.

20   Q. Let me go first to --

21   JUDGE CLIFTON: I'm not getting enough volume from --

22   MR. HOLLON: My voice is still bad from before. Let's go

23 to Table 13.

24   JUDGE CLIFTON: Move the -- you can move the mic to the

25 left you don't have to move your body.

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1   MR. HOLLON: Is this better?

2   JUDGE CLIFTON: Excellent.

3   BY MR. HOLLON:

4   Q. Figure 13, you say you have a NASS all milk price and

5   Class III at test plus PPD. Can you tell me a little bit about

6   which, you know, which one you adjusted? Did you adjust the

7   all milk price to test? Did you adjust the Class III at test?

8   Where did you get the test from?

9   A. Sure. The all milk price, to my knowledge, is already

10 at test.

11   Q. Okay.

12   A. Class III at test, I took the Class III component, so

13 your protein, butterfat, and other solids, multiplied by the

14 test data available, and I'm talking about Texas and New Mexico

15 on the MA website. The MA website for that Order lists the

16 average producer test by state.

17   Q. I understand. I understand.

18   A. Yes. So those values were multiplied out to get

19 Class III at test for those specific states. And I then added

20 the producer price differential and used the announced one on

21 the MA website, which is at the Dallas location. So I added

22 Class III at test, plus PPD, and then compared that to the NASS

23 all milk price.

24   Q. Okay. And assuming, then, that is at the NASS all milk

25 price as reflective of those tests?

                            4477

1   A.   Yes.

2   Q.   Okay. Figure 16, the blue line, tell me how you got

3 that price.

4   A.   Yes. So I made the assumption that dry whey has

5 approximately a 12 percent protein content.

6   Q.   Okay, I understand.

7   A.   And to equalize that to 34, I took the dry whey price

8 and divided it by another division, 12 percent divided by 34

9 percent.

10   Q.   Divided or times?

11   A.   You do 12 percent divided by 34 percent, and then

12 divide again --

13   Q.   I understand.

14   A.   Okay.

15   Q.   Okay. So nonfat dry milk divided by 34 gives you price

16 per one unit of protein, times 12 gets it to whey?

17   A.   Whey protein, that's comparing dry whey and whey

18 protein concentrate, just to equalize the protein level.

19   Q.   Okay. So whey -- that's the whey price, divided by 12,

20 to get --

21   A.   Yes, I guess in my head, I break it up a little bit

22 different. It's 12 percent, and that's divided by another

23 division problem. 12 percent divided by 34 percent, I believe

24 it --

25   Q.   Times the price?

1   A. Yeah, times the price. And that should equalize the

2 protein level.

3   Q. Okay. And then, okay. I think I see -- algebra works

4 that way.

5   A. Yes.

6   Q. I'm good. And the Dairy Market News whey protein is

7 assuming that price is at 34 percent protein?

8   A. It is assumed it is 34 percent.

9   Q. Okay. And then Figure 17 is simply a price versus a

10 price?

11   A. Yes. There is no alteration.

12   Q. Okay. So that's all I have. Thank you.

13   A. You're welcome.

14   JUDGE CLIFTON: That was very efficient. Thank you both.

15   MR. BESHORE: Shall we get the URL?

16   MR. DeJONG: Do you want me to get that now?

17   JUDGE CLIFTON: Mr. Vetne, your suggestion?

18   MR. VETNE: I have a suggestion. The CDFA data, does that

19 come from the CDFA hearing matrix?

20   MR. DeJONG: It comes from the matrix.

21   MR. VETNE: Okay. For those that are listening and who may

22 not be familiar with CDFA, on its site has a place where you,

23 for each hearing, you can get the proposal, you can get the

24 exhibit, you can get the, get the transcript, rather than have

25 a long matrix, it may be more useful to go through the steps

because it's a long URL -- to go through the steps involved.

You click on CDFA; you click on hearing matrix; you click on

March 12, 2009; you click on --

    MR. DeJONG: I have the exact date if you --

    MR. VETNE: Off the top of my head, the point is, that kind

of step process would get you to it, I think, more rationally

than a long URL.

    JUDGE CLIFTON: All right. Mr. DeJong, do you have, while

you are sitting there in the witness stand, the particular

hearings that are involved?

    MR. DeJONG: I believe I can direct them there by memory.

If they, if their laptop is open and they are on CDFA's

website.

    JUDGE CLIFTON: All right. Do you want to do that now for

these different -- you were asked about beginning with

Figure 5?

    MR. DeJONG: Yes, I can direct them to the spreadsheet. So

I believe you would go to CDFA's website under the hearing

matrix, and I believe then you would go to the archives, and in

there, there is a hearing dated from May 31, 2012. And in

there I believe there is transcripts, and post-hearing briefs,

and there is a file called Kraft.

    MR. VETNE: Your Honor, I'm looking at the hearings, 2012,

well, it says 2012-2004, because it goes back in reverse

chronological order. And there's a hearing entitled Class 4b

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1 whey valuation hearing, May 31 and June 1, 2012. Is that the

2 one you referring to?

3   MR. DeJONG: That sounds right.

4   MR. VETNE: Okay.

5   JUDGE CLIFTON: Now, when you say you go to Kraft, are you

6 saying K-R-A-F-T?

7   MR. DeJONG: Correct.

8   MR. BESHORE: Date again?

9   MR. DeJONG: The date of the hearing was May 31, 2012.

10   MR. VETNE: I found a hearing.

11   JUDGE CLIFTON: So are we looking for an exhibit or a

12 post-hearing brief, Mr. DeJong, under Kraft?

13   MR. DeJONG: I believe, if my memory is right, it is a

14 post-hearing brief.

15   MR. VETNE: May I suggest that further because of the

16 time --

17   JUDGE CLIFTON: Mr. Vetne?

18   MR. VETNE: Mr. DeJong will reproduce -- when did you do

19 this, by the way? When did you look at this? When did you

20 access this?

21   MR. DeJONG: I actually double-checked it today. It should

22 be on there.

23   MR. VETNE: Okay. So it was accessed some time today.

24 Mr. DeJong will -- Mr. DeJong, can you --

25   MR. DeJONG: I can go directly to our computer and go to

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 1   it.  It should be the only Excel spreadsheet.

 2        MR. VETNE:  Okay.  We're there.  Thank you.

 3        JUDGE CLIFTON:  Yeah, looking at Figure 5 I notice that the

 4   dates involved are 2010 to 2015.  So will this Excel

 5   spreadsheet for a hearing that was in 2012 be all we need?

 6        MR. DeJONG:  I added additional data to update it, since

 7   this spreadsheet was created later, but I used the same

 8   methodology as used in that spreadsheet.

 9        MR. BESHORE:  I think we're good.

10        JUDGE CLIFTON:  And does that also take care of Figure 13?

11        MR. BESHORE:  Does that relate to 13 or -- 13 is different,

12   and we're okay.

13        JUDGE CLIFTON:  Okay.  So can we stop now?

14        MR. BESHORE:  Can I ask one more further question?

15        JUDGE CLIFTON:  You may.

16        MR. BESHORE:  Page 4 and 5, the bottom 4, top of 5, that

17   you talk about transactions, shipments of milk from California

18   to Texas, I guess, out-of-state just the manufacturing plants.

19   Do you see that?

20        MR. DeJONG:  Of Exhibit 98?

21        MR. BESHORE:  Yes, sorry.

22        MR. DeJONG:  Okay.  So you are looking at the bottom of

23   page 4?

24        MR. BESHORE:  Top of page 5.

25        MR. DeJONG:  Okay.  Top of page 5.
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1   MR. BESHORE: Specifically, HCC had to ship over 340 loads

2 of milk.

3   MR. DeJONG: Yes.

4   MR. BESHORE: Okay. I'm interested in what period of time

5 was involved in those transactions.

6   MR. DeJONG: I don't have the exact date. I know it was

7 during the timeframe in question. I believe I have that file

8 on my computer where I got that data, so next week I could give

9 you the exact time range.

10   MR. BESHORE: Okay. I would appreciate that, but it was

11 over some period of weeks or months, I take it?

12   MR. DeJONG: Yes.

13   MR. BESHORE: And if you could provide the time range, that

14 would be great. And I'm prepared to yield for today.

15   JUDGE CLIFTON: Thank you, Mr. Beshore. So we'll be

16 planning on you continuing cross-examination of Mr. DeJong on

17 Monday.

18   Mr. English, what else shall we look forward to on

19 Monday besides completing Mr. DeJong's testimony?

20   MR. ENGLISH: I don't see Ms. May. So I'll say, first of

21 all, of course we will be back at the Veteran's Memorial

22 District Building.

23   JUDGE CLIFTON: That's the Clovis Veteran's Memorial

24 District Building.

25   MR. ENGLISH: At 808 Fourth Street in Old Town Clovis. So

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1   that's where we'll be, for all those, especially on the

2   Internet, who are flying in for Monday's festivities.

3   So on Monday, your Honor --

4   We will hopefully finish James DeJong on Monday. The

5   present order that's subject to change at any moment, I think

6   it won't, but the present order would be I expect a witness

7   from Marquez Brothers to follow Mr. DeJong, and then we expect

8   Jim Ahlem, who is a dairy farmer and Chairman of Hilmar Cheese

9   will be appearing. And then I do expect a witness who I

10   thought I would get on yesterday, Rob Blaufuss from Dean Foods,

11   to talk about orderly marketing.

12   I don't think Ms. Taylor will be on Monday. She is our

13   last witness on the issue of orderly marketing.

14   JUDGE CLIFTON: What is Marquez?

15   MR. ENGLISH: It is a cheese manufacturing plant, company.

16   JUDGE CLIFTON: Okay. And the gentleman from Hilmar, what

17   is his last name?

18   MR. ENGLISH: Ahlem, A-H-L-E-M.

19   JUDGE CLIFTON: All right. Mr. Beshore?

20   MR. BESHORE: Your Honor, I am told that there may be some

21   other, two other dairy farmers coming in Monday who would, two

22   other dairy farmers coming in Monday who would hope to testify

23   then. Don't have any other details on that at present.

24   JUDGE CLIFTON: Okay. You don't know their names?

25   MR. BESHORE: No, I do not.

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 1        JUDGE CLIFTON:  Okay.  All right.  So we look forward to

 2   their testimony, we'll take them just as soon as we can.

 3        Do any of your people have to complete their testimony

 4   Monday, Mr. English?

 5        MR. ENGLISH:  I think the witness from Marquez Brothers,

 6   Mr. Maldonado, M-A-L-D-O-N-A-D-O, is traveling in to testify,

 7   and so we would need to get him on and off the stand, and, you

 8   know, Mr. Blaufuss will appreciate it very much when I say he's

 9   flexible.

10        JUDGE CLIFTON:  Okay.  Mr. Maldonado?

11        MR. ENGLISH:  M-A-L-D-O-N-A-D-O, so we really need to get

12   him on and off.

13        JUDGE CLIFTON:  Good.  All right.  So I'll leave it to your

14   discretion, Mr. English, whether you interrupt Mr. DeJong's

15   cross in order to accommodate those other people,

16        MR. ENGLISH:  Well, dairy farmers always have priority,

17   your Honor, and we will accommodate them as they and

18   Mr. Beshore request.  And I think Mr. DeJong is also flexible

19   since he's been here, I think, every single day of the hearing.

20   So, I, of course have my back to him right now, so I think the

21   answer is that yes, we will we flexible as to all three of

22   those in order to make sure that all three of those get on

23   Monday.  And again, for the dairy farmers, if they want to go

24   on first, that's what we'll do.

25        JUDGE CLIFTON:  Very good, thank you, Mr. English.
```

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1   Ms. May, do you have any announcements with regard to

          2   our vacating these premises and going to the Clovis Veterans

          3   Memorial District for Monday morning?

          4   MS. MAY: Yeah. I don't think so. Just make sure you take

          5   it all with you today, and we'll see you over there Monday at

          6   9:00.

          7   JUDGE CLIFTON: Very good. And of course, as always, you

          8   are welcome to come as early as 8:00, we'll go on record at

          9   9:00.

         10   All right. Thank you, everyone have a wonderful

         11   weekend. We go off record at 4:59.

         12   (Whereupon, the evening recess was taken.)

         13   ---o0o---

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 3   STATE OF CALIFORNIA   )
                           )     ss.
 4   COUNTY OF FRESNO      )

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 6          I, MYRA A. PISH, hereby certify:

 7          I am a duly qualified Certified Shorthand Reporter, in

 8   the State of California, holder of Certificate Number CSR

 9   11613, issued by the Court Reporters Board of California and

10   which is in full force and effect.

11          I am not financially interested in this action and am

12   not a relative or employee of any attorney of the parties, or

13   of any of the parties.

14          I am the reporter that stenographically recorded the

15   testimony in the foregoing proceeding and the foregoing

16   transcript is a true record of the testimony given.

17

18

19          DATED:    November 30, 2015

20                    FRESNO, CALIFORNIA

21

22

23                    _____

24                    MYRA A. PISH, CSR
                       Certificate No. 11613
25
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4399:10;4404:4;
4406:2,22;4408:24;
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