

**CERTIFIED
TRANSCRIPT**

NATIONAL FEDERAL MILK MARKETING ORDER
PRICING FORMULA HEARING

DOCKET NO.: 23-J-0067; AMS-DA-23-0031

Before the Honorable Jill Clifton, Judge

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Carmel, Indiana

January 16, 2024

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Reported by:

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Certificate No. 11613

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5 Todd Wilson
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15 Ryan Miltner

16 FOR INTERNATIONAL DAIRY FOODS ASSOCIATION:

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18 FOR THE AMERICAN FARM BUREAU FEDERATION:

19 Dr. Roger Cryan

20 ---o0o---

21 (Please note: Appearances for all parties are subject to
22 change daily, and may not be reported or listed on
23 subsequent days' transcripts.)

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19
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21
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23
24
25
26
27
28

M A S T E R I N D E X

SESSIONS

TUESDAY, JANUARY 16, 2024

PAGE

MORNING SESSION

10,444

AFTERNOON SESSION

10,557

---o0o---



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

M A S T E R I N D E X

WITNESSES IN CHRONOLOGICAL ORDER

WITNESSES: PAGE

Sally Keefe:

(Continued)

Direct Examination by Ms. Vulin	10,448
Cross-Examination by Ms. Hancock	10,455
Cross-Examination by Mr. Miltner	10,468
Cross-Examination by Ms. Taylor	10,470
Redirect Examination by Ms. Vulin	10,482
Recross-Examination by Ms. Hancock	10,490
Cross-Examination by Mr. Rosenbaum	10,587

Sally Keefe:

Direct Examination by Ms. Vulin	10,496
Cross-Examination by Ms. Hancock	10,514
Cross-Examination by Mr. Miltner	10,557
Cross-Examination by Dr. Cryan	10,557
Cross-Examination by Ms. Taylor	10,579
Redirect Examination by Ms. Vulin	10,599

Dr. Mark Stephenson:

Direct Examination by Mr. English	10,609
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1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

M A S T E R I N D E X

INDEX OF EXHIBITS

IN CHRONOLOGICAL ORDER:

NO.	DESCRIPTION	I.D.	EVD.
444	Federal Register Note		10,444
445	Hearing Notice		10,445
446	MIG-64D	10,448	10,494
440	MIG-64		10,493
441	MIG-64A		10,494
442	MIG-64B		10,494
443	MIG-64C		10,494
447	MIG-15	10,495	10,606
448	MIG-15A	10,496	10,607
449	MIG-15B	10,496	10,607
450	MIG-15C	10,496	10,607
451	MIG-16-Corrected		10,608
452	MIG-16A	10,608	
453	MIG-16B	10,608	

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1 TUESDAY, JANUARY 16, 2024 -- MORNING SESSION

2 THE COURT: We're back on record on 2024,
3 January 16th. It's a Tuesday. This is day 44 of the
4 proceeding.

5 I'd like first to take any preliminary matters
6 that anyone would like to mention now, and also do
7 preliminary matters later if you'd prefer.

8 MS. McMURTRAY: Good morning, Your Honor.

9 Michelle McMurtray, M-I-C-H-E-L-L-E; McMurtray is
10 M-c-M-U-R-T-R-A-Y, on behalf of the Agricultural Marketing
11 Service.

12 We just wanted to enter two preliminary exhibits.

13 Marked as Exhibit 444 we have the notice that went
14 in the Federal Register of the reconvened hearing.

15 Marked as Exhibit 445 we have the posting on the
16 Department of Agriculture's website to give notice of the
17 hearing.

18 And we are entering those just to make sure that
19 they are on the record to show that we complied with the
20 regulations.

21 THE COURT: Is there any significance in the
22 number 444 for the exhibit and day 44 of the hearing?

23 MS. McMURTRAY: Just a happy coincidence.

24 THE COURT: Is there any objection to the
25 admission into evidence of Exhibit 444?

26 There is none. Exhibit 44 is admitted into
27 evidence.

28 (Thereafter, Exhibit Number 444 was received



1 into evidence.)

2 THE COURT: Is there any objection to the
3 admission into evidence of Exhibit 445?

4 There is none. Exhibit 445 is admitted into
5 evidence.

6 (Thereafter, Exhibit Number 445 was received
7 into evidence.)

8 THE COURT: Are there any other preliminary
9 matters?

10 Dana Coale.

11 MS. COALE: Your Honor, Dana Coale, Dairy
12 Programs.

13 Just a couple of things -- now, just a couple of
14 things for the record with regards to scheduling, Your
15 Honor.

16 We are reconvening today, Tuesday, January 16th.
17 We will go through Friday, January 19th, and we will need
18 to conclude on Friday approximately around 3:30, 3:45. So
19 to put everyone on notice, we will not be going until
20 5:00 p.m. on Friday.

21 And then we will reconvene at 8:00 a.m. on
22 January 29th, and we will conclude the hearing -- I hope
23 everybody heard that -- conclude, Your Honor, by 5:00 p.m.
24 on February 2nd.

25 Are there any questions on that?

26 Thank you.

27 THE COURT: Thank you so much.

28 Mr. English.



1 MR. ENGLISH: Good morning, Your Honor. Chip
2 English.

3 I'm here to report that Mr. Rosenbaum, counsel for
4 IDFA, was trying to get here last night. His flight was
5 cancelled. He expects to be here by midmorning. He has
6 expressly stated that we can move forward.

7 I would note that Ms. Keefe is on the stand, and
8 if somehow she's done by that time when he gets here, he
9 may have some additional questions for her, and we would
10 need to bring her back. So I just want that to be on the
11 record. But the most important thing is he expressly says
12 we may move forward.

13 THE COURT: Thank you.

14 I'm delighted at the full house we have here
15 today. I imagine many of you have experienced weather
16 problems wherever you originated your travel, and I'm just
17 glad that so many of you are in place.

18 I have one preliminary matter. Normally I break
19 for lunch at noon. Today I'm breaking for lunch at 12:45.
20 So for those of you who have planned a different lunch
21 hour, I apologize, but that will work better for our
22 schedule today.

23 Is there anything else preliminary to the witness
24 resuming testimony?

25 I see nothing. I would like the witness again to
26 state and spell your name.

27 THE WITNESS: Good morning.

28 My name is Sally Keefe, S-A-L-L-Y, K-E-E-F-E.



1 THE COURT: Thank you. You remain sworn.

2 SALLY KEEFE,

3 Having been previously sworn, was examined
4 and testified as follows:

5 THE COURT: Ms. Vulin, if you will identify
6 yourself.

7 MS. VULIN: Ashley Vulin for the Milk Innovation
8 Group.

9 THE COURT: Thank you -- you may proceed.

10 MS. VULIN: Thank you, Your Honor.

11 Just before we make Ms. Keefe available for
12 cross-examination, we had some housekeeping matters, some
13 corrections to her exhibits, and we would like to address
14 those now just so that everyone has the complete and
15 accurate exhibits before cross-examination resumes. So if
16 we could just take a quick break to pass those out right
17 now.

18 THE COURT: Yes. Let's go off record at 8:15.

19 (An off-the-record discussion took place.)

20 THE COURT: Let's go back on record.

21 We're back on the record at 8:17.

22 Ms. Vulin.

23 MS. VULIN: Thank you, Your Honor.

24 So we distributed three documents. I'd like to
25 start with the first document, which is a new document,
26 but it was discussed on the record at the end of your
27 testimony, Ms. Keefe, and -- and we had promised to
28 provide it in written form in order to aid everyone's



1 understanding of those numbers. So that would be MIG
2 Exhibit 64D, as in dog. It is a single-page with two
3 charts on it.

4 Your Honor, I believe it should be given
5 Exhibit 446, and we would ask that it be thus marked.

6 THE COURT: Yes. I have marked Exhibit 446, which
7 is also Exhibit MIG-64D, like David.

8 (Thereafter, Exhibit Number 446 was marked
9 for identification.)

10 DIRECT EXAMINATION (Cont'd)

11 BY MS. VULIN:

12 Q. And as I said, we had discussed that -- these
13 numbers on the record last time.

14 But, Ms. Keefe, can you just tell us what we are
15 looking at here in Exhibit 64D?

16 A. Absolutely. So the easiest way to understand
17 Exhibit 64D is to pull out Map 7 and look at the legend.
18 And you will see on the legend of Map 7 there's a gray box
19 for negative \$1 to negative \$0.75 for that bucket, and
20 there are three counties in that bucket. And so
21 continuing on through all of the colors and counties, we
22 get to a total of 3,108 counties and --

23 Q. If I may, you say "Map 7."

24 That's in MIG-64A, which is also Exhibit 441,
25 correct?

26 A. Yes, that's correct.

27 Q. Thank you.

28 And you are referring to the chart on the left



1 which bears the same coloring as the legend on Map 7?

2 A. That's right. So the table on the left has the --
3 is the same colors, and it shows you the number of
4 counties that are each color in the map.

5 Q. Thank you.

6 And what does the table on the right show us?

7 A. So the table on the right shows us the number of
8 counties that are within plus or minus \$0.25, 1,818, and
9 then it shows those that are below that on the negative
10 side or above it on the positive side.

11 Q. Thank you.

12 And just kind of a unique feature between these
13 two, given the \$0.25 ranges, there's a slightly different
14 range for the table on the right than we see for the
15 colors and the counties broken down on the left.

16 Do you see that there? Which goes from \$0.49 to
17 \$0.25.

18 A. That's correct.

19 Q. And why is that?

20 A. So the buckets or bins on the table on the left
21 match the buckets or bins for the map, and those bins and
22 buckets are exactly 25 data points. And so to do plus or
23 minus \$0.25, zero is one of your points, and so that bin
24 would be 51 points or values. And so we have the little
25 table on the right to help make that more clear.

26 Q. In order to capture the \$0.25 or the quarter
27 negative and positive?

28 A. Exactly.



1 Q. Thank you.

2 So then if we could please turn back to that
3 Exhibit 64A, which is Exhibit 441, and turn to page 15.
4 We have also circulated MIG Exhibit 64A corrected.

5 That is the same box-and-whisker chart?

6 A. That's correct. So MIG Exhibit 64A is a
7 replacement to page 15 of Exhibit 441. And these were
8 simply cosmetic corrections to make the colors and bars
9 and markers for the average appear -- well, hopefully
10 appear easier to read, so the colors would be consistent.
11 And there had been on the original one bar that was green
12 that should have been orange for Order 131, and that has
13 also been corrected.

14 MS. VULIN: So, Your Honor, if it's all right with
15 you, I would propose just replacing that page 15.

16 BY MS. VULIN:

17 Q. Is all of the substantive data the same in the
18 corrected version versus the version that was originally
19 introduced?

20 A. Yes. There were no -- this is strictly cosmetic
21 formatting to make it print better and show up better on
22 the screen.

23 THE COURT: So I just want to do whatever is
24 easier for everyone to follow. Will it be easier for you
25 if I give it a new number?

26 MS. VULIN: To avoid having multiple versions, I
27 would propose we all just rip out page 15 and stick this
28 one there to replace it so that we have just got one



1 complete packet. Since it's -- like we said, it's -- like
2 Ms. Keefe said, it's really just cosmetic changes to help
3 with the printing and the visual digestion of the
4 information as opposed to anything substantive.

5 MS. TAYLOR: We would replace it on the website.
6 It might have already been replaced.

7 MS. VULIN: I believe it's been submitted, but I'm
8 not sure it's been replaced.

9 MS. TAYLOR: It will be today.

10 MS. VULIN: Okay. Great.

11 If there are no objections from anyone else, that
12 would be how we propose handling it.

13 THE COURT: All right. Ms. Vulin, I see no
14 objections, and the Agricultural Marketing Service has
15 indicated that they will be able to deal with the online
16 version as well as the paper copies. So your proposal
17 that MIG Exhibit-64A corrected replace page 15 of
18 Exhibit 441 is acceptable.

19 MS. VULIN: Thank you, Your Honor.

20 BY MS. VULIN:

21 Q. And then one more corrected exhibit.

22 If we could please go to MIG Exhibit 64C, which is
23 also Exhibit 443.

24 Ms. Keefe, remind us what this exhibit is, and can
25 you identify for us what corrections were made.

26 A. Absolutely. So Exhibit 64C is a list of fluid
27 plants, and it shows -- it's the comparison of the Class I
28 differentials from the model, Proposal 19, and has some



1 calculations that show the difference between Proposal 19
2 and the current, Proposal 19 and the model average, things
3 of that nature.

4 And so if you look on the left of corrected 64C
5 where it says "row," in -- the first correction happened
6 on page 2. And in Row 332, I fixed a typo. Saputo had
7 appeared twice and should only be there once.

8 And then I corrected the county code on Row 419
9 and 2897. The operators of those plants let me know that
10 the county was listed incorrectly in the original 64C.

11 And then in Rows 1300 and 2717 I marked plant
12 closures.

13 Q. That was also information you received after you
14 had submitted the exhibit?

15 A. Yes.

16 MS. VULIN: So, Your Honor, likewise, we would
17 recommend that given that Exhibit 64C was intended to be
18 an accurate and complete list of the fluid plants by
19 county, that we merely replace Exhibit 443 as originally
20 submitted with Exhibit 64C corrected.

21 THE COURT: Will that procedure work for the
22 Agricultural Marketing Service?

23 MS. TAYLOR: Yeah. The whole document? Yeah.

24 MS. VULIN: Correct. The entire document would
25 replace the original version.

26 THE COURT: And is there any objection from anyone
27 as to that procedure?

28 There is none. This document that you have given



1 me today, I'm going to write on it Exhibit 443. It is
2 also shown as Exhibit MIG-64C-corrected. And it -- this
3 document that I'm looking at today will replace the
4 previously submitted Exhibit 43 -- excuse me --
5 Exhibit 443, both the paper copy and the online.

6 MS. VULIN: Thank you, Your Honor.

7 BY MS. VULIN:

8 Q. Just our last housekeeping item. Exhibit 440,
9 which is MIG-64 in your written testimony, I understand
10 you had two typo corrections to that document, correct,
11 Ms. Keefe?

12 A. Yes, that's correct.

13 Q. So if we could go to page 4, please.

14 A. So --

15 Q. The second to last line.

16 A. Uh-huh.

17 Q. What should be corrected there?

18 A. So on page 4, the second to bottom line where it
19 says "USDA," that should say "the USDSS."

20 Q. So the sentence would read, "The USDSS has been
21 used in the past to develop Class I differentials"?

22 A. Yes, that's correct.

23 MS. VULIN: Your Honor, we'd ask that the record
24 copy reflect that change, please.

25 THE COURT: Would you repeat it, please, Witness?

26 THE WITNESS: Absolutely. So on the second from
27 the bottom line of page 4 where it says -- where the
28 sentence begins "USDA," that sentence should begin, "the



1 USDSS." And the complete sentence should read, "The USDSS
2 has been used in the past to develop Class I
3 differentials."

4 THE COURT: Let's go off record just a moment. We
5 want to make sure we get that change captured.

6 Go off record at 8:30.

7 (An off-the-record discussion took place.)

8 THE COURT: Back on the record at 8:31.

9 That change has been made on the record copy and
10 of course will also be made online.

11 Ms. Vulin.

12 BY MS. VULIN:

13 Q. And the final correction, Ms. Keefe, as I
14 understand, is on page 7, still in Exhibit 440, in the
15 second paragraph.

16 Can you please walk us through that.

17 A. Absolutely. So the second paragraph on page 7,
18 the last sentence, "non-FMMO" should be deleted, and then
19 the word "counties" should be replaced with the word
20 "cities." And so the corrected sentence should read, "nor
21 is it clear why two Arizona cities were included, but not
22 one city in the Northeast or the Pacific Northwest."

23 MS. TAYLOR: Where is that at?

24 MS. VULIN: Page 7 --

25 MS. TAYLOR: Yes.

26 MS. VULIN: -- the second full paragraph that
27 starts "NMPF's use of anchor cities," the very last
28 sentence which starts "with nor is it clear."



1 BY MS. VULIN:

2 Q. Can you read us one more time how it should read,
3 please?

4 A. Yes. So in that last sentence of the second
5 paragraph, delete "non-FMMO" and replace "counties" with
6 "cities." And so it should read, "nor is it clear why two
7 Arizona cities were included, but not one city in the
8 Northeast or the Pacific Northwest."

9 THE COURT: That correction has been made and will
10 be made online as well. Thank you.

11 MS. VULIN: Thank you, Your Honor, for the -- for
12 those housekeeping matters, and now we make Ms. Keefe
13 available for cross-examination.

14 CROSS-EXAMINATION

15 BY MS. HANCOCK:

16 Q. Good morning. Nicole Hancock for National Milk.

17 A. Good morning.

18 Q. I want to start with Exhibit 441. And I know you
19 said some of this by way of background, but I just kind of
20 want to contextually get us back there.

21 I think as I understood it from my notes, you had
22 worked with a consultant that helped you to do the mapping
23 that we see in Exhibit 441.

24 A. Yes. I worked with an analyst to help me with the
25 mapping.

26 Q. Okay. And so -- and is it fair to characterize
27 Exhibit 441 and its mapping as just mapping National
28 Milk's Proposal 19 into the various ways that you have



1 sliced and diced it in that exhibit?

2 A. Yes. So the -- you know, listed at -- so, like,
3 the first map is actually not in NMPF's Proposal 19. The
4 map number 1 is the current Class I differentials, and
5 then map number 2 is NMPF Proposal 19, and then there's a
6 map with the model minimum, estimates, the spring, the
7 average, the fall. And so -- and there's a list on page 1
8 of MIG Exhibit-64A of all ten of the maps.

9 Q. Okay. And so these are all just an objective
10 mapping. There's been no additional analysis that was
11 performed in order to map the items in Exhibit 441?

12 A. Correct. The -- the analysis was not done using
13 the mapping software. The mapping -- the analyst just
14 used the mapping software to generate the maps from the
15 spreadsheet.

16 Q. Okay. And then you took the analyst's work and
17 compiled it in a way that is now being presented in
18 Exhibit 441?

19 A. Yes.

20 Q. Okay. And then your testimony in Exhibit 440 just
21 extrapolates conclusions based on the mapping results; is
22 that fair?

23 A. Based on the mapping as well as the other analyses
24 that, you know, I did. There's some other stuff that's
25 described besides just the maps themselves.

26 Q. And you didn't do any kind of local analysis into
27 any of the individual counties, did you?

28 A. No, I did not.



1 Q. And -- okay. I just have a few questions on
2 Exhibit 440, if we can turn to page 3. This is under
3 Section 2 where you are describing your position that the
4 USDA should reject National Milk's Proposal 19.

5 And under Subsection A you state that National
6 Milk failed to provide specific or compelling
7 justification for the \$1.60 base or the 2.20 base for its
8 proposed Class I differentials.

9 Do you see where I'm at?

10 A. Yes.

11 Q. And -- I just want to make sure your mic is okay.

12 And in that section, is it fair to say that you,
13 in making that conclusion or offering that opinion, that
14 there's no justification for the \$1.60 or 2.20 base
15 differential, that it's your position that the base
16 differential should be at zero?

17 A. My position, which we'll be discussing later on
18 with MIG's 20, which is my next appearance, is indeed that
19 the base differential should be zero. And I get into much
20 more detail there than I have provided here.

21 Q. And does that relate to this Section A, that your
22 opinion that the base differential should be zero, it ties
23 back to this section where you believe that there's not
24 sufficient justification to support the \$1.60 or 2.20 base
25 differential?

26 A. They are both about the base differential. But
27 the analysis and justification on why the base
28 differential should be zero is not the same thing as what



1 I'm addressing here in this testimony, in Section 2,
2 Part A.

3 Q. If the -- if the recommended decision that is
4 ultimately approved allows -- returns us back to the
5 higher-of calculation that we have talked about earlier in
6 the hearing, if that were the case, would it be true,
7 then, that if there was no base differential, that Class I
8 would be priced the same as manufacturing classes,
9 assuming that the manufacturing class is the higher of the
10 two?

11 A. No. It would -- that would only be the case in a
12 county today. And, again, this is -- you are asking me a
13 question about MIG's Proposal 20. If the base
14 differential were zero instead of \$1.60, today it's \$1.60,
15 but that base differential is the actual Class I
16 differential in only some of the counties. There are many
17 counties where the base differential is more than \$1.60.

18 And so in all of those counties, there -- the --
19 the -- if -- were MIG's Proposal 20 adopted, it would --
20 the -- the Class I price would not equal either the
21 higher-of, the average-of, whatever the base Class I skim
22 price winds up being.

23 Q. Okay. So fair clarification.

24 But in the counties in which there is no
25 additional amounts above the base differential, in those
26 counties, it would be the same between Class I and the
27 manufacturing class, assuming the manufacturing class
28 would be higher?



1 A. Yes.

2 Q. And on page 7 of Exhibit 440, this is under the
3 section -- under Section C, and you are talking about the
4 proposed increases there.

5 I'm wondering, did you -- did you ever average or
6 calculate the proposed increase differentials that
7 National Milk was proposing?

8 A. Where on the page are you referring? I'm sorry,
9 it's been a bit of time.

10 Q. That's okay. And it has been for my notes as
11 well.

12 But I'm just under Section C. Under the second
13 paragraph there you are talking about the proposed
14 increases, and you talk about the increases in the western
15 cities range from \$0.60 to \$0.80 from the model average,
16 which is a 25 to 38% increase over the model results.

17 And my question -- and then you talk about some
18 other decreases after that.

19 I'm wondering if you ever performed a total sum
20 calculation of the proposed average increases to the
21 differentials that are proposed by National Milk?

22 A. Yes. You can see that in MIG Exhibit 64A, in
23 Table 1 and Table 2, both provide summary statistics
24 regarding my work.

25 Q. Okay. So if we look at Table 1 on page 12 of
26 Exhibit 441, this has a comparison of Proposal 19 to the
27 current and the model averages.

28 Is that what I'm -- I'm just reading the title,



1 but is that what's reflected here?

2 THE COURT: Let's pause just a minute,
3 Ms. Hancock, so that people can find this. So we're going
4 into Exhibit 441, page 12.

5 And what are you calling our attention to?

6 MS. HANCOCK: Well, first I'm just trying to
7 clarify if this is -- you know, the Table 1 is just her
8 work reflecting the comparison between Proposal 19 and the
9 current, and then Proposal 19 and the model average
10 percentage of change.

11 THE WITNESS: Yes.

12 BY MS. HANCOCK:

13 Q. And so if I'm reading it correctly, if I look at
14 the "all" category under Proposal 19 versus current,
15 you're saying that that's a 58% increase or change from
16 the total sum of the Proposal 19 proposals and the current
17 differentials?

18 A. Yes. That's looking at -- so the -- the average
19 today for all 3,108 counties is \$2.57, and then the
20 average for all of the counties with Proposal 19 was
21 \$4.07. And so, like, that "all" row at the bottom of the
22 table is all of the counties, and it's just a simple
23 average. It's not -- it's -- it's in no way weighted by
24 utilization or anything like that. It's just a simple
25 average. And you can very much tell that this table is
26 looking at the averages because, like, \$2.57 isn't the
27 Class I differential actually anywhere, because there's no
28 Class I differential that ends in \$0.07.



1 Q. Okay. And so this is just taking the simple
2 average of all the counties. You have just added up each
3 order -- or -- maybe let me back up.

4 Did you take each order, the counties within each
5 order, average those first?

6 A. Yes. So the -- the summary table, Row Number 1 is
7 the average for the 171 counties of the Northeast, 5 would
8 use the data for the 338 Appalachian counties, and so on.
9 And then the final is all counties in the continental 48
10 states.

11 Q. And so if -- the takeaway here, at least with
12 the -- with respect to the 58%, is that it's a -- National
13 Milk's proposal is a 58% increase over the current
14 differentials just using that simple average?

15 A. Yes.

16 Q. Okay. And then the Proposal 19 versus the model
17 average, can you tell me the significance of why you were
18 tracking that?

19 A. So I was tracking that because throughout NMPF's
20 testimony, when NMPF referred -- when witnesses -- and in
21 the testimony frequently their comparison point for the
22 model was looking at the model average, and so I looked at
23 the Proposal 19 versus the model average.

24 Q. Okay. Just to see how much of a deviation
25 National Milk was proposing as compared to the model
26 average results?

27 A. Uh-huh.

28 Q. Is that a "yes"?



1 A. Yes, that's a yes. And apologies, I realize that
2 there's a typo at the top of the table.

3 So if you look at "Proposal 19 v Current," and
4 then it says "Current," and then there's "Proposal 19 v
5 Model Average," and it says "Current" again, that should
6 say "Model Average."

7 Q. Okay.

8 THE COURT: Should we make that change now?

9 THE WITNESS: Yes, please.

10 THE COURT: All right. And so I'm going to ask
11 the witness to lead us to what exhibit and what page.

12 THE WITNESS: So this is Exhibit 441, page 12, and
13 so in the section with the heading "Proposal 19 v Model
14 Average," where it says, "Current," that should say "Model
15 Average."

16 THE COURT: And I'm just going to ask you, it's
17 about to be made on the record copy, so say it again one
18 more time, where to find it and what to do.

19 THE WITNESS: So Exhibit 441, page 12, where it
20 states "Current" underneath "Proposal 19 v Model Average,"
21 that should say -- "Current" should be replaced with
22 "Model Average."

23 THE COURT: The change has been made. Thank you.

24 BY MS. HANCOCK:

25 Q. So if -- if I could summarize what you have in
26 this last box here on the Proposal 19 versus the model
27 average, you did another simple average of -- of each one
28 of the counties within each order, and then summarized all



1 the Federal Orders with a simple average based on National
2 Milk's Proposal 19 as compared with the model results, and
3 in total, National Milk's proposal is within a 3%
4 deviation range from the model average results?

5 A. In total, as I noted in my testimony, there was --
6 it varies a great deal across the 11 Federal Orders, so
7 the amount of the variance. So in total 3%, but it's not
8 the same in each of the 11.

9 Q. Right. I understand it's not the same.

10 Because you have that reflected here in each one
11 of the Federal Orders that you have noted, right?

12 A. Absolutely.

13 Q. So is my question then -- is the answer to my
14 question, yes, that in total --

15 A. Yes, in total.

16 Q. -- when you take your -- let me just make sure
17 that the record is clear.

18 But in total, when you take your simple average of
19 National Milk's Proposal 19 as compared with the model
20 results, National Milk's proposal is within a 3% deviation
21 from the average model results?

22 A. Yes, in total.

23 Q. If we look at page 10 of Exhibit 440, you have --
24 and this is under Section D that starts on page 8 -- but
25 you have a chart at the top of page 10 there, and these
26 are examples of -- that you have selected of where there
27 are plant locations and some of the effects of National
28 Milk's Proposal 19; is that right?



1 A. No. These four counties were in the table because
2 these were four counties that were corrected. The Class I
3 differential for Proposal 19 was adjusted by NMPF once the
4 hearing began.

5 Q. And you stated it, in the prior page, on the end
6 of page 9, "It cannot be ignored that there is one or more
7 plants in each of these counties."

8 What was the point you were making there?

9 A. The point I was just making there was that I
10 thought it was interesting that, I mean, 3,108 places is a
11 lot of places. And the only four that had an update or a
12 correction, each had a milk plant in them. That's all.

13 Q. Do you know why those corrections were made?

14 A. NMPF's witnesses testified about those, and I
15 wouldn't want to speculate as to what they were doing or
16 anything like that. I just found it interesting.

17 Q. Okay. Do you know -- so you have one of them is
18 in Travis, Texas -- Travis County, Texas, which is Austin,
19 right?

20 A. Yes. And that plant has been closed, so it --
21 that plant is no longer bottling milk.

22 Q. Do you think that makes it less interesting then?

23 A. Not necessarily because -- honestly, as the
24 proposal was being developed, that plant was still
25 operating, so it's a relatively recent closure.

26 Q. It was closed in May of 2023?

27 A. That's my understanding.

28 Q. And so that was well before the correction was



1 even made; is that right?

2 A. It -- actually before the correction was made and,
3 frankly, before the proposal was finalized.

4 Q. What do you know about the plant in Comanche,
5 Texas?

6 A. I know that that plant is a relatively small
7 plant, and I honestly don't know a lot about that one.

8 Q. Do you know if they use their own milk?

9 A. I don't know.

10 Q. Are they a producer handler?

11 A. I don't know.

12 Q. Do you know if they do glass bottling?

13 A. I don't know.

14 Q. Do you know if it has any material effect on the
15 Class I market in any way?

16 A. I would not know. All I know is that there is a
17 plant there.

18 Q. Okay. So what about that would be interesting to
19 note then?

20 A. It's -- it's just -- like what I was talking about
21 before. With all the counties in the country, you know,
22 it's not surprising that there were corrections and
23 adjustments, and I would have thought -- there's part of
24 me that thinks that perhaps there would have been more.

25 One thing that I do think is very interesting
26 about the corrections is whether or not the corrections
27 suggest that, frankly, that further adjustment is needed
28 in areas surrounding those. But that's not something that



1 I have looked at.

2 Q. Okay. So you just noted it, it doesn't really
3 have any substantive effect?

4 A. The substantive effect of four counties out of
5 3,108, no, there's -- it's not much.

6 Q. Okay.

7 A. It's just interesting.

8 Q. Okay. I want to turn to page 16.

9 A. Page 16 of Exhibit 440?

10 Q. Yes. And this is under Section D where you were
11 talking about the Southeast orders should be adjusted for
12 the impacts of the USDA's recent final rule.

13 And you have a chart on page 16 where you are
14 talking about the current versus pending transportation
15 and distributing plants delivery credits.

16 A. Yes.

17 Q. Have you done any kind of analysis to -- to
18 determine how much and to what extent that -- that rule
19 will -- when it goes into effect -- will adjust or offset
20 from the proposed Class I differentials that National Milk
21 has proposed?

22 A. The -- the pending rule -- the pending rule
23 creates changes that effectively increase the Class I
24 differential, that now we have to be careful because if
25 they don't actually increase the Class I differential, the
26 pending rule is about transportation credits and
27 distributing plant delivery credits.

28 For a Class I handler, those act very much like an



1 effective increase in the Class I differential, but their
2 impact throughout the marketplace is a little bit
3 different given the nature of the credits themselves, that
4 they are transportation credits, and then the new credits
5 are distributing plant delivery credits.

6 Q. And so my question was, have you done any kind
7 of -- you have done an analysis here about what you
8 understand the increase to be with that new transportation
9 and distributing plant delivery credits.

10 My question was, do you -- did you perform any
11 kind of an analysis to determine to what extent those
12 credits are adjusted or would offset from the Class I
13 differential increase?

14 A. So the amount of the increase I have noted in the
15 table, and I have not done further analysis beyond what
16 you see here in Exhibit 440.

17 Q. And you're not suggesting, then, that this would
18 be something that would just be automatically added on top
19 of the Class I differential, are you?

20 A. What I'm -- what I'm suggesting here and reminding
21 everybody about is that the transportation credits and
22 distributing plant delivery credits exist, they are going
23 up, and they are going up in a substantial fashion in
24 these three markets. And they have -- from the vantage
25 point of a Class I handler, they have a very similar
26 effect to a Class I differential.

27 Q. And you would agree, though, that if there was
28 some kind of an adjustment or an offsetting, that that



1 would need to be factored in to determine the net effect?

2 A. I think that one of the things that I write here
3 is that, like, further analysis, study, and all the rest
4 of that is needed. I mean, it's -- it's -- I actually
5 think that these changes in the Southeast are going to be
6 significant, but it's very hard to know how significant
7 they will be and what their impact will be right now.

8 Q. Yeah. So as I read it, you say that the USDA
9 should just reject that proposal to raise differentials in
10 the region until it's understood. I didn't -- I didn't
11 read in here that you were saying that we should do an
12 analysis to determine the net effect.

13 A. I stand corrected. My sentence does state that
14 USDA should reject the proposal until the impacts are
15 understood.

16 Q. Do you think it would be more prudent, then, to
17 just conduct the analysis now that we have the Southeast
18 transportation credits proposed rule?

19 A. I suppose we could do more analysis. Yes.

20 MS. HANCOCK: That's all I have. Thank you.

21 CROSS-EXAMINATION

22 BY MR. MILTNER:

23 Q. Good morning, Mrs. Keefe.

24 A. Good morning, Mr. Miltner.

25 Q. Ryan Miltner, I represent Select Milk Producers.
26 I only have a few questions. Maybe I can even summarize
27 it in one question.

28 Does MIG have a position about whether the changes



1 to the Class I surface as reflected in the USDSS model
2 should be adopted?

3 A. MIG's position is that the Class I differential
4 should not be increased.

5 With respect to the modelling, MIG's position is
6 that the minimum values should be followed if one were to
7 follow the modeling. But fundamentally, MIG does not
8 believe that the Class I differentials should be
9 increased.

10 Q. So MIG's position is that the base differential
11 should go from \$1.60 to zero, correct?

12 A. That's correct.

13 Q. Further to that point, should -- does MIG advocate
14 for any further adjustments to the Class I differentials?

15 A. MIG has not been advocating for any further
16 adjustment to the Class I differentials. I did recognize
17 in my testimony here regarding Proposal 19, and my
18 testimony to follow, that it's been a long time since the
19 Class I differentials were updated. And I do feel -- MIG
20 feels, fundamentally, that the USDSS modeling is the best
21 tool that the industry has to understand the geographic
22 relationship of prices, so like the location part of it,
23 like the relative value from one county to the next. And
24 there, if a change were to be made on that geographic
25 aspect of the pricing, MIG believes that one would be best
26 served by following the model minimum estimates. But
27 that's not MIG's proposal, nor is that NMPF's proposal.

28 Q. Are you suggesting that USDA is bound to merely



1 accept or reject proposals that are before it and not make
2 any further adjustments?

3 A. In the past, USDA has done things that are not
4 exactly like one of the proposals that is before it, and
5 so that's why I have made a point of calling out the model
6 minimum with respect to the geographic aspect of the
7 pricing.

8 MR. MILTNER: I think the rest of my questions
9 will have to do with the next proposal. So thank you very
10 much.

11 THE WITNESS: You're welcome.

12 THE COURT: Is there other cross-examination
13 before I call on the Agricultural Marketing Service for
14 its questions?

15 I see no one. I invite the Agricultural Marketing
16 Service to question the witness.

17 CROSS-EXAMINATION

18 BY MS. TAYLOR:

19 Q. Good morning.

20 A. Good morning.

21 Q. I want to do a little summary mostly to remind
22 myself about what you talked about, you know, before the
23 holidays.

24 A. Absolutely. Thank you.

25 Q. Based on my notes. But I, like everybody else,
26 have to remember why I wrote what I wrote a long time ago.

27 I think, if I summarize what I heard back in
28 December, you all oppose updating -- or oppose



1 Proposal 19, so updating the differentials: One, because
2 there's an ample supply of milk already to meet consumer
3 needs?

4 A. Yes, that's correct.

5 Q. And like you just stated, we should be looking at
6 minimums, not averages, in the model, if changed?

7 A. With respect to the modeling, looking at minimums,
8 not averages. But one of the things that I noted in my
9 written testimony, as well as my presentation in December,
10 is that in some FMMOs, NMPF followed the modeling more
11 closely than they did in other places. And so that -- the
12 modeling doesn't necessarily feel to me like it's central
13 or core to their proposal.

14 Q. And that brings me to a question.

15 We have heard a lot of testimony from NMPF
16 witnesses about what went into deciding -- or what went
17 into ultimately the differentials that they proposed and
18 why some of those varied from the model, as you just
19 spoke. And generally, you know, they said the model looks
20 at efficient movements of milk based in the model's kind
21 of world.

22 But in reality, there's other things that
23 happened. And they went into some detail about what
24 the -- what those things were that made them decide to
25 offer something slightly different than what the model
26 offered.

27 And so I wonder if you can just respond to that.
28 I mean, are you of the opinion that there might be factors



1 that would support deviating from the model results, or is
2 it MIG's position that those factors don't exist, or if
3 they do exist, they shouldn't be considered and you should
4 still stick with whatever the model spits out?

5 A. So it's a model, and we're people. And so I don't
6 think that you just run with it willy-nilly without
7 examining it.

8 But that said, I think that you have to consider
9 whether the deviation that you are talking about, the
10 deviation that you are considering, how it's treated in
11 the model in the first place. So, like, why -- so that --
12 so, for example, is it -- is it transportation costs? And
13 so if it's transportation costs, the model has a lot of
14 information in it today about transportation costs. So
15 what is it that the model's not capturing correctly?

16 And so in that case, like, if it's something that
17 is fundamental to the system as a whole with respect to
18 transportation costs, perhaps the modeling itself should
19 be updated in like the formula or variable, the
20 constraint. Like, whichever way it goes into the
21 optimization model should be changed.

22 Alternatively, it could be something that the
23 model just can't really deal with. And so an example of
24 that would be like a traffic situation. And, you know, I
25 think you will -- like, we heard from witnesses from --
26 speaking regarding California about the Grapevine and
27 getting from the Valley into L.A. and what a traffic
28 nightmare that is. And as I understand it, that's an



1 example of something where the model is just simply not
2 going to be able to understand that traffic constraint.
3 Like, the model looks at that road and says they are not
4 that far apart, and you get a -- you get in your milk
5 truck, and you drive 60 miles an hour, and voila, you're
6 there. That's just not how it happens.

7 And so I think that there are things like that
8 that you -- that considering a deviation from the model
9 makes sense.

10 But, you know, if it's something that's global,
11 like fuel and tires and those sorts of things, those are
12 there. And so I don't feel the same way about every
13 aspect of those sorts of deviations.

14 Q. So traffic would be one of them.

15 Is there any other ones that you would say is
16 possible?

17 A. Traffic is the most obvious and easy one.

18 The other thing that the model, in my view,
19 doesn't capture very well today, is specialty products and
20 specialty milk supplies. The example I would give there
21 is organic. So organic has been growing for the industry,
22 but the network is very different for organic than it is
23 for the industry as a whole. And the model looks at it
24 optimally and looks at all of it, like, organic,
25 conventional, everything all together, all at once. And I
26 do wonder about teasing apart some of those differences
27 with respect to more unique markets.

28 Q. Okay. A couple other questions.



1 In your written statement on page 9 you outline
2 the differences between the National Milk Class I
3 recommendations, and you describe them as fungible.

4 Can you elaborate on why you feel the differences
5 between the iterations we're talking about -- you know, in
6 previous exhibits there's a -- I don't know what the
7 months are, May and a June maybe, I'm not -- I don't
8 remember, but they don't seem systematic or principled,
9 and I was wondering if you could elaborate on that.

10 A. So I spent a lot of time reviewing the Class I
11 differentials spreadsheet that USDA posted with NMPF's
12 original proposals, which is the May spreadsheet, and then
13 the updated, which is the June spreadsheet after the
14 information session. And I really wanted to understand
15 the proposal sort of from a bottom-up perspective, like,
16 looking at counties, and orders, and big patterns, and
17 like a big picture. And I really struggled to find a
18 pattern. I mean, it looked like, oh, it went this way, it
19 went that way. Like, I mean, there were places that, you
20 know, flip-flopped back and forth.

21 And it was just like, wow, like, from an
22 outsider's perspective it didn't feel like there -- to me,
23 like there was much rhyme or reason, necessarily. I'm not
24 saying that there was zero rhyme or reason. People
25 thought long and hard, I'm confident, about what they did.
26 I mean, we heard a lot of testimony about how hard the
27 team at NMPF worked on the proposal. So it's just, you
28 know, coming into it later in the process, it was very



1 hard to follow.

2 Q. Okay. And a few pages later you talk about the
3 differentials. And we have heard testimony in many cases
4 what was actually recommended, and the goal was to not
5 upset -- or to preserve current pricing relationships.

6 And you say that that "would only reinforce
7 current market participant dynamics, and all but exclude
8 new entrants."

9 So I was wondering if you could talk about the
10 effects on these pricing relationships to new entrants.

11 A. So our pricing system here with the FMMOs is very
12 complex. And if you were a new entrant, there is, first
13 and foremost, like, a huge knowledge barrier to entry.
14 Then, because we have these price relationships that are
15 so complex and so steeped in history, they tend to
16 reinforce the status quo, and they can make it very
17 difficult for somebody to do something that is new and
18 different and isn't following in the same pattern as the
19 past. And so that's really where I was trying to go there
20 with those comments.

21 Q. So it sounds like that's just a general comment on
22 Federal Order pricing.

23 Is that necessarily applicable to whether
24 differentials change?

25 A. So with respect to the differentials, I actually
26 do feel like they do a lot to entrench the relationships
27 between particular regions. And they -- and they -- and
28 they very much will -- like, this idea that -- that --



1 that one -- so -- and the regional thing can be thought of
2 both as big regions, so, like, the Upper Midwest versus
3 California, and, like, where the Class I differentials are
4 in both of those markets, and then what the implication is
5 as it rolls out for pricing. And then, also within a much
6 more localized area, so looking at a metro area that might
7 have a couple of milk plants, and then the farm milk
8 supply that is further out in the countryside, and so that
9 relationship between the milk shed and the milk plants.
10 And so those price relationships get reinforced here, and
11 it circles around keeping things the way they are.

12 Q. So the opposite of that would be the government
13 changes a set of regulations that would somehow in this --
14 let's say in this case, right, negatively impact some
15 price relationships of established businesses. And I
16 guess what's your response to that other side of the coin.

17 A. So I'm not saying that we should -- USDA's
18 position is a difficult one. You are being asked to do
19 both things. You are being asked to give space for a new
20 entrant, and you are also being asked to make sure that
21 the market is orderly for existing entrants. And so it's
22 not an easy task.

23 One thing that I would say as far as the whole
24 thing with the Class I differentials, I actually think
25 that in the Southeast where there have been changes with
26 the transportation credits, the distributing plant
27 delivery credits, it's the only area where the Class I
28 differentials were updated.



1 Part of this problem with reinforcing a status quo
2 is that it's been far too long since a change was made.
3 And so with respect to minimizing the impact, things like
4 that, if a change were to be made considering a phase-in,
5 if the change is large, I think would be something that
6 current market participants would very much support.

7 Q. Okay. It seems like the argument we shouldn't
8 update Class I differentials, which is MIG's position, is
9 contradictory to the fact -- to the separate statement you
10 just made, it's been too long since we updated them?

11 A. So MIG did propose updating the Class I
12 differential, updating the base Class I differential, and
13 I will be talking about that next.

14 MIG did not propose a geographic part of it. And
15 first and foremost, for MIG, MIG and our members, we
16 looked at the marketplace and we said, is there enough
17 milk? Is there sufficient supply? And our answer to that
18 question was yes.

19 Then, fundamentally, with updating the geographic
20 element of the Class I differentials, we, quite frankly,
21 had a logistics problem. There was no way that we could
22 have developed a geographic -- the county-by-county
23 relative prices from -- in last spring and summer. It
24 just was not feasible. So that's the other part of the
25 tension, I think, that you sense in my comments.

26 Q. Okay. Let's see. So you did mention that you
27 think because it's been so long, that if the differentials
28 were updated, there could be some kind of delayed



1 implementation or phased-in implementation.

2 So I just wondered if you could elaborate on that
3 piece a little bit.

4 A. I think a phased-in implementation similar to what
5 IDFA and the Cheese Makers have proposed on
6 Make Allowances could make sense if we're talking about
7 large changes. Without knowing the scope of a proposed
8 change, it's sort of hard to speculate on, you know. But
9 that idea where it was phased in over the course of
10 several years and the -- and, frankly, that the phase-in
11 was known to all the market participants in advance, like,
12 this is how we're going to do it, we're going to step
13 through it, it's going to -- we're going to do step one,
14 step two, step three, step four type of a thing.

15 I would say, to me, this is more of a phase-in
16 thing as opposed to a delayed implementation. Like, when
17 we were talking about with risk management stuff, like,
18 making sure that there was enough, like, of an actual
19 delay so that people's positions for their risk management
20 positions could clear and all of that sort of stuff, that
21 that's not what I'm talking about here, like, a
22 straight-up delay. What I was saying was phase it in over
23 time.

24 Q. Okay. So it's not related to risk management?

25 A. No. And I was just contrasting the idea of
26 phasing in over time versus, like, a one-year delay
27 because of people's open positions with their hedges type
28 of a thing.



1 Q. Uh-huh. Okay.

2 So is the -- I guess what I'm trying to get on the
3 record is the why behind the phase-in?

4 A. So the why --

5 Q. For your members, or fluid processors in general,
6 or whatever other piece of the industry is impacted,
7 why -- why is that?

8 A. So why a phase-in is, honestly, when you look at
9 some regions of the country and you look at the USDSS
10 modeling, as well as NMPF's Proposal 19, you see extremely
11 large changes relative to the current Class I
12 differentials. And so for places where the increases are
13 so substantial, having time to adjust by phasing in a
14 change over time helps businesses adapt and make plans and
15 learn to live with the new reality.

16 You know, one of the things I say at home a lot is
17 you got to eat the elephant one bite at a time, and
18 that's --

19 Q. I have never heard that statement before last
20 week, and now you are like the fifth person to say that to
21 me in a week. That's hilarious.

22 A. My family is cringing right now that I said it
23 here.

24 Q. Okay. I just wanted to make sure everything's
25 clear.

26 To clarify one point on the record. You -- on
27 page 16 of your testimony, you talked about it with
28 Ms. Hancock for a second on the Southeast transportation



1 credits and the new distributing plant delivery credits?

2 A. Yep.

3 Q. I say "new." They are not implemented in the
4 decision that -- you know, the producers are still voting
5 on that and going through that process. So should they be
6 implemented.

7 What you have in here for the category "pending,"
8 are you -- can you elaborate for the record -- and I guess
9 I should ask the question.

10 Do you know how those are implemented in the
11 Southeast? Are they maximum levels or are they the level?

12 A. So the -- the -- so with the table on page 16,
13 current refers to the current level today. The pending
14 column refers to the maximum level. And my understanding
15 from reading the proposed rule is that the expectation is,
16 at least at the beginning, that we're going to be at the
17 maximum down there, which is why I put the pending in this
18 way.

19 Today in the Appalachian, the current is actually
20 below the maximum, and so it could change in the future,
21 and it may not always be at the level that is there in the
22 pending column.

23 Q. And when you talk about with the differentials,
24 should somehow take that into consideration, you would
25 talk about the actual effective transportation credit or
26 the maximum amount, assuming those are different
27 eventually?

28 A. I think the actual amount is where you want to be.



1 And my understanding is, from the proposed rule and the
2 final rule, as well as at the hearing, that the
3 expectation is that these are being set -- that it's being
4 structured so that they will be at the maximum, like --
5 and that with the change -- with the other changes that
6 aren't summarized in the table here, and that are detailed
7 in those documents, that there are a lot of nuance changes
8 there that are -- that -- that the expectation is that the
9 pending and the maximum will become the actual --

10 Q. Okay.

11 A. -- but it might not.

12 Q. Only time will tell.

13 A. Time will tell.

14 Q. I wanted to turn to -- I think I just have one
15 last question.

16 So let's turn to the corrected Exhibit 64A that
17 you entered this morning, just so that we're looking at
18 the right one. And this -- okay.

19 A. So page 15?

20 Q. Yes, it will be the new page 15.

21 In this box-and-whisker chart, I have a question
22 from last time because the chart kind of shows the
23 quartiles.

24 So what are -- what makes it an outlier for the
25 little dots that you do have a couple outliers?

26 A. Yeah. So when Excel generates a box-and-whisker
27 plot, the standard settings are that if it's more than one
28 and a half times outside the inter-quartile range, then



1 it's an outlier.

2 Q. Okay. Thank you.

3 MS. TAYLOR: I think that's it from USDA. Thank
4 you very much.

5 THE COURT: I'd like to take a 15-minute break.

6 Please be back and ready to go at 9:45.

7 We go off record.

8 (Whereupon, a break was taken.)

9 THE COURT: We're back on the record at 9:45.

10 Ms. Vulin.

11 MS. VULIN: Thank you, Your Honor.

12 REDIRECT EXAMINATION

13 BY MS. VULIN:

14 Q. Ms. Keefe, we'll start with Exhibit 440, which is
15 your testimony. And Ms. Hancock had asked you some
16 questions about your testimony on page 3 discussing the
17 NMPF proposals base Class I differential.

18 Do you recall that discussion?

19 A. Yes.

20 Q. And --

21 THE COURT: I don't understand why when you're
22 testifying it's so loud and clear and when you say "yes"
23 it's so faint.

24 THE WITNESS: The microphone was off.

25 THE COURT: Oh, all right. Would you begin again
26 your examination?

27 BY MS. VULIN:

28 Q. So we're on page 3 of Exhibit 440, your written



1 testimony.

2 A. Yes, I am.

3 Q. And I had asked you if you had recalled a
4 discussion with Ms. Hancock regarding the base Class I
5 differential in NMPF's Proposal 19.

6 A. Yes, I do.

7 Q. And she had asked you if it was MIG's position --
8 or your testimony also -- that the base Class I
9 differential should be zero, and you had answered that
10 will be part of MIG 20.

11 Are there any other criticisms or testimony you
12 want to offer on NMPF's base Class I differential?

13 A. NMPF's -- in my analysis, NMPF's Proposal 19, the
14 base Class I differential, they did not evaluate that
15 systematically. And, for example, they did -- they -- the
16 USDSS modeling that was done for NMPF was done with \$1.60
17 base Class I differential, but then when you review the
18 proposal, there are a number of places where it appears
19 that the base would be \$2.20. And so there's variability
20 there between \$1.60 and \$2.20. And then as far as why
21 it's \$1.60 or why it's \$2.20, like, I also was criticizing
22 that.

23 Q. In other words, if I were to ask you, how do you
24 break down the \$1.60, what are the components of that in
25 NMPF's proposal? Have you identified \$0.20 as allocated
26 to this factor, 40 to this factor, et cetera?

27 A. I haven't been able to understand the
28 justifications of those different elements based on the



1 analysis that I did or the testimony that I heard.

2 Q. And if we could turn to Exhibit 441, please, which
3 is your tables, charts, and maps, and turn to page 12,
4 Table 1. This is the table entitled "Comparison of
5 Proposal 19 to Current and Model Average by FMMO." And
6 you had also discussed this table with Ms. Hancock.

7 Do you recall that?

8 A. Yes, I do.

9 Q. And if I could point you to the right-hand part of
10 the chart, Proposal 19 versus model average, you had
11 discussed that the average across all of the counties for
12 the percentage change between the model average and
13 Proposal 19 is 3%.

14 Do you see that?

15 A. Yes.

16 Q. And do you think that it is most important for
17 USDA to consider that nationwide average of 3% or the
18 breakdown between the FMMOs?

19 A. I think it's very important to consider the
20 deviations that are happening within and between the
21 FMMOs. And so, for example, in the Mideast it's showing
22 that the proposal on the average is 4% under the model
23 estimates, the average of model estimates, and whereas,
24 California is 31% above. That's very, very different.

25 And if NMPF had followed the modeling more
26 closely, I would have expected to see that those sorts of
27 changes would be more consistent.

28 Q. And by "more consistent," you mean, for example,



1 uniformly 4% above the model average as opposed to above
2 and below and by the varying factors we see here of
3 negative 4% to positive 31%?

4 A. Yes, that's right. I would. I don't know if I
5 would expect to see everything at 4% or 14% or minus 4%,
6 but I would just expect to see more consistent results.

7 Q. And if we could turn to Exhibit 64D, please, the
8 new exhibit introduced today which is marked Exhibit 446.

9 And similarly, looking at the table on the left,
10 is the distribution of counties between each of these
11 25% -- excuse me -- \$0.25 buckets of concern to you?

12 A. The distribution is concerning. There are a lot
13 of counties that are outside the plus or minus \$0.25 band.
14 You know, there are some that are dramatically below;
15 there are some that are dramatically above. And "some"
16 isn't even necessarily a small number. Like, those sums,
17 when you look at the bottom two gray boxes or the top two
18 red boxes, you know, that's right around 100 counties
19 there. And then if you -- then when you put in the next
20 group, you know, you are talking about, you know, hundreds
21 of counties. Like, we're not talking about small changes
22 that are happening in four places.

23 Q. And if you could look at the table on the right
24 that breaks it out based on either a quarter above or a
25 quarter below deviation from the model, why did you pick a
26 quarter?

27 A. I picked a quarter because when I testified on
28 December 8th, the day before Dr. Stephenson had testified



1 regarding the USDSS modeling, and he was asked what he
2 considered sort of like a typical range of deviations,
3 and -- and he -- and he mentioned -- he talked about
4 \$0.25. And he also talked about \$0.25 being -- it's an
5 above and below thing, like, it's a plus or minus thing,
6 it's not just -- the deviations can happen in both
7 directions.

8 Q. And that anything outside of the \$0.25 would be
9 concerning, would prompt re-examination of the model
10 itself?

11 A. Yes. As I recall Dr. Stephenson's testimony, he
12 talked about that once you start getting beyond those
13 types of levels, that you would -- that -- that it would
14 make sense to really consider the modeling itself. Like,
15 what should the parameters of the USDSS be changed,
16 because you're -- you're really going beyond the realm of
17 what seems significant or insignificant.

18 Q. And given both the degree of variation from the
19 model and the significant number of counties that vary by
20 a significant degree from the model, this table reflects
21 why you testified that the USDSS is not central to NMPF's
22 Proposal 19 in your opinion?

23 A. Yes, in my opinion. And you can see it visually
24 on Map 7, where when you look at just how the variations
25 go across the country, like, you will see -- so, you know,
26 in the East generally, but not exactly, east of the
27 Mississippi tending to be following the model a bit more
28 closely, although there are sprinkles of changes



1 throughout there. And then in the West, like, tending to
2 have much, much higher levels, you know, than Maine having
3 its whole own thing going on. I mean, there's just a lot
4 of -- there's a lot of variation from the spring and fall
5 estimates from the model.

6 Q. And you were here to observe most, if not all, of
7 NMPF's testimony on Proposal 19, correct?

8 A. Most of it. I -- I think I'm proud to say that
9 I'm not going to claim 100% on that.

10 Q. In your observation of NMPF's testimony, would
11 traffic account for the level of deviations that you have
12 identified mathematically here?

13 A. I don't think traffic would account for it here.
14 I mean, I don't think traffic's going to be a problem to
15 this level in nearly half the countries in the country.

16 Q. Half the counties?

17 A. Half the counties in the country.

18 Q. You also mentioned specialty milk, for example,
19 organic, as a reason to deviate from the USDSS, correct?

20 A. Yes.

21 Q. And in your observation of NMPF's testimony, did
22 any NMPF witness testify that Proposal 19 deviated from
23 the model average to account for supply chains for organic
24 milk or other specialty milk?

25 A. Not that I'm aware of.

26 Q. In your observation of NMPF's testimony, and
27 reading the written testimony as well, did you identify a
28 consistent set of principles for NMPF's deviations?



1 A. I was unable to identify a consistent set of
2 principles, consistent methods, consistent rationale.
3 Like, what -- what I saw was, frankly, a lot of
4 inconsistency. And it -- I think that the magnitude of
5 the changes are also inconsistent. I mean, some places
6 change by a little; some places change by a lot. So
7 it's -- there's not, in my view, a consistent theme.

8 Q. And because of that, do you believe USDA should
9 reject Proposal 19?

10 A. I do believe Proposal 19 should be rejected.

11 Q. Nothing further.

12 MS. VULIN: Thank you, Ms. Keefe.

13 THE COURT: Ms. Keefe, I have a question about
14 traffic.

15 Do you recall the testimony that the model takes
16 into account routine traffic by questioning drivers as to
17 how much time they take to get to a point A, to point B,
18 and how much time they take getting offloaded of their
19 cargo? I'll call it cargo.

20 THE WITNESS: So I believe that the model does
21 have some parameters around transportation and traffic
22 like you are describing. But dramatic traffic things, so
23 like when I was talking about the Grapevine in California,
24 it's my understanding that something like that is not
25 considered.

26 So, like, what you are talking about, the modeling
27 would have that for everywhere, and it's not necessarily
28 going to vary down to, like, the specific problem in



1 Southern California, like going from the Central Valley
2 into the L.A. basin.

3 THE COURT: And I recall also that disasters are
4 not included, whether they are hurricanes or avalanches?

5 THE WITNESS: Indeed. I do not believe that the
6 model -- it's -- the model doesn't -- natural disasters,
7 so especially significant weather events that cause road
8 closures, are not considered. But I wouldn't think
9 that -- that's an example of one that I'm not sure should
10 be considered, because, you know, we regulate minimum
11 prices, and the model is modeling an efficient market
12 solution. And thank goodness weather like today is
13 hopefully unusual.

14 THE COURT: Now, we're lucky where we are. There
15 was not three feet of snow, and the snow that fell
16 overnight was champagne powder, which I did not realize
17 exists in Indiana.

18 THE WITNESS: Nor did I. I was very surprised to
19 walk outside and have it sound like I was in Colorado.

20 THE COURT: I know. But I agree with you, there
21 are many parts of the country, whether it's flooding or
22 record snowfalls, have had that added to drops in
23 temperature, making transportation very difficult.

24 All right. Ms. Vulin, do you want to follow up at
25 all on my questions before I invite re-cross?

26 MS. VULIN: No thank you.

27 THE COURT: All right. Thank you.

28 Re-cross.



1 RE CROSS-EXAMINATION

2 BY MS. HANCOCK:

3 Q. Thank you. Nicole Hancock with National Milk. I
4 just have a couple questions.5 On Exhibit 446, this is the new exhibit. Do you
6 have that in front of you? You were just talking with
7 Ms. Vulin about the two gray boxes at the bottom where you
8 have about 100 counties, and then the two on the top that
9 have about 100 counties of the range.

10 Do you remember talking about that with her?

11 A. Yes, I do.

12 Q. Do you know how many plants are located in those
13 bottom 100 counties that you have categorized there?

14 A. No, I don't.

15 Q. Do you know how many plants are located in that
16 top 100 counties that are noted there?17 A. Not off the top of my head, no. I -- I -- that's
18 a -- I would need to get back into the data to answer
19 those questions.20 Q. Okay. Did you analyze that in any of the work
21 that you did?22 A. I -- no. I haven't tried to, like, lay in the
23 number of plants here in each of the boxes like that.24 Q. And it's -- you understand that based on National
25 Milk's proposal, that it's proposing differentials in all
26 the counties throughout the country, but that there's not
27 a milk plant located in all of those counties?

28 A. Yes, I am aware of that, and that would -- that's



1 part of the motivation for Exhibit 443, which is only the
2 counties with milk plants. So, yes.

3 Q. And those -- and that Exhibit 443 didn't chart it
4 against what we have in 446, which is the magnitude of the
5 differences in the counties in which plants are actually
6 located?

7 A. Yeah. I have not done any mapping using
8 Exhibit 443.

9 Q. And then you also had -- when you were asked about
10 what would justify deviations from the modeling, you had
11 used the example of organic or specialty milk being a
12 potential reason for deviating from that model results; is
13 that right?

14 A. Yes.

15 Q. In which counties would -- would those deviations
16 be supported?

17 A. Oh, boy. I mean, there's organic milk in a lot of
18 places, and there's also organic consumers in a lot of
19 places. So if you are going to adjust the modeling, you
20 would have to adjust it in -- on both sides.

21 Q. So is it fair to say that when you were talking
22 about using organic or specialty milk as a basis for
23 justifying a deviation, it's not a local consideration,
24 but something that's specific to the end use of that milk?

25 A. Absolutely. I was talking more about a deviation
26 that might need to happen on a more -- on a more national
27 or global basis than just at, like, a particular localized
28 situation like the traffic we keep talking about.



1 Q. Okay. And then when you were talking about how
2 National Milk's witnesses were -- were talking about
3 different unique factors within each local jurisdiction,
4 and that you didn't believe that it was consistent across
5 the country, you understood that those witnesses were
6 talking about actual local considerations?

7 A. Yes. I understand that most the witnesses were --
8 were addressing the proposal from the perspective of their
9 local situation.

10 Q. And based on their experience operating within
11 that local market?

12 A. Absolutely.

13 Q. Okay.

14 MS. HANCOCK: No further questions. Thank you.

15 THE COURT: What do we call this, re-redirect?

16 MS. VULIN: No questions, just to move admission
17 of the exhibits, Your Honor.

18 THE COURT: All right. So I know you gave me a
19 new exhibit, 446.

20 Did you have any left over from December 8th?

21 MS. VULIN: Of the?

22 THE COURT: Of exhibits that you had not moved
23 into evidence?

24 MS. VULIN: I don't believe we moved any of them
25 in because we hadn't done cross-examination yet.

26 THE COURT: So we have a number.

27 MS. VULIN: Yes.

28 THE COURT: So do you know which numbers?



1 MS. VULIN: I do.

2 THE COURT: Okay.

3 MS. VULIN: I move admission of Exhibits 440, 441,
4 442, 443, and 446.

5 THE COURT: Is there any objection to any of these
6 exhibits being admitted into evidence?

7 Mr. Hill.

8 MR. HILL: I don't have an objection, but I do
9 want to look at the MIG Exhibit 64A corrected. I do note
10 that at the bottom, if we're going to add this to the old
11 441, it does say page 1 of 1. I think it is supposed to
12 be replacing page 15 of 15.

13 And I would also like to find out if we can get a
14 full copy of this for the -- for online services so we can
15 do this more efficiently.

16 MS. VULIN: Yes. We can submit a clean copy of
17 Exhibit 441 as one complete packet, and we will update the
18 footer for that page as well in the electronic version.

19 MR. HILL: Okay. That's all I have.

20 THE COURT: All right. That's an excellent plan.
21 Are there any other comments or objections?

22 There are none.

23 I admit into evidence Exhibit -- oh, help me,
24 Ms. Vulin, as I call each of these, tell me what its MIG
25 number is.

26 I admit into evidence Exhibit 440.

27 MS. VULIN: MIG Exhibit 64.

28 (Thereafter, Exhibit Number 440 was received



1 into evidence.)

2 THE COURT: I admit into evidence Exhibit 441.

3 MS. VULIN: MIG Exhibit 64A.

4 (Thereafter, Exhibit Number 441 was received
5 into evidence.)

6 THE COURT: I admit into evidence Exhibit 442.

7 MS. VULIN: MIG Exhibit 64B.

8 (Thereafter, Exhibit Number 442 was received
9 into evidence.)

10 THE COURT: I admit into evidence Exhibit 443.

11 MS. VULIN: MIG Exhibit 64C corrected.

12 (Thereafter, Exhibit Number 443 was received
13 into evidence.)

14 THE COURT: I admit into evidence Exhibit 446.

15 MS. VULIN: MIG Exhibit 64D.

16 (Thereafter, Exhibit Number 446 was received
17 into evidence.)

18 THE COURT: Thank you, Ms. Vulin.

19 MS. VULIN: Thank you, Your Honor.

20 And I believe MIG is calling the next witness, and
21 that will be Ms. Keefe, but on Proposal 20.

22 So if it is all right with everyone, now would be
23 a good time for a break just to switch over her PowerPoint
24 and to distribute her testimony.

25 THE COURT: All right. Would ten minutes suffice
26 or do we need 15? We don't want people to have to come
27 back early.

28 Do you think ten might suffice?



1 MS. VULIN: I might defer to Ms. Keefe, who might
2 need to use the restroom and have a minute. Would 15 be
3 all right?

4 THE COURT: Yes, it would be all right.
5 So please be back and ready to go at 10:25.
6 (Whereupon, a break was taken.)

7 THE COURT: All right. Let's go back on record.
8 We're back on the record at 10:25.

9 Ms. Vulin.

10 MS. VULIN: Thank you, Your Honor.

11 Ashley Vulin with the Milk Innovation Group. The
12 Milk Innovation Group calls Sally Keefe to introduce
13 Proposal 20.

14 THE COURT: Ms. Keefe, please again state and
15 spell your name.

16 THE WITNESS: Good morning. My name is Sally
17 Keefe, S-A-L-L-Y, K-E-E-F-E.

18 THE COURT: Thank you.

19 And, Ms. Vulin, you may proceed.

20 MS. VULIN: Thank you, Your Honor.

21 First, I would like to mark the exhibits that we
22 have distributed. Exhibit MIG-15, which is the testimony
23 of Sally Keefe Part 3, that's Ms. Keefe's written
24 testimony, I believe, should be marked Exhibit 447.

25 THE COURT: Agreed.

26 (Thereafter, Exhibit Number 447 was marked
27 for identification.)

28 MS. VULIN: Exhibit MIG-15A, entitled "Milk



1 Production, Disposition, and Income, 2022 Summary," should
2 be marked as Exhibit 448.

3 (Thereafter, Exhibit Number 448 was marked
4 for identification.)

5 MS. VULIN: Exhibit MIG-15B, which is the Class I
6 Differentials by County, should be Exhibit 449.

7 (Thereafter, Exhibit Number 449 was marked
8 for identification.)

9 MS. VULIN: And Exhibit MIG-15C, which is
10 Ms. Keefe's PowerPoint presentation, should be
11 Exhibit 450.

12 (Thereafter, Exhibit Number 450 was marked
13 for identification.)

14 MS. VULIN: Thank you, Ms. Keefe. Let me know
15 when you are ready.

16 THE WITNESS: I'm ready.

17 MS. VULIN: Your Honor, are you ready?

18 THE COURT: I am.

19 MS. VULIN: Thank you.

20 DIRECT EXAMINATION

21 BY MS. VULIN:

22 Q. So if we could pull up your PowerPoint, please,
23 Ms. Keefe.

24 THE COURT: Let's go off record just a moment
25 while we pull this up.

26 (An off-the-record discussion took place.)

27 THE COURT: Let's go back on record.

28 We're back on the record at 10:37.



1 Ms. Vulin.

2 MS. VULIN: We have had some technical issues, and
3 despite trying two different laptops, couldn't get the
4 PowerPoint to display, so we'll proceed with the printed
5 copy of Exhibit 450, which is Ms. Keefe's PowerPoint.

6 THE WITNESS: I have one request.

7 MS. VULIN: Yes.

8 THE WITNESS: Could someone give me a copy of the
9 PowerPoint that is single-sided, not double-sided?

10 MS. VULIN: Yes. We will work on getting you one
11 of those.

12 THE WITNESS: Thank you.

13 MS. VULIN: And then hopefully during the lunch
14 break, that will give the IT team a chance to work on the
15 PowerPoint, because it will be more important for later
16 witnesses.

17 THE COURT: Very good. Thank you.

18 MS. VULIN: But we'll try and keep things moving
19 in the meantime.

20 THE COURT: Thank you so much.

21 MS. VULIN: Great.

22 BY MS. VULIN:

23 Q. So, Ms. Keefe, I was going to say turn to slide 1,
24 but I'll ask that everyone turn to Exhibit MIG-15C, which
25 is Exhibit 450, page 2, entitled "Current Class I
26 Differential."

27 So I know with Proposal 19 we have been talking
28 about the county level differentials quite a bit, but just



1 to re-orient us, can you remind us what all the pieces are
2 of the current Class I price.

3 A. Sure. So the current Class I price is made up of
4 the base Class I price, which itself has two parts: The
5 base Class I skim price, which was covered in Issue 4 of
6 this hearing; then we have the Advanced Class I butterfat
7 price. And so together those will create the base Class I
8 price. And then the Class I differentials are added to
9 that base Class I price.

10 Q. And the base Class I price versus the
11 differentials, which one makes up the majority of the
12 Class I price?

13 A. The majority of the Class I price comes from the
14 base. The differentials is the smaller portion.

15 Q. Okay. And so now let's get into the different
16 factors that make up the Class I differential. And I see
17 you have those on your slide here.

18 Can you walk us through each of those four parts,
19 please.

20 A. Yes. Today, the current Class I differentials
21 range from \$1.60 to \$6 per hundredweight. There are four
22 parts: There is \$0.40, which is compensation for Grade A
23 status; there is \$0.60 related to market balancing; and
24 then a further \$0.60 to incentivize producer milk to be
25 supplied for fluid bottling. Together, those first three
26 elements are \$1.60 and make up the base Class I
27 differential.

28 And then you have the geographic component, which



1 ranges from zero to \$4.40 down in Southern Florida.

2 Today, the zero is found in locations in what we would
3 describe as the Upper Midwest as well as some Western
4 counties.

5 Q. And MIG's Proposal 20 deals with that \$1.60,
6 basically the first three parts of this four-part list?

7 A. Yes, that's correct. MIG's Proposal 20 addresses
8 the base Class I differential. And so for this proposal,
9 MIG examined the \$1.60 starting point, the \$1.60 base.

10 Q. And this breakdown, the \$0.40, \$0.60, and \$0.60,
11 what's the source of this breakdown of the \$1.60?

12 A. So this breakdown of the \$1.60 dates to order
13 reform. At order reform, there's a lot of information in
14 that record regarding the Class I differential, and
15 specifically the elements of the base differential.

16 Q. And so this \$0.40, \$0.60, and \$0.60 is not an
17 estimation by MIG, but is the precise numbers that you
18 pulled from the records from order reform?

19 A. Yes, that's correct.

20 Q. And then if we could turn to page 3, please, of
21 your slide show.

22 So what is the role of the Class I differential in
23 the Class I price?

24 A. So the Class I differential is designed to ensure
25 a sufficient supply of milk for fluid use, and it's -- to
26 do that, the idea is the lowest value that you need to get
27 the milk needed for fluid bottling to meet consumers needs
28 in the marketplace.



1 Q. And you said lowest value necessary.

2 Is this a principle established by USDA during
3 order reform?

4 A. Yes. As you can see in the block quote below on
5 slide 3, as well as in my written testimony, at order
6 reform, USDA wrote, "The \$1.60 minimum differential level
7 proposed is perceived to be the lowest value necessary
8 under present supply and demand conditions to maintain
9 stable and viable pools of milk for Class I use in markets
10 that are predominantly manufacturing-oriented."

11 Q. And what is the risk if the price for the Class I
12 differential is at too high of a level?

13 A. So the risk if the Class I differential is at too
14 high of a level is that the Class I prices will overall be
15 price enhancing and they won't -- they will no longer be a
16 minimum price. And if they are not at the minimum level
17 and are acting in a way that enhances prices, they can
18 attract additional supply into the market overall, which
19 then winds up not being used in Class I, but used in the
20 manufacturing classes, which are lower priced.

21 Q. And this risk was recognized by USDA, I believe,
22 in the last line of the block quote. If you could read
23 that for us, please, starting with "if the blend price."

24 A. Absolutely. "If the blend price exceeds the
25 marginal value of milk in manufacturing, there would be an
26 incentive to overproduce for fluid needs."

27 Q. And do you believe that USDA should still rely
28 upon those guiding principles in setting the Class I



1 differential today?

2 A. Yes. I believe that those guiding principles as
3 far as the lowest value needed to ensure sufficient supply
4 makes sense in the market then, and it makes sense in the
5 market today.

6 Q. In a sense, kind of fundamental economic
7 principles?

8 A. In -- in a fundamental kind of way.

9 Q. And if we could turn to slide 4, please.

10 So tell us, please, what this chart reflects.

11 A. So the chart on slide 4 shows the utilization of
12 producer milk in the FMMOs, and so this is only talking
13 about the utilization of FMMO milk. This is not the
14 utilization of all milk. And it looks at it from 1950 to
15 2022. And what you see back at the beginning of the chart
16 is Class I utilization actually dominating the market up
17 at 60%.

18 By the time of order reform in the -- around the
19 year 2000, you see that Class I utilization is more like
20 40%. And then today, we have got Class I utilization
21 actually dropping below 30% for the FMMOs. And I would
22 note that with respect to the market in total -- so all
23 milk, not just FMMO milk and, you know, all the way along
24 during this time period, some milk has not been subject to
25 the FMMOs, or not participating in the orders -- we would
26 be at Class I utilization below 20%.

27 Q. And so this chart overstates the utilization of
28 Class I milk in the marketplace as a whole because it is a



1 larger part of FMMO milk?

2 A. Yeah. The chart is for -- the denominator of the
3 chart is just FMMO milk.

4 Q. And so this significant decline in Class I market
5 share, why is that relevant to setting the Class I
6 differential?

7 A. It's relevant because of, when milk is produced on
8 the farm, it's -- we don't dedicate its use to a
9 particular utilization. And so understanding how the milk
10 will be used, whether it would be used in Class I for
11 fluid or in Classes II, III, and IV for non-fluid uses, is
12 important because of the nature of the Class I prices
13 being set at different levels for different uses of milk.

14 Q. Essentially, there's less milk needed to meet
15 fluid needs relative to the FMMO marketplace as a whole?

16 A. Yes, I would agree with that statement.

17 Q. And during this same time period that Class I
18 utilization is decreasing by over half, is -- has milk
19 production gone up or down?

20 A. Milk production on the farms has increased during
21 this time period, which goes towards the adequacy of
22 supply. There's much more milk available today than there
23 was in -- at the time of order reform, and certainly in
24 periods preceding that.

25 Q. And so when we're talking about those basic
26 economic principles, is it fair to say the world we live
27 in today has more milk than we had at order reform, and we
28 need less of that milk in order to meet fluid needs?



1 A. Yes, that's correct.

2 Q. And with that reality, what would that suggest to
3 you should happen to the price that is needed to command
4 milk to meet those fluid needs?

5 A. I would expect that the price needed to attract
6 the milk for fluid use is going to be lower today than it
7 was then.

8 Q. And is it MIG's position that the current base
9 Class I differential is outdated?

10 A. Yes. MIG believes that the current base Class I
11 differential of \$1.60 is outdated and its various elements
12 should be reviewed and adjusted.

13 Q. And we talked a little bit about this with the
14 risk of overproduction, but what are the disorderly
15 marketing conditions that result from having a Class I
16 differential, a base Class I differential, that's too
17 high?

18 A. The primary risk is price enhancement writ large,
19 but there's also issues with having a base Class I
20 differential that's too high as far as just the dynamics
21 between the different uses of milk.

22 Q. And you say "price enhancement," meaning that the
23 Class I differential is setting the price at higher than
24 the marketplace would value the milk?

25 A. Yes.

26 Q. And when you talk about the dynamics between
27 classes, is that essentially what happens to the other
28 classes when the Class I price overstimulates the



1 production of milk?

2 A. So -- correct. So if -- if the Class I price is
3 too high and is acting in a price-enhancing manner, and we
4 attract more supply into the marketplace, then we wind up
5 with a situation where that additional supply is not going
6 to be used in Class I, it's not going to be bottled, it's
7 going to be used in the other classes at presumably lower
8 prices.

9 Q. And if we could turn to page 5, please, slide 5.

10 If you could please walk me through what updates
11 MIG proposes making to the base Class I differential
12 vis-à-vis each element that makes up that \$1.60.

13 A. Absolutely.

14 So MIG looked at the three elements of the base
15 Class I differential: We looked at the Grade A piece, the
16 balancing piece, and the incentive piece.

17 And so starting with the Grade A piece of \$0.40,
18 we -- MIG feels that Grade B milk is not relevant to FMMO
19 prices today. More than 99% of milk is Grade A or
20 eligible for fluid use, and you can see the details on
21 that by state in Exhibit -- MIG Exhibit 15A, which is
22 Hearing Exhibit 448.

23 And with respect to the Grade A/Grade B issue, the
24 main -- one of the main things that I would note is that
25 today, all plants, whether they are fluid or not, for the
26 most part, are using Grade A milk exclusively. And so
27 whether you are talking about cheese, whether you are
28 talking about ingredients, whether you are talking about



1 yogurt and ice cream, and all sorts of different dairy
2 products, they are all being made with Grade A milk today.
3 There is not -- no longer a significant -- there's no
4 longer a Grade B market of any real size today.

5 Q. And it's not MIG's position that there are no
6 costs associated with maintaining Grade A status, correct?

7 A. MIG's position is not that there are no costs
8 associated with maintaining Grade A status, it's MIG's
9 position that all of the milk needs to meet that, not just
10 Class I. So it's -- it's that -- it's not that there is
11 no cost, it's that this is a cost that needs to be on all
12 of the milk.

13 And so presumably, because the Class III and IV
14 prices are market clearing, that that cost of serving the
15 Grade A market is -- is embedded within those
16 market-clearing prices for the manufacturing classes.

17 Q. And so there's no need to include an additional
18 \$0.40 in order to ensure there's enough Grade A milk to
19 meet fluid needs, because the marketplace has made that an
20 industry standard; is that fair?

21 A. Yes, that's a fair summation.

22 Q. And then if we could look at the second element,
23 balancing, please.

24 A. Yeah. So the second element that MIG examined was
25 balancing, which is -- market balancing is about 60 -- is
26 \$0.60 per hundredweight. And what we saw there is that
27 balancing costs are borne by many different market
28 participants in many, many different ways. And so there



1 are times when market-balancing expenses are borne by
2 processors, other times when they are being borne by a
3 cooperative, other times they may be borne by producers
4 directly.

5 And these -- these -- this is a real situation
6 where there is a lot of variety. And because of that, we
7 feel that it makes a lot more sense to not include it in
8 the minimum so that the prices can adapt to the particular
9 conditions between a Class I handler and their suppliers.

10 Q. Because if the \$0.60 for balancing is included in
11 the base, it's essentially -- essentially a presumption
12 that every supplier is incurring \$0.60 worth of balancing
13 for every hundredweight of milk they sell; is that right?

14 A. That's correct.

15 Q. And in your analysis, and the members' analysis of
16 their own operations, suppliers aren't uniformly bearing
17 \$0.60 worth of balancing costs?

18 A. Suppliers aren't necessarily uniformly bearing
19 \$0.60 worth of balancing costs, nor are, frankly,
20 processors uniformly bearing \$0.60 worth. Like, it -- it
21 varies.

22 And so by removing \$0.60 from the base Class I
23 differential, it should allow the market to correctly
24 allocate that \$0.60 to the person who was performing those
25 balancing services. And so in some cases it -- it would
26 be the cooperative, in some cases it may be farmers
27 directly, in other cases it would be a fluid processor.

28 Q. And have you heard of instances where these



1 balancing costs are, today, being paid for outside of the
2 FMMO system, but on an individual relationship basis?

3 A. Yes, definitely. There's a lot of examples as far
4 as ways that the market is pricing and valuing these
5 balancing services. And so examples that I have heard a
6 lot about include even-day receiving credits, as well as
7 investments in raw milk storage both on the farm or at a
8 plant. So, like, the raw milk storage thing is one where
9 you could see it being a cost borne by a farmer directly
10 or you could see it as a cost being borne at a fluid
11 processing plant.

12 Q. And so it's fair to say that MIG's not operating
13 on the assumption that the marketplace will find a way to
14 account for this cost, because that's already happening
15 today?

16 A. Yes. We believe that the market shows that it can
17 do this.

18 Q. And then if you could look to the third element,
19 please, incentive to serve Class I.

20 A. Yes. So the final -- the final element that we
21 examined was the incentive piece. And, otherwise, I like
22 to call it the attractant, but we -- the language in order
23 reform is incentive, so I have changed my ways.

24 And the presumption here that we still need a
25 pool-wide incentive does not hold today. We asked
26 Dr. Mark Stephenson to look at this element and help us
27 understand it, and he has a lot of detail on that in his
28 testimony, which will follow mine.



1 Fundamentally, what MIG and its members found was
2 that when it comes to the incentive piece, in order for
3 Class I to get the milk that they need for bottling, it's
4 very important to be able to reward suppliers directly.

5 Q. And is that a function of the changing utilization
6 within the FMMOs?

7 A. Yes. Because Class I is no longer the dominant
8 use, being able to directly compensate your actual
9 suppliers as opposed to having an incentive diluted
10 through the pool is, in the view of our members, an
11 essential change.

12 Q. But given that Class I does need milk, isn't there
13 a risk that if you reduce this price, the FMMO system
14 won't be able to ensure that Class I needs are being met?

15 A. There is a lot of milk out there. I think that
16 our members will have more specifics to add on the
17 situations that they encounter and how they attract the
18 milk that they need for their operations, and why they
19 believe that this change is aligned with both the program
20 as well as the marketplace.

21 Q. And do you think Class I utilization will continue
22 to drop in upcoming years?

23 A. I do. And it's not to say that that's a 100% sob
24 story, because I'd like to believe, and I do believe, that
25 Class I sales could stabilize and will stabilize in the
26 future. But given the increase in overall milk supply,
27 and given the way that we use it today for manufacturing
28 uses, you know, largely cheese, butter powder, fancier



1 ingredients than those but -- as well. And that --
2 because the denominator is getting bigger, even if
3 Class I's -- Class I sales would have to grow so
4 dramatically that it just wouldn't be realistic to think
5 that the Class I utilization is going to meaningfully
6 increase, even if Class I sales do begin increasing again,
7 and even if Class I sales, they don't increase, they just
8 stabilize, so --

9 Q. And there's been a fair bit of discussion about
10 price inversions, driving the need to either maintain or
11 increase Class I prices.

12 Do you believe that this change will impact
13 significantly price diversi- -- price inversions or what
14 drives those?

15 A. So I would remind everybody of Mr. Schuelke's
16 testimony during Issue 4 on price inversions. And the
17 most important factor to consider here is the spread
18 between Classes III and IV as far as contributing to price
19 inversions. And quite frankly, the size of an increase
20 that would be needed to make it so that Class I prices
21 could prevent an inversion is dramatically high. At
22 points in time, it would make it so that even higher than
23 organic prices, I mean, very, very high some of the time
24 when the spread is very wide.

25 Q. And so is it your testimony that the Class I price
26 is really not the right tool to use to address price
27 inversions?

28 A. Class prices and Class I prices are not -- are not



1 the right method for preventing price -- for preventing
2 price inversions. Class I prices, that's not their role,
3 that's not their job.

4 If you're concerned about price inversions, and
5 because price inversions are tied with depooling, I think
6 that there are other parts of the regulation that we
7 should be looking at.

8 Q. And if we could turn to your last slide, please.
9 And just to put a finer point on your earlier testimony,
10 it's MIG's position that Proposal 20 should be adopted
11 because the current Class I differential is resulting in
12 disorderly marketing, correct?

13 A. Yes. MIG believes that in today's market the base
14 Class I differential is contributing to disorderly
15 marketing.

16 Q. And what do you believe the result of reducing the
17 \$1.60 base Class I differential could be that would
18 benefit fluid processors in the industry as a whole?

19 A. Reducing the base Class I differential provides an
20 opportunity to free up resources in ways that could
21 reinvigorate the fluid market. It could -- different
22 folks could use it in different ways, so I could see
23 situations where it's being used to more closely link a
24 processor and their milk supply. I could see situations
25 where it's being used to, you know, fund investment in
26 innovative extended shelf life products. There's many,
27 many different things that could be done to help
28 reinvigorate the Class I market, and this \$1.60 would help



1 get that started.

2 Q. And what role should over-order premiums play in
3 the Class I differential?

4 A. So over-order premiums are a mechanism. They
5 allow Class I processors to directly compensate their
6 suppliers. It means that when you're providing a payment
7 for a service, it's going to the person who is providing
8 you that service as opposed to being shared through the
9 mechanism of market-wide pooling.

10 Q. And as discussed earlier with Ms. Hancock during
11 the Proposal 19 testimony, MIG's Proposal 20 would not
12 reduce the Class I differential to zero in every county in
13 the country, correct?

14 A. No, it would not. The range of Class I
15 differentials would be from zero to \$4.40 as proposed,
16 which you can see in MIG Exhibit 15B, which is
17 Exhibit 449.

18 Q. And that's what each -- Exhibit 449 reflects what
19 the county-level differential will be for each county
20 under MIG's Proposal 20, correct?

21 A. Yes, that's correct. So if you look at the first
22 county in Alabama, Autauga, Alabama -- I apologize for
23 mispronouncing it -- the Proposal 20 effective
24 differential would be \$2.20.

25 Q. And so under MIG's proposal, why keep the
26 county-level differentials?

27 A. Because there is a geographic element to the
28 prices. The prices are not the same in every place around



1 the country, and so we do think that it's important that
2 the price structure reflect that.

3 THE COURT: I'm going to ask you to spell Autauga.
4 Apparently you said it correctly.

5 THE WITNESS: Absolutely. Autauga, Alabama,
6 A-U-T-A-U-G-A.

7 BY MS. VULIN:

8 Q. And so what do you expect the impact of
9 Proposal 20 to be on blend prices?

10 A. So in my written testimony in Table 1 on page 9,
11 it shows MIG's estimate of this change on the blend prices
12 in sum and by order, and we estimate that this would
13 decrease blend prices on the average across all of the
14 FMMOs by \$0.43 per hundredweight, and these changes do
15 vary from a decrease of \$0.11 to a decrease of \$1.33.

16 Q. And given the testimony we have heard about the
17 increased costs of milk production and knowing that this
18 proposal would result in the blend price going down, how
19 would MIG members be able to ensure that the Class I
20 market is -- is being served and that suppliers are
21 receiving the price needed to serve that market?

22 A. So I think it's important to remember that the
23 FMMO price, the Class I price, is the minimum price. And
24 I would expect that in many cases that over-order premiums
25 are going to be filling things in. Probably some places
26 more than others should Proposal 20 be adopted.

27 Q. And you mentioned a little bit earlier, and I just
28 want to re-circle a little bit on this point, that it's



1 important to MIG members that this -- that the over-order
2 premiums or that compensation for milk be given to
3 directly to the suppliers that are serving that Class I
4 processor.

5 And why is that important?

6 A. So that's important to MIG's members for --
7 because, fundamentally, they want to compensate the people
8 who are providing the services that they need to
9 adequately supply their plants. And one way to think
10 about it is -- a MIG member recently stated that it
11 wasn't -- it wasn't like they were looking for a price
12 decrease, what they are looking is to change where the
13 money goes. And so what is most important to the members
14 is that the Class I differential can be used to compensate
15 the people who are supplying them with the milk that they
16 are using in their plants.

17 Q. And so if the purpose of FMMOs and the Class I
18 differential is to ensure service of the Class I market,
19 given the realities of the marketplace today, the changes
20 of utilization, it's MIG's position that those fluid needs
21 are best met by freeing up money from the pool and being
22 able to direct it directly to suppliers?

23 A. Yes, it is MIG's position that directly
24 compensating their suppliers will more effectively and
25 efficiently attract the milk that they need for fluid
26 bottling.

27 Q. And do you believe that Proposal 20 will have any
28 impact or will support potential innovation of the



1 shrinking Class I market?

2 A. I do really hope that it will. I think that there
3 are a number of things that it can do. It's interesting
4 because Class I is shrinking, the impact on the pool is,
5 so the impact on the blend is smaller than what it is when
6 you think about the \$1.60 in the context of what it means
7 for a Class I handler. Because for that Class I handler,
8 that \$1.60 is there. And so they can then -- and, you
9 know, it's a start. It's a good place to think about
10 investing in things that can help you improve margin,
11 either through innovation or simply by being more
12 efficient, like improving your IT system for your
13 warehousing, lots of stuff.

14 Q. Thank you very much.

15 MS. VULIN: Nothing further, Your Honor.

16 CROSS-EXAMINATION

17 BY MS. HANCOCK:

18 Q. Good morning, Ms. Keefe.

19 I'm Nicole Hancock with National Milk.

20 A. Good morning, Ms. Hancock.

21 Q. I have got notes in a couple of different places,
22 so I'm going to do my best to keep it organized, but bear
23 with me if I jump around a little bit.

24 Maybe a good place to start is with a little bit
25 of your background. You own and operate your own
26 consulting firm; is that right?

27 A. Yes, that's correct.

28 Q. And you work a lot with organic processors?



1 A. Organic and others. I have both organic and
2 conventional clients.

3 Q. What percentage of the work that you do in your
4 consulting business is working with the organics or
5 specialty milk products?

6 A. Well, organic is just one form of specialty milks,
7 and I would say that the majority of my work is for folks
8 who are doing specialty products. It's not to say it's
9 100%. Like, I -- I work with traditional HTST processors
10 as well, but mostly folks who are doing something on the
11 specialty spectrum, not just organic.

12 Q. Okay. Organic being a subset of the specialty
13 spectrum, but the totality of which makes up the majority
14 of the consulting work that you do?

15 A. I do a lot of consulting work for organic, as you
16 might imagine, given my background, but it's not all of
17 it.

18 Q. And were you part of MIG's proposal for this
19 hearing that put forth a position to have organic milk
20 taken out of the Federal Order system regulations
21 altogether?

22 A. Yes. I was -- I actively participated in
23 developing all of the proposals that MIG submitted for
24 consideration at the hearing. So we submitted proposals
25 regarding organic. We also submitted proposals regarding
26 assembly and balancing credits. There were a number of
27 proposals that MIG submitted, not all of which were
28 accepted for consideration at the hearing. Struggling to



1 find the right word there.

2 Q. One of which was the proposal for organics to be
3 excluded from regulation by the Federal Order system?

4 A. Proposal 6 that MIG submitted back in the summer,
5 that was not accepted for consideration at this hearing,
6 would have exempted organic milk from the pooling
7 provisions of the FMMOs, but not from the minimum pricing
8 provisions. The -- we had -- our proposal was to
9 structure that one such that, to be eligible for the
10 exemption, you would need to be producing certified
11 organic milk, and you would need to be paying a price for
12 that certified organic milk that actually exceeded the
13 Class I price, not -- so -- what one would expect would be
14 the highest of the minimum prices.

15 Q. And -- and that proposal was not included in the
16 hearing; is that right?

17 A. That proposal was not accepted for consideration
18 at this hearing. The Secretary and AMS encouraged MIG to
19 consider submitting -- resubmitting that for consideration
20 at a separate proceeding.

21 Q. Do you -- do you believe that we need a Federal
22 Order system at all for regulation of -- of dairy milk
23 pricing?

24 A. I think that it is widely-accepted within our
25 industry. I think that the system of minimum prices
26 provides value to many market participants, whether you
27 are on the producer side or the processor side.

28 And then I also think that the system as a whole,



1 I think that there are some real values that having the
2 program in place provides for the market in terms of
3 information and transparency and things like that.

4 And that was actually one of the things that we
5 thought a lot about with respect to the organic proposal
6 that we submitted. One of the details, like, in the weeds
7 of that proposal was that that -- that the organic milk
8 would remain subject to the Market Administrator fees and
9 the like, to continue to facilitate the data and
10 information collection. Because we think that there is a
11 lot of value to everyone throughout the marketplace with
12 all of the great info that we have.

13 Q. Okay. And so the Federal Order system allows for
14 the collection of that data and that transparency to the
15 industry that you think brings value to the industry?

16 A. Uh-huh.

17 Q. Is that a "yes"?

18 A. That is a yes. Thank you.

19 Q. And so outside of the data collection and the
20 transparency into that data for the industry, do you
21 believe that there is value in the minimum pricing and the
22 effect on pricing between the producers and the handlers
23 that the Federal Order system offers?

24 A. I don't really think it's my decision. I'm a
25 consultant. Like, I'm not a dairy processor. I'm not a
26 dairy producer. Like, I help people understand the
27 regulations. I help people understand where they fit in,
28 how they interact with them, how to structure their data



1 system so they can comply and report and all sorts of
2 things.

3 But, you know, I -- I don't produce milk. I'm not
4 a dairy farmer. I don't process milk. Like, I don't
5 manufacture cheese. Like -- and so it's -- it's not --
6 it's -- it's not my decision. It's -- it's -- and I think
7 that there -- I -- like I just said, I think that there
8 are many things about our current system that are very
9 valuable.

10 Q. And that being information gathering and data
11 transparency?

12 A. Information data -- information collection and
13 reporting, which helps provide market transparency, so
14 it's --

15 Q. Okay. I want to maybe just walk through a little
16 bit of your written testimony, and I'm going to try not to
17 overlap where it -- it does overlap with your presentation
18 that I'll cover separately.

19 But let's start with, if we go to page 3 of
20 Exhibit 447. This is your written testimony?

21 A. Yes.

22 Q. And you have offered a substantive opinion about
23 why you believe that the first three elements that were
24 used to set the differentials in order reform were -- are
25 no longer necessary; is that right?

26 A. Yes, I have.

27 Q. Okay. So there are times in which you do offer
28 your perspective and opinion of the Federal Order system,



1 and that was the example that I'm just including right
2 now.

3 A. Yes. And I would point out that this is a much
4 narrower opinion. This is about the base Class I
5 differential. You were asking a much larger question
6 about the system. To me, that's what I was hearing.

7 Q. And if I want to cross-reference this just so I'm
8 tackling two birds with one stone here, if I look at your
9 presentation on Exhibit 450, on slide 2, you have provided
10 a summary on page 2 about those four elements, the first
11 three of which are what MIG is proposing are no longer
12 relevant or needed in differentials?

13 A. The first three of which -- yes. And then the
14 fourth one would be the geographic component. And, you
15 know, as I stated during my testimony, we do actually --
16 MIG believes, and I believe, that one of the things that
17 is important and valuable today is this geographic
18 component, these relative prices, so --

19 Q. Okay. And so that's number 4 that's on page 2 of
20 your PowerPoint?

21 A. Uh-huh. Yes, it is.

22 Q. And -- and so you do believe that there's a
23 geographic component that should continue on, and that is
24 based on what's -- what's being, under MIG's proposal,
25 utilized from the USDSS -- or from the modeling results
26 from Dr. Stephenson?

27 A. Under MIG's Proposal 20, we did not propose
28 changing the county-level -- the county-level adjustments



1 from their current levels. You know, I have talked a
2 great deal about the USDSS modeling and where I think that
3 that can inform should the Department choose to go in a
4 different direction.

5 Q. And so that, without making any additional changes
6 to the county-by-county, you understand that -- that those
7 inputs were just updated at least up to 2016 based on
8 Dr. Stephenson's modeling results?

9 A. So the -- are you asking me about the modeling
10 that Dr. Stephenson did for MIG on the fluid incentive or
11 are you asking about the modeling that was done for
12 Proposal 19?

13 Q. Yeah. That's fair. I'm just trying to clarify.
14 I mean, earlier when you were talking in your
15 rebuttal about Proposal 19, you had said that you do think
16 it's appropriate that there is some updates that happen,
17 and I'm just trying to clarify, are you -- is it MIG's
18 position, then, that the modeling results should be
19 updated in any way or are you just saying you believe that
20 the base differentials of \$1.60 should be eliminated?

21 A. So we believe that the Class I differential should
22 be updated, and MIG does not believe the Class I
23 differentials need to be increased. Updating doesn't
24 necessarily mean going up. And the -- in particular, we
25 believe that the three elements of the base Class I
26 differential should be decreased. And then when you get
27 to the county-level location adjustments, I think that
28 that question gets more complex.



1 Q. So can you describe for us the process you went
2 through in order to reach that conclusion? Did you have
3 any kind of industrywide meetings or conduct any kind of
4 studies or analysis?

5 A. So the group conducted a fair bit of study and
6 analysis and a lot of discussion last spring. We did
7 participate in meetings hosted by IDFA to explain our
8 ideas to a broader audience, and then we also participated
9 in the information session and the like, when we were --
10 after everyone had submitted proposals, so --

11 Q. The information session hosted by the USDA?

12 A. Yes, hosted by the USDA. Thank you.

13 Q. Okay. I want to back up and talk about what --
14 what work you did do.

15 When you said that the group conducted a study and
16 an analysis, when you say "group," which group are you
17 referring to?

18 A. So I'm referring to the Milk Innovation Group, so
19 myself and the members. And then we, as a group,
20 presented our ideas to IDFA for consideration of more a
21 broader network of people than just the MIG members.

22 Q. When were you retained as a consultant to perform
23 this study or work?

24 A. We -- early. No. I'm trying to remember if it
25 was the fourth quarter of 2022 or the first quarter of
26 2023. So let's call it the winter of 2022/2023.

27 Q. Approximately a year ago?

28 A. About a year ago.



1 Q. Okay. And it was MIG that retained you?

2 A. I'm actually retained by Davis Wright Tremaine, so
3 Mr. English's law firm, and the members of MIG.

4 Q. Okay. You understand that in Davis Wright
5 Tremaine's retention of you, that it was on behalf of MIG
6 and its membership?

7 A. Yes, I did.

8 Q. And you were retained to do what? What was the --
9 what was your understanding of the scope of what you were
10 retained to do?

11 A. I was asked to help the group evaluate what were,
12 at the time, discussion documents and the like that had
13 started circulating within the industry about various
14 price changes and what their impact would be specifically
15 with respect to Class I, like a focus on fluid milk, as
16 opposed to, you know -- as opposed to thinking about,
17 like, the price survey or something like that.

18 Q. Was it -- was it specific to Class I differentials
19 or broader than Class I differentials and went to the
20 total Class I pricing?

21 A. The group was very much -- at the beginning, the
22 group was very much focused frankly just on the health of
23 Class I and how Class I interacts with the orders, and
24 what -- what changes could be made to make it work better
25 for fluid milk.

26 Q. Okay. And so you said that the group conducted a
27 study and an analysis.

28 Can you describe for me the study that was



1 conducted?

2 A. So we broke apart -- lots of reading. So quite a
3 lot of looking at the order reform documents, considering
4 what the -- what was said with respect to Class I prices
5 at the time of order reform, and then thinking about,
6 okay, does this -- how does this work in today's
7 marketplace? Has something fundamentally changed or is
8 something not changed? And, you know, we went through
9 each piece of it over a few months.

10 Q. And when you say "we," you are talking about you
11 as the consultant, along with the membership for MIG?

12 A. Myself and the MIG membership. And we were
13 looking at more than just the Class I differential, we
14 were looking at -- we were looking at how Class I
15 interacts with the orders in a more -- from a higher-level
16 perspective than -- than just, like, the \$1.60, than just
17 this one proposal that is under consideration at the
18 hearing and that we're talking about today.

19 Q. And what analysis was conducted with -- with that
20 group?

21 A. We looked at -- gosh, we looked at lots of
22 different things. We looked at people's experiences
23 around balancing. We looked at people's experiences
24 around supply. We looked at many, many, different things.
25 It was pretty wide ranging.

26 Q. And when you say "we looked at people's
27 experiences," you mean the membership or the group that
28 you were working with to evaluate that study and analysis?



1 A. Yes. And so sometimes we would do things, like,
2 you know, a little mini internal survey, and, like,
3 everybody would provide information, like -- then I would
4 gather it up, and protect people's identities, and then we
5 would talk about it after it was anonymized, stuff like
6 that.

7 Q. And do you know if any cooperative members or any
8 cooperatives were invited to join those groups?

9 A. So one of MIG's members is Organic Valley CROPP
10 Cooperative. And so, yes, CROPP is a co-op and is
11 definitely a member.

12 Q. And I should have clarified. Do you know if any
13 non-MIG cooperatives were invited to join that study or
14 analysis?

15 A. I don't believe so.

16 Q. Do you know if any National Milk members, who were
17 not also MIG members, were invited to join, assuming that
18 there is any overlap, but do you know if any National Milk
19 members would -- were invited to join that study or
20 analysis?

21 A. Most likely not, but maybe. I mean, you know,
22 quite honestly, it's a group. And I wouldn't be surprised
23 if folks reached out to their colleagues, you know, so --

24 Q. Not that you are aware of, though?

25 A. Not that I'm aware of. But I do think that we
26 were working on things, and it was widely known.

27 Q. Okay. And do you know how many members MIG has?

28 A. MIG has ten members.



1 Q. So easy to know who is in the room; is that fair?

2 A. Relatively.

3 Q. Anyone that you can think of outside of the MIG
4 membership that was invited to that -- to those group
5 studies or analysis working sessions?

6 A. Well, as you can see from some of the information
7 that I have provided during the hearing, allies outside of
8 the group have participated in some of MIG's work. So,
9 for example, there were non-MIG members who provided data
10 for the component survey back on Issue 1, when the weather
11 was the opposite of today.

12 Q. How about with respect to Proposal 20?

13 A. I don't recall anything specifically with respect
14 to Proposal 20. But it's -- Proposal 20 is a little less
15 quantitative than some of the other work that I did for
16 the group.

17 Q. With respect to the other proposals?

18 A. Yeah, with respect to, like, the work that went
19 into evaluating the component issue, that was, you know,
20 very data-intensive kind of thing.

21 Q. Okay. And then I think you said that your process
22 after you did your -- your -- your MIG study and analysis,
23 then you presented that to IDFA at a meeting?

24 A. Yes. IDFA asked -- most of the members of MIG are
25 also members of IDFA. I don't know if it's 100% overlap
26 or not. I'm just not that far into the weeds of
27 everybody's business. And so IDFA, in the spring, held a
28 series of meetings where they asked people to present



1 their ideas around FMMO changes, and so MIG was one of a
2 number of people who presented ideas to IDFA's membership.

3 Q. Okay. It was an outward presentation, not an
4 information-gathering session?

5 A. Yes. And then what I would say is that as people
6 became more aware of what we were working on, then you
7 start seeing, like, information going the other way, too,
8 you know.

9 Q. And -- and I think that you said this earlier, but
10 just to include it within the section here that we're
11 talking about on the work that you did in order to come up
12 with the Proposal 20, you didn't do any kind of
13 independent county-by-county analysis, just because, as
14 you described earlier, there were logistical constraints
15 that didn't allow you to do that?

16 A. That's correct. This was very much considered --
17 yeah. We looked at the base Class I differential because
18 that was within -- it was an achievable thing for us to
19 look at and evaluate and come up with a proposal that the
20 group could support.

21 Q. If we are on page 3 of Exhibit 447, your written
22 testimony, you -- and this corresponds with page 2 of your
23 PowerPoint presentation in 450 -- that looking at the
24 element number 1, the compensation for Grade A status,
25 when you were doing that research and a lot of reading as
26 you described it, when it comes to that \$0.40 per
27 hundredweight compensation for Grade A status, it wasn't
28 just compensation for converting Grade A to -- or Grade B



1 to Grade A, was it?

2 A. So there's a -- on page 3 of my testimony you can
3 see that I wrote that it's not just the cost of
4 conversion, it's also related to maintaining Grade A
5 status.

6 Q. And you understand that's maintaining Grade A
7 status at the farm level?

8 A. Yes. Maintaining Grade A status at the farm
9 level. And -- and like I stated earlier, to me, there's a
10 double-counting issue here, that the -- because --
11 especially when you think about the maintenance piece of
12 it, because all of the milk is Grade A -- for the most
13 part, 99% plus -- and so it's there. And when you include
14 it again in the Class I differential, you are asking
15 Class I to pay for it twice.

16 Q. Where is it paid for the first time?

17 A. It's paid for the first time in the
18 market-clearing prices for the manufacturing classes, and
19 those -- and the Class I prices are built -- the price
20 formulas build Class I atop of the prices for III and IV.

21 Q. Are there any parts of the Class III or IV
22 formulas that specifically compensate dairy farmers for
23 maintaining the Grade A status?

24 A. That's -- not directly like that, no. That's --
25 it's -- it would be implicit within the way that the --
26 the Class III and IV formulas are very different than
27 Class I, because those are end product price formulas. So
28 it's just not the same structure.



1 Q. And Class I is the only class that actually
2 requires Grade A standards?

3 A. Most dairy products today, like, nearly all of
4 them, are -- dairy processors, no matter the class,
5 require that their suppliers provide Grade A milk to them.

6 Q. I'm not talking about market forces, I'm talking
7 about under the Federal Order system.

8 Is it true to say that the Class I is the only
9 Federal Order-required Grade A milk?

10 A. The requirement for Grade A milk would be related
11 to the sanitary standards, and so I'm just struggling a
12 bit because I'm trying to think about, like, all the uses
13 of milk, and, like, are there any of the products in the
14 other classes where it's required that, like, a product in
15 Class II be made with Grade A, and actually there would
16 be. Because -- so the fluid creams in Class II also have
17 to be made with Grade A milk.

18 Q. Okay. And if we talk about market forces, it's
19 true that under current market conditions, that the fluid
20 market buyers often require something well in excess of
21 the Grade A requirements; is that right?

22 A. People definitely have receiving specification and
23 standards, quality specifications and standards for their
24 milk, and they are -- and, yes, many people would consider
25 just the Grade A status to be a low bar, a minimum hurdle.

26 Q. And all of the clients with whom you work as a
27 consultant, they all have requirements that are in excess
28 of Grade A, don't they, for their fluid milk?



1 A. Yes. I'm not aware of anyone that would be right
2 on the Grade A standard.

3 Q. In the study and analysis that you did in coming
4 up with Proposal 20, what cost study did you do in order
5 to calculate what it costs to maintain Grade A at the farm
6 level?

7 A. I did not look at the cost of maintaining Grade A
8 at the farm level. What I looked at was whether or not
9 Class I should be asked to pay for that again.

10 Q. So you asked the MIG membership whether they --
11 whether they should be asked to pay for the cost of
12 maintaining Grade A milk?

13 A. No, I didn't. Well, the discussion that we had
14 was a very -- around Grade A, it was a very -- it was a
15 discussion that only an accountant would love. It was a
16 great deal of discussion around when -- when is something
17 double-counting and when is something not double-counting
18 and --

19 Q. So is it fair to say that when you are describing
20 double-counting for the cost of maintaining Grade A
21 status, you are talking about, it's already embedded in
22 the manufacturing milk class, and so you don't need to pay
23 for it again in Class I?

24 A. Yes.

25 Q. And --

26 THE COURT: That answer was "yes"?

27 THE WITNESS: Yes.

28 THE COURT: Thank you.



1 BY MS. HANCOCK:

2 Q. And so you are saying that the market conditions
3 have already naturally taken it into account for purposes
4 of establishing it in the Class III prices, for example,
5 and so that is essentially the market has remedied itself?

6 A. Yes. That is a fair summation of my perspective.

7 THE COURT: Ms. Hancock, please remember where you
8 are. I want to take a ten-minute break. I would like
9 everybody to be back and ready to go at 11:55. 11:55.

10 (Whereupon, a break was taken.)

11 THE COURT: We're back on the record at 11:58.

12 Ms. Hancock, you may resume.

13 MS. HANCOCK: Thank you, Your Honor.

14 BY MS. HANCOCK:

15 Q. Ms. Keefe, just to kind of put it back into
16 context, when we -- right before the break, I think our
17 last subject that we were talking is that you feel
18 confident that market forces can control or govern in a
19 way that will set prices where they need to be set; is
20 that fair?

21 A. Yes. I believe that the market forces can
22 continue to help the market function.

23 Q. And -- and throughout your testimony and your
24 presentation that you gave earlier today, you gave some
25 examples of that, including how over-order premiums can be
26 used when necessary to move Class I fluid milk where it
27 needs to go when it needs to move there?

28 A. Yes.



1 Q. Do you know, as you sit here today, whether
2 producers can rely on over-order premiums to cover all the
3 costs that it takes to maintain Grade A milk?

4 A. I don't believe that producers need to rely on
5 over-order premiums to compensate with respect to Grade A
6 milk.

7 Q. And you didn't do any of that analysis in the
8 workup that you did for Proposal 20, did you?

9 A. Which analysis?

10 Q. You didn't analyze to what extent over-order
11 premiums are used to supply the Class I fluid milk
12 markets?

13 A. I did not. We were very -- throughout MIG's work,
14 we were very, very conscious of antitrust concerns around
15 pricing discussions, and especially around discussions
16 with respect to over-order premiums, and so I did not
17 undertake, like, a survey of over-order premiums or
18 anything like that.

19 Q. As you sit here today, do you have an estimate of
20 the extent which over-order premiums are used in the
21 Class I market?

22 A. Over-order premiums vary around the country. They
23 vary in magnitude. They are more important in some places
24 than others. But as you will hear from MIG's members,
25 over-order premiums are a repeated theme for each and
26 every one.

27 Q. Okay. And do you know what percentage of the
28 Class I market the ten MIG members represents?



1 A. I don't recall that number off the top of my head,
2 I'm sorry.

3 Q. Less than 50%?

4 A. Certainly less than 50%.

5 Q. Less than 20%?

6 A. Maybe right around 20%, but I'm not -- I -- it's
7 been a long time since I've looked at that number, and I
8 just can't remember it off the top of my head.

9 Q. There would be no way to know whether over-order
10 premiums in the future would be able to -- to compensate
11 producers for servicing the Class I market, would there?

12 A. We can't know the future. But people who care the
13 most about making sure that they have enough milk for
14 their bottling needs, in my view, are Class I processors,
15 and so if they were concerned that this change would lead
16 to a shortage of supply for them, MIG would not have
17 proposed it.

18 Q. Do you know when the -- when the AMAA was
19 originally enacted, if Class I processors had an incentive
20 to -- to take care of producers at that time?

21 A. So the AMAA was enacted in 1937, and I'm going to
22 defer to Dr. Stephenson on the history of the Act and all
23 of those sorts of questions.

24 Q. One of the other -- one of the other points that
25 you make in your presentation is that if you -- if the --
26 if the market allows over-order premiums to be paid, then
27 it would -- it would make the payments reach the producers
28 who are actually producing that milk; is that right?



1 A. Yes. The -- there are times probably where I
2 should be a bit more precise in my language around this.
3 So with the orders, producer milk can be either directly
4 from a producer from a dairy farmer. But producer milk is
5 also cooperative-handled milk, and so when I'm talking
6 about the producer milk that supplies Class I, I mean all
7 of the producer milk that supplies Class I.

8 Q. Okay. And that includes at the farm level?

9 A. Yes.

10 Q. And if -- we could reference it, too, because if
11 you look at Exhibit 450, your PowerPoint presentation, if
12 you turn to page 5 under the incentive to serve Class I,
13 the \$0.60 a hundredweight, that third element that you --
14 your proposal is to eliminate from the differentials -- or
15 from the base differentials, the second bullet point there
16 you say, "Compensation needs to go directly to the Class I
17 suppliers."

18 That's what you understood we were just talking
19 about?

20 A. Yes.

21 Q. And you understood that one of the principles
22 under the Federal Order system is to pay producers without
23 regard to the end use of their milk?

24 A. Yes, I understand that. That -- and what we are
25 suggesting here is that for this portion of it, it would
26 be better to not be shared through the pooling mechanism,
27 that it should go directly.

28 Q. Directly to the farm that's producing milk that



1 would be used for fluid milk purposes?

2 A. Directly to the supplier. So whether the producer
3 milk was cooperative or a dairy farmer. It's not -- and
4 so it's direct on the producer milk.

5 Q. And this is, again, reinforcing your principles
6 that you would think it's better to let market forces
7 dictate the movement of milk?

8 A. Yes.

9 Q. And so I'm going to go back to one of my first
10 questions, that if we're here to -- and you believe that
11 market forces can dictate the movement of milk, then other
12 than data collection and transparency into what's
13 happening in the market, why have a Federal Order system?

14 A. We have a Federal Order system because dairy
15 farmers have asked the Secretary to enact it. And if
16 dairy farmers want it, that's good enough for me. Like,
17 it can exist. It should exist. If they want it, then,
18 yes.

19 Q. And if we take your proposal then to fruition,
20 what you are really saying is if the dairy farmers want
21 it, we'll have it for purposes of data collection, but we
22 want the market forces to really govern the pricing
23 provisions?

24 A. Your -- I mean, your question is very broad. I
25 mean, the pricing provisions are way bigger than just
26 Class I differentials. So, yes, with respect to Class I
27 differentials. But, I mean, there's a lot more to FMMO
28 pricing than just the base Class I differential.



1 Q. Sure. So maybe it's good when it comes to setting
2 Make Allowances, but not when it's good for setting
3 differentials?

4 A. I mean, I don't want to opine on end product price
5 formulas. That's, you know, not what I'm here to talk
6 about.

7 Q. Okay. Let's -- let's turn to -- you have Table 1
8 in your testimony. I have to find it again really quick.
9 And I am looking for the table on blend prices.

10 THE COURT: Page 9.

11 MS. HANCOCK: Thank you, Your Honor.

12 BY MS. HANCOCK:

13 Q. And it's my understanding, as I read your position
14 on eliminating the cost of balancing, that you believe
15 that those -- those costs are already sometimes paid by
16 other parties. Is that -- or a variety of parties I
17 guess.

18 A. Yes, a variety of parties.

19 Q. And, again, that would be another place in which
20 you believe that market forces will drive the coverage of
21 those balancing costs on its own forces, and we don't need
22 the Federal Order system to build in a cost for balancing?

23 A. Yes, absolutely. And in particular, I think that
24 that element that the market has shown that there are a
25 variety of different solutions, and so that -- that is
26 particularly ripe for re-evaluation today.

27 Q. And as you understand it, the current
28 differentials have \$0.60 a hundredweight built into those



1 differential prices now for balancing, and even with that
2 \$0.60 a hundredweight built in, market forces have still
3 driven that shift -- that shifting of those costs to other
4 locations?

5 I dropped my pen, so I might have distracted you
6 there. Sorry.

7 A. Could you repeat the question?

8 Q. Yeah.

9 A. Thank you.

10 Q. Under the current differentials, you understand
11 that there's a \$0.60 a hundredweight included from Federal
12 Order Reform for balancing costs?

13 A. Yes.

14 Q. And with that \$0.60 a hundredweight that's
15 currently built in, even with that built in, market forces
16 have created situations today in which additional
17 balancing costs are borne by other parties?

18 A. Yes. It is -- today there are balancing services
19 being provided to the market by a wide variety of parties
20 in a lot of different ways.

21 Q. So if we don't even talk about who is paying for
22 it, have you done a study or an analysis to determine how
23 much it costs to balance?

24 A. So a great big, like, study or research paper
25 that's going to go out in a peer-reviewed journal, the
26 answer to that question is no.

27 But the smaller question as far as a lot of
28 research and discussion around various balancing costs,



1 and who's performing the service and why, and what's --
2 what -- the service they are performing, like, and how
3 much does it cost them to do that, yes, we looked at that
4 extensively as a group.

5 Q. And how much did you estimate on the work that you
6 looked at as a group that it costs to balance?

7 A. What we saw was, frankly, a very wide range and,
8 you know, above and below the \$0.60. And so one of the
9 things with the \$0.60 there, to me, is that sometimes some
10 of that \$0.60 belongs with one party, and sometimes part
11 of it belongs with somebody else. Sometimes it's way
12 bigger; sometimes it's way smaller. It's -- what we saw
13 was a lot of variability.

14 Q. What's the range?

15 A. I don't want to speculate that on the fly.

16 Q. And I'm not asking you to speculate. You said
17 that you conducted a study and an analysis, and then I
18 asked if you had studied the balancing costs and you said
19 yes.

20 So I'm just saying, based on the study and
21 analysis that you did, what was the range of the balancing
22 costs that you observed with MIG's membership?

23 A. Anywhere -- small, so, like, \$0.25 type of thing
24 that somebody was taking on, to very large, like, dollars
25 per hundredweight. So it -- a very wide range.

26 Q. And when you say that someone was "taking on," are
27 you talking about that MIG's membership was absorbing?

28 A. Yes.



1 Q. Okay. And so this is something in addition to
2 what they are already paying that's built in to the
3 differentials?

4 A. Yes. And it's -- the way that the \$0.60 is built
5 into the differential, there's this assumption that it's
6 happening, that balancing is happening the same way, like,
7 all the time. And the biggest -- my biggest takeaway was
8 actually that there is a myriad of solutions and services
9 and activities, and there was -- there's just a lot of
10 variability there.

11 Q. Okay. And that can run throughout the whole
12 supply chain where those costs could be incurred.

13 A. Yes.

14 Q. And you have listed some here that go from the
15 farm level all the way through to the processors; is that
16 right?

17 A. Yes, I have.

18 Q. And you said -- and in your Exhibit 450 in your
19 PowerPoint presentation, you said that -- you reference a
20 raw milk storage at the farm level.

21 Do you remember talking about that?

22 A. Yes.

23 Q. And so that would actually be a cost of -- that
24 the farm would have to incur itself; is that right?

25 A. Yes, it would be.

26 Q. And not even something that -- that the
27 cooperative would incur, but somewhere all the way down to
28 the level where the cows are being milked?



1 A. Absolutely.

2 Q. And then it goes all the way through to the
3 finished goods that are paid by the ultimate consumer, or
4 by the ultimate sale to the retail outlets, for example?

5 A. Yeah. I -- I don't think I'd tag consumers with
6 having responsibility for balancing.

7 Q. You said finished goods at the warehouse.

8 Are you talking by the processors?

9 A. Yes.

10 Q. Okay. And -- and so when you were working with
11 your membership at MIG and you said it could range up into
12 the \$2 range, that variability can be seasonal; is that
13 fair?

14 A. The variability can definitely be seasonal. And
15 MIG's -- there are 11 witnesses to follow me on
16 Proposal 20, and MIG's members have a lot more specific
17 information relative to their context and their
18 experiences that I think would be informative here,
19 like...

20 Q. And I'm just trying to dig through the surface
21 about what you're testifying to. So when you say that you
22 believe that those costs aren't necessary, I'm trying to
23 figure out what costs of balancing in the work that you
24 did, did you determine were no longer relevant to be
25 including in the Class I differentials?

26 A. So my conclusion and the -- my conclusion and the
27 group's proposal was that the \$0.60 for market balancing
28 in the current base Class I differential should not be



1 included anymore because of all of the different ways that
2 balancing happens today.

3 Q. Okay. So if I just maybe put a fine point on it,
4 you are just saying the market conditions will take care
5 of itself in putting those costs where they need to be
6 allocated?

7 A. Yes. And I would add that it will not be 100% of
8 the time that it -- that that \$0.60 belongs with a
9 processor.

10 Q. You are saying that if it needs to be at the farm
11 level, that will be paid for in those over-order premiums?

12 A. If it needs to be at the farm level, it will be in
13 over-order premiums. If it needs to be, you know, with
14 the producer milk, it's going to be on over-order
15 premiums. If it's going to be at the processor level, you
16 know, there could be a credit on over-order premiums.
17 There's a lot of different ways that it happens. And I
18 know that our members are prepared to talk about that, and
19 their testimony covers these -- this topic.

20 Q. Okay. So you just trusted the membership that you
21 worked with at MIG, that if it was needed to be paid, that
22 it would be paid through those over-order premiums?

23 A. In my experience, with my clients, MIG and
24 otherwise, when -- when over-order premiums are
25 negotiated, they are paid.

26 Q. And you have been here throughout a good chunk of
27 this hearing, and you have heard numerous producers and
28 cooperatives testify; is that fair?



1 A. Yes, that's fair.

2 Q. And have you heard them testify about how
3 over-order premiums are not so easily negotiated from
4 their side of the leveraged bargaining power?

5 A. I have heard that testimony.

6 Q. Any reason to believe that they are not being
7 truthful or honest when they say that?

8 A. Definitely not. I think that it will be
9 instructive and informative for the record to hear the
10 other side of that negotiation.

11 Q. And -- and I think, in total, you are -- you say
12 that by eliminating each of these three elements, so
13 eliminating the \$1.60, you are allowing the market
14 conditions to take over and govern the pricing; is that
15 fair?

16 A. To take over and govern the base Class I
17 differential, just that first \$1.60.

18 Q. And if instead those are increased, you are
19 worried that it will create overproduction of milk?

20 A. We are concerned that price-enhancing changes
21 would lead to oversupply.

22 Q. What study or analysis have you done or been
23 involved in that would suggest that increasing the prices
24 would increase the milk production more than what demand
25 would require?

26 A. I reached that conclusion based on -- just on my
27 experience in the industry and, you know, basic economic
28 principles. There's no great big study there.



1 Q. Is there any study at all?

2 A. There's a lot of knowledge amongst myself and our
3 group regarding, you know, how -- how dairy production
4 responds to changing prices, how farm milk supply responds
5 to price increases.

6 Q. Okay. And I'm going to get to that in just a
7 second. But before I get to the actual experience and
8 walking down that path, I'm just wondering, you said there
9 is a study.

10 Is there any actual study on that that you are
11 aware of?

12 A. No.

13 Q. Okay. So when you talk about we have experience
14 with it, can you tell me any situation where an increase
15 in differentials, where the price for Class I fluid milk
16 has resulted in an overproduction of milk?

17 A. So those statements, I'm relying on just basic
18 economic principles of supply and demand. And it has been
19 a long time since Class I differentials have changed. You
20 know, outside of the Southeast, it hasn't happened since
21 order reform.

22 The clearest signal, actually, that I can show you
23 in the marketplace, or point to, is if you look at the way
24 that the farm milk supply has reacted to changes in the
25 valuation of components over -- since order reform, and as
26 fat has become more valuable, as protein has become more
27 valuable, that you see increases in the production of
28 those components. Like, people are responding to the



1 market signals.

2 Q. And that's because there's a buyer for that milk;
3 is that right?

4 A. That's because there's a buyer for that milk.

5 There have also been times where, you know,
6 there's a lot of, you know, kind of like boom/bust timing
7 issues sort of thing within our dairy markets where prices
8 will go up, more milk comes on, it turns out to be too
9 much, the prices go down, milk supply contracts some. You
10 know, there's a give and take there.

11 Q. So I'm just trying to figure out -- let's say
12 Class I differentials are increased as National Milk
13 proposes.

14 What's the scenario that you can envision that
15 would cause too much extra Class I milk to be produced?
16 Doesn't there have to be a buyer on the other side in
17 order for the producer to sell that milk?

18 A. So what happens is the milk comes on, and it's
19 perhaps more than what's needed, and then we see prices in
20 the manufacturing classes decline, and the milk winds up
21 being used for something that -- it's not like it goes
22 down to zero value, but the price is no longer as high as
23 it once was, and supply and demand, you know,
24 re-equilibrates.

25 Q. Well, in that scenario, that would also reduce
26 Class I prices, right?

27 A. I suppose it would.

28 Q. Okay. So I'm just trying to figure out, if



1 there's no buyer for more Class I milk, why is there going
2 to be an overproduction then?

3 A. We have seen over the years, dairy producers
4 respond to higher prices by increasing production. And
5 there's other reasons why production changes at the farm
6 level, but certainly the influence of pricing can't be
7 ignored.

8 Q. And, you know, cooperatives, for example, if, you
9 know, they are obligated to take their members' milk, they
10 can implement base/excess programs?

11 A. Yes, they could.

12 Q. And if you are not in a cooperative, you can just
13 not buy it as a processor, right?

14 A. You could match your supply. There's -- some
15 cooperatives have quota systems. There's a number of
16 different solutions.

17 Q. And you say throughout your testimony, and one
18 example is on page 6 -- well, this one is related to
19 balancing costs. You say that it can create disorderly
20 market conditions.

21 I'm wondering how those disorderly market
22 conditions are created?

23 A. Can you tell me where you are on page 6?

24 Q. Yeah. This one is the last -- the first sentence
25 of the last paragraph on that page.

26 A. So the -- so when balancing costs are built into
27 the minimum price, it creates disorderly marketing.

28 Q. Yeah. How does it create disorderly marketing?



1 A. So I think that it is disorderly when we are
2 asking people to perform a service and not compensating
3 them for it, or requiring that they compensate someone for
4 a service that they aren't getting. And both of those
5 things happen.

6 Q. And in this example, in referring to balancing,
7 you are talking about because other parties might
8 negotiate payment in another way outside of the Federal
9 Order system?

10 A. I believe that's where I was at in the preceding
11 paragraph. The statement following the sentence that we
12 were just talking about is in the first instance that
13 means Class I processors are paying for balancing services
14 that they may not be receiving.

15 In the second instance, being forced to pay into
16 the pool generally for balancing leaves Class I processors
17 with fewer resources to pay their direct suppliers
18 over-order premiums related to balancing.

19 So I was trying to talk about both sides of it
20 there.

21 Q. So all of the balancing costs that are not built
22 into the Class I price are optional.

23 Those are -- those are contract negotiated prices;
24 is that fair?

25 A. They are negotiated prices. I don't think the
26 market is optional. I mean, you have to meet -- you have
27 to -- you have to pay -- you have to pay for what you want
28 to get, like...



1 Q. Right. I'm just saying, to the extent that it's
2 being double-counted, it's because somebody's negotiated
3 an additional amount to cover those balancing costs; is
4 that right?

5 A. I think that that's one way to look at it. I
6 think that some of our members would look at it maybe
7 through a different lens.

8 Q. Meaning they feel forced to pay for those costs
9 because of the bargaining power on the other side of the
10 table?

11 A. No, not so much a bargaining power thing. More,
12 actually, that there are times when -- and we heard
13 actually producer testimony about this back in October.

14 A California conventional producer talked about
15 why he stopped shipping directly to a Class I processor
16 and changed handlers, because of the disincentives and
17 pricing issues related to pooling all of this \$1.60.

18 Q. So on that same page, on page 6, the prior
19 paragraph, the second to the last sentence, it says that,
20 "The Class I processors are effectively paying for
21 balancing twice, once diluted through pool payment."

22 That's through the Federal Order system; is that
23 right?

24 A. Yes.

25 Q. "And then a second time to the producers actually
26 supplying the milk to the fluid plants."

27 You mean through a negotiated contract price?

28 A. Yes.



1 Q. And it's that double payment that you are saying
2 in the next paragraph creates that disorderly marketing?

3 A. That's one example of it.

4 Q. Okay.

5 A. There are others.

6 Q. And sticking with this example that it's not the
7 Federal Order system that's creating that situation, it's
8 that secondary-tiered negotiation of the contract price to
9 pay it -- the balancing costs, that's creating that
10 secondary payment; is that right?

11 A. If you -- if you consider the -- if you consider
12 the FMMO base Class I differential as the first, then the
13 other will have to be the second.

14 Q. Right. Because the Federal Order system is the
15 minimum price; is that right?

16 A. It is.

17 Q. So it has to be the first, right?

18 A. I would think, yes.

19 Q. Okay. And so it's not the Federal Order system
20 that's creating that disorderly marketing, it's just your
21 perception that in negotiating for additional over-order
22 premiums that cover those balancing costs, that that's
23 somehow double dipping and creating a disorderly market
24 condition?

25 A. I think that it is disorderly to ask Class I to go
26 above and beyond. And, like, this is an example of
27 continuing to ask Class I to go above and beyond.

28 Q. Well, isn't this somewhat inconsistent with what



1 you have already said, that the market's going to take
2 care of itself, if you are saying that now by negotiating
3 a balancing cost on top of what's already built in to the
4 Class I differential it's creating a disorderly market
5 condition?

6 A. I -- I don't think so.

7 Q. Okay. Let's turn to page 8 of your testimony in
8 Exhibit 447. Under Section C there you say that "the
9 solution for a failing Class I market is less regulation."

10 Do you see that?

11 A. Yes.

12 Q. And so you mean less regulation in the Federal
13 Order system?

14 A. So I mean less of the price being covered in the
15 minimum, you know, less of it being in the fully-regulated
16 minimum price.

17 Q. And in reducing the \$1.60 base Class I
18 differential, you state that "it will leave Class I market
19 in a better position"?

20 A. Yes. I think that reducing the Class I
21 differential will provide necessary resources for Class I
22 to help turn the tide on declining sales.

23 Q. Okay. And I think you described earlier that it
24 would allow Class I processors to be more innovative as
25 well; is that right?

26 A. It's -- it's one step in it.

27 Q. Meaning it would allow them more dollars in -- in
28 their budgets in order to allow them opportunities to



1 explore how to be more innovative within the fluid market
2 sector?

3 A. Yes.

4 Q. And I think you, based on your calculations, said
5 that that's about -- it ranges between \$0.11 a
6 hundredweight and \$1.33 a hundredweight depending on the
7 jurisdiction?

8 A. That would be the impact on the blend price. The
9 impact on the Class I price is uniformly \$1.60. The
10 Class I price is only -- the Class I is only going to be
11 applied to the Class I milk in the market, whereas the
12 uniform price is going to be impacting all of the pool
13 milk.

14 Q. And so that to the extent that it would allow
15 Class I fluid milk handlers to be more innovative, it
16 would come at the costs paid to producers?

17 A. Producer prices, if Proposal 20 is adopted,
18 producer prices would go down.

19 Q. So to the extent that Proposal 20 by MIG is
20 designed to incentivize innovation by fluid milk handlers,
21 that is coming at the costs of the reduced payment to
22 producers?

23 A. What reduces is the calculation. So what reduces
24 is the regulated minimum price.

25 Q. So my question was, to the extent that Proposal 20
26 results in a decrease in the Class I price that's paid,
27 and you gave the blend price calculation range of
28 somewhere between negative \$0.11 and \$1.33 a



1 hundredweight, that comes out of the pockets of producers?

2 A. Yes.

3 Q. Do you believe that the producers should shoulder
4 the costs of the fluid milk handlers' innovation?

5 A. I believe that the -- that we should provide a
6 system that allows the market to incentivize more
7 innovation in the fluid space.

8 Q. And who is going to subsidize the dairy farmers to
9 be more innovative with respect to their production?

10 A. That's a rhetorical question.

11 Q. Can you answer it?

12 A. I think that fundamentally the FMMOs are a system
13 of regulated minimum prices. And, frankly, I would hope
14 that dairy farmers look to the market and price
15 negotiation to get the payments necessary to fund their
16 own innovations.

17 Q. And if the dairy producers lack the leverage to
18 negotiate that, as they have testified to being unable to
19 get over-order premiums that cover their costs, other than
20 through the minimum pricing mechanisms afforded by the
21 Federal Order system, are there any other options that
22 they have?

23 A. Well, I heard the testimony from cooperatives and
24 producer witnesses regarding over-order premiums. I am --
25 I do not agree with the statement that -- that over-order
26 premiums don't exist, aren't paid, are difficult to
27 negotiate. That's not something I agree with.

28 Q. And -- and what dairy farmers did you include in



1 your study and analysis in setting Proposal 20 up?

2 A. So several of our members are actually dairy
3 farmers themselves, so we have that group of people. And
4 then we also, like I mentioned before, the MIG's -- the
5 proposal that became MIG 20 was discussed at a number of
6 IDFA meetings, and we received feedback from a wide
7 variety of people on it.

8 Q. And the dairy producers that are part of MIG's
9 membership, are those the organic dairy farmers?

10 A. There are organic dairy farmers, and then there --
11 there's also some conventional. I believe that one of our
12 members used -- it's complicated. But one of our members
13 farms conventionally.

14 Q. Do you know what percentage of the membership of
15 MIG is based on conventional dairy farming?

16 A. So the -- so several of MIG's members operate
17 farms, and then there's also a MIG member who is a dairy
18 cooperative. So Organic Valley is an organic dairy
19 cooperative; Aurora Organic Dairy operates organic dairy
20 farms; Crystal Creamery previously operated conventional
21 dairy farming operations; and if memory serves, Shamrock
22 Farms does both.

23 Q. Okay. And Crystal was a producer handler?

24 A. No.

25 Q. They produce their own milk?

26 A. Well, Crystal might have been a California
27 producer handler, but Crystal was not an FMMO producer
28 handler, to my knowledge.



1 Q. And since Federal Order Reform, do you know, are
2 you familiar with what has happened on just inflationary
3 growth during the last 20 years' cost of production?

4 A. Generally speaking, yes.

5 Q. What's happened to it?

6 A. The cost of production has gone up.

7 Q. Do you know by what percentage?

8 A. I do not know off the top of my head by what
9 percentage.

10 Q. What would the range be that you would estimate
11 that the inflationary growth of -- costs of production
12 have increased over the last 20 years?

13 A. I don't want to venture a guess and get it wrong.
14 As you can tell, I'm sort of like a precise kind of
15 person, and I would want to look it up and give you the
16 right answer.

17 Q. And where would you look to get that answer?

18 A. I would look at information from USDA, as well as
19 other industry sources.

20 Q. Like the producer price index for fluid milk
21 manufacturing?

22 A. That wouldn't be where I would look, but one could
23 look there.

24 Q. What about the price of natural gas --

25 A. So --

26 Q. -- as a factor for calculating the inflationary
27 growth for the cost of production?

28 A. So energy costs are definitely part of the reason



1 why costs have increased throughout our economy. And so
2 looking at and understanding energy costs is definitely
3 important.

4 Q. Dairy product manufacturing costs at NAICS, would
5 you use that as a source?

6 A. Dairy product, for looking at the farmer side of
7 things? I probably wouldn't go there first, but, you
8 know...

9 Q. A factor for consideration?

10 A. It's certainly something that one could think
11 about.

12 Q. And is it fair to say that while you don't feel
13 comfortable giving a precise number, you know that it --
14 over the last 20 years, the costs of production have
15 increased by more than 100%?

16 A. I believe that to be correct.

17 Q. And even under your calculations, the cost of --
18 of the proposed increase by National Milk at -- I think
19 you calculated it to be on average of 53%, would fall well
20 short of just keeping up with the inflationary cost of
21 production; is that right?

22 A. So I'm sorry, so the 53%, are you talking about
23 NMPF's Proposal 19 or --

24 Q. Yes.

25 A. Okay. Could you restate that?

26 Q. Sure.

27 A. I lost a thread there.

28 Q. Under what we looked at previously, under your



1 calculation of National Milk's proposed 19, Class I
2 differential increase, you estimated it to, on average, be
3 53%.

4 Do you recall that?

5 A. Versus current.

6 Q. Versus current.

7 A. I believe that to be what we were talking about
8 earlier this morning, yes.

9 Q. And under any calculation, if you just looked at
10 the cost, the inflationary cost increase that's happened
11 since order reform, National Milk's 53% would fall far
12 short of just inflationary costs of production?

13 A. Yes, it's below. And those inflationary pressures
14 are seen throughout our economy. They are seen by fluid
15 processors. They are seen by dairy farmers. They are
16 seen by a cheese manufacturer. They are seen throughout
17 the dairy industry and throughout our economy as a whole.
18 So when you are talking about changes in transportation
19 and energy, like, I mean, that's a --

20 Q. So the answer is, yes, National Milk's proposal,
21 if you just looked at the increase -- inflationary costs
22 that have increased over the last 20 years, National
23 Milk's proposal would still fall far short of that?

24 A. Yes. Just compared to straight-up inflation.

25 Q. And you understand that one of the elements in
26 setting the Class I differentials takes into account the
27 cost to supply the market?

28 A. So, yes, the cost to supply the market, as well as



1 an incentive to attract to the market. So I -- are you
2 saying that with respect to the cost to supply, are you
3 talking about balancing there, or are you talking about
4 the incentive?

5 Q. I'm just talking about the cost to supply the
6 market. In all of the research you did in order to come
7 up with Proposal 20, did you discover that part of the
8 justification for the Class I differentials included the
9 cost for the dairy farmer to supply the market?

10 A. So fundamentally, yes. What we're looking at with
11 the Class I differential is making sure that we have a
12 Class I price that will effectively get the milk that's
13 needed for Class I into Class I plants so that consumers
14 can buy it at the store.

15 Q. That's all I have.

16 MS. HANCOCK: Thank you so much for your time.

17 THE COURT: It's time that we're going to break
18 for lunch today. It's 12:45.

19 But before we do that, Mr. Rosenbaum, you came in
20 during this cross-examination. We knew you would be late.
21 Would you just come to the podium and announce that you
22 are here?

23 MR. ROSENBAUM: Steve Rosenbaum for the
24 International Dairy Foods Association. I made it.

25 THE COURT: Wonderful. Thank you.

26 I notice Dr. Cryan came in, too, but we didn't
27 have a preview that he had given permission for us to go
28 on without him, so -- we did with regard to Mr. Rosenbaum.



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All right.

 Please be back and ready to go at 1:46.

 We go off record at 12:46.

 (Whereupon, the lunch recess was taken.)

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1 TUESDAY, JANUARY 16, 2024 - - AFTERNOON SESSION

2 THE COURT: Let's go back on record.

3 We're back on record at 1:47, and we will resume.

4 Let's see, Ms. Hancock, you had just finished.

5 MS. HANCOCK: I did.

6 THE COURT: So who will next cross-examine

7 Ms. Keefe?

8 MR. MILTNER: Ryan Miltner representing Select
9 Milk Producers.

10 CROSS-EXAMINATION

11 BY MR. MILTNER:

12 Q. Ms. Keefe, hello again.

13 A. Good afternoon, Mr. Miltner.

14 Q. Do you have Exhibit 447 in front of you, your
15 written statement?

16 A. Yes.

17 Q. Could you turn to page 4 of that exhibit, please?

18 The first block quote on that page is from a prior
19 USDA decision, talking about the component of the \$1.60
20 base for balancing costs.

21 And I'm wondering if in your discussions with the
22 members of MIG, if you or the group discussed what is
23 included in balancing costs?

24 A. So as a group when MIG has discussed balancing, we
25 have talked about quite a wide range of activities,
26 including, but not limited to, the stuff that would be
27 detailed here in the block quote.

28 Q. So within the block quote there's a reference to a



1 litany of components. The first is seasonal and daily
2 reserve balancing of milk supplies.

3 Is that one of the elements that your members
4 discussed?

5 A. Yes, that was one that we discussed quite a bit,
6 both around from a milk supply perspective, and then also
7 from -- so production on the farm, more even, considering
8 it versus seasonal demand, as well as the difference in
9 shelf life and how inventory can play into those sorts of
10 seasonal and daily balancing issues.

11 Q. How would inventory play into seasonal balancing
12 issues?

13 A. For some extended shelf life in aseptic products,
14 you are talking about code dates that are more than
15 200 days, and so you really can do things, like, put up
16 product in the summer for sale in the fall.

17 Q. Which members of MIG produce ESL products?

18 A. Aurora Organic Dairy produces ESL products; Danone
19 produces ESL products; HP Hood produces ESL products;
20 fa!rlife produces ESL products; Shamrock produces ESL
21 products; Shehadey produces one ESL product, it's a very
22 small amount of their portfolio.

23 THE COURT: Would you spell Shehadey for me?

24 THE WITNESS: Absolutely. Shehadey is
25 S-H-E-D-E-Y (sic).

26 MR. MILTNER: I think you missed a few letters.

27 THE COURT: S-H-E --

28 THE WITNESS: S-H-E-H-A-D-E-Y.



1 THE COURT: Thank you.

2 BY MR. MILTNER:

3 Q. Of those members, which of them actually stockpile
4 products in the summer for later sale?

5 A. Many of them could. Who does and doesn't would be
6 a better question for them than for me. I don't want to
7 betray their business strategies.

8 It is interesting, there's a real carrying cost
9 associated with doing that, because of the carrying cost
10 of the inventory itself, and so there's a lot of tradeoffs
11 that go into that type of a decision. But it definitely
12 does happen.

13 Q. Perhaps the answer is self-evident, but can HTST
14 processors stockpile product in the same manner?

15 A. Not in the same manner seasonally, but -- and so
16 that was honestly one of the reasons why this was
17 something that we talked about quite a lot, was that
18 tension between what's possible with different processing
19 technologies and very different products.

20 Q. Have you looked at what percentage of the Class I
21 market is ESL?

22 A. I did look at that. I'm not going to remember the
23 number off of the top of my head, but it is actually in
24 the petition that MIG submitted in May for our hearing
25 proposals. I just -- I --

26 Q. Okay. Thank you.

27 Would you agree that the specific elements of what
28 is considered balancing is different for a cooperative



1 than it is for a handler?

2 A. I think that for a cooperative relative to -- I
3 think that when it comes to cooperatives and balancing,
4 there is activity around the -- balancing the producer
5 milk that comes off of the farm, and you also see very
6 similar concerns when a handler has direct ship producers.
7 So I think that sometimes the scale is going to be
8 different because cooperatives are frequently -- have many
9 more members than what I would be talking about with a
10 fluid processor, with a direct ship supply. But there you
11 see very similar activities and concerns.

12 Q. Which of your members utilize direct shippers?

13 A. Anderson Erickson uses direct shippers. Aurora
14 uses direct shippers. I believe -- and in many of these
15 cases, people are doing both. Like, it's not necessarily
16 like all or the other. And I think Crystal does both.
17 One of Crystal's facilities, I believe, is almost all
18 direct shipment.

19 So -- and continuing alphabetically, Organic
20 Valley is a co-op. Danone has direct shippers. I believe
21 that fa!rlife is mainly cooperative supplied. But this
22 question would be best directed to the members of MIG
23 themselves.

24 Q. Are you aware of any MIG member that is only using
25 direct shippers?

26 A. I'm not. But I am -- a couple of them would --
27 the amount of cooperative milk that they buy is very low,
28 like, not a routine purchase.



1 Q. So for an organization like that, they would be
2 using the direct shippers to supply most of their needs,
3 correct?

4 A. Yes.

5 Q. And then the cooperative supply would round out
6 their needs --

7 A. Yes.

8 Q. -- correct?

9 A. But you really should ask the members themselves
10 because I may not have that right. I'm actually -- Turner
11 may be 100% direct ship. So please ask the members
12 themselves.

13 Q. I will. Thank you. And although I will, I have
14 one more question, maybe two, on this point.

15 For those handlers that are utilizing both direct
16 shippers and cooperatives, normally, the direct shipper is
17 shipping all of their milk to the Class I plant, correct?

18 A. Typically, but not always. And Turner, actually,
19 I know has part of their milk supply, which is in order to
20 balance, they have direct ship producers that are -- that
21 are largely dedicated to a manufacturing facility.

22 Q. For those that are under the typical model where
23 the direct shippers supply all of their farm production to
24 a handler, isn't the balancing for that plant then shifted
25 to the cooperative supply for those plants?

26 A. Maybe. In some cases, yes, but in other cases,
27 no. And so there are examples within the ten members that
28 would not conform with the assumption there.



1 Q. Why would they not conform to that assumption?

2 A. So you can have a situation where the co-op
3 supplier is not routine, is not a routine supply, and is
4 not -- and is also not necessarily the peaks and valleys.
5 Like, I would encourage you to talk with the folks at
6 Aurora about this one.

7 There's -- there's a number of different
8 arrangements within the -- just the ten members of MIG,
9 and so it leads me to think that when you look at the
10 industry as a whole, that you are -- that we would see
11 even more situations where the primary cost and
12 responsibility for balancing will sometimes be in one part
13 of the supply chain or another. It's often frequently
14 shared, though. It's -- it's not necessarily all one or
15 all the other.

16 Q. I think, did you testify earlier that Aurora has
17 essentially own farm production for a portion of its
18 supply?

19 A. Aurora has own farm production, it also has direct
20 ship production, and has cooperative supplied milk. So
21 they have all of it.

22 Q. And -- and Aurora is 100% organic milk, correct?

23 A. Yes. And so that's something that is also very
24 unique about their balancing situation.

25 Q. You were asked some questions by Ms. Hancock about
26 the balancing costs of the MIG members. And I believe you
27 stated that those costs sometimes were less than \$0.60 and
28 sometimes more than \$0.60.



1 Did I understand that correctly?

2 A. Yes. And I was -- what I mean there is that that
3 is the portion of the cost that they are bearing.

4 Q. Above the regulated Class I price?

5 A. No, it would be the portion that is -- it's just
6 like looking at the activity and saying how much is this
7 balancing activity costing you versus how much is some
8 different activity costing.

9 Q. Okay. So let me take a generic MIG member then,
10 because I want to help understand that testimony.

11 For a MIG member that has this balancing cost you
12 examined, and let's just say it's \$0.60 --

13 A. Sure.

14 Q. -- is that \$0.60, then, just the portion of the
15 base \$1.60?

16 A. So the \$0.60 is the cost that they are bearing
17 today for what it is that they are doing.

18 Q. Okay. So it's not what they are paying in the
19 Class I price, it is the cost incurred by the MIG member
20 to balance, correct?

21 A. Yes. That's -- yes.

22 Q. Would that \$0.60 include any additional balancing
23 costs that are incurred by a cooperative supplier to that
24 MIG member?

25 A. No, there would be -- in that example, when
26 Ms. Hancock and I were talking, there could be additional
27 balancing costs borne by someone other than the MIG
28 member. And so there could be another \$0.60 borne by the



1 cooperative. There could be a cost borne by -- at the
2 farm level by a producer.

3 Q. So for this generic MIG member, there are some
4 balancing costs that will be incurred by the producer --
5 and I say "producer" to include cooperative and farmer,
6 correct?

7 A. Yes.

8 Q. There would be balancing costs incurred by the MIG
9 member by the Class I processor, correct?

10 A. Yes.

11 THE COURT: Your response?

12 THE WITNESS: Yes.

13 BY MR. MILTNER:

14 Q. Now, those are the actual costs of the
15 transactional participants.

16 There's a \$0.60 payment made by the Class I
17 handler to the pool, which is part of the base
18 differential, correct?

19 A. Yes, that's correct.

20 Q. And then in many cases, if not all, would there be
21 over-order premiums that are specifically allocated to a
22 balancing cost?

23 A. In many cases the over-order premiums are
24 associated with balancing activities.

25 Q. And I don't recall if this was asked, or if it was
26 asked, if you answered it. The range of the actual
27 balancing costs incurred by the MIG members, do you recall
28 or can you testify as to what that range was?



1 A. So I'll say the same thing that I said earlier.
2 It could be low, like \$0.25, to high, dollars, like,
3 plural. I -- the exact nature of the range was quite
4 wide.

5 And one thing that's -- one reason why it's very
6 difficult for me to give a range like this is with the
7 diversity of membership in the group and three members of
8 the group being so focused on organic, their costs are
9 very different than other members in the group, so it's --
10 it's not a homogeneous set.

11 Q. Do you recall, or were you listening to the
12 hearing, or at the hearing, when there was testimony from
13 a cooperative witness that balancing costs to the
14 cooperative could also be in the range of dollars per
15 hundredweight?

16 A. Yes, I recall testimony like that.

17 Q. If a cooperative is incurring dollars per
18 hundredweight, and a hypothetical MIG member is incurring
19 on the low end \$0.25, that transaction between the milk
20 producer, the seller, and the milk buyer, the plant, it's
21 certainly more than \$0.60, right?

22 A. In this example, yes. The -- the \$0.60 that's
23 there today is the \$0.60 that is -- was -- that -- it's
24 \$0.60 that USDA settled on and included in the final
25 decision in order reform. And so that \$0.60 is -- it's
26 definitely going -- many things have changed since order
27 reform.

28 Q. Do you think that the balancing costs that USDA



1 found to be \$0.60 during order reform have decreased?

2 A. I think that the way in which balancing costs are
3 incurred throughout the market has changed a lot since
4 order reform. I don't necessarily think that they have
5 gone down. I think it's a question of who's paying them
6 when.

7 And I also think that this idea that there are --
8 that this is an above-and-beyond extra special cost
9 associated with Class I exclusively is something that we
10 need to look at, because in some cases there can be
11 extraordinary costs associated with serving a particular
12 supply market, whatever, and in other cases the cost could
13 be very low. And so, you know, what MIG's proposal is
14 advocating for is a change that would allow more
15 flexibility.

16 Q. And, now, your answer then starts to move nicely
17 into the next questions I have here.

18 Before I get there, you have testified that some
19 handlers are paying twice for balancing in your opinion,
20 correct?

21 A. Yes, in my opinion.

22 Q. But certainly not every instance where a Class I
23 handler is paying an over-order premium for balancing is
24 double paying or paying twice, correct?

25 A. It kind of is because the \$0.60 is there in the
26 base Class I differential. And so if you are paying \$0.60
27 related to -- into the pool with your producer settlement
28 fund obligation, and then you are paying an over-order



1 premium, that could be much more, it could be \$2. And
2 so -- and that over-order premium is also related to
3 balancing. You have paid \$0.60, you have not got the --
4 all the balancing covered needed done, and then you pay
5 another \$2. And I think that happens a lot.

6 Q. But yet, that doesn't necessarily mean that all of
7 the balancing costs incurred by the farm or the
8 cooperative are covered, does it?

9 A. No, not necessarily.

10 Q. And so now we'd lead into the answer you gave a
11 little bit earlier, which is part of your concern, part of
12 MIG's concern, is that those that actually incur the costs
13 of balancing are not being adequately compensated,
14 correct?

15 A. Yes, absolutely. And so fundamentally, MIG's
16 members are concerned that all the money that they pay for
17 balancing, so whether it's the \$0.60 that is part of the
18 producer settlement fund or some negotiated thing that's
19 part of an over-order premium, or something else entirely,
20 that that payment actually -- that that payment actually
21 compensate the people who are performing the balancing,
22 who are doing the work.

23 Q. So if we -- if we took, for instance, a
24 cooperative that operated in, say, New Mexico and Texas,
25 hypothetically, and -- and the Class I price, the \$0.60
26 within the base differential was paid by a handler, and
27 there's 30% Class I utilization, by my math, the farmers
28 supplying that plant are getting compensated \$0.18 for



1 their balancing obligations, correct?

2 A. Yes. And so of -- and \$0.18 is not a lot for
3 balancing, and it's a real -- it's -- it's truly a
4 necessary market function.

5 And there's also the situation where when you are
6 doing it through the mechanism of the pool, so you have
7 your \$0.60 and \$0.18 went there, so you have the
8 remainder, which is not necessarily all going to market
9 participants that are performing balancing services.

10 Q. Okay. Let's move on to a different one of the
11 three elements of the base, the incentive to supply
12 Class I plants.

13 Back on page 4 of your testimony there's a second
14 block quote, and I want to read the first sentence so we
15 can talk about it: "Option 1A presumes that the
16 [proposed] minimum Class I differential is no longer
17 adequate to ensure a sufficient supply of milk due to the
18 competitive nature of the manufacturing facilities in this
19 region."

20 Do you know which region the USDA is referring to
21 in that block quote?

22 A. I would need to go back and look that up.

23 Q. Okay.

24 A. I don't remember that right now.

25 Q. If I suggested it was the Upper Midwest, would --
26 would that refresh your recollection?

27 A. That sounds right.

28 Q. So if this block quote is talking about the Upper



1 Midwest -- let's assume that it is, okay -- and USDA
2 determined that a \$0.60 component within the differential
3 was then needed to draw milk from cheese plants to
4 bottling plants in the Upper Midwest, what, in your
5 opinion, has changed to make that specific conclusion no
6 longer applicable?

7 A. So what has changed there is the utilization
8 throughout more regions of the country trending towards
9 manufacturing, and then the, frankly, additional value
10 being generated in those manufacturing uses. And
11 Dr. Stephenson's testimony that follows mine goes into
12 this element and analysis, you know, more thoroughly than
13 the summary that I have here.

14 Q. Do you know if there are Class I over-order
15 premiums in the Upper Midwest today?

16 A. I do not know what the Upper order -- what the
17 over-order premiums are in the Upper Midwest today.

18 Q. Do you know, have you analyzed, or do you have an
19 opinion as to whether the Class I differential in the
20 Upper Midwest is alone sufficient to entice producers to
21 move milk from a cheese plant to a bottling plant if that
22 market is available?

23 A. So I'm trying to remember when he testified. I
24 think it was October. So when Mark Lamers testified, he
25 talked a lot about his challenges with attracting milk and
26 competing in a market that's very much, in his market,
27 dominated by Class III by cheese. And there are
28 situations where when the -- there are situations today



1 when the underlying value of the milk for non-fluid use
2 appears to be higher than what it is for fluid, and that
3 is leading to the types of problems that Mr. Lamers
4 identified in his testimony earlier in the hearing.

5 Q. And for purposes of a clear record, Mr. Lamers and
6 Lamers Dairy is in Wisconsin, which is in the Upper
7 Midwest order, correct?

8 A. Yes, that is correct.

9 Q. Do you have Exhibit 449 available, the table of
10 all of the counties, MIG-15B?

11 A. Yes, I have Exhibit 449.

12 Q. Okay. I saw you making exhibit marks on there,
13 and I hope I didn't lead you astray and my numbering is
14 correct.

15 But it is MIG-15B, and you have it?

16 A. Yes.

17 Q. Okay. So I want to look at two, maybe three
18 examples here.

19 So if you would look at page 47, and I just want
20 to call out Cuyahoga County, Ohio, at the top of the page.

21 If Proposal 20 were adopted, the differential for
22 Cuyahoga County would be \$0.40, correct? That's what this
23 table conveys?

24 A. Yes.

25 Q. Okay. And Cuyahoga County is the base zone for
26 Order 33; is that correct?

27 A. I believe so.

28 Q. If you would now turn to page 29.



1 And Kent County, Michigan, is Grand Rapids, and
2 its effective differential would be \$0.20.

3 And so the difference between the base zone in
4 Cuyahoga County and Kent County is \$0.20, and the
5 differential at the base zone is \$0.40.

6 And so I wondered if in putting together
7 Proposal 21 -- I'm sorry -- Proposal 20, there was any
8 consideration as to whether that relationship between
9 those two points would result in less milk being pooled on
10 the order?

11 A. No. We really didn't look at that. It's -- we
12 looked at the base Class I differential, the individual
13 elements. We did not look at whether -- we didn't look --
14 we didn't look at this relative relationship between, say,
15 Kent County, Michigan, and Cuyahoga County, Ohio, and nor
16 did we look at the geographic element with respect to what
17 I was discussing earlier during my Proposal 19 testimony
18 regarding the more current USDSS modeling than today's
19 Class I differentials.

20 Q. Around Grand Rapids there's a fairly good pocket
21 of milk production; would you agree?

22 A. Yes.

23 Q. There's also --

24 THE COURT: I'm sorry, that was a "yes"?

25 THE WITNESS: Yes.

26 THE COURT: Thank you.

27 BY MR. MILTNER:

28 Q. And there are also both fluid and manufacturing



1 plants in that part of the state, correct?

2 A. Yes.

3 Q. If a farmer is supplying the manufacturing plant
4 but qualifying as a producer, would it be ec- -- do you
5 know if it would be economically advantageous for that
6 producer's milk to actually be pooled if the \$1.60 were
7 completely reduced to zero?

8 A. I haven't looked at that.

9 Q. If you did a similar comparison between Dallas
10 County, Texas, the base zone for Order 126, which would be
11 reduced to \$1.40, and Eastern New Mexico and the adjacent
12 Panhandle of Texas, where the -- it would be reduced to
13 \$0.50, was there any analysis as to whether that
14 significant milk shed with a lot of manufacturing milk
15 would have an economic incentive to pool their milk?

16 A. No, I did not look at that.

17 Q. On page 8 of your written statement, again, the
18 paragraph that continues at the top of the page, the final
19 sentence reads, "The fluid incentive embedded in the
20 Class I differential is not cost justified and should be
21 eliminated."

22 Is that speaking only to the components of the
23 base which is supposed to induce milk to supply Class I
24 plants?

25 A. Yes. I believe that that paragraph is focused on
26 the fluid incentive.

27 Q. Last set of questions.

28 You made reference to a document MIG submitted to



1 USDA which contained a number of proposals for this
2 hearing earlier, correct?

3 A. Yes, I did.

4 Q. And one of those proposals was to -- I forget how
5 it was phrased -- but to allocate \$0.55 of the base
6 differential to those farms that supply Class I plants,
7 correct?

8 A. Yes.

9 Q. And USDA did not notice that for the hearing,
10 correct?

11 A. That is correct.

12 Q. Okay. I don't want to get into the mechanics of
13 how that would work, but the combination of all the
14 proposals that MIG had submitted on this type of topic
15 would have taken the \$1.60 to zero, replaced it with \$0.55
16 to those farms that supply a Class I handler, and create a
17 separate credit for those supplying specialty milks,
18 correct?

19 A. Yes, that's correct.

20 Q. And so is it MIG's belief -- I guess is the word
21 I'll pull at the moment -- is it MIG's belief that a
22 direct payment of \$0.55 to those farms supplying a
23 conventional Class I handler is a sufficient regulated
24 minimum to compensate those farms to entice milk to the
25 plant and balance the milk being supplied?

26 A. I believe that -- that that \$0.55 was focused not
27 on the fluid incentive, but on balancing.

28 Q. Okay. Would there have been -- but there was no



1 separate component for then a fluid incentive?

2 A. There was not a separate component for a fluid
3 incentive and -- but the \$0.55 was related to the
4 balancing.

5 Q. Okay. You mentioned in response to a question
6 from maybe Ms. Vulin, maybe Ms. Hancock, I forget whom,
7 but that one of the MIG members said they weren't looking
8 for a price decrease, they were looking to direct where
9 that money goes.

10 Did I get that down correct?

11 A. You did.

12 Q. I'm not going to ask you specifically who said
13 that because I don't think you would answer, and not
14 necessarily fair, but was that a conventional processor or
15 a specialty milk processor?

16 A. That was a conventional processor.

17 Q. So -- so if Proposal 20 were adopted, that
18 processor would see their pool obligation drop by \$1.60,
19 correct?

20 A. Yes. And that processor expects that on the other
21 side, that there would be a commensurate increase.

22 Q. But yet, MIG didn't propose \$1.60 to be paid to
23 the farms supplying those plants, it proposed \$0.55, and I
24 wonder if there's explanation as to where that \$1.05 goes?

25 A. So let's -- let's take the first \$0.40. So for
26 the Grade A, the first \$0.40, I don't think this processor
27 would be thinking of paying that again.

28 The next piece of it, as far as the balancing --



1 and the thing to bear in mind is that there's -- there's a
2 difference here between the proposals that were -- that
3 are -- this proposal that's under consideration at the
4 hearing, as opposed to some of our other ideas that were
5 not accepted. And the -- the idea that the difference
6 there in the \$1.05 would be the market. And in some
7 cases, some of the members would expect that more of that
8 would need to flow to their suppliers than others. It --
9 it varies depending on their conditions and in the areas
10 where they operate.

11 MR. MILTNER: I think that's all I have. Thank
12 you.

13 DR. CRYAN: Hello, Your Honor.

14 THE COURT: Hello, Dr. Cryan.

15 DR. CRYAN: It's nice to see you.

16 THE COURT: Thank you.

17 DR. CRYAN: I'm Roger Cryan with the American Farm
18 Bureau Federation.

19 CROSS-EXAMINATION

20 BY DR. CRYAN:

21 Q. Hello, Ms. Keefe.

22 A. Hi, Dr. Cryan. Welcome back.

23 Q. Thank you. Nice to see you.

24 You said earlier that -- that the class prices
25 shouldn't be the basis for maintaining class price
26 alignment and --

27 A. It sounds like I may have garbled a sentence.

28 Q. Or at least you said the Class I price shouldn't



1 be the basis for maintaining class price alignment.

2 Is -- is class price alignment important? Does it
3 matter?

4 A. What do you mean by "class price alignment"?

5 Q. Maintaining Class I as the -- as the higher price,
6 and to avoid price inversions. You said to avoid price
7 inversions, which I take to mean to maintain the
8 consistency and the hierarchy of class prices.

9 Did I misunderstand that?

10 A. So what I was talking about there was that
11 Mr. Schuelke, during his testimony on the base Class I
12 skim mover, had testimony regarding when you look at the
13 spread between the Class III prices and the Class IV
14 prices, and then when you look at utilization in the
15 market that he was looking at was California, and I
16 believe that subsequently Mr. Brown with IDFA has done
17 perhaps more in his testimony in December, that the level
18 that you have to increase Class I prices to -- to prevent
19 the inversion, based on the utilization that exists in a
20 market like California, are extraordinarily high, like far
21 outside the realm of what one would consider a reasonable
22 milk price for conventional milk.

23 And I commented that, like, some of that, you
24 know, the prices started to look like organic milk prices.

25 Q. Okay. So you are saying that shouldn't be the
26 only factor, shouldn't be the only thing that goes into
27 addressing class price inversions?

28 A. Yes. I think that -- so the -- in my view, the



1 reason why people get concerned about price inversions is
2 not, frankly, so much the price inversion itself, people
3 get concerned about price inversions because of depooling.
4 And I think that when it comes to depooling, that there
5 are a number of levers within the system that are,
6 frankly, not under consideration at the hearing right now,
7 but that are worthy of being addressed in order to -- if
8 depooling is the problem that you are trying to solve, you
9 can't just solve it with increasing the Class I price, in
10 my view.

11 Q. With just the Class I. Okay. I understand. I
12 appreciate that.

13 And in your statement you said that too high a
14 Class I differential causes overproduction of milk.

15 What -- what is overproduction of milk?

16 A. So overproduction of milk, in my view, is when the
17 farm milk supply is at a level that leads to, in extreme
18 cases, dumping, but even in less extreme cases, you see,
19 you know, low prices for commodity cheeses, commodity
20 powder, stuff like that. So, you know -- and eventually
21 the market forces, you know, find a new equilibrium, and,
22 you know, we get to a new happy place.

23 But if -- if the Class I prices are too high, if
24 the Class I differential is too high, that's going to
25 artificially inflate the Class I price, and then that's
26 going to, you know, just inflate the milk prices
27 throughout the system.

28 It's a -- it is just the supply and demand



1 dynamics of the marketplace.

2 Q. Are you suggesting that a higher Class I
3 differential over the long-term will cause milk dumping?

4 A. Well, that would be very dramatic, but it could
5 certainly contribute to a situation where that maybe
6 becomes more frequent. But I hope that if that were
7 happening, then other factors would stabilize, and then,
8 like, production would decrease, and we would not continue
9 to dump milk.

10 Q. So if -- I mean, in our market we have export
11 outlets and other ways of balancing.

12 The markets balance; is that correct?

13 A. The markets balance today, but the markets don't
14 always balance at a price that all market participants
15 find reasonable. I mean, you know, Ms. Hancock and I just
16 had quite a discussion on that.

17 Q. Okay. Okay.

18 DR. CRYAN: That's all. Thank you.

19 THE COURT: Is there other cross-examination
20 before I invite the Agricultural Marketing Service
21 questions?

22 Mr. Rosenbaum.

23 MR. ROSENBAUM: Your Honor, my questions are going
24 to be back on Proposal 19, her testimony on that, which I
25 was not here for because of my flight having been
26 cancelled. So I don't know how you want to proceed. If
27 the government wants to do their questions first, that
28 probably makes more sense.



1 THE COURT: And is there anyone else who has
2 questions on Proposal 20 before I invite Agricultural
3 Marketing Service questions on 20?

4 No one. I invite the Agricultural Marketing
5 Service to proceed.

6 MS. TAYLOR: Thank you, Your Honor.

7 And thank you, Mr. Rosenbaum.

8 CROSS-EXAMINATION

9 BY MS. TAYLOR:

10 Q. Good afternoon.

11 A. Good afternoon, Ms. Taylor.

12 Q. Let's see, I don't think I have that many
13 questions that haven't already been discussed. Let me
14 sort through my notes. Let's turn to page 5.

15 THE COURT: This is Exhibit 447?

16 MS. TAYLOR: Yes. Thank you, Your Honor,
17 Exhibit 447.

18 BY MS. TAYLOR:

19 Q. That first full paragraph you talk about the Act's
20 requirement for us to bring forth an adequate supply of
21 milk; if the differential levels are too high, it induces
22 overproduction while reducing fluid milk consumption.

23 And then the next sentence there says, "It is also
24 not in the public interest."

25 What is the "it" in that sentence? Because you
26 talked about two things in the prior sentence.

27 A. So I was focused on the Class I differentials
28 being set at too high a level as opposed to the comments



1 regarding fluid consumption.

2 Q. So having a Class I differential set too high is
3 not in the public interest, because?

4 A. So in my view, it's not in the public interest
5 because the -- if you -- there's two aspects to it. So if
6 you set the Class I differentials too high, there is the
7 public interest perspective related to dairy producers and
8 what could happen with milk prices if there -- if the
9 Class I differential acts in a price-enhancing way that
10 then stimulates overproduction and causes utilization of
11 milk in lower classes and, thereby, decreases producer
12 revenue income, things like that.

13 And then on the other end of it, I also think --
14 and this -- and if it is related to consumers, is that if
15 you are increasing the Class I differential, you know,
16 ultimately when you increase class, when you increase
17 costs for Class I, you are going to increase prices for
18 fluid milk at retail, and the people that we ask to pay
19 those prices are our consumers. And so that is the other
20 end of it.

21 Q. Okay.

22 A. And so I was trying to get to sort of both parts
23 of it with -- related to the differentials themselves.

24 Q. Okay. And so when it -- on the consumer side
25 then, it's more about the price impact to the consumers
26 which you are talking about, and not the consumption
27 impact that that might bring about as a result?

28 A. Yeah. The consumption impact is interesting as



1 far as like the elasticity discussions and all that
2 were -- that we heard a lot about during the Proposal 19
3 opposition testimony from other experts. But that is --
4 elasticity is not my area of expertise.

5 Q. Okay.

6 THE COURT: It's not what?

7 THE WITNESS: It's not my area of expertise.

8 BY MS. TAYLOR:

9 Q. So when I -- I'm looking at the -- let's -- let's
10 talk about the three elements of the differential, and the
11 first one being Grade A.

12 And in the decision you highlighted how that
13 Grade A piece was maintaining Grade A status. And it
14 makes contention that, because virtually 99-plus percent
15 of the milk is Grade A now, you don't need that extra
16 piece, and that somehow that is being compensated for in
17 the Class III and IV prices now?

18 A. Yes. I mean, today, the Class III and IV prices
19 are market clearing. Those products are being made with
20 Grade A milk. And so we are asking, when it comes to the
21 Grade A piece, we're asking Class I to go above and beyond
22 what we ask everybody else to do to maintain -- or to have
23 a Grade A milk supply available for the industry.

24 And so to me, it is very much a classic
25 accounting -- like, double-counting example there. Like,
26 very straightforward.

27 Q. I have to look between my notes to my actual
28 questions to you.



1 On the next sentence you talk about, in the top of
2 that first paragraph that comes from the next page, that
3 the Grade A compensation portion is antiquated and
4 discriminatory.

5 I can get you there -- I can get to what you are
6 talking about antiquated.

7 How is it discriminatory?

8 A. So the discriminatory part of it is that we only
9 ask Class I to pay the \$0.40 again. That's the
10 discriminatory part of it to me.

11 Q. And your -- MIG's -- I guess further in your line
12 of argument on this particular piece, your contention is
13 it's in the III/IV prices, so we have to assume that
14 whatever is in there for Grade A maintenance for producers
15 is adequate for them?

16 A. Yes. And I -- I feel like that's a pretty
17 reasonable assumption given the amount of Grade A milk
18 that is available and the, I mean, negligible amount of
19 Grade B milk that exists in the market today.

20 Q. And you talk on the balancing piece about -- you
21 mention in the middle of that paragraph the balancing
22 arrangements can also vary regionally.

23 And so is that -- in there you are talking -- if
24 I'm just trying to piece your argument together, is that
25 that then can be -- that cost recovery can be left to the
26 negotiations between that processor and its producers on a
27 regional basis?

28 A. Yes. And because there is regional variability,



1 that's one of the reasons why I think that it is good to
2 leave -- I think it's appropriate to leave it to the
3 market there, because the market is going to be -- the
4 direct negotiation is going to be able to better create
5 the arrangement that is most efficient. That is the --
6 it's like everybody talks about, like -- so with
7 Proposal 19 we talked a lot about the model. And, like,
8 the model was, like, this -- the USDSS model is this,
9 like, perfectly efficient solution. And, you know, I feel
10 like the market is going to be more efficient when you --
11 when there is regional variability than -- than this --
12 than a national regulated -- by embedding it in the
13 national-regulated minimum.

14 Q. Uh-huh. And your sentence talks about processors
15 kind of do their part in balancing because they will
16 accept even everyday -- it says -- I think there's a typo,
17 which we can correct. On page 6, in the middle of the
18 paragraph, that first full paragraph, that begins, "In
19 other scenarios, the processor may accept," is that
20 supposed to be "everyday"? Or even -- is it supposed to
21 be "even day"?

22 A. I was using "even day" --

23 Q. Okay.

24 A. -- in the insider lingo jargon that often gets
25 used.

26 Q. Okay.

27 A. So --

28 Q. And even day, why don't you define what you mean



1 by that?

2 A. So what I mean by even day is literally receiving
3 even amounts of milk across all of the days of the week or
4 the month. And there are a number of different even-day
5 receiving programs that I'm aware of, and they don't
6 necessarily -- they are not necessarily all the same as
7 far as the time bucket that they are looking at, so not
8 necessarily all -- like, all weekly or all monthly or --
9 and many have elements that look at evenness on -- on
10 different time scales, too. So you would be looking at,
11 you know, a band for a week versus something for a month
12 versus an annual commitment. So lots of -- lots of
13 different ways to skin that cat.

14 Q. And that's not -- is that at the -- to the benefit
15 of the supplier in that case, so they know, hey, I always
16 have to deliver ten loads, let's say, or they will take --
17 they will that extra three loads on the weekend that
18 they --

19 A. It can be to the benefit of the supplier that they
20 know that it's very routine, like, it's guaranteed, like
21 you are going to get it. It could be to the benefit of
22 the plant where they are, like, I -- you know, I can't do
23 this, and I know what it's going to cost me when I -- when
24 I don't do it, so --

25 Q. Do the plants -- I guess, is that part of the
26 negotiation?

27 There's been some discussion on the hearing record
28 about credits given to plants, receiving credits for kind



1 of the similar arrangements you are talking about. So
2 some of that cost they incur to do that, are they getting
3 some recognition of that in that negotiation they have
4 between their suppliers?

5 A. Yes. There is some recognition of that today when
6 that negotiation goes on.

7 Q. And so to follow MIG's kind of argument on the
8 balancing piece, I just want to stick to that, is to leave
9 it up to the market to do that. So one has to assume,
10 then, that that works?

11 A. One has to assume that the market is going to
12 work.

13 And like Mr. Miltner raised, we -- we did offer a
14 proposal that recaptured 55 of that \$0.60, but that isn't
15 under consideration today, so --

16 Q. Uh-huh. And on this last paragraph, that first
17 sentence, and you had a little bit of discussion on the
18 record with -- in your previous cross-examination about,
19 it's not necessarily disorderly marketing. And I wrote
20 down you talked about asking people to perform a service
21 and not being compensated, or requiring compensation for a
22 service they are not getting.

23 A. Yes, I feel both of those are disorderly.

24 Q. Okay. Do you think there's indirect benefits that
25 processors might get through the pricing system?

26 A. Do you mean beyond, like, the information services
27 and market transparency stuff that we were talking about?

28 Q. Like, the orderly marketing, the whole system is



1 supposed to provide for the benefit of all participants.
2 And it does that through pricing and pooling. I mean,
3 that's not just one set of provisions, right?

4 A. Yeah. I think that there are some benefits. I
5 would point you towards Mr. Carson's testimony with
6 United. You know, he talked a little bit about the
7 benefits that he felt that the order system, like, brought
8 for his operation. You know, I think that it's -- there
9 are -- there are some -- there are benefits beyond just
10 the data and information and market transparency type of
11 very, very valuable to the market, those things. But
12 there are other things that people, in my view, do value.

13 Q. If -- if I turn to page 8. And I don't think you
14 answered this question. I apologize if I'm repetitive.

15 Under C on that first paragraph, you say, "The
16 current system is not working."

17 Could you elaborate on how it's not working?
18 Other than maybe that's the disorder you just talked
19 about, I'm not sure. But to be clear?

20 A. Yeah. So I think that the current system and the
21 current base Class I differential isn't working because,
22 say, in the case of the Grade A/Grade B compensation, you
23 are asking Class I to pay for something that no one else
24 is being asked to do. And that is, you know, clearly
25 being provided to other market participants as well, but
26 it's not embedded in the pricing for them in the same way
27 that it is for Class I. And so that's -- that's what I
28 mean about it not working and --



1 Q. Okay. So maybe some type of free rider program --
2 or not program -- problem, in other words?

3 A. I think that there are some free rider problems,
4 absolutely, yeah, that one.

5 Q. If I turn to page -- Exhibit 450, which is your
6 presentation, and on page 5. This is just a clarification
7 question.

8 Under the balancing section, the third bullet,
9 "Cap ex for raw milk storage."

10 What is Cap ex?

11 A. Capital expenditures.

12 Q. Oh, okay. Okay.

13 MS. TAYLOR: And that's it from AMS. Thank you
14 very much.

15 THE COURT: So, Mr. Rosenbaum, I'd like to take a
16 ten-minute break before you go back to Proposal 19.

17 So let us take that now. It's almost 3:00. Be
18 back at 3:10, ready to go back on record.

19 (Whereupon, a break was taken.)

20 THE COURT: Let's go back on record.

21 We're back on record at 3:11.

22 Mr. Rosenbaum, would you identify yourself,
23 please.

24 MR. ROSENBAUM: Yeah, Steven Rosenbaum for the
25 International Dairy Foods Association.

26 CROSS-EXAMINATION

27 BY MR. ROSENBAUM:

28 Q. Good afternoon, Ms. Keefe.



1 A. Good afternoon, Mr. Rosenbaum.

2 Q. I have a few questions that are going to be
3 directed toward the corrected page, I think it's 15, to
4 Hearing Exhibit 441. It's the document that has the red
5 and green charts on it.

6 And I also will be calling a little attention to
7 Table 2 in that same exhibit, so that's Hearing
8 Exhibit 441, which was MIG Exhibit 64A.

9 And I did make a couple of copies. I can make it
10 a little easier if you -- and one of them is corrected,
11 the chart is corrected.

12 So -- so looking at the -- at the chart which is
13 Chart 1, as I said, original page 15 of MIG Exhibit 64A,
14 which you submitted a corrected version of, as I
15 understand it, and so I'm going to be using the corrected
16 version I believe you submitted this morning.

17 So, first of all, am I correct that everything
18 that's on that chart is a reflection of a number that
19 appears on Table 2 of that same exhibit?

20 A. Yes.

21 Q. So in -- I guess there's a saying that a picture
22 is worth a thousand words.

23 I think in this case, this is a chart that perhaps
24 reflect a thousand numbers, or not quite that many, but
25 quite a few numbers, correct?

26 A. Yes. The chart is trying to convey a lot of
27 information about over 6,000 numbers.

28 Q. Okay. And so because it's so concise, I want to



1 make sure it's clear what it means. And when I first saw
2 it, I didn't understand it all, so let's see how close I
3 have gotten it.

4 First of all, you called this, when you testified
5 about it originally, this was before we went on the last
6 break -- I don't mean the lunch -- the ten-minute break, I
7 mean the month break we were on -- so you called this a
8 box-and-whiskers chart, which I had never heard that
9 phrase before.

10 So can you just tell us what that meant?

11 A. Yes. So if you look at the orange box with the
12 "all," if you turn the chart from a landscape orientation
13 where the boxes and the whiskers go up and down, to a
14 portrait orientation, they look more like boxes and
15 whiskers. And a lot of the times when people encounter
16 these charts in, like, a statistics course, you frequently
17 see them actually presented the other -- in the other
18 orientation.

19 Q. Okay. So that -- and I would like to maybe focus
20 on the green bar, I guess, to the far left as we look at
21 it in --

22 A. Uh-huh.

23 Q. -- in the way it's printed.

24 So there is literally a box that sort of runs from
25 roughly \$1.80 up to \$3.20, let's say, correct?

26 A. Yes.

27 Q. And that's the box.

28 And then the whiskers, there's a whiskers below



1 and whiskers above, correct?

2 A. Yes. And so for the green "all," you have the
3 box, and so the box is going to be the second and third
4 quartiles.

5 Q. We'll get to that in a second, but I just want to
6 make sure I have the boxes and the whiskers right.

7 Now, am I correct that this document, does --
8 which is a comparison of the current Class I differentials
9 to the Class I differentials that are being proposed by
10 National Milk in Proposal 19, correct?

11 A. Yes.

12 Q. Okay. And am I correct that this document does
13 not, if you will, reflect any judgment on your part, it's
14 just, as they say in the old Dragnet shows, the facts,
15 correct?

16 A. Yes. It's not judgment, it's just a way of
17 looking at the information.

18 Q. Okay. So -- and, once again, continuing using the
19 green information that has the word "all" under it, that
20 reflects the current Class I differentials as they exist
21 today in the entire country; is that correct?

22 A. Yes. So that "all" is all 3,108 counties, their
23 Class I differentials today.

24 Q. Okay. And indeed, if we -- and if we want to get
25 specific numbers, I'll give some of them, but it's all in
26 Table 2, right? Including that number of counties you
27 just told us, correct? That's all in Table 2, right?

28 A. Yes, it is.



1 Q. Okay. So we have -- let's -- so let's just go
2 through the -- what I call the quadrants.

3 The lowest quadrant, I take it, is the whisker
4 underneath the box; is that correct?

5 A. Yes.

6 Q. And --

7 THE COURT: The answer was "yes"?

8 THE WITNESS: The answer was "yes."

9 BY MR. ROSENBAUM:

10 Q. Okay. And by "quadrants," am I -- is this
11 basically an effort to divide the 3,108 counties into four
12 even pieces, if you will, four quadrants?

13 A. Yeah. Four quadrants or four quartiles is what --
14 quartiles is the term that's most frequently used.

15 Q. Now, obviously, you might not have a clean break
16 in the sense that every -- am I right that every county
17 with the same price ends up in the same quadrant, correct?

18 A. Yes.

19 Q. So that might mean you are not going to have
20 exactly as many counties in every single quadrant; is that
21 right?

22 A. Yes.

23 Q. Okay. So the lowest quadrant then -- this is
24 current -- and this -- this covers roughly -- I mean, if
25 we take the 3,108 counties and divide it by four, we're
26 looking at something on the order of 770 counties.

27 That's a rough number, correct?

28 A. Roughly that, yes.



1 Q. Okay. So -- and those all fall in the range from
2 \$1.60 to \$1.80, correct?

3 A. Yes.

4 Q. I mean, I can eyeball that and sort of see that.
5 But if I want to make sure I have the exact numbers, I can
6 look in Table 2, and, in fact, in Table 2 there's -- the
7 last set of information is the "all" set and the current.
8 I can see that, in fact, in the lowest quadrant the price
9 runs -- the Class I differential, excuse me, runs from
10 \$1.60 to \$1.80, correct?

11 A. Yes. And about the fourth of the Class I
12 differentials are there.

13 Q. Okay. And then if we go up now, we're going to go
14 to the, if you will, second lowest quadrant, I guess I'll
15 call it that. We're now in the box.

16 And does that take us from the bottom of the box
17 up to the -- where the line is in the box?

18 A. Yes.

19 Q. Okay. And by "line," I mean the line, the
20 horizontal line, correct?

21 A. Yes.

22 Q. All right. And is that -- and, once again, I'm
23 getting numbers -- you can get it sort of eyeballing it,
24 but, once again, that -- using exact numbers from Table 2,
25 that will take us from \$1.80 to \$2.40, correct?

26 A. Yes, that's correct.

27 Q. And since -- and since we have used the bottom two
28 quadrants up at this point, is -- tell us what that line



1 then represents, the line across the box.

2 A. So the line across the box represents the median,
3 so the middle.

4 Q. Okay. And just -- can you just define "median"
5 for us?

6 A. So the median is going to be the middle of the
7 distribution, so half of the values will be below and half
8 of the values will be above.

9 Q. So half the counties are below and half the
10 counties are above in this context.

11 Is that what that means?

12 A. Yes.

13 Q. And then there's an "X." An "X" is what?

14 A. And so "X" is the average, which here is \$2.57.

15 Q. Okay. So that's what the average Class I
16 differential is today in the United States?

17 A. Across all of the counties.

18 Q. Okay. Now, the next quadrant then would be from
19 that line that goes across the box up to the top of the
20 box, the green box; is that correct?

21 A. Yes.

22 Q. And to get specific numbers, once again, looking
23 at Table 2, that will take us from \$2.40 to \$3.20,
24 correct?

25 A. Yes.

26 Q. And then the last quadrant is going to take us
27 from -- is the top whisker, correct?

28 A. Yes.



1 Q. And that will take us from \$3.20 to \$5 as it
2 appears on Chart 1, correct?

3 A. Yes.

4 Q. Now, if you actually look at Table 2, it shows the
5 maximum Class I differential being \$6, and that's because
6 you have certain outliers which are these little dots,
7 correct?

8 A. Right. And so you can see -- you can see that the
9 top dot is right at \$6.

10 Q. Okay. And my understanding is that USDA, in
11 cross-examining you earlier, asked you to explain what the
12 outliers mean, and I'm not going to -- and so I'm not
13 going to ask you about that.

14 A. Okay.

15 Q. So then the orange is the same information, but
16 it's Proposal 19, correct?

17 A. That's correct.

18 Q. In other words, the box right next to the "all" is
19 the -- if you will, the "all" information for Proposal 19,
20 correct?

21 A. Yes.

22 Q. And, in fact, you labeled it "all" at the very
23 top, correct?

24 A. Uh-huh. Yes, I did.

25 Q. And so in this, therefore, in a pictorial way,
26 tells us in an overall manner how the current Class I
27 differentials compare to proposed; is that right?

28 A. Yes. And it shows you both for all of them and



1 then also by FMMO.

2 Q. Okay. And so you could see -- I mean, so you can
3 just, you know, see pictorially that, as an example, the
4 average Class I differential has gone up from, I think you
5 said it was \$2.57 to, I don't know, roughly \$4.20,
6 something like that; is that right?

7 A. \$4.07.

8 Q. Okay. So that gives you a sense as to what the
9 overall magnitude has been.

10 But then another thing this does for you is in a
11 pictorial way gives you a sense of the range, correct?

12 A. Yes, it does.

13 Q. And the range is very easy to visualize because
14 that's what this whole thing is. I mean, that's to say
15 the current range goes from the bottom of the green
16 whisker up to the top of the upper whisker, correct? With
17 a few outliers on top. Where -- and the range for the
18 proposal goes from the bottom of the red, it's at \$2.20 I
19 think that is, up to \$7.90, correct?

20 A. Yes.

21 Q. So just eyeballing, you can tell the range of
22 Class I differentials is a lot higher under the proposal
23 than under the current regime, correct?

24 A. Correct.

25 Q. All right. So then the other thing this tells you
26 is the same information, really, but on an order-by-order
27 basis, correct?

28 A. Yes.



1 Q. And so methodologically what you did for the "all"
2 is the same as what you did for each individual --

3 A. Yes, the --

4 Q. -- order; is that fair?

5 A. Yes. The -- the calculations and the math
6 underneath to create each of the individual box and
7 whiskers are -- it's the same.

8 Q. Okay. So -- and then, once again, you can also
9 do -- so -- and you can eyeball certain things. Like, if
10 you want to look at Order 1, you know, you can see --
11 well, right now, you know, the highest differential in
12 Order 1 is, like, \$3.20, I'm eyeballing it, and under the
13 proposal, the lowest differential would be more than that,
14 \$4, going all the way up to \$5.20, correct?

15 A. Yes.

16 Q. So you can just eyeball the comparison.

17 But they actually vary substantially from order to
18 order, that relationship; is that fair?

19 A. Absolutely. So, like, you are not seeing the same
20 sorts of changes between the current and Proposal 19
21 happening in each of the orders.

22 Q. Okay. So, I mean, so as an example -- well, like
23 Order 126, for example, you can see a fair amount of
24 overlap between the existing green Class I differentials
25 and the new red Class I differentials, correct?

26 A. Yes. So for Order 126 you see that it's actually
27 sort of moving in a similar fashion to the "all," where,
28 you know, there's a lot of overlap with the current range



1 and the proposed range.

2 Q. And -- and the range, that tells you within an
3 order how much difference there is between the cheapest
4 Class I differential in the order and the most expensive,
5 correct?

6 A. Yes. The range will show you across the -- for
7 the counties in that order.

8 Q. So let me just look at a few. So -- and you can
9 use Table 2 if that is helpful.

10 But as an example, some examples, Order 33, the
11 current range you can tell is not that big, just if you
12 look at what the lowest green point is to the highest
13 green point in 33, and if you look at the actual numbers,
14 that is, in fact -- the range is \$0.70, correct?

15 A. Yes.

16 Q. Whereas the proposal almost triples the range to
17 \$2.05, correct?

18 A. Yes. And you can see that the box, the orange box
19 for Proposal 19 for Order 33 is much -- it's a larger box
20 and the whiskers are longer.

21 Q. Okay. And -- okay. And that reflects range,
22 correct?

23 A. Yes.

24 Q. And there's other information, but that's one of
25 the things that it reflects.

26 Now, Order 30 by comparison is -- let's see, the
27 current range is \$0.20 and the proposed range \$0.55,
28 correct?



1 A. Yes.

2 Q. I mean, these are actually adjacent orders,
3 correct?

4 A. Yes.

5 Q. Okay. And then Order 51, which is California,
6 actually for Order 51, the -- well, there's some outliers
7 there, right? So the range is broader, somewhat broader,
8 if you ignore the outliers, correct?

9 A. Yes.

10 Q. If you look at the outliers, the range actually is
11 not changed at all; is that right?

12 A. That's correct.

13 Q. And then, if we look at Order 131, which is
14 Arizona, the range actually is shrinking; is that correct?

15 A. Yes, that's correct.

16 Q. There the range currently is \$0.45, it's going
17 down to \$0.20, correct?

18 A. Yes.

19 MR. ROSENBAUM: I think that's all I have. Thank
20 you.

21 THE COURT: Mr. Rosenbaum, that was extremely
22 helpful. Thank you.

23 MS. VULIN: Your Honor, Ashley Vulin with the Milk
24 Innovation Group.

25 I believe we're starting redirect on Exhibit -- or
26 excuse me, Proposal 20?

27 THE COURT: Yes. Unless you have any follow-up to
28 what Mr. Rosenbaum did.



1 MS. VULIN: No, thank you. I think it was covered
2 thoroughly.

3 Sorry?

4 THE WITNESS: Does anybody else want to talk about
5 those before we put them away?

6 THE COURT: Oh, the boxes and whiskers?

7 THE WITNESS: Yes.

8 THE COURT: Okay. Would anyone else like to
9 follow up on boxes and whiskers?

10 I think we have got it.

11 REDIRECT EXAMINATION

12 BY MS. VULIN:

13 Q. So just a few things. You had been asked earlier
14 about the membership of MIG, and I believe in earlier
15 testimony you had testified that Class I operators are
16 broken down approximately to 50% cooperative-owned, 30%
17 proprietary, and 20% captive/retailer owned; is that
18 right?

19 A. Yes.

20 Q. And of the 30% that is proprietary for Class I
21 operators, MIG membership certainly has the majority of
22 that production, correct?

23 A. Yes, that would be correct.

24 Q. And earlier you were also asked about whether it's
25 best to let market forces dictate the movement of milk.

26 Do market forces dictate the movement of milk
27 today?

28 A. Absolutely.



1 Q. And does MIG's Proposal 20 fundamentally change
2 how FMMOs account for market forces in the Class I prices?

3 A. Not fundamentally. It's still looking at a
4 combination of a regulated minimum and market forces in
5 the form of over-order premiums and the like.

6 Q. And so Proposal 20 still has a market minimum,
7 correct?

8 A. Correct.

9 Q. And it still would account for over-order
10 premiums, same as today, correct?

11 A. Yes.

12 Q. Rather, it's just a question of magnitude.
13 Proposal 20 addresses a certain amount of money that would
14 be taken out of the minimum and, instead, left to market
15 forces?

16 A. That's correct. That is my perspective on what
17 MIG is seeking with Proposal 20.

18 Q. Entirely consistent with the principles that USDA
19 applies today and how to balance minimum prices and market
20 forces?

21 A. I think that it works. I think that it is
22 consistent with the way that the program operates today.

23 Q. And you were also asked quite a bit about \$0.60
24 for balancing and how that results in double-counting. So
25 I just want to walk through that briefly.

26 The \$0.60 that today is pooled and allocated for
27 balancing costs, is that \$0.60 directed to Class I
28 suppliers who actually carry those balancing costs?



1 A. Not necessarily. That \$0.60 goes -- that \$0.60 is
2 part of the base Class I differential, and so that \$0.60,
3 a Class I handler is accountable for it to the pool
4 through the producer settlement fund.

5 Q. And particularly with orders with low utilization,
6 that \$0.60 would be quite diluted throughout the pool,
7 correct?

8 A. Definitely.

9 Q. And so imagine a producer to a Class I plant in
10 the Central Order, and imagine that producer as carrying
11 \$0.60 worth of balancing costs in order to service the
12 Class I market.

13 Will the pool compensate that producer for his or
14 her \$0.60 of balancing costs?

15 A. No, because of the Class I utilization, the amount
16 that's going to come through is going to be much lower.

17 Q. And so when that farmer goes to sell his or her
18 milk to a Class I plant, he'll need to charge that plant
19 again to make up for the difference of -- of what he still
20 has for his balancing costs, correct?

21 A. Yes.

22 Q. And so despite that plant already paying \$0.60
23 into the pool, that plant would, a second time, have to
24 pay that supplier in order to make up for the difference
25 in the balancing costs that supplier has, correct?

26 A. Yes.

27 Q. And that's the double-counting you were
28 describing?



1 A. Yes.

2 Q. So then let's do one more example. A similar
3 scenario, but imagine this time the Class I processor who
4 is purchasing that milk has extra raw milk storage that
5 they have built.

6 In that case, that would be the processor bearing
7 the cost of a balancing funds, correct?

8 A. Yes.

9 Q. And one more example. Imagine a Class I processor
10 who decides to build an ESL plant.

11 There are a lot of business considerations to do
12 so, but as you testified, that could also provide a
13 balancing function, correct?

14 A. Yes.

15 Q. And even if it's not seasonal balancing, right?
16 You were asked, I know, about milk being produced in the
17 summer and saved until the fall.

18 Certainly, in your experience, have you seen it be
19 utilized at least for daily or week-to-week balancing of
20 supplies?

21 A. Oh, absolutely, daily, weekly, and even getting
22 into monthly. With the shelf life on ESL products, you --
23 you really see people managing their inventories in a way
24 to facilitate balancing.

25 Q. And so a processor who builds an ESL facility
26 would be paying a lot more per hundredweight for the
27 balancing activities that that plant provides versus
28 someone who builds extra raw milk storage, correct?



1 A. Yes. Unfortunately, silos versus an ESL milk
2 plant are not quite the same sort of capital expenditure.

3 Q. ESL milk plants are quite expensive to build,
4 correct?

5 A. Yes, they are.

6 Q. And so that's why you are looking at even
7 scenarios where the two processors are both bearing
8 balancing costs, it really depends on the manner in which
9 they provide that cost to determine what the expense is to
10 the processor in providing it?

11 A. Yes. So what balancing activities and how they
12 are undertaking those balancing activities is going to --
13 is going to make it so that the costs are not the same,
14 and the amount of the balancing that they are taking on
15 may not be the same.

16 Q. And is that why MIG determined that this minimum
17 price should not contain that portion of balancing because
18 it's carried so differently in every market situation?

19 A. Yes. Because there is so much variability, we
20 believe that it makes more sense to leave it to the market
21 so that the specifics can be addressed.

22 Q. And when you say "leave it to the market," do you
23 mean leave it to the producers and processors to determine
24 for their individual businesses the most cost effective
25 way they want to handle balancing?

26 A. Absolutely. The most efficient, most cost
27 effective way to perform that vital service.

28 Q. And to ensure that that service is actually being



1 compensated when it's provided to Class I versus dilution
2 through the pool, correct?

3 A. Yes.

4 Q. And you were also asked about over-order premiums.

5 And in your experience, do you believe dairy
6 producers lack the leverage to negotiate over-order
7 premiums in some way that's a systemic problem for FMMOs?

8 A. I don't think so. I think that while we have
9 heard testimony from some cooperative witnesses and
10 producers about problems, we have also heard testimony
11 from others about, frankly, the market power that they
12 have.

13 Q. And is the fact that some producers are not
14 receiving over-order premiums they believe are warranted,
15 what does that say to you about the current minimum price?

16 A. That says to me that the current minimum price is
17 too high, that you are bumping up against it.

18 Q. And is that because the minimum prices serving is
19 the actual price instead of leaving space above that
20 minimum for the market to operate?

21 A. Yes.

22 Q. And do you believe that is disorderly marketing or
23 a symptom of it?

24 A. I think it's a symptom of it. I think that it --
25 it's a marker. It's some -- it's a -- we should take a
26 look at this.

27 Q. And you were also asked about Grade A
28 requirements. And you were asked if Federal Milk



1 Marketing Orders only require Class I operators to use
2 Grade A milk.

3 Do you recall that?

4 A. Yes.

5 Q. Can producers who are participants in the FMMO
6 system have Grade B milk?

7 A. No. In order to -- all producer milk for the
8 FMMOs has to be Grade A.

9 Q. So similar to our experience with rBST-free,
10 Grade A milk has become the industry standard within
11 FMMOs?

12 A. Grade A milk is very much the industry standard.

13 Q. And the regulatory standard?

14 A. Absolutely.

15 MS. VULIN: Nothing further. Thank you.

16 THE COURT: Are there any other questions of this
17 witness regarding Proposal 20?

18 I see none.

19 Congratulations, Ms. Keefe. You may step down.

20 MR. ENGLISH: Your Honor, I'm going to try to move
21 things along.

22 Chip English for the Milk Innovation Group.

23 THE COURT: Move them slowly, please.

24 MR. ENGLISH: I'm after lunch, so -- okay.

25 Thank you. Yes.

26 Chip English for the Milk Innovation Group.

27 I call to the stand once again, Dr. Mark

28 Stephenson, and we're going to try to hand out the



1 documents quickly enough so we don't have take a very long
2 break or any break at all.

3 We believe we are reconnected to the computer,
4 right?

5 THE COURT: We'll go off record at 3:39.

6 (An off-the-record discussion took place.)

7 THE COURT: We're back on record at 3:41.

8 I have three exhibits in front of me.

9 MS. VULIN: Before we turn to that, Your Honor, I
10 would like to move to admit Ms. Keefe's testimony and
11 exhibits. I had rushed off before we did that.

12 THE COURT: All right. Thank you for remembering
13 that. I'm glad you did.

14 All right. So what will be the first number you
15 will refer to?

16 MS. VULIN: Exhibit MIG-15, which is Exhibit 447.

17 THE COURT: Is there any objection to the
18 admission into evidence of Exhibit 447, also marked
19 Exhibit MIG-15?

20 There is none. That Exhibit 447 is admitted into
21 evidence.

22 (Thereafter, Exhibit Number 447 was received
23 into evidence.)

24 MS. VULIN: MIG Exhibit -- sorry, Exhibit MIG-15A,
25 which is Exhibit 448.

26 THE COURT: Is there any objection to the
27 admission into evidence of Exhibit 448, also marked
28 Exhibit MIG-15A?



1 There is none. Exhibit 448 is admitted into
2 evidence.

3 (Thereafter, Exhibit Number 448 was received
4 into evidence.)

5 MS. VULIN: Exhibit MIG-15B, which is marked 449.

6 THE COURT: Is there any objection to the
7 admission into evidence of Exhibit 449, also marked
8 Exhibit MIG-15B, as in boy?

9 There is none. Exhibit 449 is admitted into
10 evidence.

11 (Thereafter, Exhibit Number 449 was received
12 into evidence.)

13 MS. VULIN: And Exhibit MIG-15C, which is also
14 marked as Exhibit 450, please.

15 THE COURT: Is there any objection of the
16 admission into evidence of 450, also marked
17 Exhibit MIG-15C, like cat?

18 There is none. Exhibit 450 is admitted into
19 evidence.

20 (Thereafter, Exhibit Number 450 was received
21 into evidence.)

22 MS. VULIN: Thank you, Your Honor.

23 MR. ENGLISH: Your Honor, Chip English.

24 And, yes, you do have three documents in front of
25 you. The first is Exhibit MIG-16 corrected, which was
26 resubmitted last week. I'd like that to be marked as I
27 believe as 451.

28 THE COURT: Yes.



1 (Thereafter, Exhibit Number 451 was marked
2 for identification.)

3 MR. ENGLISH: The next exhibit is the original
4 Exhibit MIG-16A, which is data, and that should be 452.

5 (Thereafter, Exhibit Number 452 was marked
6 for identification.)

7 THE COURT: Yes.

8 MR. ENGLISH: And the final one is Exhibit 16B,
9 which is a PowerPoint presentation, which was also
10 submitted. And that should be 453, correct?

11 THE COURT: Correct.

12 (Thereafter, Exhibit Number 453 was marked
13 for identification.)

14 THE COURT: And I'd like the witness in the stand,
15 please, to identify himself, once again, and spell all of
16 his names, and explain to me what his Ph.D. is in.

17 THE WITNESS: Thank you, Judge.

18 My name is Mark W. Stephenson. That's M-A-R-K; W;
19 S-T-E-P-H-E-N-S-O-N.

20 I have two master's degrees in agricultural
21 economics and in dairy science; and I have a Ph.D. also in
22 agricultural economics; and an undergraduate in dairy
23 science.

24 THE COURT: We welcome you back. And you remain
25 sworn.

26 THE WITNESS: Thank you.

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MARK STEPHENSON,

Having been previously sworn, was examined
and testified as follows:

MR. ENGLISH: Thank you, Your Honor.

And thank you, Dr. Stephenson.

DIRECT EXAMINATION

BY MR. ENGLISH:

Q. Before you provide your testimony, which is really going to be the presentation Exhibit 453 we resubmitted, last week, Exhibit, what is now marked 451, MIG-16 corrected, which was originally submitted back in September.

And you made, at your request, several corrections to your testimony, correct?

A. I did, yes.

Q. Could you tell us -- I think there's three -- could you tell us what they are?

A. Sure. One of the corrections was to change the name of the presiding judge that at the time of submission was different.

The other was that there was a calculation that was wrong, which was the percentage of Grade A milk in markets back in the 1950s.

And the third one --

Q. You added a comment about elasticity?

A. I did. I'm sorry about that. I did have a paragraph that I added that was just a comment about the changing estimates of elasticities. I had been listening



1 in to the hearing, and I did hear a few of the witnesses
2 who testified as to how we have seen changes recently in
3 what we would consider to be the elasticities of beverage
4 milk.

5 Q. And how does that affect your views of your
6 testimony?

7 A. It doesn't very much, but it does speak to at
8 least one of their justifications that we have had early
9 on for classified pricing.

10 Q. Okay. Could you then provide -- and hopefully it
11 will work on the screen -- your presentation, Exhibit 453.

12 A. Sure. I'll do that.

13 Not to belabor the point, but we -- we do have
14 quite a history with Federal Milk Marketing Orders, and
15 that history really began back in the 1930s. By the time
16 we got to 1937, we had permanent legislation that
17 authorized Federal Milk Marketing Orders.

18 But in the 1940s, fluid milk was the most
19 important dairy product being regulated at the time and,
20 in fact, the most important market for milk that existed
21 at that point in time. And the market has changed a fair
22 amount.

23 I'll show you a slide in just a moment. We have
24 seen some of that with Mrs. Keefe's testimony as well.

25 But fluid milk today is only about 18% of all
26 market, whether we consider regulated milk or not. In
27 Federal Milk Marketing Orders, I believe it's 27% or 28%
28 depending on the month and year most recently, but it has



1 become a small portion of the milk, whereas in the early
2 portion of the time period for regulation, beverage milk
3 was about two-thirds of all of the milk that was
4 regulated.

5 The Grade B milk volume had declined significantly
6 since the 1950s. At that time, it represented about 40%
7 of the milk supply. And in some areas where you had high
8 utilization and relatively high amount of Grade B milk, it
9 would certainly be possible to not have adequate supplies
10 of Grade A milk to service the fluid markets. But today,
11 that Grade B milk is well less than 1% of the total milk
12 production in the country and is certainly a portion of
13 the changing market landscape that we do see.

14 This graphic is showing you the use of Federal
15 Milk Marketing Order milk over time. It goes back to
16 1947. As I mentioned at that time, the blue bars are
17 about -- about 65% of total utilization of milk in Federal
18 Orders. The rest of that was milk used for manufacturing
19 that continued to climb through the 1960s and into the
20 early 1970s when we saw peak utilization of fluid milk.

21 Since that time period, total use of fluid milk
22 has been relatively flat per capita utilization of
23 beverage milk, over that time period had declined as
24 population grew.

25 But you can also see over that entire time period
26 that use for milk has continued to grow. As I mentioned,
27 today, manufacturing milk is by far the largest use of
28 milk in our dairy industry.



1 The Federal Milk Marketing Orders that were
2 created back in the late 1930s time period were built
3 around fluid milk, and this is partly demonstrated by the
4 concepts that we have the fluid plants must be regulated,
5 they had no choice in the matter, and manufacturing plants
6 may be regulated if they choose to do so.

7 There is an AMS document that explicitly states
8 that "Federal Orders are used to stabilize conditions for
9 fluid milk to make the buying and selling of fluid milk an
10 orderly process upon which dairy farmers, milk dealers and
11 consumers alike can depend."

12 So this kind of cuts right to the heart of what
13 Federal Milk Marketing Orders were constructed to do and
14 still is a primary mission today.

15 The primary tools of Federal Milk Marketing Orders
16 are relatively simple, and sometimes have been referred to
17 as blunt instruments, but they are classified pricing and
18 pooling.

19 The higher prices which are charged for fluid milk
20 offsets, to some extent, the greater cost of servicing
21 those plants, and it also was a -- clearly a promotion in
22 history to exploit an inelastic consumer demand.

23 This gets to the additional comment that I put in
24 my testimony since the hearing, is I did find some of the
25 testimony to be rather interesting. We have always
26 assumed that fluid milk has been inelastic, but that now
27 perhaps it is actually moved to the category of being
28 elastic. And if that is the case, then it suggests that



1 charging a higher price for fluid milk might -- well, it
2 absolutely would mean that it would now lower producer
3 returns rather than increasing them.

4 So we do have to be a little bit care if that's
5 one of the justifications that we want to use for
6 classified pricing and the properties of milk being
7 inelastic.

8 Federal Orders have always relied on minimum
9 pricing. That means that you are welcome to pay more for
10 milk and, indeed, many plants and buyers of milk do. But
11 if you are regulated, you cannot pay less.

12 And being chronically above, at least the
13 market-clearing price, creates surplus product which the
14 market can't clear. Our dairy markets, we have always
15 felt, have kind of walked on a knife's edge, that being
16 plus or minus 1% on milk supplies can cause some pretty
17 big swings in prices as the markets do attempt to clear
18 that.

19 I use a graph here, and I think that this graph is
20 important and illustrates some things. Sometimes even we
21 as economists get a little bit sloppy when we refer to
22 such things as the supply of milk or the demand for milk,
23 and we're really just talking about the quantity.

24 But as an economist, the words "supply" or
25 "demand" really are talking about a relationship between
26 price and quantity. If we're thinking about the demand
27 for milk, at a higher price, consumers want relatively
28 less product; at a lower price, they will demand



1 considerably more.

2 The inverse of that is true for those producing
3 milk, supplying the milk. At a higher price, they are
4 willing to produce a fair amount of milk, and at a lower
5 price, not as much.

6 And if you will notice in this graph here, we have
7 this one spot where these thin crisp lines intersect, and
8 we would call that a market-clearing price. That's the
9 one place where consumers and producers agree on the
10 quantity and the price of the product. That just clears
11 the market.

12 Again, at a higher price, if you are regulating a
13 price up here, you will have demand for a product that's
14 in this range, and you will have supply here. That
15 difference between the price demanded and the price
16 supplied is surplus or inventory. Down here, we have a
17 position that's precisely the opposite, where there's more
18 milk demanded than is being supplied by the marketplace.

19 The marketplace for minimum pricing is able to
20 deal with prices below a market-clearing level. We can do
21 that because premiums will step into the breach to fill
22 that market price up, and we'll find our way working back
23 and forth until we achieve a market-clearing price.

24 If we're at a level that's higher than a
25 market-clearing price, then we have surplus, and we're
26 regulating that as a minimum price. Welcome to pay more.
27 You will find that we have relatively few options. One of
28 the few options that we have in Federal Milk Marketing



1 Orders is that we can opt out of regulation if you are a
2 manufacturing plant, and that does happen.

3 Now, we show lines like this in illustration that
4 appear to be very crisp and clean and really quite
5 definite, as though we actually know what that
6 market-clearing price is at any point in time. And we
7 really don't. We have an idea about the range and the
8 reason for those prices being in that range, but it's
9 truthfully more like these fat lines over here. There's
10 kind of a target in the middle that we know we ought to be
11 shooting at. We don't want to be much above it or much
12 below it.

13 But, nevertheless, if we make small mistakes but
14 are still hitting the target, we're probably going to have
15 markets that will function all right. If you are hitting
16 well above that, you may be in trouble. If you are
17 hitting well under that, you are probably irrelevant. So
18 I would suggest that, you know, we try to think just about
19 how precise our market pricing is really trying to be.

20 I mentioned that being slightly above can be
21 accommodated by accumulating dairy stocks, but it's also a
22 signal the market is already clearing and we'll need to do
23 something to lower the price. It's probably better to err
24 on a somewhat too-low price rather than one that's too
25 high, especially for fluid plants which can't opt out of
26 this regulation. Manufacturing plants can; fluid plants
27 can't.

28 We have had a number of opportunities to talk



1 about this U.S. Dairy Sector Simulator model. The Sector
2 Simulator model solves a rather complex task of assembling
3 raw milk from dairy farms across the contiguous 48 states,
4 shipping it to plants where it's made into dairy products,
5 to be distributed to consumers all across the 48 states.
6 The model's task is to find the most efficient method of
7 moving that milk for assembly, product processing, and
8 distribution of final products, subject to many
9 constraints. The model doesn't develop or reflect actual
10 values for milk, but rather it can calculate relative
11 values of milk when raw milk is always going to its
12 globally highest and best use.

13 So in other words, this is the activity of
14 somebody that we might think of as a marketplace dictator
15 that is really moving products in the most optimal way.
16 We often don't get a chance to do that, but it provides us
17 with a benchmark, at least, for an efficient dairy
18 marketplace and system.

19 So the Class I differential and Grade A. We have
20 had some discussion about this in the last, well, morning
21 and day, and then others talking about it. But in looking
22 back at the history of differentials, there is some
23 evidence in documentation that talks about this \$1.60
24 Class I differential, which has been reported as being
25 implemented during the Federal Order reform.

26 I'm not sure I have seen that precise document,
27 but you do see documents that describe an A plus B plus C
28 equals the differential. And they then provide -- and



1 certainly during California hearing I also recall hearing
2 about the different pieces of what those elements actually
3 were. The document indicates that part of the value is to
4 support conversion from Grade B to Grade A milk
5 production. I think that was important at one point in
6 time, undoubtedly very much less so today.

7 Today, compensation to support convergence or to
8 maintain Grade A status is really not needed. Grade A
9 status is no longer a Class I issue at all, it's an
10 industrywide standard. We have seen a variety of ways in
11 which voluntary premiums have been used to incentivize
12 milk production and milk qualities. One of the them
13 mentioned just a little while ago was rBST. There were
14 premiums that were paid to dairy producers to provide
15 non-rBST production of a milk supply that was to be sold
16 at a premium. And as we found farms no longer --
17 declining to do that, in some cases on a co-op basis and
18 some cases on state-by-state basis, that premium is really
19 no longer available or being paid.

20 We have also seen premiums being paid for greater
21 quality in milk production. So low somatic cell count
22 milk was a good example of that. Those premiums have been
23 fairly substantial, and farms worked hard to achieve that.
24 At this point in time, our milk quality is improved so
25 much that there's very little of those premiums actually
26 being paid anymore.

27 The opportunity of moving on to using premiums for
28 other purposes is now available. That's no longer a



1 strong incentive in the marketplace. They have become
2 commodified. And we could see I think the very same thing
3 with Grade A milk. It has been the standard for so long
4 and maintaining that is not an expensive issue on farms,
5 and it has become commodified and is probably hard to
6 justify in the portion that -- that is being looked at as
7 the basis of the differential.

8 Another one of the pieces has been balancing.
9 Now, that's a part of the justification here that
10 balancing is a cost to a system. And I'm not sure that
11 that is quite the case anymore for market-wide or
12 pool-wide expense being efficient and consistent with
13 orderly marketing goals.

14 Co-ops and individual producers offer successfully
15 negotiated incentives, and fluid plants have changed their
16 behavior. We have different types of balancings that were
17 needed. But a couple of decades ago it was very common to
18 have intra-week balancing as plants often didn't process
19 on a Saturday or a Sunday, and that milk had to go
20 somewhere over the weekend, and then a greater amount was
21 desired on Monday to refill store shelves. So plants were
22 incentivized to install silos and accept milk, at least on
23 weekends, even if they weren't processing. And that has
24 taken place across the country.

25 A high proportion of manufactured milk no longer
26 solves the balance -- or serves as a balancing function,
27 partly because of the great supply of milk that we have
28 relative to the Class I needs and in many areas of the



1 country. That shift means that there's more than an
2 adequate supply of milk available.

3 Another portion of the Class I differential that's
4 been identified is the incentive to serve Class I. In
5 other words, when needed, can we move milk from a
6 manufacturing plant or some other use to a fluid plant.
7 And sometimes it's been identified as the cost to move
8 that milk, maybe largely via diversion, from
9 manufacturers' plants to where it's needed. But I'm not
10 persuaded that that's still always a factor as Class I
11 can't be considered in isolation. We have to think about
12 it, nowadays, in the totality of our dairy system in the
13 U.S.

14 Class I plants, in reality, may have to pay twice:
15 Once in market heavy, manufacturing heavy regions of the
16 country into the pool, and a second time as a premium to
17 get that milk to move from manufacturing plants to a fluid
18 plant.

19 I take Order 30 as an example where utilization
20 has been so low. If it's looked at as being \$0.60, or
21 something like that as the portion that is used to move
22 it, and the Class I utilization is, for easy math, maybe
23 10%, then we're talking about \$0.06 being available to
24 incent milk to move. Not likely to get much milk moving
25 with that in a region like that.

26 This shows that money is perhaps not included in
27 the pool, but instead be allowed to be used by fluid milk
28 plants directly.



1 Now, I'm going to talk about something that is my
2 idea. This is not a MIG proposal, but was rather my own
3 idea. I have a fairly strong independent sense of what I
4 may want to do from time to time. And if it's determined
5 that \$1.60 is necessary to ensure service to Class I
6 plants, it would be a lot more effective to require that
7 Class I plant include the \$1.60, that they have to pay it,
8 but that they can pay it directly to their supplier and
9 not into the pool.

10 Now, that's not necessarily the entire Class I
11 differential, but it is that portion that we have tried to
12 justify as being a fixed proportion that is added
13 everywhere.

14 The remainder of the differential, however, would
15 be part of the market-wide pool.

16 Now, when we look at that USDSS model out there, I
17 was asked to take a look at the cost of balancing and the
18 incentives to move product around. And, in fact, the MIG
19 proposal was not even developed at that point in time, but
20 I was looking at these other things. I did look for
21 insights from this USDSS model. Is there something that
22 it can tell us about these relative costs and -- and
23 movement of milk?

24 And the primal and dual solutions represent values
25 from the optimal. The U.S. model validation shows us that
26 the evolution of regional processing structure highly,
27 closely correlates with what the optimal model solution
28 is. In other words, in relatively surplus regions of the



1 country, we have manufacturing heavy plants that are
2 taking place, and in regions of the country that are
3 relatively deficit, we find that we have many more fluid
4 plants and very few manufacturing plants. And the fluid
5 plants even in the manufacturing regions tend to be
6 located closer to population centers, while manufacturing
7 is actually located closer to the milk supply. That's
8 consistent with what the model feels ought to happen, so I
9 think it's consistent that the -- you know, the model is
10 capturing the actual incentives that we see in the
11 marketplace.

12 Actual milk movements, not the representations
13 that we have, can differ from the optimal solution in the
14 model, but differing by very much is like swimming against
15 an economic current. In the proposals for Class I
16 differentials, when we have seen maps of model results, or
17 indeed the Class I differentials that we actually have in
18 place at this point in time, we do see that gradation in
19 variation, that is representative of what you might call
20 an economic current that milk wants to move in those
21 directions of higher prices. May not be compensated fully
22 for that movement, but it is going to try to move in that
23 direction if it needs to move at all. And swimming
24 against the current or going against that price surface is
25 something that can be done over short distances, but it's
26 expensive and it's difficult to sustain in the long run.

27 This model can also give us an idea of the
28 relative value of milk used in different types of plants.



1 AMS has never asked us for the dual value in manufacturing
2 plants, it's only wanted to take a look at the dual values
3 at fluid plants. But, in fact, we can have the model
4 generate these values anywhere there's a plant of any
5 type, or a farm, or a population center. Anyplace that we
6 have a constraint available, we can always look at what is
7 the value of relaxing that constraint at that point by one
8 unit.

9 And we can also look at those values at cheese
10 plants. So, for example, if we happen to look at a fluid
11 plant and a cheese plant that's quite literally across the
12 road from one another, the dual values can and they do
13 differ based on the need for the finished product. So
14 when we take a look at types of plants, even in the very
15 same location, we can see that the marginal value, that
16 dual value of the product, can differ based on what the
17 model can actually do with the products that could be
18 produced at that point, whether it is manufactured product
19 or fluid.

20 So a plant making cheese in some location might be
21 more valuable to the global solution of the USDSS than the
22 fluid plant across the road. That comparison, by looking
23 at these dual values here, can approximate the incentive
24 or the give-up charge for delivering milk to a fluid plant
25 instead of the manufacturing plant.

26 I'm going to show you in just a slide or two here
27 a map that looks at these differences, and the model does
28 show that difference in the dual or marginal values for



1 fluid and cheese use across all 48 states. It represents
2 Class I dual value minus Class III dual values, with
3 shades of red to green. And those values are not
4 inclusive of the \$1.60. These are just the price relative
5 values that the model spits out.

6 The green-colored counties are locations where
7 delivering milk to a fluid plant is of more value; in
8 other words, the model can lower this total global cost
9 more in an efficient market if the milk goes to the fluid
10 plant rather than to a manufacturing plant. In the areas
11 where we see colors of red, it's just the opposite. The
12 model can lower total costs more by having the milk go to
13 a cheese plant than it does to the fluid plant there.

14 The intensity of the red color shows where we're
15 delivering milk to a cheese plant is of more value. The
16 fluid plant located in the red-colored region would find
17 that cheese plants in the area were unwilling to give up
18 milk unless you compensated them for at least their
19 opportunity costs, which are greater than the fluid
20 plants' regional cost of milk.

21 This, in fact --

22 THE COURT: Dr. Stephenson?

23 THE WITNESS: Yes.

24 THE COURT: I know Mr. English had in mind that we
25 would not take a break, but I must. And I want to do it
26 before you help us evaluate more of this map on page 19.

27 So let us take a ten-minute break, and then we'll
28 come back to Exhibit 453, the slides, and we'll begin with



1 page 19. Thank you.

2 Ten minutes. Please be back and ready to go at
3 4:22.

4 (Whereupon, a break was taken.)

5 THE COURT: Let's go back on record. We're back
6 on record at 4:22.

7 Thank you, Dr. Stephenson. My dry throat, I had
8 been drinking too much water, I needed that break.

9 You may resume.

10 THE WITNESS: Okay. Thank you. No, the break was
11 nice.

12 I left off just at the introduction of this map.
13 I had talked about it a little bit, and there's probably
14 plenty more that needs to be said about it.

15 I was not aware that this relationship existed in
16 this kind of way. It was not something that we had ever
17 really looked at, explicitly or directly. We had looked
18 at marginal values of manufacturing milk in comparison to
19 the fluid values, marginal values of fluid milk, for sure.
20 We noticed the patterns that tended to be similar, that
21 they were relatively less valuable in the upper left-hand
22 portions of the map and became more valuable as you go to
23 the lower right-hand corners of the map, but I never
24 really looked at the differences between those two things.

25 And in trying to think about some of the, what
26 does it take to move milk from one type of plant to
27 another, what is the incentive that's required, you can
28 notice that the marginal value of milk in the central



1 portion of the country where it's virtually all red in
2 here is considerably greater than it is for a fluid plant.
3 This is a place where I think you can say that, what's
4 needed to move milk is the give-up charge or the
5 opportunity cost that that manufacturing plant faces and
6 the fluid plant is going to have to come up with more
7 money than they would want to do, based on the value of
8 their product at that location that point in time.

9 The red is actually in gradations there from a
10 darker red to pink. That represents stronger values in
11 manufacturing for the very dark red colors to pink colors
12 where it's a little bit more. There are actually gray
13 bands on this map. Doesn't show up as well on this
14 monitor up here, but those gray bands are where the
15 marginal value of fluid is about equal to the marginal
16 value of the manufacturing products in there.

17 And in regions like the Southeast, and, in fact,
18 in California and Nevada, we find that the marginal value
19 in fluid is a little bit greater than it is for the
20 manufacturing there.

21 So it's not consistent across the country, but
22 there are definitely patterns that we see here. And it
23 does correspond to relatively surplus versus the global
24 need for the particular product that is and can be
25 manufactured in those different locations.

26 This was a bit of a revelation to me to look at
27 the model results in this particular way. I hadn't done
28 that before. Sometimes we have our own ideas about what



1 we think may be going on and we pursue them, or we look at
2 them through research to validate that. Sometimes we are
3 looking at data, as I did here, that have been with us for
4 some period of time, but we're simply looking at them in a
5 way we had never looked at them before to have new
6 insights revealed about this. I think this is
7 particularly potent in this particular example.

8 So I would say that those areas of the map here
9 where we're seeing some red zones, the primary purpose of
10 what this uniform differential may be that gets added on
11 to the spatial values of Class I is really needed there to
12 try to attract that milk away from manufacturing plants.
13 It's the incentive that's required to pull it away from a
14 better use in that region.

15 In the areas where we see a lot of dark green,
16 that's not necessarily the case. Their fluid milk plants
17 find it so valuable to have the next unit of milk in
18 there, that their value of that increment that may be
19 added to it is more for the compensating the cost of
20 balancing in the region, making sure that we're bringing
21 milk in or pushing it away if we didn't need it at that
22 point in time.

23 So we have two different kinds of things going on
24 here. One, in the red areas the need to pull that milk
25 toward fluid plants and away from cheese plants if needed,
26 and in the green areas, we're looking at more of the costs
27 of balancing than we are the costs of pulling it away from
28 a cheese plant in the region. So some different uses



1 there, but those two are both valid.

2 I would point out that when we take a look at the
3 average value, this is a simple average of these 3,000
4 plus counties. But the average value of the differences
5 between the Class I and the Class III values was a minus
6 \$0.38, which indicates that on a national average it is of
7 more value -- cost saving to the model to have milk in a
8 cheese plant than it is in fluid plants, in most regions.
9 Not all regions but most regions.

10 I think that speaks a little bit to the evolution
11 of our industry as well, that we have gone from being a
12 fluid-dominated dairy industry to being one that is
13 manufacturing dominant.

14 The range, however, does go from somewhat more
15 than \$2 per hundredweight favorable to a cheese plant in
16 red to somewhat more than \$2 per hundredweight more
17 favorable to a fluid plant in green, which tends to be in
18 the Southeast.

19 I think the model result bolsters the arguments
20 not to dilute that value into the pool. If it represents
21 balancing costs for fluid plant or an opportunity cost for
22 manufacturing plants, then if we're diluting that, really
23 into the pool -- again, my example or rough example
24 looking at Order 30 with a 10% utilization -- you are
25 saying that we have effectively compensated producers or
26 cheese plants with a \$0.16 value to try to move that milk,
27 which doesn't come close to the \$2 or essentially close to
28 that in many of the regions. Better if those plants had



1 the full \$1.60, that they could toss that to the people
2 who are actually doing the balancing or, in fact, pulling
3 the milk away from a plant, the opportunity costs from a
4 cheese plant.

5 If a fluid plant pays the \$1.60, it lets the fluid
6 plants pay that portion directly to the farms,
7 cooperatives, or manufacturing plants who do supply the
8 milk. I'm not suggesting taking money out of the
9 regulation, but rather that it -- it is -- have the
10 ability to be directed.

11 The slight change in the Federal Order mechanism
12 does not take regulated value away from producers. The
13 portion of that minimum Class I payment directly rewards
14 the milk that helps to balance the industry or to attract
15 the farm milk to the plant. The marketwide pool would
16 have much less to distribute, which may discourage
17 non-performing milk distant from a fluid plant as well
18 from choosing to pool. That response could increase the
19 Class I utilization in heavy manufacturing regions to
20 something more like a level needed to balance the fluid
21 needs.

22 The dairy industry's evolved a long ways from the
23 conditions of the 1940s. The structure of the Federal
24 Orders was conceived to solve fluid milk problems when
25 fluid milk bottling was the most important use of farm
26 milk and a dominant class of overall milk. Manufacturing
27 milk uses are now not only ascendant, and the FMMOs are
28 functioning as a fluid base system in a



1 manufacturing-dominant world. I believe that this is why
2 we're seeing many of the issues being raised at the
3 hearings. Handler actions such as depooling are more of a
4 symptom of the underlying problem than actually being the
5 problem themselves.

6 Milk used for manufactured dairy products can't be
7 ignored, it has to be recognized. They have a geographic
8 basis, just like fluid milk does, and in many locations,
9 they can now compete fluid plants for local milk supply
10 under our current Federal Order regulations. Perhaps we
11 can move in a direction to allow a portion of the
12 differential paid directly by plants to their supplier and
13 not shared across the pool.

14 We have had in Federal Orders in the past not just
15 marketwide pooling, as we have in most orders today, but
16 we have had individual handler pools. This doesn't go
17 that far. It's a bit of a combination of the two things.
18 A portion of that pool can be paid by individual plants to
19 the folks supplying them. This would focus the
20 differential paid by Class I and make Class I prices more
21 directly potent to attract the milk to their plants.

22 And those are the comments I had. I would be
23 happy to answer questions about that.

24 BY MR. ENGLISH:

25 Q. You did have one more slide.

26 A. Did I? I did. Okay.

27 Many of the marketwide justifications that we have
28 had for the fixed increment are really valid. Grade A



1 conversion and maintenance is just not justified with the
2 current production practices. I think it's a real stretch
3 to try to do that.

4 Intra-week balancing being done by fluid plants
5 already accepting milk on weekends, and even to some
6 extent the seasonal balancing is being challenged by the
7 increasing production of ESL products.

8 I'm not suggesting that that takes care of
9 seasonal balancing. The seasonal demand for fluid milk
10 products is almost countercyclical to our supply of milk
11 and the milk production. So we still have seasonal
12 balancing needs that need to happen.

13 Marketwide pooling of the entire Class I premium
14 attracts more milk to most orders than is necessary to
15 ensure fluid needs. A portion of the Class I value would
16 be better directed to compensate suppliers rather than
17 diluting the payment across the entire pool.

18 And that, I believe, is my last slide.

19 Q. Yes, Dr. Stephenson. Thank you.

20 So let me ask first, before someone else does, are
21 you being compensated by MIG for appearing today?

22 A. I am, yes.

23 Q. And do you oppose Federal Milk Marketing Orders?

24 A. No, quite the opposite. I think that Federal
25 Orders have been an important part of the structure of
26 this industry. But I think that, you know, we are well
27 past the time to need to have some significant changes in
28 the Federal Order system.



1 One of them that's just obvious, and I think we
2 have almost uniform acceptance of it, is that our milk
3 price discovery mechanism has long over need -- or due for
4 the need to update Make Allowance in the product price
5 formulas. I certainly would stand by that.

6 I would also suggest that the rest of the Federal
7 Order mechanism has provided a lot of benefits to the
8 dairy industry, but there are some of those things that
9 just need to be changed. As I mentioned, it's a -- it's a
10 fluid milk solution and a manufacturing world.

11 Q. So after we -- after MIG pre-submitted your
12 testimony, we heard from some in industry that said
13 adopting your proposal would lead to the end of Federal
14 Milk Marketing Orders.

15 Do you agree?

16 A. I don't know, but I don't think so. We have lost
17 Federal Milk Marketing Orders over time, partly through
18 consolidation, but some of them have just been voted out
19 because they didn't service the needs of a particular
20 region or producer, or at least it was deemed at the time
21 to do so. That the industry and orders would evolve and
22 perhaps vote another order or two out, I wouldn't be
23 surprised at that, but I'm not sure that I could fully
24 draw cause and effect, if this, then no order.

25 Q. We have also heard that USDA has sort of two
26 choices: It can either regulate more or it can regulate
27 less.

28 Have you heard that or discussed that yourself?



1 A. I have heard that. I mean, that speaks to
2 conclusions that people have drawn that change is needed.
3 Right? And regulating more or more heavy hand in
4 regulation might involve a variety of things.

5 So, for example, the fat lines that I showed as
6 being our target for discovering milk prices could perhaps
7 be thinned up if you really wanted to try to do some of
8 this to better understand market conditions. But, wow,
9 that's a tough call to do. I mean, to be able to
10 prescribe what the value of a product is at any point in
11 time precisely is difficult. Most of the command
12 economies that have tried to do that have not been
13 successful.

14 Regulate less, yes, this speaks to letting the
15 invisible hand of the marketplace, you know, allow things
16 to happen. So I do think that we could regulate less, and
17 this perhaps is a step in that direction, but it's not a
18 full scale jump in my opinion.

19 Q. In fact, didn't USDA in Federal Order reform in
20 the original proposed rule, in 1998, suggest in Option 1B
21 that it would be possible to allow the market to operate a
22 little more, correct?

23 A. Yes. There were documents that looked internally
24 at what were considered to be two different options, and
25 they were discussed a fair amount, 1A and one 1B. One of
26 them was much more market oriented; the other was a little
27 bit more professional-judgment oriented.

28 Q. And are there benefits to Federal Milk Marketing



1 Orders?

2 A. I think there certainly are. If we didn't have
3 the structure of Federal Orders, I believe the industry
4 would have to recreate some of that. If you look at a few
5 countries that have deregulated, had something similar to
6 the relatively heavy hand that we have in the Federal
7 Order marketplace here, to nothing, they had to recreate a
8 lot of what their structure and regulation had done.

9 So I would not be advocating the loss of Federal
10 Orders. I think it's going to be challenging in the
11 future if we don't have changes. But, no, I'm not
12 advocating the loss of them.

13 Q. As between heavier regulation and lighter
14 regulation, do you come down on one side?

15 A. I personally come down on lighter regulation. I
16 would like to see that. And the reason I say that is I
17 think that the changes that are happening in our industry
18 are happening so rapidly, and the complexities that we
19 have now, it's not my grandfather's dairy industry. This
20 is an industry whose manufacturing processes and ideas,
21 both at the farm level and through processing, are just
22 very different today than they used to be. It is hard to
23 keep up with it. And if you are perennially in a state of
24 not being where it needs to be, then I think we have to go
25 a little bit lighter and let the marketplace make some of
26 those decisions.

27 Q. So let me now turn to your discussion about the
28 use of the model.



1 And first, I think there was some confusion
2 earlier in the hearing, what underlying data did you use
3 for your work for this submission?

4 A. This was the normal milk supply and demand data
5 and cost structure. But I took this from model runs that
6 we had made back in 2016 -- or with 2016 data. This was
7 data that were not as relevant as we had run more
8 recently, but I felt that that was just not a reasonable
9 thing to do, to use current data. So this is 2016 data.

10 Q. And that is the current data belonging to National
11 Milk, correct?

12 A. In my opinion, yes.

13 Q. So when Dr. Nicholson was here presenting and
14 before I tried to clarify with him, he appeared to express
15 concern that you had used the data for National Milk.

16 A. No, no. No, no. This is 2016 data. Always has
17 been.

18 Q. Do you have any concerns that the use of somewhat
19 older data than that used for National Milk in NMPF 19
20 might impact your results?

21 A. Qualitatively? No. I think we would see a very
22 similar structure and justification.

23 Quantitatively? Perhaps. They would be a little
24 bit different.

25 I think that it is always important, if we're
26 considering changes to regulation or something like that,
27 that we use the most current data that we can and is
28 available. But I -- I wasn't going to do that for this



1 particular work.

2 Q. I think from what you said when you started this
3 project, you did not know what the results would be?

4 A. No.

5 THE COURT: Say that again.

6 BY MR. ENGLISH:

7 Q. You did not know what the results would be?

8 A. No. This was exploration on my part. I had been
9 asked to look at the justification for balancing costs,
10 the justification for give-up costs, if you will, you know
11 from plants, and to look at that \$1.60 and the pieces of
12 that that have been talked about here earlier. And it was
13 in the process of doing that and seeing whether or not
14 there was a more systematic way than just saying, my
15 professional judgment concludes that we should do X, Y, or
16 Z. I wanted to see if there wasn't something we could do
17 with model structure.

18 Q. Did MIG tell you what it wanted the results to be?

19 A. No. In fact, I don't think at the time that I had
20 done that that MIG even had their proposal together.

21 Q. So has the model been used this way before?

22 A. Not precisely. I did mention my testimony, that
23 we have looked at the dual values of other classes of
24 milk, including farm level milk, which we seldom talk
25 about. But, you know, those price surfaces are different.

26 Just as an aside, when we were looking back in the
27 days of the Cornell dairy markets and policy for reform
28 purposes, we knew that the farm milk price value surface



1 was different than the Class I price surface. And Federal
2 Orders have historically relied on the differences in
3 Class I prices as the zone values within orders. And when
4 we did calculations looking at this, it was pretty clear
5 to us that with consolidated orders, partly because of
6 utilization but also because of the farm level values,
7 there were going to be some problems of milk pooling on
8 different orders.

9 Q. So does the fact that it's not been used this way
10 in the past, should that affect the way USDA use the
11 results?

12 A. I don't think so. If -- if you accept that this
13 is a valid approach to looking at something like Class I
14 price relatives, then the rest of the model results may or
15 may not be useful for other questions that you have. I
16 felt as though looking at these, that this was a
17 reasonable use to help elucidate a little bit about, you
18 know, the tensions that we see in some regions with
19 difficulty getting milk into Class I plants.

20 Q. So if you could go back to page 19 of your
21 presentation, which is the map.

22 A. The map, yep.

23 Q. All right. So one thing, is the underlying data
24 for this map is Exhibit MIG-16A, which is Exhibit 452,
25 correct?

26 A. Yes.

27 Q. That's the actual data that the model spit out,
28 correct?



1 A. Yes, that's correct.

2 Q. And so you've talked about the green, and you have
3 talked about the red.

4 But there are also areas that are in the gray,
5 correct?

6 A. That's correct.

7 Q. And some of those are, you know, very close to
8 zero, either positive or negative, correct?

9 A. That's correct. That doesn't mean that the milk
10 value is zero.

11 Q. It means the difference was zero?

12 A. Yes.

13 Q. So in such an instance, there really wasn't a
14 great need for balancing expense or a great need for an
15 incentive cost, correct?

16 A. That's correct.

17 Q. And given the fact that you have this wide range,
18 from a negative \$2, over \$2, to a positive over \$2, and
19 then some in the zero or close to zero, say in the Central
20 Valley of California, what does that say about including a
21 fixed value in the pool?

22 A. Well, again, I think that, you know, this is a
23 case where if it's truly zero, there wouldn't have been a
24 story here for me to tell about this, and -- and I think
25 that it would have been appropriate to simply say, well,
26 this could be included in the pool because there's not a
27 strong difference from one to the other. Although it
28 still means that we need to incentivize milk to move,



1 whether for balancing purposes or for give-up charges, but
2 it may be a smaller value. It may be something that you
3 could pull out with premiums pretty easily, those premiums
4 are not going to have to be in the dollars range.

5 Q. But nonetheless, it doesn't change your view that
6 instead of including it in the pool, if there's some
7 number, whether it's \$1.20 without the Grade A or \$1.60,
8 it would be better to direct that to the producers
9 supplying the milk, correct?

10 A. Yes.

11 Q. So let's go back to your work --

12 THE COURT: Mr. English, so he used three
13 categories. He didn't just say "producers," did he? What
14 are the -- what are the --

15 THE WITNESS: There were producers, cooperatives,
16 and plants -- I mean, manufacturing plants.

17 THE COURT: All providing the fluid milk?

18 THE WITNESS: If you needed to incent the pull of
19 milk from a plant that had already paid for that milk,
20 then I would view that payment as going to that plant that
21 had already paid for the milk.

22 MR. ENGLISH: Thank you, Your Honor.

23 BY MR. ENGLISH:

24 Q. So, Dr. Stephenson, going back to your work with
25 Dr. Nicholson and National Milk Producers Federation 19,
26 if USDA is to use the USDSS to set the Class I
27 differentials, should it use the model average, the model
28 maximum, or the model minimum?



1 A. I mentioned that the bigger problem that you have
2 in regulating minimum prices is regulating one that's too
3 high. It may be close to ignorable for many of the
4 regions of the country, but when we looked at seasonal
5 differences between fall and spring marginal values, in
6 some of the areas, like the Southeastern portion of the
7 country, those differentials were large. So you could
8 potentially be asking for more money than is necessary in
9 the flush season of the month, in other words -- or flush
10 season of the year, in other words, overpaying during that
11 time period, and you ought to be really looking at the
12 minimum price rather than the average or the maximum.

13 Q. And did Dr. Nicholson agree with you on page 29 of
14 his testimony, effectively stating you should use the
15 minimum?

16 A. I recall Dr. Nicholson saying that, yes, that it
17 is a problem to overpay for milk in a regulated minimum
18 system.

19 Q. So we have a bit of a conundrum, and it is not
20 that you did something different from what MIG's proposal
21 is. Rather, given our Hearing Notice and what solutions
22 USDA has available to its Hearing Notice, how should USDA
23 approach your concept that some of the Class I
24 differentials ought to be paid to the actual suppliers of
25 the Class I milk?

26 A. Well, as I mentioned, I do have an independent
27 streak, and thinking about this particular proposal, it
28 was not a proposal that I wanted to make. I wanted to



1 talk about, if we did something like this, and offer this
2 as ideas or evidence. I don't want to choose -- much like
3 Ms. Keefe said before me, that I don't buy milk, I don't
4 sell milk, I shouldn't be creating proposals for that.

5 What I can do is to offer ideas and maybe some
6 analysis, and I would lay that at the feet of USDA, and
7 perhaps we can have a more targeted special hearing or
8 something if you wanted to do or needed to do that from a
9 procedural point of view.

10 Q. And let there be no confusion about what you are
11 advocating, because I think another person in speaking to
12 me said, well, wait a minute, is Dr. Stephenson saying
13 that because of all these red areas and the value of milk
14 used in cheese that USDA ought to more heavily regulate
15 and do mandatory pooling of Class III and IV?

16 Are you advocating that?

17 A. No, I'm not. That would go toward the more
18 heavy-handed regulation that I do oppose. I think that we
19 have a prescription for problems and issues if we don't
20 have a relief valve in a regulated system like this now.

21 Q. And finally, there may be criticism of the
22 proposal, that your approach would create a competitive
23 issue for those who do not ship milk to fluid plants, that
24 is to say a lack of a fluid draw would create competitive
25 issues for them.

26 What would you say about that criticism?

27 A. It may. I really -- any change that we're going
28 to make to the regulated system that we have today is



1 going to cause some winners and some losers in the system.
2 There's going to be some who benefit and some who are
3 going to take a bit of a hit from that. And I wouldn't
4 disagree that this is likely to not share as much money
5 across the pool as it did before.

6 But the regulated minimums are still going to be
7 the same. We're going to still be trying to solve the
8 fluid milk problem to the extent that we still have some
9 of that, that we had at the time that Federal Orders were
10 implemented. I think it makes the order system still be
11 able to function in a way that we might not be able to if
12 we were to continue doing much of what we have in the
13 past.

14 Q. And finally, do you have any additional thoughts
15 for USDA before I turn you over for cross-examination?

16 A. No, I don't. Good luck.

17 MR. ENGLISH: Your Honor, as this concludes my
18 direct, and recognizing we'll hold off on the ruling, I do
19 want to at least move the admission of Exhibits 451, 452,
20 and 453.

21 THE COURT: Does anyone object to my taking those
22 into evidence even before we do cross-examination?

23 No one does. Is it -- is there any objection to
24 the admission into evidence of Exhibit 451, also
25 Exhibit MIG-16 corrected?

26 There is none. Exhibit 451 is admitted into
27 evidence.

28 (Thereafter, Exhibit Number 451 was received



1 into evidence.)

2 THE COURT: Is there any objection to the
3 admission into evidence of Exhibit 452, also marked
4 Exhibit MIG-16A?

5 There is none. Exhibit 452 is admitted into
6 evidence.

7 (Thereafter, Exhibit Number 452 was received
8 into evidence.)

9 THE COURT: Is there any objection to the
10 admission into evidence of Exhibit 453, that's the slide
11 presentation that we just completed, also marked
12 MIG Exhibit 16B, like boy?

13 There is none. Exhibit 453 is admitted into
14 evident.

15 (Thereafter, Exhibit Number 453 was received
16 into evidence.)

17 MR. ENGLISH: Your Honor, I conveniently left
18 National Milk with five and a half minutes before
19 5 o'clock.

20 THE COURT: I'd like to use the time to talk about
21 tomorrow. I want to go off record in six minutes, and
22 that's not time for adequate cross-examination.

23 So, Mr. English, what are your objectives for
24 tomorrow?

25 MR. ENGLISH: Well, Your Honor, we didn't make it
26 through today, but -- so Dr. Stephenson --

27 THE COURT: We did.

28 MR. ENGLISH: Well, we didn't make it through the



1 witnesses. I'm now -- the shoe is on the other foot or
2 something, when -- when Ms. Hancock was routinely
3 concerned about getting her witnesses on and off and.

4 And so Dr. Stephenson will be here in the morning
5 to conclude his examination. After that, the order -- we
6 actually did provide an order, and we're going to stick
7 with it, at least for now.

8 Warren Erickson of Anderson Erickson Dairy is the
9 next expected witness. Mike Newell from HP Hood is the
10 next expected witness. And then I imagine that either
11 before him or after him we will have a non-MIG witness
12 because Heath Miller, who is I believe a dairy farmer from
13 Maine, is scheduled to be -- Wednesday afternoon, which is
14 tomorrow is Wednesday.

15 MS. TAYLOR: Oh, yeah, tomorrow afternoon.

16 MR. ENGLISH: And so I imagine that in the best
17 case scenario Mr. Newell will get on and off and then
18 Mr. Miller will get on.

19 And then after Mr. Newell, Mr. Tim Kelly from
20 Shamrock Foods Company. And then after that, Mr. Chuck
21 Turner, I believe, from Turner Dairies.

22 And I venture to say that I can stop there. The
23 participants have a list, although Aurora Organic Dairy I
24 think is next on the list after that. I think that's
25 optimistic that we're going to get there, but I'm going to
26 try.

27 THE COURT: Excellent. We have a few more minutes
28 left.



1 Does anyone have anything you would like to say
2 for the good of the gathering?

3 No?

4 All right, then. We will see you at 8 o'clock
5 tomorrow morning right here. We go off record at 4:57.

6 (Whereupon, the proceedings concluded.)

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1 STATE OF CALIFORNIA)
) SS
 2 COUNTY OF FRESNO)

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4 I, MYRA A. PISH, Certified Shorthand Reporter, do
 5 hereby certify that the foregoing pages comprise a full,
 6 true and correct transcript of my shorthand notes, and a
 7 full, true and correct statement of the proceedings held
 8 at the time and place heretofore stated.

9

10 DATED: February 2, 2024

11 FRESNO, CALIFORNIA

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16 MYRA A. PISH, RPR CSR
 17 Certificate No. 11613

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	\$0.06 10619:23 \$0.07 10460:28 \$0.11 10512:15 10549:5,28 \$0.16 10627:26 \$0.18 10567:28 10568:2,7 \$0.20 10483:25 10571:2,4 10597:27 10598:17 \$0.25 10449:8,13,17,23,26 10485:11,13 10486:4,8 10537:23 10565:2,19 \$0.38 10627:6 \$0.40 10498:22 10499:10,16 10504:17 10505:18 10526:26 10570:22 10571:5 10574:25,26 10582:9 \$0.43 10512:14 \$0.45 10598:16 \$0.49 10449:16 \$0.50 10572:13 \$0.55 10573:5,15,22,26 10574:3,23 10597:27 \$0.60 10459:15 10498:23,24 10499:10,16 10505:26 10506:10,12,17,19,20,22,24 10533:13 10535:28 10536:2, 11,14 10537:8,9,10 10538:4 10539:27 10540:8 10562:27, 28 10563:12,14,16,22,28 10564:16 10565:21,22,23, 24,25 10566:1,25,26 10567:3,17,25 10568:7 10569:2 10585:14 10600:23, 26,27 10601:1,2,6,11,14,22 10619:20 \$0.70 10597:14 \$0.75 10448:19 \$0.80 10459:15 \$1 10448:19 \$1.05 10574:24 10575:6 \$1.20 10638:7 \$1.33 10512:15 10549:6,28 \$1.40 10572:11 \$1.60 10457:7,14,24 10458:14,17 10469:11 10483:16,20,21,24 10498:21,26 10499:5,9,11, 12 10500:6 10503:11 10504:12 10510:17,28	\$1.80 10589:25 10592:2,10, 25 \$2 10539:12 10567:1,5 10627:15,16,27 10637:18 \$2.05 10597:17 \$2.20 10483:19,20,21 10511:24 10595:18 \$2.40 10592:25 10593:23 \$2.57 10460:19,26 10593:14 10595:5 \$3.20 10589:25 10593:23 10594:1 10596:12 \$4 10596:14 \$4.07 10460:21 10595:7 \$4.20 10595:5 \$4.40 10499:1 10511:15 \$5 10594:1 \$5.20 10596:14 \$6 10498:21 10594:5,9 \$7.90 10595:19 - ---o0o--- 10556:5 10644:7 1	
	2 10452:6 10456:5 10457:3 10458:1 10459:23 10497:25 10519:9,10,19 10526:22 10588:7,19 10590:26,27 10592:6,24 10593:23 10594:4 10597:9 2.20 10457:7,14,24 20 10457:18 10458:13,19 10483:10 10494:21 10495:13 10499:5,7 10510:10 10511:11,20,23 10512:9,26 10513:27 10519:27 10525:12,14 10526:12 10529:4 10531:8 10539:16 10549:17,19,25 10551:1,5 10552:3,12 10553:14 10554:22 10555:7 10570:21 10571:7 10574:17 10579:2,3 10598:26 10600:1,6,13,17 10605:17 20% 10501:26 10532:5,6 10599:17 200 10558:15 2000 10501:19 2016 10520:7 10634:6,9,16 2022 10496:1 10501:15 10521:25 2022/2023 10521:26 2023 10464:26 10521:26 2024 10444:1,2 10557:1 21 10571:7 25 10449:22 10459:16 25% 10485:11 27% 10610:27 2717 10452:11 28% 10610:27 2897 10452:9		



29 10570:28 10639:13	441 10448:24 10450:3,7 10451:18 10455:18,23,27 10456:11,18 10459:26 10460:4 10462:12,19 10484:2 10493:3,11,17 10494:2,4 10588:4,8	<hr/> 6 <hr/>	ability 10628:10
29th 10445:22		6 10516:4 10544:18,23 10546:18 10583:17	above-and-beyond 10566:8
2nd 10445:24		6,000 10588:27	absolutely 10448:16 10451:26 10453:26 10454:17 10463:12 10470:24 10491:25 10492:12 10500:24 10504:13 10512:5 10535:23 10539:1 10558:24 10567:15 10587:4 10596:19 10599:28 10602:21 10603:26 10605:14 10613:2
<hr/> 3 <hr/>		60 10473:5 10505:25	absorbing 10537:27
3 10457:2 10482:16,28 10495:23 10499:20 10500:5 10518:19 10526:21 10527:2	442 10493:4 10494:6,8	60% 10501:17	accept 10470:1 10583:16,19 10618:22 10636:12
3% 10463:3,7,20 10484:13, 17	443 10451:23 10452:19 10453:1,5 10491:1,3,8 10493:4 10494:10,12	64 10493:27	acceptable 10451:18
3,000 10627:3	444 10444:13,22,25,28	64A 10450:3,4,6 10459:22 10481:16 10493:9 10494:3 10588:8,13	acceptance 10631:2
3,108 10448:22 10460:19 10464:10 10466:5 10590:22 10591:11,25	445 10444:15 10445:3,4,6	64B 10494:7	accepted 10515:28 10516:5, 17 10575:5
30 10597:26 10619:19 10627:24	446 10448:5,6,8 10485:8 10490:5 10491:4 10492:19 10493:4 10494:14,16	64C 10451:22,26 10452:4, 10,17,20 10494:11	accepting 10630:5
30% 10501:21 10567:27 10599:16,20	447 10495:24,26 10518:20 10526:21 10548:8 10557:14 10579:15,17 10606:16,18, 20,22	64D 10448:2,15,17 10485:7 10494:15	accommodated 10615:21
31% 10484:24 10485:3	448 10496:2,3 10504:22 10606:25,27 10607:1,3	65% 10611:17	account 10487:11,13,23 10488:16 10507:14 10530:3 10554:26 10600:2,9
33 10570:26 10597:10,13,19	449 10496:6,7 10511:17,18 10570:9,11 10607:5,7,9,11	<hr/> 7 <hr/>	accountable 10601:3
332 10452:6	450 10496:11,12 10497:5,25 10519:9 10526:23 10533:11 10538:18 10587:5 10607:14, 16,18,20	7 10448:17,18,23 10449:1 10454:14,17,24 10459:2 10486:24	accountant 10529:15
338 10461:8		770 10591:26	accounting 10581:25
38% 10459:16		<hr/> 8 <hr/>	accumulating 10615:21
3:00 10587:17	451 10607:27 10608:1 10609:10 10641:19,24,26,28	8 10463:24 10548:7 10572:17 10586:13 10644:4	accurate 10447:15 10452:18
3:10 10587:18	452 10608:4,5 10636:24 10641:19 10642:3,5,7	8:00 10445:21	achievable 10526:18
3:11 10587:21	453 10608:10,12 10609:9 10610:11 10623:28 10641:20 10642:10,13,15	8:15 10447:18	achieve 10614:23 10617:23
3:30 10445:18	47 10570:19	8:17 10447:21	act 10466:28 10532:22
3:39 10606:5	48 10461:9 10616:3,5 10623:1	8:30 10454:6	Act's 10579:19
3:41 10606:7	4:22 10624:3,6	8:31 10454:8	acting 10500:17 10504:3
3:45 10445:18	4:57 10644:5	8th 10485:28 10492:20	actions 10629:3
<hr/> 4 <hr/>	<hr/> 5 <hr/>	<hr/> 9 <hr/>	actively 10515:22
4 10453:13,18,27 10498:5 10501:9,11 10509:16 10519:19 10557:17 10568:13	5 10461:7 10504:9 10533:12 10579:14 10587:6 10642:19	9 10464:6 10474:1 10512:10 10535:10	activities 10538:9 10557:25 10560:11 10564:24 10602:27 10603:11,12
4% 10484:22 10485:1,3,5	50% 10532:3,4 10599:16	99% 10504:19 10527:13	activity 10560:4 10563:6,7,8 10616:13
40 10483:26	51 10449:24 10598:5,6	99-plus 10581:14	acts 10580:9
40% 10501:20 10611:6	53% 10553:19,22 10554:3, 11	9:45 10482:6,9	actual 10458:15 10478:18 10480:25,28 10481:9 10492:6 10508:8 10542:7,10 10564:14,26 10581:27 10597:13 10604:19 10616:9 10621:10,12 10636:27 10639:24
419 10452:8	55 10585:14	<hr/> A <hr/>	
43 10453:4	58% 10460:15 10461:12,13	A-U-T-A-U-G-A 10512:6	
44 10444:3,22,26	5:00 10445:20,23	a.m. 10445:21	
440 10453:8 10454:14 10456:20 10457:2 10459:2 10463:23 10466:9 10467:16 10482:14,28 10493:3,26,28		A/grade 10504:23 10586:22	



adapt 10479:14 10506:8	advance 10478:11	10614:4 10618:20 10632:25	10639:23 10640:22
add 10493:10 10508:16 10540:7	Advanced 10498:6	amounts 10458:25 10584:3	approved 10458:4
added 10461:2 10467:18 10489:22 10498:8 10609:25, 27 10620:12 10626:10,19	advantageous 10572:5	ample 10471:2	approximate 10622:23
addition 10538:1	advocate 10469:13	AMS 10516:18 10587:13 10612:7 10622:1	approximately 10445:18 10521:27 10599:16
additional 10446:9 10456:10 10458:25 10500:18 10504:5 10505:17 10520:5 10536:16 10546:3 10547:21 10563:22, 26 10569:9 10612:23 10641:14	advocating 10469:15 10566:14 10633:9,12 10640:11,16	analyses 10456:23	area 10476:6,27 10581:4,7 10623:17
address 10447:13 10509:26	affect 10610:5 10636:10	analysis 10456:10,12,26 10457:27 10466:17 10467:7, 11,15 10468:3,12,17,19 10483:13 10484:1 10506:15 10521:4,6,16 10522:27 10523:19,28 10524:14,20 10525:5,22 10526:13 10529:3 10531:7,9 10536:22 10537:17,21 10541:22 10551:1 10569:12 10572:13 10640:6	areas 10465:28 10575:9 10611:7 10618:28 10623:10 10626:8,15,24,26 10637:4 10639:6 10640:13
addressed 10577:7 10603:21	afforded 10550:20	analyst 10455:24 10456:13	argument 10477:7 10582:12,24 10585:7
addresses 10499:7 10600:13	afternoon 10557:1,13 10579:10,11 10587:28 10588:1 10643:13,15	analyst's 10456:16	arguments 10627:19
addressing 10458:1 10492:8 10576:27	agree 10467:27 10489:20 10502:16 10550:25,27 10559:27 10571:21 10614:9 10631:15 10639:13	analyze 10490:20 10531:10	Arizona 10454:21 10455:7 10598:14
adequacy 10502:21	Agreed 10495:25	analyzed 10569:18	arrangement 10583:5
adequate 10568:17 10579:20 10582:15 10611:9 10619:2 10642:22	agricultural 10444:10 10451:14 10452:22 10470:13,15 10578:20 10579:2,4 10608:20,22	anchor 10454:27	arrangements 10562:8 10582:22 10585:1
adequately 10513:9 10567:13	Agriculture's 10444:16	Anderson 10560:13 10643:8	artificially 10577:25
adjacent 10572:11 10598:2	aid 10447:28	announce 10555:21	ascendant 10628:27
adjust 10466:19 10479:13 10491:19,20	Alabama 10511:22 10512:5	annual 10584:12	aseptic 10558:13
adjusted 10464:3 10466:11 10467:12 10503:12	aligned 10508:19	anonymized 10524:5	Ashley 10447:7 10495:11 10598:23
adjustment 10465:27 10467:28 10469:16	alignment 10575:26 10576:1,2,4	antiquated 10582:3,6	aspect 10469:25 10470:6 10473:13
adjustments 10465:23 10469:14 10470:2 10519:28 10520:27	alike 10612:11	antitrust 10531:14	aspects 10580:5
Administrator 10517:8	allies 10525:7	anymore 10540:1 10617:26 10618:11	assembling 10616:2
admission 10444:25 10445:3 10492:16 10493:3 10606:18,27 10607:7,16 10641:19,24 10642:3,10	allocate 10506:24 10573:5	Anyplace 10622:5	assembly 10515:26 10616:7
admit 10493:23,26 10494:2, 6,10,14 10606:10	allocated 10483:25 10540:6 10564:21 10600:26	apologies 10462:1	Association 10555:24 10587:25
admitted 10444:26 10445:4 10493:6 10606:20 10607:1, 9,18 10641:26 10642:5,13	Allowance 10631:4	apologize 10446:21 10511:22 10586:14	assume 10569:1 10582:13 10585:9,11
adopted 10458:19 10469:2 10510:10 10512:26 10549:17 10570:21 10574:17	Allowances 10478:6 10535:2	Appalachian 10461:8 10480:19	assumed 10612:26
adopting 10631:13	allowed 10619:27	Apparently 10512:4	assuming 10458:9,27 10480:26 10524:17
	allowing 10541:13	appearance 10457:18	assumption 10507:13 10538:5 10561:28 10562:1 10582:17
	alphabetically 10560:19	appeared 10452:7 10634:14	astray 10570:13
	Alternatively 10472:22	appearing 10630:21	atop 10527:20
	altogether 10515:21	appears 10483:18 10570:2 10588:19 10594:2	attempt 10613:17
	AMAA 10532:18,21	applicable 10475:23 10569:6	attention 10460:5 10588:6
	American 10575:17	applied 10549:11	attract 10500:18 10503:5 10504:4 10508:17 10513:25 10555:1 10626:12 10628:14 10629:21
	amount 10463:7 10467:14 10480:26,28 10546:3 10558:22 10560:27 10582:17,18 10596:23 10600:13 10601:15 10603:14 10610:22 10611:8	applies 10600:19	
		approach 10636:13	



attractant 10507:22	balance 10536:23 10537:6 10561:20 10563:20 10573:25 10578:12,13,14 10600:19 10618:26 10628:14,20	10576:11 10586:21 10601:2 10628:28	bigger 10509:2 10534:25 10537:12 10639:1	
attracting 10569:25		base/excess 10544:10	biggest 10538:7	
attracts 10630:14		based 10456:21,23 10463:1 10470:25 10471:20 10483:28 10485:24 10490:24 10492:10 10519:24 10520:7 10537:20 10541:26 10549:4 10551:15 10576:19 10622:13,16 10625:7	bin 10449:23	
audience 10521:8	balancing 10498:23 10504:16 10505:23,25,27 10506:10,12,17,19,25 10507:1,5 10515:26 10523:23 10535:14,21,22 10536:1,12,17,18,28 10537:18,21 10538:6 10539:6,23,27 10540:2 10544:19,26 10545:6,13,16, 18,21 10546:3,21 10547:9, 22 10548:3 10555:3 10557:20,23,24 10558:2,10, 11 10559:28 10560:3,4 10561:24 10562:12,24,26 10563:7,11,22,27 10564:4,8, 22,24,27 10565:13,28 10566:2,19,23 10567:3,4,7, 13,17,21 10568:1,3,9 10573:27 10574:4,28 10578:11 10582:20,21 10583:15 10585:8 10587:8 10600:24,27,28 10601:11, 14,20,25 10602:7,13,15,19, 24,27 10603:8,11,12,14,17, 25 10618:8,10,18,26 10620:17 10626:20,27 10627:21 10628:2 10630:4, 6,9,12 10635:9 10637:14 10638:1	basic 10502:25 10541:27 10542:17	bins 10449:20,21	birds 10519:8
Aurora 10551:19 10558:18 10560:13 10562:6,16,19,22 10643:23		basically 10499:6 10591:11	bit 10459:9 10467:2 10478:3 10486:27 10497:28 10503:13 10509:9 10512:27, 28 10514:23,24 10518:16 10521:5 10528:12 10533:2 10558:5 10567:11 10585:17 10586:6 10600:23 10613:4, 21 10624:13 10625:12,19,26 10627:10 10629:17 10632:27 10633:25 10634:24 10636:17 10639:19 10641:3	
Austin 10464:18		basin 10489:2	bite 10479:17	
Autauga 10511:22 10512:3, 5		basis 10491:22,27 10507:2 10575:25 10576:1 10582:27 10595:27 10617:17,18 10618:7 10629:8	blend 10500:23,24 10512:9, 11,13,18 10514:5 10535:9 10549:8,27	
authorized 10610:17		bear 10514:22 10575:1	block 10500:4,22 10557:18, 27,28 10568:14,21,28	
automatically 10467:18		bearing 10506:16,18,20 10563:3,16 10602:6 10603:7	blue 10611:16	
avalanches 10489:4		bears 10449:1	blunt 10612:17	
average 10450:9 10452:2 10456:7 10459:5,15,20 10460:9,18,20,23,25 10461:2,5,7,14,17,22,23,26 10462:5,6,14,15,20,22,27 10463:1,4,18,21 10484:5,10, 11,12,17,22,23 10485:1 10487:23 10512:13 10553:19 10554:2 10593:14, 15 10595:4 10627:3,4,6 10638:27 10639:12	balancings 10618:16	began 10464:4 10610:15	bolsters 10627:19	
average-of 10458:21	band 10485:13 10584:11	begin 10453:28 10482:25 10509:6 10623:28	boom/bust 10543:6	
averages 10459:27 10460:26 10471:6,8	bands 10625:13,14	beginning 10480:16 10501:15 10522:21	borne 10505:27 10506:1,2,3 10507:9,10 10536:17 10563:27,28 10564:1	
avoid 10450:26 10576:6	bar 10450:11 10528:25 10589:20	beliefs 10480:16 10501:15 10522:21	bottled 10504:6	
aware 10487:25 10490:28 10524:24,25 10526:6 10529:1 10542:11 10560:24 10584:5 10624:15	bargaining 10541:4 10546:9,11	begins 10453:28 10583:18	bottling 10464:21 10465:12 10498:25 10499:27 10508:3 10513:26 10532:14 10569:4, 21 10628:25	
<hr/> B <hr/>	barrier 10475:13	behalf 10444:10 10522:5	bottom 10453:18,27 10460:21 10485:17 10490:7, 13 10493:10 10592:16,27 10595:15,18	
back 10444:2 10446:10 10447:20,21 10450:2 10454:8 10455:20 10457:23 10458:4 10461:3 10470:27 10474:20 10482:6,9 10490:18 10494:27 10495:5, 7,8 10496:27,28 10501:15 10516:4 10521:13 10525:10 10530:9,11,15 10534:9 10546:13 10556:2 10557:2,3 10568:13,22 10575:22 10578:24 10587:16,18,20,21 10606:7 10608:24 10609:11, 23 10610:15 10611:15 10612:2 10614:22 10616:22 10623:28 10624:2,5 10634:6 10635:26 10636:20 10638:11,24	bars 10450:8 10611:16	behavior 10618:16	bottom-up 10474:15	
background 10455:19 10514:25 10515:16	base 10457:7,14,15,19,22, 24,26,27 10458:7,13,15,17, 21,25 10469:10 10477:12 10482:17 10483:4,8,12,14, 17,19 10498:4,5,7,9,10,14, 26 10499:8,9,15 10503:8,10, 16,19 10504:11,14 10506:11,22 10510:13,17,19 10519:4 10520:20,25 10526:17 10533:15 10534:28 10539:28 10541:16 10547:12 10548:17 10557:20 10563:15 10564:17 10566:26 10567:26 10568:11 10570:25 10571:3, 5,12 10572:10,23 10573:5	belabor 10610:13	bound 10469:28	
		belief 10573:20,21	box 10448:18 10462:26 10589:11,24,27 10590:3 10591:4 10592:15,16,17 10593:1,2,19,20 10594:18 10596:6 10597:18,19	
		believes 10469:25 10503:10 10510:13 10519:16	box-and-whisker 10450:5 10481:21,26	
		belonging 10634:10	box-and-whiskers 10589:8	
		belongs 10537:10,11 10540:8	boxes 10485:17,18 10490:7, 23 10589:13,14 10590:6	
		benchmark 10616:17		
		benefit 10510:18 10584:14, 19,21 10586:1 10641:2		
		benefits 10585:24 10586:4, 7,9 10631:7 10632:28		
		betray 10559:7		
		beverage 10610:3 10611:2, 23		
		big 10474:16,17 10476:2 10536:24 10541:28 10597:11 10613:17		



10599:6,9	buy 10544:13 10555:14 10560:27 10640:3	carrying 10559:8,9 10601:10	changing 10508:5 10519:28 10542:4 10609:28 10611:13
boy 10491:17 10607:8 10642:12	buyer 10543:2,4,16 10544:1 10565:20	Carson's 10586:5	characterize 10455:26
breach 10614:21	buyers 10528:20 10613:10	case 10458:6,11 10472:16 10476:14 10584:15 10586:22 10588:23 10602:6 10612:28 10618:11 10626:16 10637:23 10643:17	charge 10601:18 10622:24 10625:4
break 10446:18 10447:16 10482:5,8 10483:24 10494:23 10495:6 10497:14 10530:8,10,16 10555:17 10587:16,19 10589:6,7 10591:15 10606:2 10623:25, 27 10624:4,8,10	buying 10612:9	cases 10475:3 10506:25,26, 27 10512:24 10560:15 10561:26 10564:20,23 10566:10,12 10575:7 10577:18 10617:17,18	charged 10612:19
breakdown 10484:18 10499:10,11,12	<hr/> C <hr/>	cat 10584:13 10607:17	charges 10638:1
breaking 10446:19	calculate 10459:6 10529:5 10616:10	categories 10638:13	charging 10613:1
breaks 10485:24	calculated 10553:19	categorized 10490:13	chart 10448:28 10450:5 10463:25 10466:13 10481:21,22 10484:10 10491:3 10501:10,11,15,27 10502:2,3 10588:11,12,13, 18,23,26 10589:8,12 10594:2
briefly 10600:25	calculating 10552:26	category 10460:14 10480:7 10612:27	charts 10448:3 10484:3 10588:5 10589:16
bring 10446:10 10579:20 10580:27	calculation 10458:5 10459:20 10549:23,27 10554:1,9 10609:21	cell 10617:21	cheapest 10597:3
bringing 10626:20	calculations 10452:1 10549:4 10553:17 10596:5 10636:4	center 10622:5	cheese 10478:5 10504:27 10508:28 10518:5 10554:16 10569:3,21,27 10622:9,11, 20 10623:1,13,15,17 10626:25,28 10627:8,15,26 10628:4 10640:14
brings 10471:14 10517:15	California 10472:26 10476:3 10484:24 10488:23 10489:1 10546:14 10551:26 10576:15,20 10598:5 10617:1 10625:18 10637:20	centers 10621:6	cheeses 10577:19
broad 10534:24	call 10470:13 10488:19 10492:15 10493:24 10507:22 10521:26 10570:20 10591:2 10592:15 10605:27 10614:8 10621:19 10632:9	central 10471:12 10486:21 10489:1 10601:10 10624:28 10637:19	Chip 10446:1 10605:22,26 10607:23
broader 10521:8,21 10522:19 10598:7	called 10589:4,7	certified 10516:10,12	choice 10612:5
broke 10523:2	calling 10460:5 10470:5 10494:20 10588:6	cetera 10483:26	choices 10631:26
broken 10449:15 10599:16	calls 10495:12	chain 10538:12 10562:13	choose 10520:3 10612:6 10640:2
brought 10586:7	cancelled 10446:5 10578:26	chains 10487:23	choosing 10628:18
Brown 10576:16	Cap 10587:9,10	challenged 10630:6	chronically 10613:12
bucket 10448:19,20 10584:7	capita 10611:22	challenges 10569:25	Chuck 10643:20
buckets 10449:20,21,22 10485:11	capital 10587:11 10603:2	challenging 10633:10	chunk 10540:26
budgets 10548:28	captive/retailer 10599:17	champagne 10489:16	circles 10476:11
build 10527:20 10535:22 10602:10 10603:3	capture 10449:26 10473:19	chance 10497:14 10616:16	circulated 10450:4
builds 10602:25,28	captured 10454:5	change 10453:24 10454:5,9 10460:10,15 10462:8,23 10469:24 10475:24 10477:2, 4,5 10478:8 10479:14 10480:20 10481:5 10484:12 10488:6 10508:11,19 10509:12 10512:11 10513:12 10532:15 10566:14 10600:1 10609:18 10628:11 10632:2 10638:5 10640:27	circulating 10522:13
built 10527:19 10535:28 10536:2,15 10538:2,4 10544:26 10545:21 10548:3 10602:5 10612:2	capturing 10472:15 10621:10	changed 10471:6 10472:21 10486:15 10507:23 10523:7, 8 10542:19 10546:16 10565:26 10566:3 10569:5,7 10598:11 10610:21 10618:15 10631:9	cities 10454:20,21,27 10455:6,7 10459:15
bullet 10533:15 10587:8	care 10532:12,20 10540:4 10548:2 10613:4 10630:8		city 10454:22 10455:7
bumping 10604:17	careful 10466:24		claim 10487:9
Bureau 10575:18	cargo 10488:19		clarification 10458:23 10587:6
business 10515:4 10525:27 10559:7 10602:11	carried 10603:18		clarified 10524:12
businesses 10476:15 10479:14 10603:24	carry 10600:28		clarify 10460:7 10479:26 10520:13,17 10634:14
butter 10508:28			class 10451:27 10453:21
butterfat 10498:6			



10454:2 10456:4 10457:8 10458:7,9,15,20,21,26,27 10460:27,28 10464:2 10465:15 10466:20,23,25,28 10467:1,12,19,25,26 10469:1,3,8,14,16,19 10474:2,10 10476:3,24,27 10477:8,11,12,20 10479:11 10482:17 10483:4,8,12,14, 17 10496:5 10497:25 10498:2,3,4,5,6,7,8,9,10,12, 13,16,20,26 10499:8,14,22, 23,24 10500:9,11,13,14,19, 28 10501:16,19,20,26,28 10502:4,5,10,12,17 10503:9, 10,15,16,19,23,28 10504:2, 6,11,15 10505:10,13 10506:9,22 10507:19 10508:3,7,12,14,21,25 10509:3,5,6,7,11,20,25,28 10510:2,11,14,17,19,28 10511:3,5,12,14 10512:19, 23 10513:3,14,17,18 10514:1,4,7 10516:13 10519:4 10520:21,22,25 10522:15,18,19,20,23 10523:4,13,14 10526:17 10527:14,15,19,20,21,26,27 10528:1,4,8,15,16 10529:9, 22,23 10530:4,26 10531:11, 21,28 10532:11,14,19 10533:6,7,12,16 10534:26, 28 10539:25,28 10541:16 10542:15,19 10543:12,15,26 10544:1 10545:13,16,22 10546:15,20 10547:12,25,27 10548:4,9,17,18,20,21,24 10549:9,10,11,15,26 10554:1,26 10555:8,11,12, 13 10559:20 10561:17 10563:4,19 10564:9,16 10566:9,22,26 10567:25,27 10568:12,16 10569:14,19,27 10571:12,19 10572:20,23 10573:6,16,23 10575:24,25, 28 10576:1,2,4,5,8,11,13,18, 27 10577:9,11,14,23,24,25 10578:2 10579:27 10580:2, 6,9,15,16,17 10581:17,18,21 10582:9 10586:21,23,27 10590:8,9,20,23 10592:9,11 10593:15 10594:5,26 10595:4,22 10596:24,25 10597:4 10599:15,20 10600:2,27 10601:2,3,9,12, 15,18 10602:3,9 10604:1 10605:1 10616:19,24 10617:9 10618:28 10619:3, 4,10,14,22 10620:5,7,10 10621:15,17 10623:2 10626:11 10627:5 10628:13, 19,26 10629:20 10630:13,15 10636:1,3,13,19 10638:26 10639:23,25 10640:15	classes 10458:8 10500:20 10502:11 10503:27,28 10504:7 10505:16 10509:18 10527:18 10528:14 10543:20 10580:11 10635:23 classic 10581:24 classified 10610:9 10612:17 10613:6 clean 10493:16 10591:15 10615:4 clear 10449:25 10454:21,28 10455:6 10463:17 10478:20 10479:25 10482:22 10570:5 10586:19 10589:1 10613:14, 17 10636:4 clearest 10542:22 clearing 10505:14 10581:19 10615:22 clears 10614:10 clients 10515:2 10528:26 10540:23 climb 10611:19 close 10589:2 10627:27 10637:7,19 10639:3 closed 10464:20,26 closely 10471:11 10484:26 10486:28 10510:23 10620:27 closer 10621:6,7 closure 10464:25 closures 10452:12 10489:8 co-op 10524:10 10560:20 10562:2 10617:17 Co-ops 10618:14 Coale 10445:10,11 code 10452:8 10558:14 coin 10476:16 coincidence 10444:23 colleagues 10524:23 collection 10517:10,14,19 10518:12 10534:12,21 color 10449:4 10623:14 Colorado 10489:19 coloring 10449:1 colors 10448:21 10449:3,15 10450:8,10 10623:11 10625:11	column 10480:14,22 Comanche 10465:4 combination 10573:13 10600:4 10629:17 comfortable 10553:13 command 10503:3 10632:11 commensurate 10574:21 comment 10475:21 10609:25,27 10612:23 commented 10576:23 comments 10475:20 10477:25 10493:21 10579:28 10629:22 commitment 10584:12 commodified 10618:2,5 commodity 10577:19 common 10618:17 Company 10643:20 compare 10594:27 compared 10461:25 10463:2,19 10554:24 comparison 10451:27 10459:26 10460:8 10461:21 10484:4 10572:9 10590:8 10596:16 10597:26 10622:22 10624:18 compelling 10457:6 compensate 10508:8 10511:5 10513:7,14 10527:22 10531:5 10532:10 10545:3 10567:21 10573:24 10601:13 10630:16 compensated 10567:13,28 10581:16 10585:21 10604:1 10621:21 10623:18 10627:25 10630:21 compensating 10513:24 10545:2 10626:19 compensation 10498:22 10513:2 10526:24,27,28 10533:16 10582:3 10585:21 10586:22 10617:7 compete 10629:9 competing 10569:26 competitive 10568:18 10640:22,24 compiled 10456:17 complete 10447:14 10451:1 10452:18 10454:1 10493:17	completed 10642:11 completely 10572:7 complex 10475:12,15 10520:28 10616:2 complexities 10633:18 complicated 10551:12 complied 10444:19 comply 10518:1 component 10498:28 10519:14,18,23 10525:10,19 10557:19 10569:2 10574:1,2 components 10483:24 10542:25,28 10558:1 10572:22 computer 10606:3 conceived 10628:24 concept 10639:23 concepts 10612:4 concern 10485:11 10567:11, 12 10634:15 concerned 10510:4 10532:15 10541:20 10567:16 10577:1,3 10643:3 concerns 10531:14 10560:6, 11 10634:18 concise 10588:28 conclude 10445:18,22,23 10643:5 concluded 10644:6 concludes 10635:15 10641:17 conclusion 10457:13 10521:2 10539:26 10541:26 10569:5 conclusions 10456:21 10632:2 condition 10547:24 10548:5 conditions 10500:8 10503:15 10506:9 10528:19 10530:2 10540:4 10541:14 10544:20,22 10575:9 10612:8 10628:23 10632:8 conduct 10468:17 10521:3 conducted 10521:5,15 10522:26 10523:1,19 10537:17 confident 10474:25 10530:18
---	---	--	--



conform 10561:28 10562:1	contextually 10455:20	copies 10451:16 10588:9	cosmetic 10450:8,20 10451:2
confusion 10634:1 10640:10	contiguous 10616:3	copy 10453:5,24 10454:9 10462:17 10493:14,16 10497:5,8	cost 10505:11,14 10507:9, 10,14 10527:3 10529:4,7,11, 20 10535:14,22 10537:3 10538:23 10548:3 10552:3, 6,27 10553:17,20 10554:10, 27,28 10555:2,5,9 10559:8,9 10562:11 10563:3,11,16,19 10564:1,22 10566:8,12 10572:20 10582:25 10584:23 10585:2 10602:7 10603:9,24,26 10612:20 10618:10 10619:7 10620:17 10623:8,20 10625:5 10626:19 10627:7,21 10634:5 10637:15
Congratulations 10605:19	continental 10461:9	core 10471:13	costing 10563:7,8
conscious 10531:14	continue 10508:21 10517:9 10519:23 10530:22 10578:8 10641:12	Cornell 10635:27	costs 10472:12,13,14,18 10505:6,7,27 10506:17,19 10507:1 10512:17 10529:5 10531:3 10535:15,21 10536:3,12,17,23,28 10537:6,18,22 10538:12 10539:22,23 10540:5 10544:19,26 10545:21 10546:3,8 10547:9,22 10549:16,21 10550:4,19 10552:11,28 10553:1,2,4,14 10554:12,21 10557:20,23 10562:26,27 10563:23,27 10564:4,8,14,27 10565:8,13, 28 10566:2,11 10567:7,12 10580:17 10600:27,28 10601:11,14,20,25 10603:8, 13 10620:22 10623:12,19 10626:26,27 10627:21 10628:3 10635:9,10
considerably 10614:1 10625:2	continued 10611:19,26	corners 10624:23	counsel 10446:3
consideration 10480:24 10491:23 10515:24,28 10516:5,17,19 10521:20 10523:17 10553:9 10571:8 10575:3 10577:6 10585:15	continues 10572:18	correct 10448:25,26 10449:18 10450:6 10452:24 10453:10,12,22 10456:12 10469:11,12 10471:4 10487:7,19 10499:7,19 10503:1 10504:2 10505:6 10506:14 10510:12 10511:13,20,21 10514:27 10526:16 10553:16 10561:3, 8,17 10562:22 10563:20 10564:6,9,18,19 10566:20, 24 10567:14 10568:1 10570:7,8,14,22,26 10572:1 10573:2,7,10,11,18,19 10574:10,19 10578:12 10583:17 10588:17,25 10589:25 10590:1,7,10,12, 15,21,27 10591:4,17,27 10592:2,10,20,25,26 10593:20,24,27 10594:2,7, 16,17,20,23 10595:11,16,19, 23,24,27 10596:14,25 10597:5,14,17,22,28 10598:3,8,12,14,15,17 10599:22,23 10600:7,8,10, 16 10601:7,20,25 10602:7, 13,28 10603:4 10604:2 10608:10,11 10609:14 10632:22 10634:11 10636:25,28 10637:1,5,6,8, 9,15,16 10638:9	count 10617:21
considerations 10492:6 10602:11	contract 10545:23 10546:27 10547:8	corrected 10450:4,13,18 10451:17,21 10452:4,8,20 10453:17 10454:20 10464:2 10468:13 10481:16 10493:9 10494:11 10588:3,10,11,14, 15 10607:25 10609:11 10641:25	countercyclical 10630:10
considered 10472:3 10486:2 10488:25 10489:8, 10 10526:16 10559:28 10619:11 10632:24	contracts 10543:9	correction 10452:5 10454:13 10455:9 10464:12, 28 10465:2	counties 10448:20,21,22 10449:4,8,15 10454:19 10455:5 10456:27 10458:16, 17,18,24,26 10460:19,20,22 10461:2,4,7,8,9 10462:28 10464:1,2,7 10465:21 10466:4 10474:16 10484:11 10485:10,13,18,21 10486:19 10487:16,17 10490:8,9,13, 16,26,27 10491:2,5,15 10499:4 10570:10 10590:22, 26 10591:11,20,25,26 10593:9,10,17 10597:7 10623:6 10627:4
consistency 10576:8	contradictory 10477:9	corrections 10447:13 10450:8 10451:25 10453:10 10464:13 10465:22,26 10609:13,18	countries 10487:15 10633:5
consistent 10450:10 10484:27,28 10485:6 10487:28 10488:1,2,7 10492:4 10600:18,22 10618:12 10621:8,9 10625:21	contrasting 10478:25	correctly 10460:13 10472:15 10506:23 10512:4 10563:1	country 10465:21 10479:9 10486:25 10487:15,17 10489:21 10490:26 10492:5 10511:13 10512:1 10531:22
consolidated 10636:5	contribute 10578:5	correlates 10620:27	
consolidation 10631:18	contributing 10509:18 10510:14	correspond 10625:23	
constraint 10472:20 10473:2 10622:6,7	control 10530:18	corresponds 10526:22	
constraints 10526:14 10616:9	conundrum 10639:19		
constructed 10612:13	conveniently 10642:17		
consultant 10455:22 10517:25 10521:22 10523:11 10528:27	conventional 10473:25 10515:2 10546:14 10551:11, 15,20 10573:23 10574:14,16 10576:22		
consulting 10514:26 10515:4,14,15	conventionally 10551:13		
consumer 10471:2 10539:3 10580:24 10612:22	convergence 10617:7		
consumers 10491:18 10499:27 10539:5 10555:13 10580:14,19,25 10612:11 10613:27 10614:9 10616:5	conversion 10527:4 10617:4 10630:1		
consumption 10579:22 10580:1,26,28	converting 10526:28		
Cont'd 10448:10	convey 10588:26		
contained 10573:1	conveys 10570:23		
contention 10581:14 10582:12	cooperative 10506:3,26 10524:7,10 10534:3 10538:27 10544:12 10551:18,19 10559:28 10560:2,21,27 10561:5,25 10562:20 10563:23 10564:1, 5 10565:13,14,17 10567:8, 24 10604:9		
context 10514:6 10530:16 10539:17 10593:10	cooperative-handled 10533:5		
	cooperative-owned 10599:16		
	cooperatives 10524:8,13 10540:28 10544:8,15 10550:23 10560:3,8 10561:16 10628:7 10638:15		



10569:8 10590:21 10611:12 10618:24 10619:1,16 10621:1,2 10625:1,21 10639:4,7	creams 10528:16	23 10596:20,28 10597:11,27 10604:15,16 10621:15,20,24 10629:10 10630:2 10634:9, 10,27	10614:20
countryside 10476:8	create 10498:7 10541:19 10544:19,28 10573:16 10583:4 10596:6 10640:22, 24	cuts 10612:12	dealers 10612:10
county 10452:8,10,19 10458:12 10464:18 10469:23 10496:6 10497:28 10511:12,19,22 10570:20, 22,25 10571:1,4,15 10572:10 10591:16	created 10536:16 10544:22 10612:2	Cuyahoga 10570:20,22,25 10571:4,15	deals 10499:5
county-by-county 10477:22 10520:6 10526:13	creates 10466:23 10544:27 10547:2 10613:13	D	decades 10618:17
county-level 10511:19,26 10519:28 10520:27	creating 10547:7,9,20,23 10548:4 10640:4	daily 10558:1,10 10602:19, 21	December 10470:28 10471:9 10485:28 10492:20 10576:17
couple 10445:13 10473:28 10476:7 10481:25 10490:4 10514:21 10560:26 10588:9 10618:17	credit 10480:25 10540:16 10573:17	Dairies 10643:21	decide 10471:24
COURT 10444:2,21,24 10445:2,8,27 10446:13 10447:1,5,9,18,20 10448:6 10450:23 10451:13 10452:21,26 10453:25 10454:4,8 10455:9 10460:2 10462:8,10,16,23 10470:12 10482:5,9,21,25 10488:13 10489:3,14,20,27 10492:15, 18,22,26,28 10493:2,5,20 10494:2,6,10,14,18,25 10495:4,7,14,18,25 10496:18,24,27 10497:17,20 10512:3 10529:26,28 10530:7,11 10535:10 10555:17,25 10557:2,6 10558:23,27 10559:1 10564:11 10571:24,26 10575:14,16 10578:19 10579:1,15 10581:6 10587:15,20 10591:7 10598:21,27 10599:6,8 10605:16,23 10606:5,7,12, 17,26 10607:6,15,28 10608:7,11,14,24 10623:22, 24 10624:5 10635:5 10638:12,17 10641:21 10642:2,9,20,27 10643:27	credits 10466:15,26,27 10467:3,4,5,9,12,21,22 10468:18 10476:26,27 10480:1 10507:6 10515:26 10584:28	dairy 10445:11 10505:1 10516:22 10517:25,26 10518:4 10527:22 10528:3,4 10533:4 10534:3,14,16,20 10542:3 10543:7 10544:3 10550:8,14,17,28 10551:2,8, 9,10,15,17,18,19,21 10553:4,6 10554:15,17 10555:9,24 10558:18 10570:6 10580:7 10587:25 10604:5 10608:21,22 10610:19 10611:28 10612:10 10613:14 10615:21 10616:1,3,4,17 10617:14 10619:12 10627:12 10628:22 10629:6 10631:8 10633:19 10635:27 10643:8,12,23	decides 10602:10
cover 10518:18 10531:2 10546:3 10547:22 10550:19	criticism 10640:21,26	Dallas 10572:9	deciding 10471:16
coverage 10535:20	criticisms 10483:11	Dana 10445:10,11	decision 10458:3 10480:4 10517:24 10518:6 10557:19 10559:11 10565:25 10581:12
covered 10498:5 10548:14 10567:4,8 10599:1	criticizing 10483:21	Danone 10558:18 10560:20	decisions 10633:26
covers 10540:19 10591:24	CROPP 10524:9,10	dark 10625:11 10626:15	decline 10502:4 10543:20
cows 10538:28	cross-examination 10447:12,15 10455:13,14 10468:21 10470:12,17 10492:25 10514:16 10555:20 10557:10 10575:19 10578:19 10579:8 10585:18 10587:26 10641:15,22 10642:22	darker 10625:10	declined 10611:5,23
cream 10505:1	cross-examine 10557:6	data 10449:22 10450:17 10461:8 10490:18 10517:9, 14,19,20,28 10518:10,12 10525:9 10534:12,21 10586:10 10608:4 10626:3 10634:2,4,6,7,9,10,15,16,19, 27 10636:23,27	declining 10548:22 10617:17
Creamery 10551:20	cross-examining 10594:11	data-intensive 10525:20	decrease 10512:13,15 10513:12 10549:26 10574:8 10578:8
	cross-reference 10519:7	Danone 10558:18 10560:20	decreased 10520:26 10566:1
	Cryan 10555:26 10575:13, 14,15,17,20,22 10578:18	dark 10625:11 10626:15	decreases 10459:18 10580:11
	Crystal 10551:20,23,26,27 10560:16	darker 10625:10	decreasing 10502:18
	Crystal's 10560:17	data 10449:22 10450:17 10461:8 10490:18 10517:9, 14,19,20,28 10518:10,12 10525:9 10534:12,21 10586:10 10608:4 10626:3 10634:2,4,6,7,9,10,15,16,19, 27 10636:23,27	dedicate 10502:8
	current 10452:2 10456:4 10459:27 10460:9,14,16 10461:13 10462:3,4,5,14,20, 21 10466:14 10475:5,7 10477:6 10479:11 10480:13, 19 10484:5 10497:25 10498:2,3,20 10503:8,10 10510:11 10518:8 10520:1 10528:19 10535:27 10536:10 10539:28 10554:5, 6 10571:18 10586:16,20,21 10590:8,20 10591:24 10592:7 10594:26 10595:15,	dates 10499:12 10558:14	dedicated 10561:21
		David 10448:7	deemed 10631:20
		Davis 10522:2,4	defer 10495:1 10532:22
		day 10444:3,22 10485:28 10583:21,22,28 10584:2 10616:21	deficit 10621:3
		days 10558:15 10584:3 10635:27	define 10583:28 10593:4
		deal 10451:15 10463:6 10472:23 10520:2 10529:16	definite 10615:5
			degree 10486:18,20
			degrees 10608:20
			delay 10478:19,22,26
			delayed 10477:28 10478:16
			delete 10455:5
			deleted 10454:18
			delighted 10446:14
			deliver 10584:16
			delivering 10622:24 10623:7,15
			delivery 10466:15,27



10467:5,9,22 10476:27 10480:1	deviations 10473:13 10484:20 10486:2,6 10487:11,28 10491:10,15	10520:20,23 10522:18,19 10533:14,15 10534:26,27 10535:3,28 10536:10 10538:3 10539:25 10542:15, 19 10543:12 10554:26 10555:8 10571:19 10579:27 10580:6,23 10590:8,9,20,23 10592:12 10594:27 10595:22 10596:24,25 10616:22 10621:16,17 10638:27 10639:7,24	discriminatory 10582:4,7,8, 10
demand 10500:8 10541:24 10542:18 10543:23 10558:8 10577:28 10612:22 10613:22,25,26,28 10614:13 10630:9 10634:4	diced 10456:1	discuss 10447:26 10448:12 10484:6,11 10511:10 10551:5 10557:22, 24 10558:4,5 10579:13 10631:28 10632:25	discussed 10447:26 10448:12 10484:6,11 10511:10 10551:5 10557:22, 24 10558:4,5 10579:13 10631:28 10632:25
demanding 10614:15,18	dictate 10534:7,11 10599:25,26	discussing 10457:17 10482:16 10571:17	discussing 10457:17 10482:16 10571:17
demonstrated 10612:3	dictator 10616:14	discussion 10447:19 10454:7 10482:18 10483:4 10496:26 10509:9 10521:6 10522:12 10529:13,15,16 10536:28 10578:16 10584:27 10585:17 10606:6 10616:20 10633:27	discussion 10447:19 10454:7 10482:18 10483:4 10496:26 10509:9 10521:6 10522:12 10529:13,15,16 10536:28 10578:16 10584:27 10585:17 10606:6 10616:20 10633:27
denominator 10502:2 10509:2	differ 10621:13 10622:13,16	discussions 10531:15 10557:21 10581:1	discussions 10531:15 10557:21 10581:1
Department 10444:16 10520:3	difference 10452:1 10558:8 10571:3 10575:2,5 10597:3 10601:19,24 10614:15 10622:28 10637:11,27	disincentives 10546:16	disincentives 10546:16
depend 10612:11	differences 10473:26 10474:2,4 10491:5 10622:27 10624:24 10627:4 10636:2 10639:5	disorder 10586:18	disorder 10586:18
depending 10549:6 10575:9 10610:28	differential 10457:15,16,19, 22,25,26,28 10458:7,14,15, 16,17,25 10460:27,28 10464:3 10466:24,25 10467:1,13,19,26 10469:3, 10 10477:12 10482:17 10483:5,9,12,14,17 10497:26 10498:16,27 10499:8,14,15,22,24 10500:6,12,13 10501:1 10502:6 10503:9,11,16,20, 23 10504:11,15 10506:23 10510:11,14,17,19 10511:3, 12,19,24 10513:14,18 10519:5 10520:21,26 10523:13 10526:17 10527:14 10534:28 10536:1 10538:5 10539:28 10541:17 10547:12 10548:4,18,21 10554:2 10555:11 10564:18 10566:26 10567:26 10568:16 10569:2,19 10570:21 10571:2,5,12 10572:20 10573:6 10577:14, 24 10578:3 10579:21 10580:2,9,15 10581:10 10586:21 10592:9 10593:16 10594:5 10595:4 10596:11, 13 10597:4 10601:2 10616:19,24,28 10618:7 10619:3 10620:11,14 10626:10 10629:12,20	disorderly 10503:14 10510:12,14 10544:19,21, 27,28 10545:1 10547:2,20, 23,25 10548:4 10585:19,23 10604:22	disorderly 10503:14 10510:12,14 10544:19,21, 27,28 10545:1 10547:2,20, 23,25 10548:4 10585:19,23 10604:22
depends 10603:8	difficult 10475:17 10476:18 10489:23 10550:26 10565:6 10621:26 10632:11	display 10497:4	display 10497:4
depooling 10510:5 10577:3, 4,8 10629:3	difficulty 10636:19	Disposition 10496:1	Disposition 10496:1
deregulated 10633:5	dig 10539:20	distances 10621:25	distances 10621:25
describe 10474:3 10499:3 10521:1 10522:28 10616:27	digestion 10451:3	distant 10628:17	distant 10628:17
describing 10457:3 10488:22 10529:19 10601:28	dilute 10627:20	distracted 10536:5	distracted 10536:5
designed 10499:24 10549:20	diluted 10508:9 10546:21 10601:6	distribute 10494:24 10628:16	distribute 10494:24 10628:16
desired 10618:21	diluting 10627:22 10630:17	distributed 10447:24 10495:22 10616:5	distributed 10447:24 10495:22 10616:5
detail 10457:20 10471:23 10507:27	dilution 10604:1	distributing 10466:15,27 10467:5,9,22 10476:26 10480:1	distributing 10466:15,27 10467:5,9,22 10476:26 10480:1
detailed 10481:6 10557:27	dipping 10547:23	distribution 10485:10,12 10593:7 10616:8	distribution 10485:10,12 10593:7 10616:8
details 10504:20 10517:6	direct 10448:10 10496:20 10513:22 10534:4 10545:17 10560:6,10,12,13,14,18,20, 25 10561:2,11,15,16,20,23 10562:19 10573:22 10574:8 10583:4 10609:6 10638:8 10641:18	diversi- 10509:13	diversi- 10509:13
determine 10466:18 10467:11 10468:1,12 10536:22 10539:24 10603:9, 23	directed 10560:22 10588:3 10600:27 10628:10 10630:16	diversion 10619:8	diversion 10619:8
determined 10569:2 10603:16 10620:4	direction 10520:4 10621:23 10629:11 10632:17	diversity 10565:7	diversity 10565:7
develop 10453:21 10454:2 10616:9	directions 10486:7 10621:21	divide 10591:11,25	divide 10591:11,25
developed 10464:24 10477:22 10620:19	directly 10506:4,27 10507:9 10508:4,8 10511:5 10513:3, 22,23 10527:24 10533:3,16, 27,28 10534:2 10546:15 10619:28 10620:8 10624:17 10628:6,13 10629:12,21	document 10447:25 10452:23,24,28 10453:3,10 10572:28 10588:4 10590:7, 12 10612:7 10616:26 10617:3	document 10447:25 10452:23,24,28 10453:3,10 10572:28 10588:4 10590:7, 12 10612:7 10616:26 10617:3
developing 10515:23	disagree 10641:4	documentation 10616:23	documentation 10616:23
deviate 10487:19	disasters 10489:3,6	documents 10447:24 10481:7 10522:12 10523:3	documents 10447:24 10481:7 10522:12 10523:3
deviated 10487:22	discourage 10628:16		
deviating 10472:1 10491:12	discover 10555:7		
deviation 10461:24 10463:4, 20 10472:9,10 10473:8 10485:25 10491:23,25	discovering 10632:6		
	discovery 10631:3		



10606:1 10607:24 10616:27 10632:23	E	10513:25	10608:3,8 10609:4,7 10623:24 10629:24 10635:6 10638:12,22,23 10641:17 10642:17,23,25,28 10643:16
dog 10448:2	earlier 10458:5 10510:9 10511:10 10512:27 10520:14 10526:9,14 10527:9 10530:24 10548:23 10554:8 10562:16 10565:1 10567:11 10570:4 10571:17 10573:2 10575:24 10594:11 10599:13,14,24 10634:2 10635:12	effort 10591:11	English's 10522:3
dollars 10537:24 10548:27 10565:2,14,17 10638:4	early 10494:27 10521:24 10610:8 10611:1,20	elaborate 10474:4,9 10478:2 10480:8 10586:17	enhancement 10503:18,22
dominant 10508:7 10627:13 10628:26	easier 10450:10,24 10588:10	elastic 10612:28	enhances 10500:17
dominated 10569:27	easiest 10448:16	elasticities 10609:28 10610:3	enhancing 10500:15
dominating 10501:16	easily 10541:3 10638:3	elasticity 10581:1,4 10609:25	ensure 10499:24 10501:3 10505:18 10508:14 10512:19 10513:18 10568:17 10603:28 10620:5 10630:15
dot 10594:9	east 10486:26	electronic 10493:18	enter 10444:12
dots 10481:25 10594:6	Eastern 10572:11	element 10477:20 10504:12 10505:22,24 10507:18,20,26 10511:27 10526:24 10533:13 10535:24 10569:12 10571:16	entered 10481:17
double 10547:1,23 10566:24	eat 10479:17	elements 10483:28 10498:26 10499:15 10503:11 10504:14 10518:23 10519:10 10520:25 10541:12 10554:25 10558:3 10559:27 10568:11 10571:13 10581:10 10584:9 10617:2	entering 10444:18
double-counted 10546:2	ec- 10572:4	elephant 10479:17	entice 10569:20 10573:24
double-counting 10527:10 10529:17,20 10581:25 10600:24 10601:27	economic 10501:6 10502:26 10541:27 10542:18 10572:15 10621:15,20	eligible 10504:20 10516:9	entire 10452:24 10590:21 10611:25 10620:10 10630:13,17
double-sided 10497:9	economically 10572:5	eliminate 10533:14	entitled 10484:4 10495:28 10497:25
Dragnet 10590:14	economics 10608:21,22	eliminated 10520:20 10572:21	entrant 10475:12 10476:20
dramatic 10488:22 10578:4	economies 10632:12	eliminating 10535:14 10541:12,13	entrants 10475:8,10 10476:21
dramatically 10485:14,15 10509:4,21	economist 10613:24	elucidate 10636:17	entrench 10475:26
draw 10569:3 10631:24 10640:24	economists 10613:21	embedded 10505:15 10529:21 10572:19 10586:26	entry 10475:13
drawn 10632:2	economy 10553:1 10554:14, 17	embedding 10583:12	envision 10543:14
drinking 10624:8	edge 10613:15	enact 10534:15	equal 10458:20 10625:15
drive 10473:5 10535:20	effect 10465:14 10466:3,4, 19 10467:26 10468:1,12 10517:22 10631:24	enacted 10532:19,21	equals 10616:28
driven 10536:3	effective 10467:1 10480:25 10511:23 10571:2 10603:24, 27 10620:6	encounter 10508:17 10589:15	equilibrium 10577:21
drivers 10488:16	effectively 10466:23 10513:24 10546:20 10555:12 10627:25 10639:14	encourage 10562:5	Erickson 10560:13 10643:8
drives 10509:14	effects 10463:27 10475:10	encouraged 10516:18	err 10615:23
driving 10509:10	efficient 10471:20 10489:11 10514:12 10583:5,9,10 10603:26 10616:6,17 10618:12 10623:9	end 10447:26 10464:5 10491:24 10527:27 10533:23 10535:4 10565:19 10580:13,20 10631:13	ESL 10558:17,18,19,20,21 10559:21 10602:10,22,25 10603:1,3 10630:7
drop 10508:22 10574:18	efficiently 10493:15	ends 10460:28 10591:17	essential 10508:11
dropped 10536:5		energy 10552:28 10553:2 10554:19	essentially 10502:14 10503:27 10506:11 10530:5 10562:17 10627:27
dropping 10501:21		English 10445:28 10446:1,2 10605:20,22,24,26 10607:23	established 10476:15 10500:2
drops 10489:22			establishing 10530:4
dry 10624:7			estimate 10512:11,12 10531:19 10537:5 10552:10
dual 10620:24 10622:1,2,12, 16,23,28 10623:2 10635:23			estimated 10554:2
due 10568:17 10631:3			estimates 10456:6 10469:26 10484:23 10487:5 10609:28
dump 10578:9			
dumping 10577:18 10578:3			
dynamics 10475:7 10503:20,26 10578:1			



estimation 10499:17	10566:9	expects 10446:5 10574:20	F	
evaluate 10483:14 10522:11 10523:28 10526:19 10623:26	excuse 10453:4 10485:11 10592:9 10598:26	expenditure 10603:2		
evaluating 10525:19	exempted 10516:6	expenditures 10587:11	fallrife 10558:20 10560:21	
even-day 10507:6 10584:4	exemption 10516:10	expense 10603:9 10618:12 10637:14	faces 10625:5	
evenness 10584:9	exhibit 10444:13,15,22,25, 26,28 10445:3,4,6 10448:2, 5,6,7,8,15,17,24 10450:3,4, 6,7 10451:18,21,22,23,24,26 10452:14,17,19,20 10453:1, 2,4,5,8 10454:14 10455:18, 23,27 10456:1,11,18,20 10457:2 10459:2,22,26 10460:4 10462:11,12,19 10463:23 10466:9 10467:16 10481:16 10482:14,28 10484:2 10485:7,8 10490:5 10491:1,3,8 10492:19 10493:9,17,23,26,27,28 10494:2,3,4,6,7,8,10,11,12, 14,15,16 10495:22,24,26,28 10496:2,3,5,6,7,9,11,12 10497:5,24,25 10504:21,22 10511:16,17,18 10518:20 10519:9 10526:21 10533:11 10538:18 10548:8 10557:14, 17 10570:9,11,12 10579:15, 17 10587:5 10588:4,7,8,13, 19 10598:25 10606:16,18, 19,20,22,24,25,27,28 10607:1,3,5,7,8,9,11,13,14, 17,18,20,25 10608:1,3,4,5,8, 12 10609:9,10 10610:11 10623:28 10636:24 10641:24,25,26,28 10642:3, 4,5,7,10,12,13,15	exhibit-64a 10451:17 10456:8	experiences 10523:22,23,27 10539:18	facilitate 10517:9 10602:24
events 10489:7	exhibits 10444:12 10447:13, 15 10474:6 10492:17,22 10493:3,6 10495:21 10606:8,11 10641:19	experienced 10446:15	facilities 10560:17 10568:18	
eventually 10480:27 10577:20	exist 10467:22 10472:2,3 10534:17 10550:26 10590:20	experience 10492:10 10540:23 10541:27 10542:7, 13 10602:18 10604:5 10605:9	facility 10561:21 10602:25	
everybody's 10525:27	existed 10610:20 10624:15	explain 10521:7 10594:11 10608:16	fact 10477:9 10592:6,8 10594:22 10597:14 10604:13 10610:20 10620:18 10622:3 10623:21 10625:17 10628:2 10632:19 10635:19 10636:9 10637:17	
everyday 10583:16,20	existing 10476:21 10596:24	explanation 10574:24	factor 10483:26 10509:17 10552:26 10553:9 10576:26 10619:10	
everyone's 10447:28	exists 10489:17 10576:19 10582:19	explicitly 10612:7 10624:17	factored 10468:1	
everything's 10479:24	expect 10485:5,6 10503:5 10512:8,24 10516:13 10575:7	exploit 10612:22	factors 10471:28 10472:2 10485:2 10492:3 10498:16 10578:7	
evidence 10444:25,27 10445:1,3,5,7 10492:23 10493:6,23,26 10494:1,2,5, 6,9,10,13,14,17 10606:18, 21,23,27 10607:2,4,7,10,12, 16,19,21 10616:23 10640:2 10641:22,24,27 10642:1,3,6, 8,10,16	expected 10484:26 10643:9, 10	exploration 10635:8	facts 10590:14	
evident 10642:14	examine 10448:10 10482:12,26 10496:20 10599:11 10609:6 10643:5	explore 10549:1	failed 10457:6	
evolution 10620:26 10627:10	examined 10447:3 10499:9 10505:24 10507:21 10563:12 10609:2	export 10578:10	failing 10548:9	
evolve 10631:21	examining 10472:7	express 10634:14	faint 10482:23	
evolved 10628:22	examples 10463:26 10507:3,5 10530:25 10561:27 10570:18 10597:10	expressly 10446:6,11	fair 10455:26 10456:22 10457:12 10458:23 10491:21 10502:26 10505:20,21 10507:12 10509:9 10520:13 10521:5 10525:1 10529:19 10530:6, 20 10539:13 10540:28 10541:1,15 10545:24 10553:12 10574:14 10596:4, 18,23 10610:21 10614:4 10632:25	
exact 10565:3 10592:5,24	exceeded 10516:12	extended 10510:26 10558:13	fairly 10571:20 10617:23 10620:3	
examination 10448:10 10482:12,26 10496:20 10599:11 10609:6 10643:5	exceeds 10500:24	extensively 10537:4	fall 10456:7 10487:4 10553:19 10554:11,23 10558:16 10592:1 10602:17 10639:5	
examined 10447:3 10499:9 10505:24 10507:21 10563:12 10609:2	Excel 10481:26	extent 10466:18 10467:11 10531:10,20 10546:1 10549:14,19,25 10612:20 10630:6 10641:8	familiar 10552:2	
examining 10472:7	excellent 10493:20 10643:27	extra 10543:15 10566:8 10581:15 10584:17 10602:4, 28	family 10479:22	
examples 10463:26 10507:3,5 10530:25 10561:27 10570:18 10597:10	excess 10528:20,27	extraordinarily 10576:20	fancier 10508:28	
exclude 10475:7	excluded 10516:3	extraordinary 10566:11	farm 10476:7 10502:8 10507:7 10527:7,8 10529:5, 8 10533:8,28 10538:15,20, 24 10540:10,12 10542:4,24 10544:5 10558:7 10560:5 10561:23 10562:17,19 10564:2 10567:7 10575:17 10577:17 10622:5 10628:15, 25 10633:21 10635:24,28	
excluded 10516:3	exclusively 10504:26	extrapolates 10456:21		
exclusively 10504:26		extreme 10577:17,18		
		extremely 10479:10 10598:21		
		eyeball 10592:4 10596:9,16		
		eyeballing 10592:23 10595:21 10596:12		



10636:6	figure 10539:23 10543:11,28	10626:16,25 10627:8,17,21	10508:1 10566:1 10617:16
farmer 10507:9 10518:4	fill 10614:21	10628:5,17,20,24,25,28	four-part 10499:6
10533:4 10534:3 10553:6	filling 10512:25	10629:8,9 10630:4,9,15	fourth 10519:14 10521:25
10555:9 10564:5 10572:3	final 10454:13 10461:9	10631:10 10638:17	10592:11
10601:17 10643:12	10466:12 10481:2 10507:20	10640:23,24 10641:8	frankly 10465:3,27 10477:20
farmers 10506:26 10527:22	10565:24 10572:18 10608:8	fluid-dominated 10627:12	10478:10 10488:3 10506:19
10534:15,16,20 10550:8,14,	10616:8	flush 10639:9	10509:19 10522:22 10537:7
28 10551:3,9,10 10554:15	finalized 10465:3	fly 10537:15	10550:13 10569:9 10577:2,6
10567:27 10612:10	finally 10640:21 10641:14	FMMO 10484:5 10501:13,23	10604:11
farming 10551:15,21	find 10460:3 10462:18	10502:1,3,15 10504:18	free 10510:20 10587:1,3
farms 10502:20 10551:13,	10474:17 10493:13	10507:2 10508:13 10512:23	freeing 10513:21
17,20,22 10573:6,16,22,24	10507:13 10516:1 10535:8	10526:1 10534:27 10547:12	frequent 10578:6
10574:23 10616:3 10617:16,	10577:21 10578:15	10551:27 10595:1 10605:5	frequently 10461:21
23 10618:4 10628:6	10612:24 10614:22,27	FMMOS 10471:10 10475:11	10560:8 10562:13 10589:16
fashion 10467:23 10596:27	10616:6 10621:3 10623:16	10484:18,21 10501:12,21,25	10591:14
fat 10542:26 10615:9	10625:18 10626:17	10508:6 10512:14 10513:17	Friday 10445:17,18,20
10632:5	fine 10540:3	10516:7 10550:12 10600:2	front 10490:6 10557:14
favorable 10627:15,17	finer 10510:9	10604:7 10605:8,11	10606:8 10607:24
feasible 10477:24	finished 10539:3,7 10557:4	10628:27	fruition 10534:19
feature 10449:12	10622:13	focus 10522:15 10589:19	fuel 10473:11
February 10445:24	firm 10514:26 10522:3	10629:19	full 10446:14 10454:26
Federal 10444:14 10463:1,6,	fit 10517:27	focused 10522:22 10565:8	10493:14 10579:19
11 10475:22 10515:20	fixed 10452:6 10620:12	10572:25 10573:26	10583:18 10628:1 10632:18
10516:3,21 10517:13,23	10629:28 10637:21	10579:27	fully 10621:21 10631:23
10518:28 10528:7,9	flat 10611:22	folks 10510:22 10515:7,10	fully-regulated 10548:15
10533:22 10534:13,14	flexibility 10566:15	10524:23 10562:5 10629:19	function 10508:5 10530:22
10535:22 10536:11 10545:8	flight 10446:4 10578:25	follow 10450:24 10469:7,18	10568:4 10602:13 10615:15
10546:22 10547:7,14,19	flip-flopped 10474:20	10475:1 10489:24 10507:28	10618:26 10641:11
10548:12 10550:21 10552:1	flooding 10489:21	10539:15 10585:7 10599:9	functioning 10628:28
10604:28 10610:14,17,27	Florida 10499:1	follow-up 10598:27	fund 10510:25 10550:15
10611:14,17 10612:1,8,13,	flow 10575:8	Foods 10555:24 10587:25	10566:28 10567:18 10601:4
15 10613:8 10614:28	fluid 10451:26 10452:18	10643:20	fundamental 10472:17
10616:25 10628:11,23	10479:5 10498:25 10499:25,	foot 10643:1	10501:6,8
10629:10,14 10630:23,24,28	27 10500:26 10502:11,15,28	footer 10493:18	fundamentally 10469:7,20
10631:6,13,17 10632:19,28	10503:4,6 10504:20,25	forced 10545:15 10546:8	10477:19 10508:1 10513:7
10633:3,6,9 10636:1	10505:19 10506:27	21 10534:6,11,22 10535:20,	10523:7 10550:12 10555:10
10641:9	10507:10 10510:18,21	10599:25,26 10600:2,4,15,	10567:15 10600:1,3
Federation 10575:18	10513:20,25 10520:10	20	funds 10602:7
10638:25	10522:15,25 10528:16,19,28	foremost 10475:13	fungible 10474:3
feedback 10551:6	10530:26 10531:11 10534:1	10477:15	future 10480:20 10508:26
feel 10469:19 10471:12	10542:15 10546:26 10549:1,	forget 10573:4 10574:6	10532:10,12 10633:11
10473:12 10474:4,22	15,20 10550:4,7 10552:20	form 10447:28 10515:6	
10475:26 10506:7 10530:17	10554:14 10560:10 10570:2	10600:5	<hr/> G <hr/>
10546:8 10553:12 10582:16	10571:28 10572:19,26	formatting 10450:21	garbled 10575:27
10583:9 10585:23	10573:27 10574:1,2	formula 10472:19	gas 10552:24
feels 10469:20 10504:18	10579:22 10580:1,18	formulas 10527:20,22,26,27	gather 10524:4
10621:8	10610:18,25 10611:10,20,21	10535:5 10631:5	gathering 10518:10 10644:2
fees 10517:8	10612:3,4,9,19,26 10613:1	forward 10446:6,12	gave 10492:18 10530:24
feet 10489:15 10640:6	10615:25,26 10618:15	found 10464:16 10499:2	
fell 10489:15	10619:6,17,27 10621:3,4		
felt 10586:7 10613:15	10622:3,10,19,22,24		
10634:8 10636:16	10623:1,7,9,13,16,19		
fewer 10545:17	10624:19 10625:2,6,15,19		



10549:27 10567:10	10528:2,5,9,10,15,17,21,25, 28 10529:2,5,7,12,14,20 10531:3,5 10574:26 10581:11,13,15,20,21,23 10582:3,14,17,19 10586:22 10604:27 10605:2,6,8,10,12 10609:22 10611:5,8,10,11 10616:19 10617:4,8 10618:3 10629:28 10638:7	guiding 10500:28 10501:2	hear 10531:24 10541:9 10610:1
general 10475:21 10479:5	Grand 10571:1,20	H	heard 10445:23 10470:27 10471:15 10472:25 10474:26 10475:3 10479:19 10484:1 10506:28 10507:5 10512:16 10540:27 10541:2, 5 10546:12 10550:23 10581:2 10589:8 10604:9,10 10631:12,25,28 10632:1
generally 10471:19 10486:26 10545:16 10552:4	grandfather's 10633:19	half 10481:28 10487:15,16, 17 10502:18 10593:7,9 10642:18	hearing 10444:14,17,22 10445:22 10458:6 10464:4 10481:2 10498:6 10504:22 10515:19,24,28 10516:5,16, 18 10519:6 10523:18 10525:7 10540:27 10559:24 10565:12 10570:4 10573:2,9 10575:4 10577:6 10584:27 10588:4,7 10610:1 10612:24 10617:1 10634:2 10639:21, 22 10640:7
generate 10456:14 10622:4	Grapevine 10472:26 10488:23	Hancock 10455:15,16 10460:3,6,12 10462:24 10468:20 10479:28 10482:15 10483:4 10484:6 10490:2,3 10492:14 10511:10 10514:17,19,20 10530:1,7,12,13,14 10535:11,12 10555:16 10557:4,5 10562:25 10563:26 10574:6 10578:15 10643:2	heavy 10619:15 10621:1 10628:19 10632:3 10633:6
generated 10569:10	graph 10613:19 10614:6	hand 10605:28 10632:3,15 10633:6	heavy-handed 10640:18
generates 10481:26	graphic 10611:14	handle 10603:25	hedges 10478:27
generic 10563:9 10564:3	gray 10448:18 10485:17 10490:7 10625:12,14 10637:4	handler 10465:10 10466:28 10467:25 10506:9 10514:7 10551:23,27,28 10560:1,6 10561:24 10564:17 10566:23 10567:26 10573:16,23 10601:3 10629:3,16	held 10525:27
geographic 10469:21,24 10470:6 10477:14,19,22 10498:28 10511:27 10519:14,17,23 10571:16 10629:7	great 10451:10 10463:6 10497:21 10517:12 10520:2 10529:16 10536:24 10541:28 10618:27 10637:14	handlers 10517:22 10546:16 10549:15,20 10561:15 10566:19	helped 10455:22
give 10444:16 10450:25 10473:20 10476:19 10497:8, 14 10543:10 10552:15 10565:6 10590:25 10621:27 10623:17	greater 10612:20 10617:20 10618:20 10623:19 10625:2, 19	handlers' 10550:4	helpful 10597:9 10598:22
give-up 10622:24 10625:4 10635:10 10638:1	green 10450:11 10588:5 10589:20 10590:2,19 10593:20 10595:15 10596:24 10597:12,13 10623:3 10626:15,26 10627:17 10637:2	handling 10451:12	helps 10479:14 10518:13 10628:14
giving 10553:13	green-colored 10623:6	happen 10486:6 10491:26 10503:3 10520:16 10545:5 10559:12 10580:8 10615:2 10621:8 10622:10 10630:12 10632:16	hey 10584:15
glad 10446:17 10606:13	grew 10611:24	happened 10452:5 10471:23 10542:20 10552:2,5 10554:10	hierarchy 10576:8
glass 10465:12	group 10447:8 10485:20 10495:11,12 10521:5,15,16, 18,19 10522:11,21,22,26 10523:20,27 10524:22 10525:4,8,16 10526:20 10537:4,6 10542:3 10551:3 10557:22,24 10565:7,8,9 10598:24 10605:22,26	happening 10484:20 10485:22 10507:14 10534:13 10538:6 10578:7 10596:21 10633:17,18	high 10500:12,14 10503:17, 20 10504:3 10509:21,23 10543:22 10565:2 10576:20 10577:13,23,24 10579:21,28 10580:2,6 10604:17 10611:7,8 10615:25 10618:25 10639:3
global 10473:10 10491:27 10622:21 10623:8 10625:23	group's 10539:27	happy 10444:23 10577:22 10629:23	higher 10458:9,28 10487:2 10503:23 10509:22 10544:4 10570:2 10576:5 10578:2 10595:22 10612:19 10613:1, 27 10614:3,12,24 10621:21
globally 10616:12	groups 10524:8	hard 10468:6 10474:25,26 10475:1 10478:8 10617:23 10618:5 10633:22	higher-level 10523:15
goal 10475:4	grow 10509:3 10611:26	he'll 10601:18	higher-of 10458:5,21
goals 10618:13	growing 10473:21	head 10490:17 10532:1,8 10552:8 10559:23	highest 10516:14 10596:11
good 10444:8 10446:1,27 10455:16,17 10468:23,24 10470:19,20 10494:23 10495:16 10497:17 10514:9, 18,20,24 10534:16 10535:1, 2 10540:26 10557:13 10571:20 10579:10,11 10583:1 10587:28 10588:1 10617:22 10641:16 10644:2	growth 10552:3,11,27	heading 10462:13	
goodness 10489:12	guaranteed 10584:20	health 10522:22	
goods 10539:3,7	guess 10476:16 10479:2 10480:8 10535:17 10552:13 10573:20 10582:11 10584:25 10588:21 10589:20 10592:14		
gosh 10523:21			
govern 10530:18 10534:22 10541:14,16			
government 10476:12 10578:27			
graduation 10621:18			
gradations 10625:9			
Grade 10498:22 10504:15, 17,18,19,23,26 10505:2,4,6, 8,15,18 10526:24,27,28 10527:1,4,6,8,12,23			



10597:12 10616:12	11,14 10537:25 10549:6	impacted 10479:6	inconsistency 10488:4
highlighted 10581:12	10550:1 10565:15,18	impacting 10549:12	inconsistent 10488:5
highly 10620:26	10602:26 10627:15,16	impacts 10466:12 10468:14	10547:28
hilarious 10479:21	hurdle 10528:25	implement 10544:10	incorrectly 10452:10
Hill 10493:7,8,19	hurricanes 10489:4	implementation 10478:1,4,16	increase 10459:6,16
historically 10636:2	hypothetical 10565:18	implemented 10480:3,6,10	10460:15 10461:13
history 10475:15 10532:22	hypothetically 10567:25	10616:25 10641:10	10466:23,25 10467:1,8,13,
10610:14,15 10612:22		implication 10476:4	14 10508:26 10509:6,7,11,
10616:22	<u>I</u>	implicit 10527:25	19 10541:24 10542:14
hit 10641:3	I's 10509:3	important 10446:11	10553:18 10554:2,10,21
hitting 10615:14,15,17	ice 10505:1	10484:16,19 10497:15	10574:21 10576:18
hold 10507:25 10641:18	idea 10475:28 10478:9,25	10502:12 10508:4 10509:17	10580:16,17 10628:18
holidays 10470:23	10499:26 10566:7 10575:5	10512:1,22 10513:1,5,6,13	increased 10469:4,9
home 10479:16	10615:7 10620:2,3 10621:27	10519:17 10531:23 10553:3	10502:20 10512:17
homogeneous 10565:10	ideas 10521:8,20 10526:1,2	10576:2 10610:19,20	10520:23 10541:18
honest 10541:7	10575:4 10625:28 10633:20	10613:20 10617:5 10628:25	10543:12 10552:12 10553:1,
honestly 10464:23 10465:7	10640:2,5	10630:25 10634:25	15 10554:22
10479:8 10524:22 10559:16	identification 10448:9	improve 10514:10	increases 10459:4,14,20
Honor 10444:8 10445:11,15,	10495:27 10496:4,8,13	improved 10617:24	10479:12 10542:5,27
23 10446:1 10447:10,23	10608:2,6,13	improving 10514:12	increasing 10509:6
10448:4 10450:14 10451:19	identified 10483:25	incent 10619:24 10638:18	10541:23 10544:4 10577:9
10452:16 10453:6,23	10487:12 10570:4 10619:4,7	incentive 10500:26	10580:15 10613:3 10630:7
10455:11 10482:11	identify 10447:5 10451:25	10504:16 10507:19,21,23,25	increment 10626:18
10492:17 10494:19	10487:27 10488:1 10587:22	10508:2,9 10520:10	10629:28
10495:10,20 10496:17	10608:15	10532:19 10533:12 10555:1,	incur 10538:24,27 10567:12
10514:15 10530:13	identities 10524:4	4 10568:11 10572:15,19,26	10585:2
10535:11 10575:13	IDFA 10446:4 10478:5	10573:27 10574:1,3 10618:1	incurred 10538:12
10578:23 10579:6,16	10521:7,20 10525:23,24,25,	10619:4 10622:23 10624:27	10563:19,23 10564:4,8,27
10598:23 10605:20 10606:9	27 10551:6 10576:16	10626:13 10637:15	10566:3 10567:7
10607:22,23 10609:4	IDFA's 10526:2	incentives 10618:15	incurring 10506:12
10638:22 10641:17	ignorable 10639:3	10620:18 10621:10	10565:17,18
10642:17,25	ignore 10598:8	incentivize 10498:24	independent 10526:13
Hood 10558:19 10643:9	II 10502:11 10528:15,16	10549:20 10550:6 10617:11	10620:3 10639:26
hope 10445:22 10514:2	III 10502:11 10505:13	10637:28	index 10552:20
10550:13 10570:13 10578:6	10509:18 10527:20,21,26	incentivized 10618:22	Indiana 10489:17
horizontal 10592:20	10530:4 10569:27 10576:13	include 10505:17 10506:7	indirect 10585:24
hosted 10521:7,11,12	10581:17,18 10623:2	10507:6 10526:10 10527:13	individual 10456:27 10507:2
hour 10446:21 10473:5	10627:5 10640:15	10550:28 10563:22 10564:5	10571:12 10596:2,6
house 10446:14	III/IV 10582:13	10620:7	10603:24 10618:14
housekeeping 10447:12	illustrates 10613:20	included 10454:21 10455:7	10629:16,18
10453:8 10455:12	illustration 10615:3	10489:4 10506:10 10516:15	induce 10572:23
HP 10558:19 10643:9	imagine 10446:15 10515:16	10536:11 10540:1 10555:8	induces 10579:21
HTST 10515:9 10559:13	10601:9,10 10602:3,9	10557:23 10565:24	industry 10469:21
huge 10475:13	10643:10,16	10619:26 10637:26	10473:21,23 10479:6
hundreds 10485:20	impact 10467:2 10468:7	includes 10533:8	10505:20 10510:18
hundredweight 10498:21	10476:14 10477:3 10509:12	including 10519:1 10530:25	10516:25 10517:15,20
10505:26 10506:13	10512:8 10513:28 10514:4,5	10539:25 10557:26	10522:13 10541:27
10512:14 10526:27	10522:14 10549:8,9	10590:26 10635:24	10552:19 10554:17
10533:13 10535:28 10536:2,	10580:25,27,28 10634:20	10637:20 10638:6	10562:10 10581:23
		inclusive 10623:4	10605:10,12 10611:28
		income 10496:1 10580:12	10627:11,12 10628:14
			10630:26 10631:8,12,21
			10633:3,17,19,20



industry's 10628:22	intensity 10623:14	10543:7 10546:17 10558:10,12 10629:2 10640:19,25	keeping 10476:11 10553:20
industrywide 10521:3 10617:10	inter-quartile 10481:28	item 10453:8	Kelly 10643:19
inelastic 10612:22,26 10613:7	interact 10517:28	items 10456:11	Kent 10571:1,4,15
inflate 10577:25,26	interacts 10522:23 10523:15	iterations 10474:5	kind 10449:12 10455:19 10456:26 10466:17 10467:6, 11,28 10471:20 10477:28 10481:22 10501:6,8 10521:3 10525:20 10526:12 10530:15 10543:6 10552:14 10566:25 10583:15 10584:28 10585:7 10612:12 10613:15 10615:10 10624:16
inflation 10554:24	interest 10579:24 10580:3,4, 7	IV 10502:11 10505:13 10509:18 10527:20,21,26 10576:13 10581:17,18 10640:15	
inflationary 10552:2,11,26 10553:20 10554:10,12,13,21	interesting 10464:10,16,22 10465:18,25 10466:7 10514:3 10559:8 10580:28 10612:25	J	
influence 10544:6	internal 10524:2	January 10444:1,3 10445:16,17,22 10557:1	kinds 10626:23
info 10517:12	internally 10632:23	jargon 10583:24	knew 10555:20 10635:28
inform 10520:3	International 10555:24 10587:25	job 10510:3	knife's 10613:15
information 10451:4 10452:13 10472:14 10474:14 10499:13 10517:3, 10 10518:10,12 10521:9,11 10524:3 10525:6 10526:7 10539:17 10552:18 10585:26 10586:10 10588:27 10590:17,19 10592:7 10594:15,19 10595:26 10597:24	intersect 10614:7	join 10524:8,13,17,19	knowing 10478:7 10512:17
information-gathering 10526:4	intra-week 10618:18 10630:4	journal 10536:25	knowledge 10475:13 10542:2 10551:28
informative 10539:18 10541:9	introduce 10495:12	judge 10608:17 10609:19	L
ingredients 10504:28 10509:1	introduced 10450:19 10485:8	judgment 10590:13,16 10635:15	L.A. 10472:27 10489:2
innovation 10447:7 10495:11,12 10513:28 10514:11 10521:18 10549:20 10550:4,7 10598:24 10605:22,26	introduction 10624:12	jump 10514:23 10632:18	labeled 10594:22
innovations 10550:16	inventories 10602:23	June 10474:7,13	lack 10550:17 10604:6 10640:24
innovative 10510:26 10548:24 10549:1,15 10550:9	inventory 10558:9,11 10559:10 10614:16	jurisdiction 10492:3 10549:7	Lamers 10569:24 10570:3,5, 6
inputs 10520:7	inverse 10614:2	justification 10457:7,14,24, 27 10555:8 10618:9 10634:22 10635:9,10	landscape 10589:12 10611:13
insider 10583:24	inversion 10509:21 10576:19 10577:2	justifications 10483:28 10610:8 10613:5 10629:27	language 10507:22 10533:2
insights 10620:21 10626:6	inversions 10509:10,13,16, 19,27 10510:2,4,5 10576:6, 7,27 10577:1,3	justified 10572:20 10630:1	laptops 10497:3
insignificant 10486:17	investing 10514:10	justify 10491:10 10618:6 10620:12	large 10477:5 10478:7 10479:11 10503:18 10537:24 10639:7
install 10618:22	investment 10510:25	justifying 10491:23	largely 10508:28 10561:21 10619:8
instance 10545:12,15 10566:22 10567:23 10637:13	investments 10507:7	K	larger 10502:1 10519:5 10597:19
instances 10506:28	invisible 10632:15	K-E-E-F-E 10446:28 10495:17	largest 10611:27
instructive 10541:9	invite 10470:15 10489:25 10578:20 10579:2,4	Keefe 10446:7,28 10447:2, 11,27 10448:14 10451:2,24 10453:11 10454:13 10455:12 10468:23 10482:14 10488:12,13 10494:21 10495:1,12,14,17, 23 10496:14,23 10497:23 10514:18 10530:15 10557:7, 12 10575:21 10587:28 10605:19 10640:3	late 10555:20 10612:2
instruments 10612:17	invited 10524:8,13,17,19 10525:4	Keefe's 10495:23 10496:10 10497:5 10606:10 10610:24	law 10522:3
intended 10452:17	involve 10632:4		lay 10490:22 10640:6
	involved 10541:23		lead 10462:11 10532:15 10541:21 10567:10 10570:13 10631:13
	irrelevant 10615:17		leading 10570:3
	isolation 10619:11		leads 10562:9 10577:17
	issue 10498:5 10504:23 10509:16 10525:10,19 10527:10 10617:9 10618:4 10640:23		learn 10479:15
	issues 10497:2 10503:19		



leave 10548:18 10583:2 10585:8 10603:20,22,23	literally 10584:2 10589:24 10622:11	10567:5 10568:2 10569:25 10572:14 10581:2 10583:7 10588:26 10589:15 10595:22 10596:28 10602:11,26 10620:6 10626:15 10631:7 10633:8	20 10575:25 10576:1,5 10581:13 10618:4
leaves 10545:16	live 10479:15 10502:26		maintenance 10527:11 10582:14 10630:1
leaving 10604:19	loads 10584:16,17		majority 10498:11,13 10515:7,13 10599:21
left 10448:28 10449:2,15,20 10452:4 10485:9 10492:20 10582:25 10589:20 10600:14 10624:12 10642:17 10643:28	local 10456:26 10491:23 10492:3,6,9,11 10629:9	lots 10514:13 10523:2,21 10584:12	make 10444:18 10447:11 10449:25 10450:8,21 10454:5 10455:12 10457:11 10462:8 10463:16 10470:1 10475:16 10476:20 10478:6 10479:14,24 10486:14 10498:16,26 10509:20,22 10522:24 10532:25,27 10535:2 10569:5 10588:9 10589:1 10590:6 10592:5 10601:19,24 10603:13 10612:9 10615:13 10629:20 10631:4 10633:25 10639:28 10640:28 10642:25,28
left-hand 10624:21	localized 10476:6 10491:27	loud 10482:22	
legend 10448:17,18 10449:1	located 10490:12,15,27 10491:6 10621:6,7 10623:16	love 10529:15	
legislation 10610:16	location 10469:22 10520:27 10622:15,20 10625:8	low 10528:25 10560:27 10565:2,19 10566:13 10577:19 10601:5 10617:21 10619:20	
lens 10546:7	locations 10463:27 10499:2 10536:4 10623:6 10625:25 10629:8	lower 10500:20 10503:6 10504:7 10580:11 10601:16 10613:2,28 10614:4 10615:23 10623:8,12 10624:23	
lets 10628:5	logistical 10526:14		
letters 10558:26	logistics 10477:21	lowest 10499:26 10500:1,7 10501:3 10591:3,23 10592:8,14 10596:13 10597:12	Makers 10478:5
letting 10632:14	long 10469:18 10470:26 10474:25 10477:2,10,27 10532:7 10542:19 10606:1 10618:3 10621:26 10628:22 10631:3	luck 10641:16	makes 10464:22 10473:9 10481:24 10498:11 10501:4 10504:12 10506:7 10515:13 10578:28 10581:14 10603:20 10641:10
level 10480:11,13,14,21 10487:11,15 10497:28 10500:6,12,14,16 10527:7,9 10529:6,8 10533:8 10538:15,20,28 10540:11, 12,15 10544:6 10564:2 10576:17 10577:17 10579:28 10614:20,24 10628:20 10633:21 10635:24 10636:6	long-term 10578:3	lucky 10489:14	making 10457:13 10464:8,9 10478:18 10489:23 10504:11 10520:5 10532:13 10555:11 10570:12 10622:20 10626:20
levels 10480:11 10486:13 10487:2 10502:13 10520:1 10579:21	longer 10464:21 10500:15 10505:3,4 10508:7 10518:25 10519:11 10539:24 10543:22 10568:16 10569:6 10597:20 10617:9,16,19,28 10618:25	lunch 10446:19,20 10497:13 10555:18 10556:4 10589:6 10605:24	
leverage 10550:17 10604:6	looked 10461:22 10466:1 10474:18 10477:16 10504:14,15 10523:21,22, 23,24,26 10526:17 10529:8 10532:7 10537:3,6 10553:28 10554:9,21 10559:20 10571:12 10572:8 10618:6 10619:20 10624:17,24 10626:5 10632:23 10635:23 10639:4	M	management 10478:17,19, 24
leveraged 10541:4	losers 10641:1	M-A-R-K 10608:18	managing 10602:23
levers 10577:5	loss 10633:9,12	M-C-M-U-R-T-R-A-Y 10444:10	mandatory 10640:15
life 10510:26 10558:9,13 10602:22	lost 10553:27 10631:16	M-I-C-H-E-L-L-E 10444:9	manner 10504:3 10559:14, 15 10594:26 10603:8
lighter 10633:13,15,25	lot 10464:11 10465:7 10471:15 10472:13 10474:10,26 10475:26 10479:16 10481:7 10485:12 10487:3,4 10488:3,6 10491:17,18 10499:13 10506:6,7 10507:3,6,27 10508:15 10514:28 10515:15 10517:5,11 10521:6 10523:3 10526:25 10534:27 10536:20,27 10537:13 10538:9 10539:16 10540:17 10542:2 10543:6 10559:10,17 10566:3	made 10451:25 10454:9,10 10455:9,10 10462:17,23 10464:13 10465:1,2 10469:24 10470:5 10471:24 10477:2,4,10 10498:3 10505:2,19 10522:24 10528:15,17 10555:24 10564:16 10572:28 10581:19 10609:13 10616:4 10634:6	manufacture 10518:5
likewise 10452:16		main 10504:24	manufactured 10618:25 10622:18 10625:25 10629:6
limited 10557:26		Maine 10487:2 10643:13	manufacturer 10554:16
lines 10614:7 10615:3,9 10632:5		maintain 10500:8 10509:10 10529:5 10531:3 10576:7 10581:22 10617:8	manufacturers' 10619:9
lingo 10583:24		maintaining 10505:6,8 10527:4,6,8,23 10529:7,12,	manufacturing 10458:8,9,27 10500:20,25 10505:16 10508:27 10527:18 10529:22 10543:20 10552:21 10553:4 10561:21 10568:18 10569:9,10 10571:28 10572:3,14 10611:18,27 10612:5 10615:2,26 10619:6,15,17 10621:1,4,5,6 10622:1,25 10623:10 10624:18 10625:5, 11,16,20 10626:12 10627:13,22 10628:7,19,26 10631:10 10633:20
link 10510:23			
list 10451:26 10452:18 10456:7 10499:6 10643:23, 24			
listed 10452:10 10456:2 10538:14			
listening 10565:11 10609:28			
litany 10558:1			



10638:16	10603:18,20,22 10604:11,20	20,26 10481:4,9 10594:5	10615:20 10617:13 10631:9
manufacturing-dominant	10610:20,21,26 10611:13	10638:28 10639:12	10639:1,26
10629:1	10613:14 10614:11,22		
manufacturing-oriented	10615:19,22 10619:15	Mcmurtray 10444:8,9,23	met 10508:14 10513:21
10500:10	10623:9 10632:8,21,26	meaning 10503:22 10546:8	method 10510:1 10616:6
map 10448:17,18,23	market allows 10532:26	10548:27	methodologically 10596:1
10449:1,4,21 10456:3,4,5,6,	market's 10548:1	meaningfully 10509:5	methods 10488:2
11 10486:24 10622:27	market-balancing 10506:1	means 10511:6 10514:6	metro 10476:6
10623:26 10624:12,22,23	market-clearing 10505:16	10545:13 10589:1 10593:11	Mexico 10567:24 10572:11
10625:13 10626:8 10636:21,	10527:18 10613:13 10614:8,	10613:9 10619:1 10637:11,	mic 10457:11
22,24	20,23,25 10615:6	28	Michelle 10444:9
mapping 10455:22,25,27	market-wide 10511:9	meant 10589:10	Michigan 10571:1,15
10456:10,13,14,21,23	10618:11 10620:15	meantime 10497:19	microphone 10482:24
10491:7	marketing 10444:10	mechanics 10573:12	middle 10582:21 10583:17
maps 10456:8,14,25	10451:14 10452:22	mechanism 10511:4,9	10593:3,6 10615:10
10484:3 10621:16	10470:13,15 10503:15	10533:26 10568:6 10628:11	Mideast 10484:21
margin 10514:10	10510:12,15 10544:27,28	10631:3,7	midmorning 10446:5
marginal 10500:25	10547:2,20 10578:20	mechanisms 10550:20	Midwest 10476:2 10499:3
10622:15,28 10624:18,19,28	10579:3,4 10585:19,28	median 10593:2,4,6	10568:25 10569:1,4,15,17,
10625:15,18 10639:5	10604:22 10605:1 10610:14,	meet 10471:2 10499:27	20 10570:7
mark 10495:21 10507:26	17,27 10611:15 10612:1,13,	10502:14,28 10503:4	MIG 10448:1 10450:4,6
10569:24 10605:27	15 10614:28 10618:13	10505:9,19 10545:26	10451:17,22 10456:8
10608:18 10609:1	10630:23 10631:14,17	meeting 10525:23	10459:22 10468:28 10469:7,
marked 10444:13,15	10632:28	meetings 10521:3,7	13,15,19,25 10477:11,14,15
10448:5,6,8 10452:11	marketplace 10467:2	10525:28 10551:6	10483:10 10493:9,24,27
10485:8 10495:24,26	10477:16 10499:28	member 10513:10 10524:11	10494:3,7,11,15,20 10499:9,
10496:2,3,7,12 10606:18,27	10501:28 10502:15	10551:17 10560:24 10563:9,	17 10503:10 10504:11,14,
10607:5,7,14,16,26 10608:1,	10503:24 10504:4 10505:19	11,19,24,28 10564:3,9	18,21 10505:24 10508:1
5,12 10609:10 10642:3,11	10507:13 10508:20	10565:18	10510:13 10511:16
marker 10604:25	10513:19 10517:11 10523:7	members 10477:15 10479:5	10512:19 10513:1,10
markers 10450:9	10542:23 10578:1 10614:18,	10508:1,10,16 10512:19	10515:23,27 10516:4,18
market 10465:15 10475:7	19 10616:14,18 10618:1	10513:1,6,13 10521:19,21	10519:11,16 10520:10,22
10476:21 10477:6 10478:11	10621:11 10632:15 10633:7,	10522:3 10524:7,9,16,17,19,	10521:21 10522:1,3,5
10489:11 10492:11	25	27,28 10525:9,24,25	10523:11,12 10524:17,27,28
10498:23 10500:18 10501:4,	markets 10467:24 10473:27	10531:24,28 10539:16	10525:3,22,24 10526:1
5,16,22 10502:4 10505:4,14,	10476:4 10500:9 10531:12	10540:18 10546:6 10551:2,	10529:10 10531:28
15,25,27 10506:23 10507:4,	10543:7 10578:12,13	12,16 10557:22 10558:3,17	10532:16 10539:11
16 10510:13,21,28	10609:23 10611:10	10559:3 10560:9,12,22	10540:21,23 10549:19
10512:20,21 10513:18	10613:14,17 10615:15	10561:9,11,27 10562:8,26	10551:5,15,17 10557:22,24
10514:1 10516:26 10517:2,8	10635:27	10564:27 10565:7,9	10558:17 10559:24
10518:13 10528:6,18,19,20	marketwide 10628:15	10567:16 10574:7 10575:7	10560:22,24 10562:8,26
10530:2,5,18,21,22	10629:15,27 10630:13	members' 10506:15 10544:9	10563:9,11,19,24,27
10531:21,28 10532:11	marks 10570:12	membership 10522:6	10564:3,8,27 10565:18
10534:6,11,13,22 10535:20,	master's 10608:20	10523:11,12,27 10525:4	10572:28 10573:14 10574:7,
24 10536:2,15,19 10539:27	match 10449:21 10544:14	10526:2 10529:10 10537:22,	22 10588:8,13 10599:14,21
10540:4 10541:13 10543:1	material 10465:14	27 10539:11 10540:20	10600:17 10603:16
10544:20,21 10545:26	math 10567:27 10596:5	10551:9,14 10565:7	10606:24 10620:2,18
10547:23 10548:4,9,18	10619:22	10599:14,21	10630:21 10631:11
10549:1,11 10550:6,14	mathematically 10487:12	memory 10551:21	10635:18,20 10642:12
10554:27,28 10555:1,6,9	matter 10446:18 10528:4	mention 10444:6 10477:26	MIG's 10457:18 10458:13,19
10559:21 10566:3,12	10576:3 10612:5	10582:21 10635:22	10469:3,5,10,27 10472:2
10568:4,8 10569:22,26	matters 10444:5,7 10445:9	mentioned 10486:3	10477:8 10483:7 10499:5,7
10575:6 10576:15,20	10447:12 10455:12	10487:18 10512:27 10551:4	10503:8 10505:5,7,8
10577:21 10578:10,14	maximum 10480:11,14,17,	10574:5 10611:16,26	10507:12 10510:10
10581:19 10582:19 10583:3,			10511:11,20,25 10512:11
10 10585:9,11,27 10586:10,			10513:6,20,23 10515:18
11,25 10599:25,26 10600:2,			10519:24,27 10520:17
4,6,14,19 10601:12			



10524:9 10525:8 10531:13, 24 10537:22,27 10539:15,16 10551:4,8,16 10566:13 10567:12,15 10573:20,21 10582:11 10585:7 10600:1 10639:20 MIG-15 10495:22 10606:16, 19 MIG-15A 10495:28 10606:24,28 MIG-15B 10496:5 10570:10, 15 10607:5,8 MIG-15C 10496:9 10497:24 10607:13,17 MIG-16 10607:25 10609:10 10641:25 MIG-16A 10608:4 10636:24 10642:4 MIG-64 10453:9 MIG-64A 10448:24 MIG-64C-CORRECTED 10453:2 MIG-64D 10448:7 Mike 10643:9 miles 10473:5 milk 10447:7 10455:16 10457:6 10459:7,21 10461:25 10464:12,21 10465:8 10466:20 10468:25 10471:2,20 10473:4,20 10474:2 10476:7,9 10477:17 10487:18,24 10490:3,27 10491:2,11,17,22,24 10495:11,12,28 10498:24 10499:25,27 10500:9,25 10501:12,13,14,23,24,28 10502:1,3,7,9,13,14,18,20, 22,27,28 10503:4,6,21,24 10504:1,18,19,26 10505:2,9, 12,18 10506:13 10507:7,8 10508:3,12,15,18,26 10510:24 10512:17 10513:2, 15,25 10514:19 10515:5,19 10516:6,11,12,22 10517:7 10518:3,4 10521:18 10522:15,25 10524:16,18 10527:12 10528:5,9,10,13, 17,24,28 10529:12,22 10530:26 10531:3,6,11 10532:13,28 10533:3,4,5,6, 7,23,28 10534:1,3,4,7,11 10538:20 10540:14 10541:19,24 10542:4,15,16, 24 10543:2,4,8,9,12,15,17, 18,20 10544:1,9 10546:26 10549:11,13,15,20 10550:4 10551:25 10552:20	10553:18 10555:12 10557:9 10558:2,6 10560:5,27 10561:17,19 10562:20,22 10565:19,20 10568:17 10569:3,21,25 10570:1 10571:9,21 10572:6,14,15, 23 10573:24,25 10574:15 10576:22,24 10577:14,15, 16,17,26 10578:3,9 10579:21,22 10580:8,11,18 10581:15,20,23 10582:17,19 10584:3 10587:9 10590:10 10598:23 10599:25,26 10601:18 10602:4,16,28 10603:1,3 10604:28 10605:2,6,7,10,12,22,26 10609:22 10610:4,14,17,18, 20,25,26,27 10611:1,2,3,5,7, 8,10,11,15,17,18,20,21,23, 26,27,28 10612:1,3,9,10,13, 15,19,26 10613:1,6,10,16, 22,27 10614:3,4,18,28 10616:3,7,10,11 10617:4,12, 15,21,22,24 10618:3,19,22, 25,27 10619:2,5,8,17,24,27 10620:23 10621:7,12,20,28 10622:24 10623:7,9,12,15, 18,20 10624:18,19,26,28 10625:4 10626:12,16,17,21, 24 10627:7,26 10628:3,8,14, 15,17,24,25,26,27 10629:6, 8,9,21 10630:5,9,10,11,14, 23 10631:2,10,14,17 10632:6,28 10634:4,11,15, 19 10635:24,28 10636:7,19 10637:9,28 10638:9,17,19, 21,25 10639:17,25 10640:3, 4,13,23 10641:8 10642:18 Milk's 10455:28 10457:4 10461:13 10463:2,3,19,20, 28 10490:25 10492:2 10554:1,11,20,23 milked 10538:28 milks 10515:6 10573:17 Miller 10643:12,18 Miltner 10468:22,24,25 10470:8 10557:8,11,13 10558:26 10559:2 10564:13 10571:27 10575:11 10585:13 mind 10575:1 10623:24 mine 10507:28 10569:11 mini 10524:2 minimizing 10477:3 minimum 10456:6 10469:6, 26 10470:6 10489:10 10500:6,16 10506:8 10512:23 10516:7,14,25 10517:21 10528:25	10544:27 10547:15 10548:15,16 10549:24 10550:13,20 10568:16 10573:24 10583:13 10600:4, 6,14,19 10603:16 10604:15, 16,18,20 10613:8 10614:19, 26 10628:13 10638:28 10639:2,12,15,17 minimums 10471:6,7 10641:6 minus 10449:8,23 10485:5, 13 10486:5 10613:16 10623:2 10627:5 minute 10460:2 10495:2 10640:12 minutes 10494:25 10624:2 10642:18,21 10643:27 mispronouncing 10511:23 missed 10558:26 mission 10612:14 Mississippi 10486:27 mistakes 10615:13 misunderstand 10576:9 model 10451:28 10452:2 10456:6 10459:15,16,27 10460:9 10461:16,22,23,25 10462:5,6,13,14,20,22,26 10463:2,4,19,21 10469:1,26 10470:5 10471:6,18,19,25 10472:1,4,5,11,13,21,23 10473:1,3,8,18,23 10484:5, 10,12,22,23 10485:1,25 10486:9,19,20,27 10487:5, 23 10488:15,20 10489:6,11 10491:12 10561:22 10583:7, 8 10616:1,2,9 10620:16,21, 25,27 10621:8,9,14,16,27 10622:3,17,27 10623:5,8,12 10625:27 10627:7,19 10633:28 10634:5 10635:17, 21 10636:14,27 10638:27,28 model's 10471:20 10472:15 10616:6 modeling 10469:7,20 10471:7,10,12 10472:18 10479:10 10483:16 10484:25 10486:1,14 10488:26 10489:11 10491:10,19 10519:25 10520:2,8,9,11,18 10571:18 modelling 10469:5 moment 10454:4 10496:24 10573:21 10610:23 Monday 10618:21 money 10513:13,21	10567:16 10574:9 10600:13 10619:26 10625:7 10628:8 10639:8 10641:4 monitor 10625:14 month 10584:4,11 10589:7 10610:28 10639:9 monthly 10584:8 10602:22 months 10474:7 10523:9 morning 10444:1,8 10446:1, 27 10455:16,17 10468:23,24 10470:19,20 10481:17 10495:16 10514:18,20 10554:8 10588:16 10616:20 10643:4 10644:5 motivation 10491:1 move 10446:6,12 10492:16 10493:3 10530:26,27 10566:16 10568:10 10569:21 10605:20,23 10606:10 10619:5,7,17,21, 24 10620:18 10621:20,22,23 10624:26 10625:4 10627:26 10629:11 10637:28 10641:19 moved 10492:22,24 10612:27 movement 10534:7,11 10599:25,26 10620:23 10621:22 movements 10471:20 10621:12 mover 10576:12 moving 10497:18 10596:27 10616:7,15 10617:27 10619:24 multiple 10450:26 myriad 10538:8 <hr/> <p style="text-align: center;">N</p> <hr/> NAICS 10553:4 names 10608:16 narrower 10519:4 national 10455:16,27 10457:4,5 10459:7,21 10461:12,25 10463:1,3,19, 20,27 10466:20 10474:2 10490:3,24 10491:26 10492:2 10514:19 10524:16, 18 10543:12 10553:18 10554:1,11,20,22 10583:12 10590:10 10627:6 10634:10, 15,19 10638:25 10642:18
--	---	--	--



national-regulated 10583:13	10514:19	10551:5 10553:13 10559:23 10562:7 10573:1 10577:5 10584:4 10588:18 10590:26 10591:27 10606:14,22 10607:3,11,20 10608:1,5,12 10615:28 10638:7 10641:28 10642:7,15	one-year 10478:26
nationwide 10484:17	night 10446:4	numbering 10570:13	online 10451:15 10453:5 10454:10 10455:10 10493:14
natural 10489:6 10552:24	nightmare 10472:28	numbers 10448:1,13 10492:28 10499:17 10588:24,25,27 10590:25 10592:5,23,24 10593:22 10597:13	open 10478:27
naturally 10530:3	NMPF 10456:5 10461:20 10464:3 10471:10,15 10474:27 10482:17 10483:16 10484:25 10487:22 10634:19	numerous 10540:27	operate 10514:25 10551:16 10575:10 10604:20 10632:21
nature 10452:3 10467:3 10502:12 10565:3 10568:18	NMPF's 10454:27 10456:3 10461:19 10464:14 10469:27 10474:11 10479:10 10483:5,12,13,25 10486:21 10487:7,10,21,26, 28 10553:23	<hr/> O <hr/>	operated 10551:20 10567:24
necessarily 10464:23 10471:12 10474:23 10475:23 10485:16 10488:27 10506:18 10520:24 10560:15 10562:4, 14 10566:4 10567:6,9 10568:8 10574:14 10584:6,8 10585:19 10601:1 10620:10 10626:16	non-fluid 10502:11 10570:1	object 10641:21	operates 10551:19 10600:22
needed 10465:27 10468:4 10499:27 10501:3 10502:14 10503:3,5 10509:20 10512:21 10519:12 10540:21 10543:19 10555:13 10567:4 10569:3 10617:8 10618:17 10619:5,9 10624:8 10625:4 10626:11, 25 10628:20 10632:2 10638:18 10640:8	non-fmno 10454:18 10455:5	objection 10444:24 10445:2 10452:26 10493:5,8 10606:17,26 10607:6,15 10641:23 10642:2,9	operating 10464:25 10492:10 10507:12
negotiate 10448:19 10449:9, 27 10485:3 10549:28 10637:8,18	non-mig 10524:13 10525:9 10643:11	objectives 10642:23	operation 10586:8
negatively 10476:14	non-performing 10628:17	obligated 10544:9	operations 10506:16 10508:18 10551:21
negligible 10582:18	non-rbst 10617:15	obligation 10566:28 10574:18	operators 10452:9 10599:15,21 10605:1
negotiated 10545:8 10550:18, 27 10604:6	nonetheless 10638:5	obligations 10568:1	opine 10535:4
negotiated 10540:25 10541:3 10545:23,25 10546:2,27 10567:18 10618:15	noon 10446:19	observation 10487:10,21,26	opinion 10457:13,22 10471:28 10486:22,23 10518:22,28 10519:4 10566:19,21 10569:5,19 10632:18 10634:12
negotiating 10547:21 10548:2	normal 10634:4	observe 10487:6	opportunities 10548:28 10615:28
negotiation 10541:10 10547:8 10550:15 10583:4 10584:26 10585:3,6	Northeast 10454:22 10455:8 10461:7	observed 10537:22	opportunity 10510:20 10617:27 10623:19 10625:5 10627:21 10628:3
negotiations 10582:26	Northwest 10454:22 10455:8	obvious 10473:17 10631:1	oppose 10470:28 10630:23 10640:18
net 10468:1,12	note 10446:7 10465:19 10493:9 10501:22 10504:24	October 10546:13 10569:24	opposed 10451:4 10478:16 10485:1 10508:9 10511:8 10522:16 10575:4 10579:28
network 10473:22 10521:21	noted 10463:5,11 10466:2 10467:14 10471:8 10490:16	off-the-record 10447:19 10454:7 10496:26 10606:6	opposite 10476:12 10525:11 10614:17 10623:11 10630:24
Nevada 10625:18	notes 10455:21 10459:10 10470:25 10514:21 10579:14 10581:27	offer 10471:25 10483:12 10518:27 10585:13 10618:14 10640:1,5	opposition 10581:3
Newell 10643:9,17,19	notice 10444:13,16 10445:19 10555:26 10573:9 10614:6 10624:28 10639:21, 22	offered 10471:26 10518:22	opt 10615:1,25
nice 10575:15,23 10624:11	noticed 10624:20	offering 10457:13	optimal 10616:15 10620:25, 27 10621:13
nicely 10566:16	nowadays 10619:12	offers 10517:23	optimally 10473:24
Nicholson 10634:13 10638:25 10639:13,16	nuance 10481:7	offloaded 10488:18	optimistic 10643:25
Nicole 10455:16 10490:3	number 10444:22,28 10445:6 10448:8 10449:3,7 10450:25 10456:4,5 10461:6 10483:18 10485:16 10486:19 10490:23 10492:26 10493:25,28 10494:4,8,12,16 10495:26 10496:3,7,12 10514:3 10515:26 10519:19 10526:2, 24 10532:1,7 10544:15	offset 10466:19 10467:12	optimization 10472:21
		offsets 10612:20	Option 10568:15 10632:20
		offsetting 10467:28	optional 10545:22,26
		Ohio 10570:20 10571:15	options 10550:21 10614:27, 28 10632:24
		older 10634:19	orange 10450:12 10589:11



10594:15 10597:18	original 10450:11 10452:10, 25 10474:12 10588:13 10608:3 10632:20	10617:14,19,20,26 10629:12,18,20 10638:19,21 10639:24	patterns 10474:16 10624:20 10625:22
order 10447:28 10449:26 10450:12 10456:11 10461:3, 4,5 10462:28 10475:22 10499:12,13,18 10500:3,5 10501:18 10502:23,27,28 10505:18 10507:22 10508:2 10512:12 10515:20 10516:3, 22 10517:13,23 10518:24,28 10521:2 10523:3,5 10526:11 10528:7 10529:4 10533:22 10534:13,14 10535:22 10536:12 10542:21,25 10543:17 10545:9 10546:22 10547:7,14,19 10548:13,28 10550:21 10552:1 10554:11 10555:6 10561:19 10565:25, 26 10566:1,4 10569:16 10570:7,26 10571:10 10572:10 10577:7 10586:7 10591:26 10596:4,10,12,17, 18,23,26 10597:3,4,7,10,19, 26 10598:5,6,13 10601:10, 11,24 10605:7 10611:15 10616:25 10619:19 10627:24 10628:11 10629:10 10630:28 10631:7, 22,24 10632:19 10633:7 10641:10 10643:5,6	originally 10450:18 10452:19 10532:19 10589:5 10609:11	Panhandle 10572:12	pause 10460:2
order-by-order 10595:26	originated 10446:16	paper 10451:16 10453:5 10536:24	pay 10527:15 10529:9,11,22 10533:22 10545:15,17,27 10546:8 10547:9 10567:4,16 10580:18 10582:9 10586:23 10601:24 10613:9,11 10614:26 10619:14 10620:7, 8 10628:6
Order-required 10528:9	outdated 10503:9,11	paragraph 10454:15,17,26 10455:5 10459:13 10544:25 10545:11 10546:19 10547:2 10572:18,25 10579:19 10582:2,21 10583:18 10585:16 10586:15 10609:27	paying 10516:11 10536:21 10538:2 10545:13 10546:20 10563:18 10566:5,19,23,24, 26,28 10574:27 10601:22 10602:26
orderly 10476:21 10585:28 10612:10 10618:13	outlier 10481:24 10482:1	parameters 10486:15 10488:21	payment 10511:6 10545:8 10546:21 10547:1,10 10549:21 10564:16 10567:20 10573:22 10628:13 10630:17 10638:20
orders 10463:1,6,11 10466:11 10474:16 10501:25 10522:23 10523:15 10533:3 10596:21 10598:2 10601:5 10605:1 10610:14,17,27 10611:18 10612:1,8,13,15 10613:8 10615:1 10628:24 10629:14, 15 10630:14,23,25 10631:14,17,21 10633:1,3, 10 10636:2,3,5,8 10641:9	outliers 10481:25 10594:6, 12 10595:17 10598:6,8,10	part 10458:2 10465:23 10469:22 10477:1,14,24 10483:10 10484:9 10491:1 10495:23 10502:1 10504:26 10515:18 10527:13 10537:10 10551:8 10552:28 10555:7 10561:19 10562:12 10564:17 10567:11,17,19 10572:1 10582:8,10 10583:15 10584:25 10590:13 10601:2 10617:3 10618:9 10620:15 10630:25 10635:8	payments 10532:27 10550:15
organic 10473:21,22,24 10487:19,23 10491:11,17, 18,22 10509:23 10514:28 10515:1,6,11,12,15,19,25 10516:6,11,12 10517:5,7 10524:9 10551:9,10,18,19 10558:18 10560:19 10562:22 10565:8 10576:24 10643:23	outline 10474:1	participant 10475:7	pays 10628:5
organics 10515:4 10516:2	outsider's 10474:22	participants 10477:6 10478:11 10505:28 10516:26 10564:15 10568:9 10578:14 10586:1,25 10605:5 10643:23	peak 10611:20
organization 10561:1	outward 10526:3	participate 10521:7	peaks 10562:4
organized 10514:22	over-order 10511:2,4 10512:24 10513:1 10530:25 10531:2,5,10,16,17,20,22,25 10532:9,26 10540:11,13,14, 16,22,24 10541:3 10545:18 10547:21 10550:19,24,25 10564:21,23 10566:23,28 10567:2,19 10569:14,17 10600:5,9 10604:4,6,14	participated 10515:22 10521:8 10525:8	peer-reviewed 10536:25
orientation 10589:12,14,18	overlap 10518:17 10524:18 10525:25 10596:24,28	participating 10501:25	pen 10536:5
oriented 10632:26,27	overnight 10489:16	parties 10535:16,18 10536:17,19 10545:7	pending 10466:14,22,26 10480:7,13,17,22 10481:9
	overpay 10639:17	partly 10612:3 10618:27 10631:17 10636:5	people 10460:3 10472:5 10474:24 10494:26 10513:7, 15 10517:26,27 10521:21 10525:28 10526:2,5 10528:22,24 10532:12 10542:28 10545:2 10551:3,7 10560:15 10567:21 10577:1, 2 10580:18 10585:20 10586:12 10589:15 10602:23 10628:1 10632:2
	overpaying 10639:10	parts 10489:21 10498:4,18, 22 10499:6 10510:6 10527:21 10580:22	people's 10478:19,27 10523:22,23,26 10524:4
	overproduce 10500:26	party 10537:10	perceived 10500:7
	overproduction 10503:14 10541:19 10542:16 10544:2 10577:14,15,16 10579:22 10580:10	pass 10447:16	percent 10581:14
	overstates 10501:27	past 10453:21 10454:2 10470:3 10475:19 10629:14 10630:27 10636:10 10641:13	percentage 10460:10 10484:12 10515:3 10531:27 10551:14 10552:7,9 10559:20 10609:22
	overstimulates 10503:28	path 10542:8	perception 10547:21
	oversupply 10541:21	pattern 10474:18 10475:18	perennially 10633:23
	owned 10599:17		perfectly 10583:9
	P		perform 10467:10 10521:22 10545:2 10585:20 10603:27
	p.m. 10445:20,23		
	Pacific 10454:22 10455:8		
	packet 10451:1 10493:17		
	pages 10475:2		
	paid 10507:1 10527:16,17 10532:26 10535:15 10539:3 10540:11,21,22,25 10549:16,26 10550:26 10567:3,26 10574:22		



<p>performed 10456:11 10459:19</p> <p>performing 10506:24 10537:1,2 10567:21 10568:9</p> <p>period 10501:24 10502:17, 21 10611:2,21,23,25 10612:2 10626:4 10639:11</p> <p>periods 10502:24</p> <p>permanent 10610:16</p> <p>permission 10555:27</p> <p>person 10479:20 10506:24 10511:7 10552:15 10640:11</p> <p>personally 10633:15</p> <p>perspective 10474:15,22 10492:8 10518:28 10523:16 10530:6 10558:6 10580:7 10600:16</p> <p>persuaded 10619:10</p> <p>petition 10559:24</p> <p>Ph.d. 10608:16,21</p> <p>phase 10478:22</p> <p>phase-in 10477:4 10478:10, 15 10479:3,8</p> <p>phased 10478:9</p> <p>phased-in 10478:1,4</p> <p>phasing 10478:26 10479:13</p> <p>phrase 10589:9</p> <p>phrased 10573:5</p> <p>pick 10485:25</p> <p>picked 10485:27</p> <p>pictorial 10594:25 10595:11</p> <p>pictorially 10595:3</p> <p>picture 10474:17 10588:21</p> <p>piece 10478:3 10479:6 10504:15,16,17 10507:21 10508:2 10523:9 10527:11 10574:28 10581:13,16,21 10582:12,20,24 10585:8</p> <p>pieces 10498:1 10591:12 10617:2 10618:8 10635:11</p> <p>pink 10625:10,11</p> <p>place 10446:17 10447:19 10454:7 10472:11 10496:26 10511:28 10514:9,24 10517:2 10535:19 10577:22 10606:6 10614:9 10618:24 10621:2,18 10625:3</p> <p>places 10464:10,11</p>	<p>10471:11 10474:19 10479:12 10483:18 10485:22 10488:5,6 10491:18,19 10512:25 10514:21 10531:23</p> <p>plan 10493:20</p> <p>planned 10446:20</p> <p>plans 10479:14</p> <p>plant 10452:11 10463:27 10464:12,20,21,24 10465:4, 6,7,17 10466:27 10467:5,9, 22 10476:26 10480:1 10490:27 10507:8,11 10561:17,24 10565:20 10567:28 10569:21 10572:3 10573:25 10584:22 10601:9, 18,22,23 10602:10,27 10603:2 10615:2 10619:6,18 10620:7 10622:4,11,20,22, 24,25 10623:7,10,13,15,16 10624:26 10625:2,5,6 10626:28 10627:8,15,17,21 10628:3,4,5,15,17 10638:19, 20</p> <p>plants 10451:27 10452:9,18 10464:7 10466:15 10476:7,9 10490:12,15,23 10491:2,5 10504:25 10513:9,16 10546:26 10555:13 10561:25 10568:12 10569:3, 4 10572:1,24 10573:6 10574:23 10584:25,28 10603:3 10612:4,5,21 10613:10 10615:25,26 10616:4 10618:15,18,21 10619:9,14,17,28 10620:6 10621:1,4,5,28 10622:2,3, 10,14 10623:17 10626:12, 16,25 10627:8,22,26,28 10628:6,7 10629:9,12,18,21 10630:4 10635:11 10636:19 10638:16 10640:23</p> <p>plants' 10623:20</p> <p>play 10511:2 10558:9,11</p> <p>plenty 10624:14</p> <p>plot 10481:27</p> <p>plural 10565:3</p> <p>pocket 10571:20</p> <p>pockets 10550:1</p> <p>podium 10555:21</p> <p>point 10461:21 10464:8,9 10467:25 10469:13 10470:5 10479:26 10484:9 10488:17 10499:9 10510:9 10512:28 10519:3 10533:15 10540:3 10542:23 10561:14 10586:5 10592:28 10597:12,13</p>	<p>10610:13,21 10615:6 10617:5,24 10620:19 10621:18 10622:7,18 10625:8 10626:22 10627:2 10632:10 10640:9</p> <p>points 10449:22,23,24 10509:22 10532:24 10571:9</p> <p>policy 10635:27</p> <p>pool 10508:10 10513:21 10514:4 10545:16 10546:21 10549:12 10564:17 10566:27 10568:6 10572:15 10574:18 10601:3,6,13,23 10604:2 10619:16,27 10620:9,15 10627:20,23 10628:15,18 10629:13,18 10630:17 10637:21,26 10638:6 10641:5</p> <p>pool-wide 10507:25 10618:12</p> <p>pooled 10571:9 10572:6 10600:26</p> <p>pooling 10511:9 10516:6 10533:26 10546:17 10586:2 10612:18 10629:15 10630:13 10636:7 10640:15</p> <p>pools 10500:9 10629:16</p> <p>population 10611:24 10621:6 10622:5</p> <p>portfolio 10558:22</p> <p>portion 10498:14 10533:25 10562:17 10563:3,5,14 10582:3 10603:17 10611:1, 2,12 10618:6 10619:3,21 10620:11 10625:1 10628:6, 13 10629:11,18 10630:15 10639:6</p> <p>portions 10624:22</p> <p>portrait 10589:14</p> <p>position 10457:3,15,17 10468:28 10469:3,5,10 10472:2 10476:18 10477:8 10483:7 10503:8 10505:5,7, 9 10510:10 10513:20,23 10515:19 10520:18 10535:13 10548:19 10614:17</p> <p>positions 10478:19,20,27</p> <p>positive 10449:10,27 10485:3 10637:8,18</p> <p>posted 10474:11</p> <p>posting 10444:15</p> <p>potent 10626:7 10629:21</p>	<p>potential 10491:12 10513:28</p> <p>potentially 10639:8</p> <p>powder 10489:16 10508:28 10577:20</p> <p>power 10541:4 10546:9,11 10604:11</p> <p>Powerpoint 10494:23 10496:10,22 10497:4,5,9,15 10519:20 10526:23 10533:11 10538:19 10608:9</p> <p>practices 10630:2</p> <p>pre-submitted 10631:11</p> <p>preceding 10502:24 10545:10</p> <p>precise 10499:17 10533:2 10552:14 10553:13 10615:19 10616:26</p> <p>precisely 10614:17 10632:11 10635:22</p> <p>predominantly 10500:10</p> <p>prefer 10444:7</p> <p>preliminary 10444:5,7,12 10445:8 10446:18,23</p> <p>premium 10566:23 10567:1, 2,19 10617:16,18 10619:16 10630:13</p> <p>premiums 10511:2,4 10512:24 10513:2 10530:25 10531:2,5,11,16,17,20,22,25 10532:10,26 10540:11,13, 15,16,22,24 10541:3 10545:18 10547:22 10550:19,24,26 10564:21,23 10569:15,17 10600:5,10 10604:4,7,14 10614:21 10617:11,14,20,22,25,27 10638:3</p> <p>prepared 10540:18</p> <p>prescribe 10632:10</p> <p>prescription 10640:19</p> <p>present 10500:8 10525:28</p> <p>presentation 10471:9 10496:10 10518:17 10519:9 10526:3,23 10530:24 10532:25 10533:11 10538:19 10587:6 10608:9 10609:9 10610:11 10636:21 10642:11</p> <p>presented 10456:17 10521:20 10525:23 10526:2 10589:17</p> <p>presenting 10634:13</p>
--	---	---	--



<p>preserve 10475:5</p> <p>presiding 10609:19</p> <p>pressures 10554:13</p> <p>presumes 10568:15</p> <p>presumption 10506:11 10507:24</p> <p>pretty 10523:25 10582:16 10613:16 10636:4 10638:3</p> <p>prevent 10509:21 10576:18</p> <p>preventing 10510:1</p> <p>preview 10555:27</p> <p>previous 10474:6 10585:18</p> <p>previously 10447:3 10453:4 10551:20 10553:28 10609:2</p> <p>price 10458:20,22 10475:14 10476:10,15 10498:2,3,4,5, 7,8,9,10,12,13 10499:23 10500:11,15,16,23,24 10503:3,5,18,22,23,28 10504:2 10508:13 10509:10, 13,16,18,25,26 10510:1,2,4, 5 10512:2,18,21,23 10513:11 10516:11,13 10522:14,17 10527:19,27 10535:4 10542:5,15 10543:22 10544:27 10545:22 10546:27 10547:8, 15 10548:14,16 10549:8,9, 10,12,24,26,27 10550:14 10552:20,24 10555:12 10563:4,19 10567:25 10574:8 10575:25,28 10576:1,2,4,5,6,22,27 10577:1,2,3,9,25 10578:14 10580:25 10591:17 10592:8 10603:17 10604:15,16,19 10613:1,13,26,27,28 10614:3,5,8,10,12,13,15,22, 23,25,26 10615:6,23,24 10621:24 10623:4 10631:3,4 10635:25,28 10636:1,14 10639:12</p> <p>price-enhancing 10504:3 10541:20 10580:9</p> <p>priced 10458:8 10500:20</p> <p>prices 10469:22 10477:23 10489:11 10500:14,17 10502:12 10504:8,19 10505:14,16 10506:8 10509:11,20,23,28 10510:2 10511:28 10512:9,11,13 10516:14,25 10519:18 10523:4 10527:18,19,20 10530:4,19 10535:9 10536:1 10541:23 10542:4 10543:7, 9,19,26 10544:4 10545:23, 25 10549:17,18 10550:13</p>	<p>10575:24 10576:8,13,14,18, 24 10577:19,23,26 10580:8, 17,19 10581:17,18 10582:13 10600:2,19 10604:18 10612:19 10613:17 10614:20 10615:8 10621:21 10629:20 10632:6 10636:3 10639:2</p> <p>pricing 10469:25 10470:7 10475:5,10,11,22 10476:5 10507:4 10516:7,23 10517:21,22 10522:20 10531:15 10534:22,25,28 10541:14 10544:6 10546:17 10550:20 10585:25 10586:2, 26 10610:9 10612:17 10613:6,9 10614:19 10615:19</p> <p>primal 10620:24</p> <p>primary 10503:18 10562:11 10612:14,15 10626:9</p> <p>principle 10500:2</p> <p>principled 10474:8</p> <p>principles 10487:28 10488:2 10500:28 10501:2,7 10502:26 10533:21 10534:5 10541:28 10542:18 10600:18</p> <p>print 10450:21</p> <p>printed 10497:4 10589:23</p> <p>printing 10451:3</p> <p>prior 10464:5 10546:18 10557:18 10579:26</p> <p>problem 10477:1,21 10487:14 10488:28 10577:8 10587:2 10604:7 10629:4,5 10639:1,17 10641:8</p> <p>problems 10446:16 10570:3 10587:3 10604:10 10628:24 10636:7 10640:19</p> <p>procedural 10640:9</p> <p>procedure 10452:21,27</p> <p>proceed 10447:9 10495:19 10497:4 10578:26 10579:5</p> <p>proceeding 10444:4 10516:20</p> <p>proceedings 10644:6</p> <p>process 10474:28 10480:5 10518:4 10521:1 10525:21 10612:10 10618:18 10635:13</p> <p>processes 10633:20</p> <p>processing 10507:11</p>	<p>10559:18 10616:7 10618:23 10620:26 10633:21</p> <p>processor 10506:27 10510:24 10513:4 10516:27 10517:25 10540:9,15 10544:13 10546:15 10560:10 10564:9 10574:14, 15,16,18,20,26 10582:26 10583:19 10602:3,6,9,25 10603:10</p> <p>processors 10479:5 10506:2,20 10510:18 10511:5 10514:28 10515:9 10528:4 10532:14,19 10538:15 10539:8 10545:13, 16 10546:20 10548:24 10554:15 10559:14 10583:14 10585:25 10603:7, 23</p> <p>produce 10518:3 10551:25 10558:17 10614:4</p> <p>produced 10502:7 10543:15 10602:16 10622:18</p> <p>producer 10465:10 10498:24 10501:12 10516:27 10517:26 10533:3, 4,6,7 10534:2,4 10540:14 10543:17 10546:13,14 10549:17,18 10550:24 10551:23,27 10552:20 10560:4 10564:2,4,5 10565:20 10566:27 10567:18 10572:4 10580:11 10601:4,9,10,13 10605:7 10613:2 10631:20</p> <p>producer's 10572:6</p> <p>producers 10468:25 10480:4 10506:3 10517:22 10531:2,4 10532:11,20,27 10533:22 10540:27 10544:3 10546:25 10549:16,22 10550:1,3,17 10551:8 10557:9 10560:6 10561:20 10569:20 10580:7 10582:14, 26 10603:23 10604:6,10,13 10605:5 10614:9 10617:14 10618:14 10627:25 10628:12 10638:8,13,15,25</p> <p>produces 10558:18,19,20, 21</p> <p>producing 10516:10 10532:28 10533:28 10614:2</p> <p>product 10527:27 10528:14 10535:4 10553:4,6 10558:16,21 10559:14 10610:19 10613:13,28 10614:10,13 10616:7 10620:18 10622:13,16,18 10625:8,24 10631:4</p>	<p>10632:10</p> <p>production 10496:1 10502:19,20 10504:1 10512:17 10541:24 10542:3, 27 10544:4,5 10550:9 10552:3,6,11,27 10553:14, 21 10554:12 10558:7 10561:23 10562:17,19,20 10571:21 10578:8 10599:22 10611:12 10617:5,12,15,21 10630:2,7,11</p> <p>products 10473:19 10505:2 10510:26 10515:5,8 10528:3,13 10558:13,17,18, 19,20,21 10559:4,19 10581:19 10602:22 10616:4, 8,15 10622:17 10625:16 10629:6 10630:7,10</p> <p>professional 10635:15</p> <p>professional-judgment 10632:27</p> <p>program 10508:19 10517:2 10587:1,2 10600:22</p> <p>programs 10445:12 10544:10 10584:5</p> <p>project 10635:3</p> <p>promised 10447:27</p> <p>promotion 10612:21</p> <p>prompt 10486:9</p> <p>properties 10613:6</p> <p>proportion 10618:25 10620:12</p> <p>proposal 10451:16,28 10452:1,2 10455:28 10456:3,5 10457:4 10458:13,19 10459:26 10460:8,9,14,16,20 10461:13,16,23 10462:3,4, 13,20,26 10463:2,3,19,20,28 10464:3,24 10465:3 10468:9,14 10469:17,27 10470:9 10471:1,13 10474:15,27 10479:10 10483:5,13,18,25 10484:5, 10,13,22 10486:22 10487:7, 22 10488:9,10 10490:25 10492:8 10494:21 10495:13 10497:27 10499:5,7,8 10510:10 10511:11,20,23,25 10512:9,18,26 10513:27 10515:18 10516:2,4,8,15,17 10517:5,7 10519:24,27 10520:12,15 10523:17 10525:12,14 10526:12,19 10529:4 10531:8 10533:14 10534:19 10539:16,27 10549:17,19,25 10551:1,5</p>
---	--	--	--



10553:23 10554:20,23 10555:7 10566:13 10570:21 10571:7,17 10574:17 10575:3 10578:24 10579:2 10581:2 10583:7 10585:14 10587:16 10590:10 10594:16,19 10595:18,22 10596:13,20 10597:16,19 10598:26 10600:1,6,13,17 10605:17 10620:2,19 10631:13 10635:20 10639:20,27,28 10640:22	pulled 10499:18 pulling 10626:27 10628:2 purchase 10560:28 purchasing 10602:4 purpose 10513:17 10626:9 purposes 10530:3 10534:1, 21 10570:5 10617:28 10635:28 10638:1 pursue 10626:1 pushing 10626:21 put 10445:19 10480:17 10485:19 10510:9 10515:19 10530:15 10540:3 10558:15 10599:5 10612:23 putting 10540:5 10571:6	10534:10 10562:25 10566:17 10572:27 10578:21,23,27 10579:2,3, 13 10581:28 10588:2 10605:16 10629:23 10636:15 quick 10447:16 10535:8 quickly 10606:1 quo 10475:16 10477:1 quota 10544:15 quote 10500:4,22 10557:18, 27,28 10568:14,21,28	reacted 10542:24 read 10450:10 10453:20 10454:1,20 10455:2,6 10468:8,11 10500:22 10535:13 10568:14 reading 10459:28 10460:13 10480:15 10487:27 10523:2 10526:25 reads 10572:19 ready 10482:6 10495:5 10496:15,16,17 10530:9 10556:2 10587:18 10624:2 real 10505:4 10506:5 10517:1 10559:8 10568:3 10630:2 realistic 10509:4 realities 10513:19 reality 10471:22 10479:15 10503:2 10619:14 realize 10462:1 10489:16 realm 10486:16 10576:21 reason 10474:23,24 10487:19 10491:12 10541:6 10552:28 10565:5 10577:1 10615:8 10633:16 reasonable 10576:21 10578:15 10582:17 10634:8 10636:17 reasons 10544:5 10559:16 10583:1 rebuttal 10520:15 recall 10482:18 10484:7 10486:11 10488:15 10489:3 10525:13 10532:1 10554:4 10564:25,27 10565:11,16 10605:3 10617:1 10639:16 recalled 10483:3 recaptured 10585:14 received 10444:28 10445:6 10452:13 10493:28 10494:4, 8,12,16 10551:6 10606:22 10607:3,11,20 10641:28 10642:7,15 receiving 10507:6 10512:21 10528:22 10545:14 10584:2, 5,28 10604:14 recent 10464:25 10466:12 recently 10513:10 10610:2, 28 10634:8 recess 10556:4 recognition 10585:3,5
proposals 10460:16 10470:1,4 10474:12 10482:17 10515:23,24,25,27 10521:10 10525:17 10559:25 10573:1,4,14 10575:2 10621:15 10640:4 propose 10450:15,27 10451:12 10477:11,14 10519:27 10574:22 proposed 10457:8 10459:4, 6,13,20,21 10466:20,21 10468:18 10471:17 10478:5, 7 10480:15 10481:1 10500:7 10511:15 10532:17 10553:18 10554:1 10568:16 10574:23 10590:9 10594:27 10597:1,27 10632:20 proposes 10504:11 10543:13 proposing 10459:7 10461:25 10490:25 10519:11 proprietary 10599:17,20 protect 10524:4 protein 10542:26 proud 10487:8 provide 10447:28 10457:6 10459:23 10518:13 10524:3 10528:5 10548:21 10550:5 10586:1 10602:12 10603:9 10609:8 10610:10 10616:28 10617:14 10643:6 provided 10457:20 10519:9 10525:7,9 10536:19 10586:25 10604:1 10631:7 providing 10511:6,7 10513:8 10603:10 10638:17 provisions 10516:7,8 10534:23,25 10586:3 prudent 10468:16 public 10579:24 10580:3,4,7 pull 10448:17 10496:22,25 10573:21 10626:13,24 10638:3,18	Q quadrant 10591:3,17,20,23 10592:8,14 10593:18,26 quadrants 10591:2,10,12,13 10592:28 qualifying 10572:4 Qualitatively 10634:21 qualities 10617:12 quality 10528:23 10617:21, 24 quantitative 10525:15 Quantitatively 10634:23 quantity 10613:23,26 10614:10 quarter 10449:26 10485:24, 25,26,27 10521:25 quartiles 10481:23 10590:4 10591:13,14 question 10458:13 10459:17 10463:13,14 10467:6,10 10468:27 10470:16 10471:14 10477:18 10480:9 10481:15,21 10488:13 10519:5 10520:28 10534:24 10536:7,26,27 10549:25 10550:10 10559:6 10560:22 10561:14 10566:5 10574:5 10586:14 10587:7 10600:12 questioning 10488:16 questions 10445:25 10446:9 10457:1 10468:26 10470:8, 14 10473:28 10482:16 10489:25 10490:4,19 10492:14,16 10532:23	R raise 10468:9 raised 10585:13 10629:2 range 10449:14 10459:15 10463:4 10481:28 10486:2 10490:9 10498:21 10511:14 10537:7,14,21,25 10539:11, 12 10549:27 10552:10 10557:25 10564:26,28 10565:3,6,14 10592:1 10595:11,13,15,17,21 10596:28 10597:1,2,6,11,14, 16,21,27 10598:7,10,14,16 10614:14 10615:7,8 10627:14 10637:17 10638:4 ranges 10449:13 10499:1 10549:5 ranging 10523:25 rapidly 10633:18 Rapids 10571:1,20 rationale 10488:2 raw 10507:7,8 10538:20 10587:9 10602:4,28 10616:3,11 rbst 10617:13 rbst-free 10605:9 re-circle 10512:28 re-cross 10489:25,28 re-equilibrates 10543:24 re-evaluation 10535:26 re-examination 10486:9 re-orient 10498:1 re-redirect 10492:15 reach 10521:2 10532:27 reached 10524:23 10541:26	



recognize 10469:16	referring 10448:28 10459:8 10521:17,18 10545:6 10568:20	10640:18	remind 10451:24 10470:21 10498:1 10509:15
recognized 10500:21 10629:7	refers 10480:13,14	regulations 10444:20 10476:13 10515:20 10517:27 10629:10	reminding 10467:20
recognizing 10641:18	refill 10618:21	regulatory 10605:13	removing 10506:22
recollection 10568:26	reflect 10453:24 10512:2 10588:24 10590:13 10616:9	reinforce 10475:6,16	repeat 10453:25 10536:7
recommend 10452:17	reflected 10460:1 10463:10 10469:1	reinforced 10476:10	repeated 10531:25
recommendations 10474:3	reflecting 10460:8	reinforcing 10477:1 10534:5	repetitive 10586:14
recommended 10458:3 10475:4	reflection 10588:18	reinvigorate 10510:21,28	replace 10450:28 10451:5, 17 10452:19,25 10453:3 10455:5
reconnected 10606:3	reflects 10486:20 10501:10 10511:18 10590:20 10597:21,25	reject 10457:4 10468:9,14 10470:1 10488:9	replaced 10451:6,8 10454:19 10462:21 10573:15
reconvene 10445:21	reform 10499:13,18 10500:3,6 10501:18 10502:23,27 10507:23 10518:24 10523:3,5 10536:12 10542:21,25 10552:1 10554:11 10565:25, 27 10566:1,4 10616:25 10632:19 10635:27	rejected 10488:10	replacement 10450:7
reconvened 10444:14	refresh 10568:26	relate 10457:21	replacing 10450:15 10493:12
reconvening 10445:16	regard 10533:23 10555:28	relationships 10475:5,10, 14,26 10476:10,15	report 10446:3 10518:1
record 10444:2,19 10445:14 10446:11 10447:18,20,21,26 10448:13 10453:23 10454:4, 6,8,9 10462:17 10463:17 10479:3,26 10480:8 10482:7,9 10489:22 10495:7,8 10496:24,27,28 10499:14 10530:11 10541:9 10556:3 10557:2,3 10570:5 10584:27 10585:18 10587:18,20,21 10606:5,7 10624:5,6 10642:21 10644:5	regime 10595:23	relationship 10469:22 10476:9 10507:2 10571:8,14 10596:18 10613:25 10624:15	reported 10616:24
records 10499:18	region 10468:10 10568:19, 20 10619:25 10623:16 10626:14,20,28 10631:20	relations 10475:5,10, 14,26 10476:10,15	reporting 10518:13
recovery 10582:25	regional 10476:1 10582:27, 28 10583:11 10620:26 10623:20	relative 10469:23 10477:23 10479:11 10502:15 10519:18 10539:17 10560:2 10571:14 10616:10 10618:28 10620:22 10621:28 10623:4	represent 10468:25 10620:24
recreate 10633:4,7	regionally 10582:22	relationships 10475:5,10, 14,26 10476:10,15	representations 10621:12
RECROSS-EXAMINATION 10490:1	regions 10475:27 10476:2 10479:9 10569:8 10619:15 10620:28 10621:2,5 10625:17 10627:8,9,28 10628:19 10636:18 10639:4	relative 10469:23 10477:23 10479:11 10502:15 10519:18 10539:17 10560:2 10571:14 10616:10 10618:28 10620:22 10621:28 10623:4	representative 10621:19
red 10485:18 10588:4 10595:18 10596:25 10623:3, 11,14 10625:1,9,10,11 10626:9,24 10627:16 10637:3 10640:13	Register 10444:14	relatives 10636:14	represented 10611:6
red-colored 10623:16	regulate 10489:10 10631:26 10632:14,16 10640:14	relaxing 10622:7	representing 10557:8
redirect 10482:12 10598:25 10599:11	regulated 10549:24 10550:13 10563:4 10573:23 10583:12 10600:4 10610:19, 26 10611:4 10612:4,6 10613:11 10628:12 10639:17 10640:20,28 10641:6	relevant 10502:5,7 10504:18 10519:12 10539:24 10634:7	represents 10531:28 10593:1,2 10623:1 10625:10 10627:20
reduce 10508:13 10511:12 10543:25	regulating 10614:12,26 10632:3 10639:2	relied 10613:8 10636:2	request 10497:6 10609:13
reduced 10549:21 10572:7, 11,12	regulation 10510:6 10516:3, 22 10548:9,12 10611:2 10615:1,26 10628:9 10632:4 10633:8,13,14,15 10634:26	relief 10640:20	require 10528:5,20 10541:25 10605:1 10620:6
reduces 10549:23		rely 10500:27 10531:2,4	required 10528:14 10624:27 10626:13
reducing 10510:16,19 10548:17,20 10579:22		relying 10542:17	requirement 10528:10 10579:20
refer 10606:15 10613:21		remain 10447:1 10517:8 10608:24	requirements 10528:21,27 10604:28
reference 10533:10 10538:19 10557:28 10572:28		remainder 10568:8 10620:14	requires 10528:2
referred 10461:20 10612:16		remedied 10530:5	requiring 10545:3 10585:21
		remember 10470:26 10474:8 10490:10 10512:22 10521:24 10530:7 10532:8 10538:21 10559:22 10568:24 10569:23	research 10526:25 10536:24,28 10555:6 10626:2
		remembering 10606:12	reserve 10558:2
			resources 10510:20 10545:17 10548:21
			respect 10461:12 10469:5 10470:6 10471:7 10472:17 10473:27 10475:25 10477:3



10501:22 10504:23 10517:5 10522:15 10523:4 10525:12, 13,17,18 10531:5,16 10534:26 10550:9 10555:2 10571:16	rewards 10628:13	S-H-E 10558:27	seldom 10635:24
respond 10471:27 10544:4	rhetorical 10550:10	S-H-E-D-E-Y 10558:25	Select 10468:25 10557:8
responding 10542:28	rhyme 10474:23,24	S-H-E-H-A-D-E-Y 10558:28	selected 10463:26
responds 10542:4	rider 10587:1,3	S-T-E-P-H-E-N-S-O-N 10608:19	self-evident 10559:13
response 10476:16 10564:11 10574:5 10628:18	right-hand 10484:9 10624:23	sale 10539:4 10558:16 10559:4	sell 10506:13 10543:17 10601:17 10640:4
responsibility 10539:6 10562:12	rip 10450:27	sales 10508:25 10509:3,6,7 10548:22	seller 10565:20
rest 10468:3 10470:8 10611:18 10631:6 10636:14	ripe 10535:26	Sally 10446:28 10447:2 10495:12,16,23	selling 10612:9
restate 10553:25	risk 10478:17,19,24 10500:11,13,21 10503:14,18 10508:13	sanitary 10528:11	sense 10473:9 10477:25 10478:6 10486:14 10501:4,6 10506:7 10578:28 10591:16 10595:8,11 10603:20 10620:3
restroom 10495:2	road 10473:3 10489:7 10622:12,22	Saputo 10452:6	sentence 10453:20,28 10454:1,18,20,28 10455:4 10468:13 10544:24 10545:11 10546:19 10568:14 10572:19 10575:27 10579:23,25,26 10582:1 10583:14 10585:17
resubmitted 10607:26 10609:9	Roger 10575:17	Saturday 10618:19	separate 10477:9 10516:20 10573:17 10574:1,2
resubmitting 10516:19	role 10499:22 10510:2 10511:2	saved 10602:17	separately 10518:18
result 10503:15 10510:16 10512:18 10571:9 10580:27 10627:19	rolls 10476:5	saving 10627:7	September 10609:12
resulted 10542:16	room 10525:1	scale 10560:7 10632:18	series 10525:28
resulting 10510:11	Rosenbaum 10446:3 10555:19,23,28 10578:22,23 10579:7 10587:15,22,24,27 10588:1 10591:9 10598:19, 21,28	scales 10584:10	serve 10507:19 10512:21 10533:12 10619:4
results 10456:21 10459:16 10461:26 10463:2,4,20,21 10472:1 10485:6 10491:12 10519:25 10520:8,18 10549:26 10600:24 10621:16 10625:27 10634:20 10635:3,7,18 10636:11,14	rough 10591:27 10627:23	scenario 10543:14,25 10602:3 10643:17	served 10469:26 10512:20
resume 10530:12 10557:3 10624:9	roughly 10589:25 10591:24, 28 10595:5	scenarios 10583:19 10603:7	serves 10551:21 10618:26
resumes 10447:15	round 10561:5	schedule 10446:22	service 10444:11 10451:14 10452:22 10470:13,16 10511:7,8 10513:18 10537:1,2 10545:2,4 10578:20 10579:3,5 10585:20,22 10601:11 10603:27,28 10611:10 10620:5 10631:19
resuming 10446:24	routine 10488:16 10560:28 10562:3 10584:20	scheduled 10643:13	services 10493:14 10506:25 10507:5 10513:8 10536:18 10538:8 10545:13 10568:9 10585:26
retail 10539:4 10580:18	routinely 10643:2	scheduling 10445:14	servicing 10532:11 10612:20
retained 10521:22 10522:1, 2,8,10	row 10452:5,6,8 10460:21 10461:6	Schuelke 10576:11	servicing 10505:14 10513:3 10566:11 10604:18
retention 10522:5	Rows 10452:11	Schuelke's 10509:15	session 10444:1 10474:14 10521:9,11 10526:4 10557:1
returns 10458:4 10613:3	rule 10466:12,18,22,26 10468:18 10480:15 10481:1, 2 10632:20	science 10608:21,23	sessions 10525:5
revealed 10626:6	ruling 10641:18	scope 10478:7 10522:9	set 10476:13 10481:3 10487:28 10488:1 10502:13 10518:24 10530:19 10565:10 10572:27
revelation 10625:26	run 10472:6 10538:11 10621:26 10634:7	screen 10450:22 10610:11	
revenue 10580:12	runs 10589:24 10592:9 10634:5	season 10639:9,10	
review 10483:17	rushed 10606:11	seasonal 10539:12,14 10558:1,8,10,11 10602:15 10630:6,9,11 10639:4	
reviewed 10503:12	Ryan 10468:25 10557:8	seasonally 10559:15	
reviewing 10474:10		secondary 10547:10	
reward 10508:4	S	secondary-tiered 10547:8	
	S-A-L-L-Y 10446:28 10495:17	Secretary 10516:18 10534:15	
		section 10457:3,12,21,23 10458:1 10459:3,12 10462:13 10463:24 10466:10 10526:10 10548:8 10587:8	
		sector 10549:2 10616:1	
		seeking 10600:17	



10579:28 10580:2,6 10586:3 10592:7 10638:26	10501:11 10507:16 10512:11 10590:14 10594:4, 28 10619:26 10620:25 10623:14	skin 10584:13	Southeast 10466:11 10468:5,17 10476:25 10479:28 10480:11 10542:20 10625:17 10627:18
setting 10500:28 10502:5 10503:23 10535:1,2 10551:1 10554:26	shrinking 10514:1,4 10598:14	slided 10456:1	Southeastern 10639:6
settings 10481:27	sic 10558:25	slide 10497:23 10498:17 10499:21 10500:5 10501:9, 11 10504:9 10510:8 10519:9 10610:23 10622:26 10629:25 10630:18 10642:10	Southern 10489:1 10499:1
settled 10565:24	side 10449:10 10476:16 10516:27 10541:4,10 10543:16 10546:9 10553:6 10574:21 10580:24 10633:14	slides 10623:28	space 10476:19 10550:7 10604:19
settlement 10566:27 10567:18 10601:4	sides 10491:20 10545:19	slight 10628:11	spatial 10626:11
shades 10623:3	signal 10542:22 10615:22	slightly 10449:13 10471:25 10615:20	speak 10610:7
Shamrock 10551:21 10558:20 10643:20	signals 10543:1	sloppy 10613:21	speaking 10472:26 10552:4 10572:22 10640:11
share 10502:5 10641:4	significance 10444:21 10461:17	slowly 10605:23	speaks 10627:10 10632:1, 14
shared 10511:8 10533:26 10562:14 10629:13	significant 10468:6 10486:17,19,20 10489:7 10502:4 10505:3 10572:14 10630:27	small 10465:6 10485:16,21 10537:23 10558:22 10611:1 10615:13	special 10566:8 10640:7
shed 10476:9 10572:14	significantly 10509:13 10611:5	smaller 10498:14 10514:5 10536:27 10537:12 10638:2	specialty 10473:19,20 10487:18,24 10491:11,22 10515:5,6,8,11,12 10573:17 10574:15
Shehadey 10558:21,23,24	silos 10603:1 10618:22	snow 10489:15	specific 10457:6 10488:28 10491:24 10522:18 10539:16 10559:27 10569:5 10590:25 10593:22
shelf 10510:26 10558:9,13 10602:22	similar 10467:25 10478:4 10560:6,11 10572:9 10585:1 10596:27 10602:2 10605:9 10624:20 10633:5 10634:22	snowfalls 10489:22	specifically 10499:15 10522:14 10525:13 10527:22 10564:21 10574:12
shelves 10618:21	similarly 10485:9	sob 10508:23	specification 10528:22
shift 10536:3 10619:1	simple 10460:22,24 10461:1,14 10462:27 10463:1,18 10612:16 10627:3	software 10456:13,14	specifications 10528:23
shifted 10561:24	simply 10450:8 10473:1 10514:11 10626:4 10637:25	sold 10617:15	specifics 10508:16 10603:21
shifting 10536:3	Simulator 10616:1,2	solution 10489:12 10548:9 10583:9 10620:27 10621:13 10622:21 10631:10	spectrum 10515:11,13
ship 10560:6,10 10561:11, 20 10562:20 10640:23	single 10591:20	solutions 10535:25 10538:8 10544:16 10620:24 10639:21	speculate 10464:15 10478:8 10537:15,16
shipment 10560:18	single-page 10448:2	solve 10577:8,9 10628:24 10641:7	spell 10446:26 10495:15 10512:3 10558:23 10608:15
shipper 10561:16	single-sided 10497:9	solves 10616:2 10618:26	spent 10474:10
shippers 10560:12,13,14,20, 25 10561:2,16,23	sit 10531:1,19	somatic 10617:21	spit 10636:27
shipping 10546:15 10561:17 10616:4	situation 10472:24 10491:28 10492:9 10504:5 10506:5 10542:14 10547:7 10562:2, 24 10568:5 10578:5 10603:18	somebody's 10546:2	spits 10472:4 10623:5
shoe 10643:1	situations 10508:17 10510:23,24 10536:16 10562:11 10569:28	sort 10474:15 10478:8,20 10486:2 10543:7 10552:14 10579:14 10580:22 10589:24 10592:4,23 10596:27 10603:2 10631:25	spoke 10471:19
shooting 10615:11	size 10505:4 10509:19	sorts 10473:11,13 10484:26 10505:1 10518:1 10532:23 10558:9 10596:20	spot 10614:7
short 10553:20 10554:12,23 10621:25	skim 10458:21 10498:5 10576:12	sound 10489:19	spread 10509:17,24 10576:13
shortage 10532:16		sounds 10475:21 10568:27 10575:27	spreadsheet 10456:15 10474:11,12,13
shoulder 10550:3		source 10499:11 10553:5	spring 10456:6 10477:23 10487:4 10521:6 10525:27 10639:5
show 10444:19 10449:6 10450:21 10452:1 10499:21 10542:22 10597:6 10610:23 10615:3 10622:26,28 10625:13		sources 10552:19	
showed 10632:5			
showing 10484:21 10611:14			
shown 10453:2 10535:24			
shows 10449:3,7,9 10451:27 10481:22			



sprinkles 10486:28	5 10623:22 10624:7 10630:19 10638:24 10640:12 10642:26 10643:4	stuff 10456:24 10478:17,20 10514:13 10524:5 10557:26 10577:20 10585:27	10530:6
stabilize 10508:25 10509:8 10578:7 10612:8	Stephenson's 10486:11 10520:8 10569:11	subject 10501:24 10517:8 10530:17 10616:8	summer 10477:23 10516:4 10558:16 10559:4 10602:17
stable 10500:9	Steve 10555:23	submission 10609:19 10634:3	sums 10485:16
stand 10446:7 10468:13 10605:27 10608:14 10631:5	Steven 10587:24	submit 10493:16	Sunday 10618:19
standard 10481:27 10505:20 10529:2 10605:10, 12,13 10617:10 10618:3	stick 10450:27 10472:4 10585:8 10643:6	submitted 10451:7 10452:14,20 10453:4 10515:23,24,25,27 10516:4 10517:6 10521:10 10559:24 10572:28 10573:14 10588:14,16 10608:10 10609:11	supplied 10498:25 10560:21 10562:20 10573:25 10614:16,18
standards 10528:2,11,23	sticking 10547:6	submitting 10516:19	supplier 10506:12 10534:2 10562:3 10563:23 10584:15, 19 10601:24,25 10620:8 10629:12
start 10447:25 10455:18 10482:14 10486:12 10514:9, 24 10518:19 10526:7	stimulates 10580:10	Subsection 10457:5	suppliers 10506:9,16,18 10508:4,9 10511:6 10512:20 10513:3,22,24 10528:5 10533:17 10545:17 10575:8 10585:4 10600:28 10630:16 10639:24
started 10511:1 10522:13 10576:24 10635:2	stockpile 10559:3,14	subsequently 10576:16	supplies 10473:20 10533:6, 7 10558:2 10602:20 10611:9 10613:16
starting 10499:9 10500:23 10504:17 10598:25	stocks 10615:21	subset 10515:12	supply 10471:2 10476:8 10477:17 10487:23 10499:25 10500:8,18 10501:3 10502:22 10504:4,5 10508:26 10510:24 10513:9 10523:24 10531:11 10532:16 10538:12 10542:4, 18,24 10543:9,23 10544:14 10554:27,28 10555:2,5,9 10558:6 10560:10 10561:2, 5,19,23,25 10562:3,13,18 10566:12 10568:11,17 10572:23 10573:6,16 10577:17,28 10579:20 10581:23 10611:7 10613:22, 24 10614:14 10617:15 10618:27 10619:2 10621:7 10628:7 10629:9 10630:10 10634:4
starts 10454:27,28 10463:24 10566:16	stone 10519:8	subsidize 10550:8	supplying 10513:15 10546:26 10567:28 10572:3 10573:17,22 10574:23 10614:3 10629:19 10638:9
state 10446:26 10457:5 10468:13 10495:14 10504:21 10548:18 10572:1 10633:23	stop 10643:22	substantial 10467:23 10479:13 10617:23	support 10457:24 10472:1 10477:6 10513:28 10526:20 10617:4,7
state-by-state 10617:18	stopped 10546:15	substantially 10596:17	supported 10491:16
stated 10446:6 10464:5 10471:5 10513:10 10519:15 10527:9 10562:27	storage 10507:7,8 10538:20 10587:9 10602:4,28	substantive 10450:17 10451:4 10466:3,4 10518:22	supposed 10493:11 10572:23 10583:20 10586:1
statement 10474:1 10477:9 10479:19 10502:16 10545:11 10550:25 10557:15 10572:17 10577:13	store 10555:14 10618:21	successful 10632:13	surface 10469:1 10539:20 10621:24 10635:28 10636:1
statements 10542:17	story 10508:24 10637:24	successfully 10618:14	surfaces 10635:25
states 10461:10 10462:20 10593:16 10612:7 10616:3,5 10623:1	straight-up 10478:22 10554:24	suffice 10494:25,28	surplus 10613:13 10614:16, 25 10620:28 10625:23
stating 10639:14	straightforward 10581:26	sufficient 10457:24 10477:17 10499:25 10501:3 10568:17 10569:20 10573:23	
statistics 10459:23 10589:16	strategies 10559:7	suggest 10465:27 10503:2 10541:23 10615:18 10631:6 10632:20	
status 10475:16 10477:1 10498:23 10505:6,8 10526:24,27 10527:5,7,8,23 10528:25 10529:21 10581:13 10617:8,9	streak 10639:27	suggested 10568:25	
steeped 10475:15	stretch 10630:2	suggesting 10467:17,20 10469:28 10533:25 10578:2 10628:8 10630:8	
step 10478:12,13,14 10548:26 10605:19 10614:21 10632:17	strictly 10450:20	suggests 10612:28	
Stephenson 10485:28 10507:26 10519:26 10520:10 10532:22 10605:28 10608:18 10609:1,	strong 10618:1 10620:3 10637:27	sum 10459:19 10460:16 10512:12	
	stronger 10625:10	summarize 10462:25 10468:26 10470:27	
	structure 10512:2 10516:9 10517:28 10527:28 10620:26 10628:23 10630:25 10633:3,8 10634:5,22 10635:17	summarized 10462:28 10481:6	
	structured 10481:4	summary 10459:23 10461:6 10470:21 10496:1 10519:10 10569:13	
	struggled 10474:17	summation 10505:21	
	struggling 10515:28 10528:11		
	studied 10537:18		
	studies 10521:4 10525:5		
	study 10468:3 10521:5,15, 23 10522:27,28 10523:28 10524:13,19 10525:22 10529:3,4 10536:22,24 10537:17,20 10541:22,28 10542:1,9,10 10551:1		



<p>surprised 10489:18 10524:22 10631:23</p> <p>surprising 10465:22</p> <p>surrounding 10465:28</p> <p>survey 10522:17 10524:2 10525:10 10531:17</p> <p>sustain 10621:26</p> <p>swimming 10621:14,23</p> <p>swings 10613:17</p> <p>switch 10494:23</p> <p>sworn 10447:1,3 10608:25 10609:2</p> <p>symptom 10604:23,24 10629:4</p> <p>system 10472:17 10475:11 10507:2 10508:13 10514:12 10515:20 10516:3,22,25,28 10517:13,23 10518:1,8,28 10519:6 10528:7 10533:22 10534:13,14 10535:22 10545:9 10546:22 10547:7, 14,19 10548:13 10550:6,12, 21 10577:5,27 10585:25,28 10586:7,16,20 10605:6 10616:18 10618:10 10619:12 10628:28 10630:28 10639:18 10640:20,28 10641:1,10</p> <p>systematic 10474:8 10635:14</p> <p>systematically 10483:15</p> <p>systemic 10604:7</p> <p>systems 10544:15</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>table 10449:2,6,7,14,20,25 10459:23,25 10460:7,22,25 10461:6 10462:2 10464:1 10467:15 10480:12 10481:6 10484:4,6 10485:9,23 10486:20 10512:10 10535:7, 9 10546:10 10570:9,23 10588:7,19 10590:26,27 10592:6,24 10593:23 10594:4 10597:9</p> <p>tables 10484:3</p> <p>tackling 10519:8</p> <p>tag 10539:5</p> <p>takeaway 10461:11 10538:7</p> <p>takes 10488:15 10531:3 10554:26 10630:8</p>	<p>taking 10461:1 10537:24,26 10603:14 10621:2 10628:8 10641:21</p> <p>talk 10459:14,17 10475:2,9 10480:23,25 10503:26 10521:13 10524:5 10528:18 10535:5 10536:21 10540:18 10542:13 10545:19 10562:5 10568:15 10579:19 10581:10 10582:1,20 10599:4 10615:28 10620:1 10635:24 10640:1 10642:20</p> <p>talked 10458:5 10470:22 10479:27 10486:3,4,12 10503:13 10520:1 10546:14 10557:25 10559:17 10569:25 10579:26 10583:7 10585:20 10586:6,18 10624:13 10635:12 10637:2, 3</p> <p>talking 10459:3,13 10465:20 10466:11,14 10472:9 10474:5 10477:13 10478:6, 17,21 10485:20,21 10488:23,26 10490:6,10 10491:21,25,28 10492:1,2,6 10497:27 10501:12 10502:25 10504:27,28 10520:14 10523:10,18 10526:11 10528:6 10529:21 10530:17 10533:5,18 10537:27 10538:21 10539:8 10545:7,12 10553:22 10554:7,18 10555:3,5 10557:19 10558:14 10560:9 10563:26 10568:28 10576:10 10580:26 10582:6, 23 10585:1,27 10613:23,25 10616:21 10619:23</p> <p>talks 10583:6,14 10616:23</p> <p>target 10615:10,14 10632:6</p> <p>targeted 10640:7</p> <p>task 10476:22 10616:2,6</p> <p>Taylor 10451:5,9 10452:23 10454:23,25 10470:18 10482:3 10579:6,9,11,16,18 10581:8 10587:13 10643:15</p> <p>team 10474:27 10497:14</p> <p>teasing 10473:26</p> <p>technical 10497:2</p> <p>technologies 10559:19</p> <p>tells 10594:26 10595:25 10597:2</p> <p>temperature 10489:23</p> <p>ten 10456:8 10494:25,28 10524:28 10531:28</p>	<p>10561:27 10562:8 10584:16 10624:2</p> <p>ten-minute 10530:8 10587:16 10589:6 10623:27</p> <p>tend 10475:15 10621:5</p> <p>tended 10624:20</p> <p>tending 10486:27 10487:1</p> <p>tension 10477:25 10559:18</p> <p>tensions 10636:18</p> <p>term 10591:14</p> <p>terms 10517:2</p> <p>testified 10447:4 10464:14 10485:27,28 10486:21 10550:18 10566:18 10569:23,24 10589:4 10599:15 10602:12 10609:3 10610:2</p> <p>testify 10487:22 10540:28 10541:2 10562:16 10564:28</p> <p>testifying 10482:22 10539:21</p> <p>testimony 10446:24 10447:27 10453:9 10456:20 10458:1 10461:20,21 10463:5 10469:17,18 10471:9,15 10474:26 10475:3 10479:27 10482:15, 16 10483:1,8,11 10484:1 10486:11 10487:7,10,21,26, 27 10488:15 10494:24 10495:22,24 10500:5 10507:28 10509:16,25 10510:9 10511:11 10512:10, 16 10518:16,20 10519:15 10526:22 10527:2 10530:23 10535:8 10540:19 10541:5 10544:17 10546:13 10548:7 10550:23 10563:10 10565:12,16 10568:13 10569:11 10570:4 10571:17 10576:11,12,17 10578:24 10581:3 10586:5 10599:15 10604:9,10 10606:10 10609:8,14 10610:6,24 10612:24,25 10631:12 10635:22 10639:14</p> <p>Texas 10464:18 10465:5 10567:24 10572:10,12</p> <p>theme 10488:7 10531:25</p> <p>thin 10614:7</p> <p>thing 10446:11 10457:28 10465:25 10473:18 10476:1, 23,24 10478:14,16,28 10486:5 10487:3 10507:8 10525:20 10526:18 10537:23 10543:7 10546:11</p>	<p>10565:1,5 10567:18 10575:1 10576:26 10595:10,14,25 10618:2 10634:9 10636:23</p> <p>things 10445:13,14 10452:2 10468:2 10470:3 10471:8, 22,24 10473:7,11 10476:11, 19 10477:3 10479:16 10488:22 10497:18 10504:24 10510:27 10512:25 10514:3,10 10517:3,4 10518:2,8 10519:16 10523:22,24 10524:1,26 10537:9 10545:5 10553:7 10558:15 10565:26 10579:26 10580:12 10586:11,12 10596:9 10597:25 10599:13 10605:21 10613:20,22 10620:20 10624:24 10626:23 10629:17 10631:8 10632:4,15</p> <p>thinking 10522:16 10523:5 10574:27 10613:26 10639:27</p> <p>thinks 10465:24</p> <p>thinned 10632:7</p> <p>thought 10464:10 10465:23 10474:25 10476:1 10517:5</p> <p>thoughts 10641:14</p> <p>thousand 10588:22,24</p> <p>thread 10553:27</p> <p>throat 10624:7</p> <p>tide 10548:22</p> <p>tied 10510:5</p> <p>ties 10457:22</p> <p>Tim 10643:19</p> <p>time 10446:8 10448:13 10455:2 10459:9 10462:18 10469:18 10470:26 10474:10 10478:23,26 10479:13,14,17 10481:12, 13,22 10488:17,18 10494:23 10501:18,24 10502:17,21,23 10509:22,23 10522:12 10523:5 10527:16,17 10532:7,20 10538:7 10540:8 10542:19 10546:25 10555:16,17 10584:7,10 10601:23 10602:3 10609:19 10610:15,19,21 10611:2,6, 15,16,21,23,25 10612:2 10615:6 10617:6,24 10619:16 10620:4,19 10621:18 10625:8 10626:4, 22 10630:27 10631:17,20 10632:11 10635:19 10639:11 10641:9 10642:20,</p>
--	---	---	--



22	tracking 10461:18,19	type 10478:14,27 10537:23 10559:11 10573:14 10586:10 10587:1 10622:5 10624:26	10506:16,18,20 10549:9
times 10481:28 10506:1,2,3 10518:27 10533:1 10543:5 10546:12 10589:15	tradeoffs 10559:10	types 10486:13 10570:3 10618:16 10621:28 10622:14	unique 10449:12 10473:27 10492:3 10562:24
timing 10543:6	traditional 10515:9	typical 10486:2 10561:22	unit 10622:8 10626:17
tires 10473:11	traffic 10472:24,27 10473:2, 14,17 10487:11,13 10488:14,16,21,22 10491:28	Typically 10561:18	United 10586:6 10593:16
title 10459:28	traffic's 10487:14	typo 10452:6 10453:10 10462:2 10583:16	unusual 10489:13
today 10445:16 10446:15, 19,22 10451:9 10453:1,3 10458:12,14 10460:19 10472:14 10473:19 10480:13,19 10485:8 10489:12 10498:20 10499:2 10501:1,5,20 10502:22,27 10503:6 10504:19,25 10505:2,4 10507:1,15,25 10508:27 10513:19 10519:17 10523:18 10525:11 10528:3 10530:24 10531:1,19 10535:26 10536:16,18 10540:2 10555:18 10563:17 10565:23 10569:15,17,28 10578:13 10581:18 10582:19 10585:5,15 10590:21,23 10593:16 10599:27 10600:10,19,22,26 10610:25 10611:10,27 10612:14 10617:6,7 10629:15 10630:21 10633:22 10640:28 10642:26	transaction 10565:19	U	unwilling 10623:17
today's 10510:13 10523:6 10571:18	transactional 10564:15	U.S. 10616:1 10619:13 10620:25	upcoming 10508:22
told 10590:27	transparency 10517:3,14,20 10518:11,13 10534:12 10585:27 10586:10	Uh-huh 10453:16 10461:27 10479:1 10517:16 10519:21 10583:14 10585:16 10589:22 10594:24	update 10464:11 10477:8 10493:17 10631:4
tomorrow 10642:21,24 10643:14,15 10644:5	transportation 10466:14,26 10467:4,8,21 10468:18 10472:12,13,14,18 10476:26 10479:28 10480:25 10488:21 10489:23 10554:18	ultimate 10539:3,4	updated 10469:19 10472:19 10474:13 10476:28 10477:10,28 10520:7,19,22
too-low 10615:24	travel 10446:16	ultimately 10458:4 10471:17 10580:16	updates 10504:10 10520:16
tool 10469:21 10509:26	Travis 10464:18	unable 10488:1 10550:18	updating 10470:28 10471:1 10477:11,12,19 10520:23
tools 10612:15	treated 10472:10	undergraduate 10608:22	upper 10476:2 10499:3 10568:25,28 10569:4,15,16, 17,20 10570:6 10595:16 10624:21
top 10462:2 10463:25 10467:18 10485:17 10490:8, 16,17 10532:1,8 10548:3 10552:8 10559:23 10570:20 10572:18 10582:1 10593:19, 27 10594:9,23 10595:16,17	Tremaine 10522:2	underlying 10570:1 10629:4 10634:2 10636:23	upset 10475:5
topic 10540:19 10573:14	Tremaine's 10522:5	underneath 10462:20 10591:4 10596:6	USDA 10453:19,28 10457:4 10468:8,14 10469:28 10470:3 10474:11 10482:3 10484:17 10488:8 10500:2, 6,21,27 10521:11,12 10552:18 10557:19 10565:24,28 10568:20 10569:1 10573:1,9 10594:10 10600:18 10631:25 10632:19 10636:10 10638:26 10639:22 10640:6, 14 10641:15
toss 10628:1	trending 10569:8	understand 10448:16 10453:9 10454:14 10463:9 10467:8 10469:21 10472:28 10473:2 10474:14 10482:21 10483:27 10490:24 10492:7 10507:27 10517:26,27 10520:6 10522:4 10527:6 10533:24 10535:27 10536:10 10554:25 10563:1, 10 10577:11 10588:15 10589:2 10632:8	USDA's 10466:12 10476:17
total 10448:22 10459:19 10460:16 10463:3,5,7,14,15, 18,22 10501:22 10522:20 10541:11 10611:11,17,21 10623:8,12	triples 10597:16	understanding 10448:1 10464:27 10480:14 10481:1 10488:24 10502:9 10522:9 10535:13 10553:2 10594:10	USDSS 10453:19,20 10454:1 10469:1,20 10479:9 10483:16 10486:1,15,21 10487:19 10519:25 10520:2 10571:18 10583:8 10620:16, 21 10622:21 10638:26
totality 10515:13 10619:12	trouble 10615:16	understood 10455:21 10468:10,15 10492:5 10533:18,21	utilization 10460:24 10501:11,13,14,16,19,20,26, 27 10502:9,18 10508:5,21 10509:5 10513:20 10567:27 10569:7 10576:14,19 10580:10 10601:5,15 10611:8,17,20,22 10619:19, 22 10627:24 10628:19 10636:6
tough 10632:9	truck 10473:5	undertake 10531:17	utilize 10560:12
	true 10458:6 10528:8,19 10614:2	undertaking 10603:12	utilized 10519:25 10602:19
	trusted 10540:20	undoubtedly 10617:6	utilizing 10561:15
	truthful 10541:7	uniform 10549:12 10626:10 10631:2	
	truthfully 10615:9	uniformly 10485:1	
	Tuesday 10444:1,3 10445:16 10557:1		
	turn 10450:2,3 10457:2 10466:8 10481:14,16 10484:2,3 10485:7 10497:23,24 10499:20 10501:9 10504:9 10510:8 10533:12 10535:7 10548:7, 22 10557:17 10570:28 10579:14 10586:13 10587:5 10589:12 10606:9 10633:27 10641:15		
	Turner 10561:10,18 10643:21		
	turns 10543:8		
	two-thirds 10611:3		



V	<p>valid 10627:1 10629:28 10636:13</p> <p>validate 10626:2</p> <p>validation 10620:25</p> <p>Valley 10472:27 10489:1 10524:9 10551:18 10560:20 10637:20</p> <p>valleys 10562:4</p> <p>valuable 10518:9 10519:17 10542:26,27 10586:11 10622:21 10624:21,22 10626:17</p> <p>valuation 10542:25</p> <p>values 10449:24 10469:6 10517:1 10593:7,8 10616:10,11 10620:24 10622:2,4,9,12,23,28 10623:2,3,5 10624:18,19 10625:10 10626:11 10627:5 10635:23 10636:3,6 10639:5</p> <p>valuing 10507:4</p> <p>valve 10640:20</p> <p>vantage 10467:24</p> <p>variability 10483:19 10537:13 10538:10 10539:12,14 10582:28 10583:11 10603:19</p> <p>variable 10472:19</p> <p>variance 10463:7</p> <p>variation 10486:18 10487:4 10621:19</p> <p>variations 10486:24</p> <p>varied 10471:18</p> <p>varies 10463:6 10506:21 10575:9</p> <p>variety 10506:6 10535:16, 18,25 10536:19 10551:7 10617:10 10632:4</p> <p>vary 10486:19 10488:28 10512:15 10531:22,23 10582:22 10596:17</p> <p>varying 10485:2</p> <p>venture 10552:13 10643:22</p> <p>version 10450:18 10451:16 10452:25 10493:18 10588:14,16</p> <p>versions 10450:26</p>	<p>versus 10450:18 10460:14 10461:16,23 10462:26 10466:14 10476:2 10478:26 10484:10 10498:10 10554:5, 6 10558:8 10563:7 10584:11,12 10602:27 10603:1 10604:1 10625:23</p> <p>viable 10500:9</p> <p>view 10473:18 10488:7 10508:10 10532:14 10576:28 10577:10,16 10580:4 10586:12 10638:5, 20 10640:9</p> <p>views 10610:5</p> <p>virtually 10581:14 10625:1</p> <p>vis-à-vis 10504:12</p> <p>visual 10451:3</p> <p>visualize 10595:13</p> <p>visually 10486:23</p> <p>vital 10603:27</p> <p>voila 10473:5</p> <p>volume 10611:5</p> <p>voluntary 10617:11</p> <p>vote 10631:22</p> <p>voted 10631:18</p> <p>voting 10480:4</p> <p>Vulin 10447:5,7,10,22,23 10448:11 10450:14,16,26 10451:7,10,13,19,20 10452:16,24 10453:6,7,23 10454:11,12,24,26 10455:1, 11 10482:10,11,13,27 10488:12 10489:24,26 10490:7 10492:16,21,24,27 10493:1,3,16,24,27 10494:3, 7,11,15,18,19 10495:1,9,10, 11,19,20,28 10496:5,9,14, 17,19,21 10497:1,2,7,10,13, 18,21,22 10512:7 10514:15 10574:6 10598:23 10599:1, 12 10605:15 10606:9,16,24 10607:5,13,22</p>	<p>10479:24 10481:14 10622:2 10632:7 10635:16,18 10639:28 10640:8</p> <p>warehouse 10539:7</p> <p>warehousing 10514:13</p> <p>warranted 10604:14</p> <p>Warren 10643:8</p> <p>water 10624:8</p> <p>ways 10455:28 10505:28 10507:4,23 10510:20,22 10536:20 10540:1,17 10578:11 10584:13 10617:10 10628:22</p> <p>weather 10446:15 10489:7, 12 10525:10</p> <p>website 10444:16 10451:5</p> <p>Wednesday 10643:13,14</p> <p>weeds 10517:6 10525:26</p> <p>week 10479:20,21 10584:3, 11 10607:26 10609:10</p> <p>week-to-week 10602:19</p> <p>weekend 10584:17 10618:20</p> <p>weekends 10618:23 10630:5</p> <p>weekly 10584:8 10602:21</p> <p>weighted 10460:23</p> <p>West 10487:1</p> <p>western 10459:14 10499:3</p> <p>whichever 10472:20</p> <p>whisker 10591:3 10593:27 10595:16</p> <p>whiskers 10589:13,15,28 10590:1,6 10596:7 10597:20 10599:6,9</p> <p>wide 10509:24 10523:25 10536:19 10537:7,25 10551:6 10557:25 10565:4 10637:17</p> <p>widely 10524:26</p> <p>widely-accepted 10516:24</p> <p>willy-nilly 10472:6</p> <p>wind 10504:4</p> <p>winds 10458:22 10500:19 10543:20</p> <p>winners 10641:1</p> <p>winter 10521:26</p>	<p>Wisconsin 10570:6</p> <p>witnesses 10461:20 10464:14 10471:16 10472:25 10492:2,5,7 10497:16 10539:15 10550:24 10604:9 10610:1 10643:1,3</p> <p>wondered 10478:2 10571:6</p> <p>Wonderful 10555:25</p> <p>wondering 10459:5,19 10474:9 10475:9 10542:8 10544:21 10557:21</p> <p>word 10454:19 10516:1 10573:20 10590:19</p> <p>words 10483:23 10587:2 10588:22 10594:18 10613:24 10616:13 10619:5 10620:28 10623:8 10639:9, 10</p> <p>work 10446:21 10452:21 10456:16 10459:24 10460:8 10490:20 10497:10,14 10514:28 10515:3,7,9,14,15 10521:14,23 10522:24 10523:6 10525:8,15,18 10526:11 10528:26 10531:13 10537:5 10539:23 10567:22 10573:13 10585:12 10610:11 10634:3 10635:1 10638:11,24</p> <p>worked 10455:22,24 10474:27 10540:21 10617:23</p> <p>working 10515:4 10523:28 10524:26 10525:5 10526:6 10539:10 10586:16,17,21,28 10614:22</p> <p>works 10585:10 10600:21</p> <p>workup 10531:8</p> <p>world 10471:21 10502:26 10629:1 10631:10</p> <p>worried 10541:19</p> <p>worth 10506:12,17,19,20 10588:22 10601:11</p> <p>worthy 10577:7</p> <p>wow 10474:21 10632:8</p> <p>Wright 10522:2,4</p> <p>writ 10503:18</p> <p>write 10453:1 10468:2</p> <p>written 10447:28 10453:9 10471:9 10474:1 10482:28 10487:27 10495:23 10500:5 10512:10 10518:16,20</p>
W	<p>wait 10640:12</p> <p>walk 10454:16 10489:19 10498:18 10504:10 10518:15 10600:25</p> <p>walked 10613:15</p> <p>walking 10542:8</p> <p>wanted 10444:12 10474:14</p>			



10526:21 10557:15
10572:17

wrong 10552:13 10609:22

wrote 10470:26 10500:6
10527:3 10585:19

Y

year 10501:19 10521:27,28
10610:28 10639:10

years 10478:10 10508:22
10544:3 10552:12 10553:14
10554:22

years' 10552:3

yogurt 10505:1

Z

zone 10570:25 10571:3,5
10572:10 10636:3

zones 10626:9

