

**CERTIFIED  
TRANSCRIPT**

NATIONAL FEDERAL MILK MARKETING ORDER  
PRICING FORMULA HEARING

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

Before the Honorable Channing D. Strother, Judge

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Carmel, Indiana  
September 14, 2023

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Reported by:

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Certificate No. 11613

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Nicole Hancock  
Brad Prowant

FOR SELECT MILK PRODUCERS, INC.:

Ryan Miltner

FOR LEPRINO FOODS:

Erik G. Nielsen

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

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M A S T E R I N D E X

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1 THURSDAY, SEPTEMBER 14, 2023 - - MORNING SESSION

2 THE COURT: Mr. Rosenbaum.

3 (CONTINUED) DIRECT EXAMINATION

4 BY MR. ROSENBAUM:

5 Q. Steve Rosenbaum for the International Dairy Foods  
6 Association.

7 Mr. DeJong, I believe you describe your company in  
8 your testimony as being the largest manufacturer of  
9 American cheese in the United States; is that correct?

10 A. Correct, including our joint venture plants. That  
11 includes our joint venture plants.

12 Q. And American cheese includes cheddar cheese; is  
13 that correct?

14 A. Yes.

15 Q. Now, and I believe your testimony was you have  
16 five plants; is that correct?

17 A. Five cheese plants.

18 Q. And did all of those five cheese plants  
19 participate in Dr. Stephenson's survey of 2022 cost of  
20 manufacturer?

21 A. Yes. They did.

22 Q. And was there any effort by your company to  
23 manipulate the submission in a way that would have made  
24 the numbers different than reality?

25 A. Absolutely not.

26 Q. And how long did it take to compile the numbers to  
27 provide to Dr. Stephenson?

28 A. I think it took well over a month. Our accounting



1 team and our plant controllers were tasked with the  
2 process of collecting the information. Given that they  
3 have other jobs that are very busy, they couldn't  
4 obviously do it all in one shot. So over the course of  
5 over a month, they collected the information, compiled it.  
6 We reviewed it, looked for -- looked for anything that  
7 could be wrong. And once we felt comfortable that the  
8 numbers -- the numbers looked right, we submitted it to  
9 Dr. Stephenson.

10 Q. Now, two of those plants on which you submitted  
11 data actually are joint ventures between your company,  
12 Dairy Farmers of America, and Select Milk; is that  
13 correct?

14 A. That's correct.

15 Q. And you did submit data for those plants as part  
16 of your participation in Dr. Stephenson's survey, correct?

17 A. Yeah. Those were two of the five plants we  
18 submitted.

19 Q. Okay. Now, I would like to just -- which of your  
20 plants is the largest plant in terms of, you know,  
21 poundage?

22 A. The Southwest Cheese plant, which is a joint  
23 venture plant, as far as I'm aware, is the largest cheese  
24 manufacturing facility in the world as far we know.

25 Q. Do you have a plant in Idaho that makes barrel  
26 cheese?

27 A. Yes, we do.

28 Q. Did that plant participate in the Stephenson



1 survey?

2 A. Yes, it did.

3 Q. And what's the size of that plant compared to  
4 other barrel plants?

5 A. As far as we know that's the largest barrel  
6 processing facility in the world.

7 Q. And what's your newest plant in terms of most  
8 recently built plant that's actually operational?

9 A. So that would be our joint venture plant in  
10 St. Johns, Michigan, and that thing was fully commissioned  
11 around 2020.

12 Q. And did that plant participate in the Stephenson  
13 survey?

14 A. It did.

15 Q. And to the extent you have older plants than that,  
16 have you invested money in their modernization over time?

17 A. Yes, we have.

18 Q. Now, you provided -- in your testimony, you said  
19 that you really only had one plant, the Twin Falls plant,  
20 that was operational in 2006 and that had operations that  
21 really today are still comparable to what was being done  
22 in 2006?

23 A. Correct.

24 Q. And you put in some information about various  
25 specific costs of production increases that that plant has  
26 experienced in various, if you will, line items of  
27 expense; is that correct?

28 A. Yes.





1 Q. And you didn't, in your testimony, set forth what  
2 the total increase in costs of production have been on  
3 a -- on a percentage basis since 2006.

4 But do you have that number?

5 A. Yes. When I took our total costs for 2008 and  
6 divided them by the cheese pounds that were produced,  
7 versus doing the same thing for 2022, where I took the  
8 total cost allocated to that plant, divided by the cheese  
9 pounds produced, I came to just slightly over 50%  
10 increase.

11 Q. Is it literally something between 50 and 51%?

12 A. Yes.

13 Q. And that's the total increase on a percentage  
14 basis, in the cost of production, in the Twin Falls plant,  
15 from 2008 to 2022; is that correct?

16 A. Correct. That's how we have it in our books.

17 Q. Okay. And is that a number that relates to cheese  
18 production?

19 A. Yes. This plant only makes cheese. It sends its  
20 whey to another facility.

21 Q. Now, you have testified that the current  
22 Make Allowances are substantially lower than what you  
23 believe to be the actual current cost of manufacture; is  
24 that fair?

25 A. Yes.

26 Q. So why is it under those conditions that companies  
27 have still provided some level of investment in their  
28 plants?



1           A.     In my experience in the industry, and doing  
2     financial analysis for plants, analyzing the return on  
3     investment on Greenfield plants, I think a lot of what is  
4     happening is companies are looking for escape valves  
5     outside of the regulated system, that can include not  
6     pooling, only partially pooling, and it can also include,  
7     direct contracts with milk handlers that are not  
8     necessarily in line with the Federal Order pricing.

9           How I understand it, that milk processors and  
10    handlers can agree to any -- any milk pricing, it could be  
11    \$0.05 a hundredweight, it could be a hundred dollars a  
12    hundredweight. The milk handler is still obligated to the  
13    pool if they are pooling, but they can agree to any supply  
14    contract they see fit.

15          Q.     And that would in particular be a cooperative  
16    that's permitted to reblend in terms of how much they  
17    actually pay their farmers, correct?

18          A.     Cooperatives, from my understanding, have the  
19    ability to reblend.

20          Q.     Okay. And are people building facilities that are  
21    simply physically located outside the Federal Order system  
22    as well?

23          A.     Yeah, that happens. There's -- in Idaho, for  
24    example, there's been plants built over the years there.

25          Q.     Okay. So, you know, if those opportunities exist,  
26    why do you still care about having the Make Allowance made  
27    more realistic?

28          A.     Well, I think in Idaho, even though we're not part



1 of the Federal Order system, I think the Class III and IV  
2 prices are very much benchmarks, they are like the gospel.  
3 Everybody is looking at what the Class III/IV price is,  
4 what the Class IV price is, and they -- they look at that  
5 as one of the most critical ways to benchmark where their  
6 prices are. And also, our joint venture plants are in the  
7 Federal Order system, and we have a major stake in those  
8 as well.

9 Q. And, you know, what are the -- if the benchmark is  
10 a bad benchmark because the Make Allowances are too low,  
11 you know, what's the effect of that?

12 A. Well, I think one of the problems is it can create  
13 an incentive to just always live outside the pool. It  
14 gives I think farmers an unrealistic expectation for what  
15 their milk is worth in any milk sheds. And I think it's  
16 also unfair to any -- any company that is pooling their  
17 milk, and is on the hook for those prices when in some  
18 milk sheds it's just very, very difficult or impossible to  
19 use Class III as a real world benchmark.

20 MR. ROSENBAUM: Your Honor, the witness is  
21 available for cross-examination.

22 CROSS-EXAMINATION

23 BY MR. MILTNER:

24 Q. Good morning, Mr. DeJong.

25 A. Good morning.

26 Q. I'm Ryan Miltner. I represent Select Milk  
27 Producers.

28 I wanted to ask some questions about Glanbia's



1 various plants and joint venture, if I could.

2 You mentioned that all of them participated in  
3 Dr. Stephenson's, what I guess we're calling the 2021 and  
4 2023 reports; is that correct?

5 A. All of the ones that produce cheese.

6 Q. So let's go through what the plants produce if we  
7 could.

8 Southwest Cheese, do they produce cheese?

9 A. Yes, they do.

10 Q. Do they produce barrel cheese?

11 A. Our only barrel facility is at Gooding.

12 Q. Is in where?

13 A. Gooding, Idaho.

14 Q. Gooding, okay.

15 Does Southwest Cheese produce 640-pound blocks?

16 A. I don't want to get into proprietary information  
17 about our exact formats, but all of our plants are block  
18 plants except for the Gooding plant.

19 Q. Does it produce 40-pound blocks?

20 A. I'm not going to get into the exact mix, but they  
21 are all block format.

22 Q. Does Southwest Cheese produce dry whey powder?

23 A. No.

24 Q. Does it produce whey protein concentrate?

25 A. All of our plants only produce whey protein  
26 concentrate. We don't make any whey powder.

27 Q. Does Southwest Cheese report any sales to the  
28 National Dairy Product Sales Report?



1 A. I believe all of our cheese plants that make  
2 cheese that meet the technical requirements to be reported  
3 to the NDPSR, report into NDPSR.

4 Q. Would that include Southwest Cheese, does it  
5 produce products that meet the specifications necessary to  
6 report to the NDPSR?

7 A. I believe all of our plants meet those  
8 requirements in some way.

9 Q. When you say meet the requirements, they do report  
10 sales of some products?

11 A. Yes.

12 Q. That would include Midwest Cheese?

13 A. Yes, by default.

14 Q. In Idaho, you mentioned a plant in Gooding and a  
15 plant in Twin Falls.

16 Is there one more cheese plant or two?

17 A. There's one more. It's in Blackfoot, Idaho.

18 Q. You said that only Gooding produces barrels.

19 So does that mean that Blackfoot produces blocks?

20 A. Yes.

21 Q. And Twin Falls produces blocks?

22 A. Correct.

23 Q. Do those plants report to NDPSR?

24 A. I believe so, that they do make products that  
25 would be reported.

26 Q. So Glanbia Nutritionals is a member of IDFA,  
27 correct?

28 A. Correct.



1 Q. And your testimony today is just for Glanbia  
2 Nutritionals, it's not IDFA testimony, right?

3 A. I am representing Glanbia here.

4 Q. Some witnesses have -- in the hearing have shared  
5 quite a bit about their actual manufacturing costs and  
6 some have given percentages and ranges similar to what you  
7 have done thus far.

8 Is Glanbia willing to discuss its manufacturing  
9 costs on the record, at least as to those plants that are  
10 subject to FMMO regulation?

11 A. Not to the one I have described. And also, I am  
12 very sensitive to our joint venture partners, for our  
13 Michigan and the Southwest Cheese plants especially, to  
14 not divulge any proprietary information.

15 Q. Did you ask the joint venture partners if they  
16 would be in agreement to share any information about the  
17 plants that USDA might find relevant?

18 A. No, we did not, to my knowledge.

19 Q. On page 4 of your first statement, you  
20 testified -- this is at the end of the first paragraph,  
21 "When these Make Allowances are not maintained, as they  
22 haven't been in 15 years, we can expect to see market  
23 distortions and further real world variances versus the  
24 USDA announced class prices."

25 Can you -- I know you have talked about some  
26 issues you have seen. But what exactly would you  
27 categorize as a market distortion or a real world variance  
28 that is of concern to Glanbia?



1           A.     So my figures starting on page 15, I calculate the  
2 difference between mailbox prices and the uniform prices  
3 at test in four orders/milk sheds. And these weren't  
4 cherry-picked. I just picked three multiple component  
5 pricing orders I was familiar with and put those in my  
6 analysis. And they all show a clear trend of actual  
7 mailbox prices decreasing versus the Federal Order prices  
8 at the uniform price at test, and I picked specific PPD  
9 zones that I thought were representative where there were  
10 large concentrations of dairies. And you can see that the  
11 premiums versus -- the milk premiums versus the uniform  
12 prices at test have been collapsing in every -- every area  
13 I analyzed.

14           Q.     So a decrease in the mailbox price relative to the  
15 uniform price you characterize as a market distortion?

16           A.     Yes. Because it is showing that in many milk  
17 sheds, the Federal Order prices are not reflective of how  
18 much money can be generated through the sale of dairy  
19 products. And in that case, when there is not enough  
20 revenue being generated by the milk processor, the milk  
21 price has to go lower and eventually go lower than the  
22 Federal Order prices to clear the market.

23           Q.     So certainly the milk price itself plays a major  
24 role in the mailbox price, but there are a number of other  
25 factors involved with the mailbox price, correct?

26           A.     Yes.

27           Q.     It would include hauling costs the producer pays,  
28 correct?



1           A.     Yeah.  So hauling cost is an interesting one.  We  
2     have seen hauling costs go up substantially.  Before I  
3     came to this hearing I did some calculations looking at  
4     the Producer Price Index for truck hauling.  I estimate  
5     that between 2008 and current, that there has been about  
6     50% in inflation in hauling costs.

7                     So just doing some -- doing some reverse math,  
8     let's say that a typical hauling cost was \$0.60 per  
9     hundredweight today.  That would imply in 2008 the hauling  
10    costs would have been about \$0.40.  So just roughly  
11    speaking about \$0.20 of that could easily be hauling, you  
12    know, plus/minus.  So I think that's definitely part of  
13    the picture, why we see declining mailbox prices versus  
14    the uniform price at test.  But it doesn't get anywhere  
15    close to explaining the full collapse in what these graphs  
16    are showing.

17           Q.     When you talk about a \$0.60 hauling cost, is  
18    that -- is that just a hypothetical cost you used for  
19    illustration, or is that a loaded cost per hundred miles  
20    per hundredweight, or what is that?

21           A.     Yeah.  So I got to that number before I left for  
22    the hearing.  I asked our director of milk procurement,  
23    just ballpark, what he thought a typical haul cost was in  
24    Idaho for a direct shippers, and he ballparked and thought  
25    it was around \$0.60 per hundredweight.

26           Q.     Did you ballpark that for Southwest Cheese?

27           A.     No, I have not.  We are not in charge of the milk  
28    procurement for that plant.





1 Q. And you have no visibility to that at all?  
2 Glanbia has no visibility to those costs?

3 A. I have not seen that information.

4 Q. If the hauling costs in the Southwest were  
5 substantially higher than what is -- what you found in  
6 Idaho, would that surprise you?

7 A. It is my understanding that some of the dairies  
8 can be far away in the Southwest. But that's also true in  
9 Idaho, too, so I'm not sure how big of a difference there  
10 would be.

11 Q. How far is the average producer from one of  
12 Glanbia's plants in Idaho?

13 A. I couldn't tell you that information. I know that  
14 there are some relatively close and some very, very far  
15 away.

16 Q. And am I correct that most of the suppliers to  
17 Glanbia's plants in Idaho supply all of their milk to a  
18 Glanbia plant?

19 A. Ask that question one more time to make sure I  
20 understand it.

21 Q. Sure. The farms that supply Glanbia's plants in  
22 Idaho, are those producers generally shipping all of their  
23 milk to one Glanbia plant?

24 A. I'm not sure that's necessarily the case. I think  
25 we have some producers who might ship to some additional  
26 processors, like non-Glanbia, and we can move milk around  
27 between our plants, where dairies can go between plants  
28 depending on how our procurement team directs those loads.



1 Q. Okay. So does the producer have a contract with  
2 Glanbia to supply milk directly?

3 A. I'm not going to get into proprietary information  
4 about the contracts we have with our patron milk  
5 suppliers.

6 Q. I'm just -- I'm more interested at this point in  
7 whether your producers essentially agree to contract their  
8 full supply to Glanbia.

9 A. I would say in most cases that's true, but I can't  
10 say in every case that's true.

11 Q. And that's different than what generally happens  
12 for a cooperative producer, correct?

13 A. I'm not sure how a cooperative would handle that.

14 Q. Do you know that -- do you understand that in a  
15 cooperative, the hauling costs incurred by all of the  
16 members are generally shared in some manner across the  
17 entire cooperative?

18 A. I have heard that said before.

19 Q. And that those hauling costs are deducted then  
20 from milk income revenue for that producer? You  
21 understand that?

22 A. Yes. Those costs have to be paid somehow.

23 Q. So you understand that for a cooperative producer  
24 supplying Southwest Cheese, even if that were a short  
25 haul, that producers in the cooperative that may have to  
26 move their milk longer distances could pay a longer a  
27 higher hauling cost. You understand that?

28 A. Yes. And the reverse would also be true. The



1 farms who are very, very far away would have a subsidized  
2 haul rate, if I'm reading your logic right.

3 Q. Well, not quite.

4 That affects the mailbox price for all of the  
5 producers in that region, correct?

6 A. Yes.

7 Q. And so to compare the hauling cost for a Glanbia  
8 producer in Idaho is not exactly an apples-to-apples  
9 comparison for a producer in West Texas who is a  
10 cooperative producer, correct?

11 A. Our weighted average hauling cost, I wouldn't know  
12 how that compares to a Southwest producer. Maybe it's  
13 more, maybe it's less, I'm not sure.

14 Q. I know you have -- you came in I think this week  
15 for the hearing, correct?

16 A. Correct.

17 Q. Did you happen to hear Mr. Gallagher's testimony  
18 last week at all?

19 A. Unfortunately not.

20 Q. I don't know, if you are not here and you are not  
21 having to listen to us, I don't know if I would call that  
22 fortunate or unfortunate, but I'd like to ask you a couple  
23 questions about the Figure 5 on page 17 where you have the  
24 West Texas mailbox price.

25 Now, was West Texas selected because producers in  
26 that region are in proximity to Southwest Cheese?

27 A. I selected large milk sheds that had a long  
28 history where I could analyze back to 2008. It wasn't



1 specifically selected because I was trying to make a point  
2 with that particular order.

3 Q. Is there a reason why you chose, for instance,  
4 West Texas versus New Mexico?

5 A. No, but I could do the New Mexico analysis. I  
6 would not have a problem doing that. I did not  
7 cherry-pick one versus the other.

8 Q. Well, let's look at the figure you did include.

9 You are supporting the Make Allowance adjustment  
10 proposed by IDFA, correct?

11 A. Correct.

12 Q. And when fully implemented, do you have an  
13 estimate as to what the impact on the blend price or  
14 uniform price would be?

15 A. Well, two points on that. I wish we had the USDA  
16 econometric analysis in hand because I think that would  
17 really be helpful for this discussion for all parties.

18 And I think my second thought on that is I would  
19 not expect 100% passthrough of any change in the regulated  
20 price for Class III or IV.

21 Q. Okay. Do you want to answer the question I asked?

22 A. Could you ask it one more time then?

23 MR. MILTNER: Ms. Pish, could you read that back,  
24 please?

25 (The question was read back as requested.)

26 THE WITNESS: I do not have my own estimate.

27 BY MR. MILTNER:

28 Q. If the total cost impact were estimated at about



1 \$1.50 per hundredweight, would that sound reasonable to  
2 you?

3 A. As -- to clarify, as the net impact to mailbox  
4 prices?

5 Q. Yes.

6 A. That would be very surprising because I believe  
7 the IDFA proposal for the initial year 2025 is well below  
8 that number.

9 Q. I'm sorry. Did you say for the initial year?

10 A. Yes. So IDFA's Make Allowance proposal starts in  
11 2025 and then phases up to the full amount over the course  
12 of four years I believe.

13 Q. All right. I was asking about when it's fully  
14 phased in.

15 A. When it is fully phased in, I would be -- again, I  
16 would be surprised if it was a full passthrough, and I  
17 could explain why I would be surprised if it was a full  
18 passthrough.

19 Q. Please do.

20 A. Well, for example, for a producer shipping milk to  
21 a manufacturing cooperative who, let's say, makes  
22 Class III or IV products, just because the regulated price  
23 drops, that does not mean that the revenue coming in from  
24 the sales of those products drops. So on paper, a  
25 manufacturer who is -- who has the -- who is benchmarking  
26 against the Class III/IV price, the -- if the Class III  
27 and IV price drop, but the revenue stays the same, then  
28 that means on paper that cooperative has become much more



1 profitable versus the Class III and IV price are  
2 relatively more profitable. And since cooperatives' main  
3 objective, how I understand it, is to return value to  
4 their members, in that case, that the producer would end  
5 up in exactly the same position they were before, other  
6 things equal.

7 Q. And that doesn't show up in the mailbox the price  
8 though, does it?

9 A. How I understand the mailbox price, it is real  
10 world prices that are being paid by milk handlers and  
11 processors to producers. So my understanding would be  
12 that if the revenue hasn't changed, only the regulated  
13 prices change, that that would be reflected in mailbox  
14 prices.

15 Q. So are you suggesting that the profits from a  
16 cooperative-owned manufacturing plant are paid on a  
17 monthly basis to the members of that cooperative?

18 A. Not necessarily monthly. How I understand it,  
19 they can be paid in yearly dividends. But I would doubt  
20 most of these cooperatives would take those extra profits  
21 and send it to a Swiss bank account or something. I  
22 imagine that any extra profits generated from a lower  
23 regulated manufacturing class price, that those profits  
24 would hopefully end up back in the dairy's hands or end up  
25 in new investments or something to that effect.

26 Q. And if they end up in new investments, again, that  
27 doesn't show up in the mailbox price, does it?

28 A. If it went into new investments, that would not



1 show up in the mailbox price, but in theory, that would  
2 offer a future benefit to the producers, assuming that the  
3 cooperative was making a smart investment decision.

4 Q. Okay. Let's ask just a much more straightforward,  
5 less esoteric question.

6 If the West Texas mailbox price dropped by an  
7 additional dollar over what you show here, what do you  
8 think that means for Glanbia's ability to acquire milk  
9 from a local milk supply?

10 A. If I accepted your premise that there would be a  
11 full passthrough, which I do not agree with, but just  
12 accepting the premise of your question -- and it also  
13 depends on the market prices as well -- if the cheese  
14 price and butter prices and etcetera were high, the  
15 dairies, in theory, could still be more profitable. So a  
16 huge variable in this is, of course, the market prices  
17 that are driving the milk prices. But in general, anytime  
18 that the dairies are getting paid less, again, assuming  
19 your premise, the farmers are under more financial stress.

20 Q. Are you suggesting that the farmers in West Texas  
21 and New Mexico who supply Southwest Cheese are going to be  
22 more profitable if IDFA's Make Allowance proposals are  
23 adopted?

24 A. I would not suggest they would be more profitable.

25 Q. On page 6 of your primary statement, in the middle  
26 the paragraph that begins with "additionally," you say  
27 that "sustainability-related costs have also skyrocketed.  
28 We have invested in more sustainable" -- is that packaging



1 or packing?

2 A. I believe its packaging, but I'm not 100% sure.

3 Q. Okay.

4 A. I got some help on some of these internally.

5 Q. And I restart that since I cut us off.

6 "Sustainability-related costs have also  
7 skyrocketed. We have invested in more sustainable  
8 packaging, plant upgrades that reduce carbon output and  
9 waste, \$2.5 million per unit water polishers that allow  
10 plant water to be reused many times over, often multiple  
11 polishers are required per plant, and investment in  
12 personnel who monitor dairies and enforce on-farm  
13 sustainability requirements."

14 For those costs there, how many of those were  
15 required investments by Glanbia Nutritionals?

16 A. Oh, boy, I wish John Dardis, our sustainability  
17 vice president, was here. But, in general, I could say  
18 that sustainability is becoming more and more critical for  
19 our industry. Our -- our customers are requiring us to  
20 comply with more sustainability requirements, and as those  
21 sustainability requirements increase, it necessitates more  
22 investment on our behalf to meet those requirements.

23 Q. Is there additional financial return to Glanbia  
24 from those sustainability investments?

25 A. My understanding is most of the time, no.

26 Q. So they are just spending money, not required to,  
27 but spending money without an investment return?

28 A. That is usually the case. I know that there is a





1 lot of discussion in the industry where we would like to  
2 see our efforts and all of the resources we spend get some  
3 kind of a return in the marketplace for our -- for our  
4 sustainability efforts. And that's just not Glanbia. I  
5 think that's an industry-wide thing where we would like to  
6 see a better return on those investments and the consumers  
7 are aware of the lengths we go to and are hopefully  
8 willing to pay for that.

9 Q. So you are expecting a return from additional  
10 sales?

11 A. We would like to, but those returns are not  
12 promised, I understand, in most cases.

13 Q. Nor are the returns from selling milk apparently.  
14 Does Glanbia track its reduction in carbon output?

15 A. Some of these questions would probably be better  
16 suited to our vice president of sustainability. I do know  
17 that we have done analysis on our carbon output in our  
18 plants, but I'm not intimately familiar with those  
19 analysis.

20 Q. Does Glanbia sell carbon credits?

21 A. I wouldn't know that. I don't think so, but I  
22 could be wrong.

23 Q. The water polishers that are installed that allow  
24 Glanbia to reuse water many times over, that reduces the  
25 amount of water you need to purchase, correct?

26 A. Correct.

27 Q. Is there a payback or return analysis done on your  
28 water polishers to determine whether there was a net



1 savings in installing those devices?

2 A. I'm sure there was a financial analysis done. I'm  
3 not sure what the net return is. But I know  
4 sustainability was a major consideration in those  
5 investments.

6 Q. Further down on that page you describe the  
7 investment in Midwest Cheese. And you -- I think you're  
8 testifying that the cost to construct that facility was  
9 \$470 million; is that right?

10 A. That is what is published online and publicly  
11 available.

12 Q. So it might not be the actual cost to install it  
13 or to construct it?

14 A. It was my understanding that the final cost was  
15 close. That could -- it could be a bit over or under  
16 that. I am not sure. But that was what the press release  
17 announced price was.

18 Q. Okay. That plant is located in Federal Order 33,  
19 correct?

20 A. Correct. Mideast.

21 Q. And the milk that supplies that plant, do you know  
22 if it's producer milk on Order 33?

23 A. The milk handlers in our case have pooling  
24 decision. So we would not be aware of how that milk is  
25 pooled.

26 Q. Well, it seems like an awfully lot -- an awful lot  
27 of money to invest in a plant regulated by a system with  
28 insufficient Make Allowances.



1           A.     Well, I cannot get into the proprietary milk  
2 supply agreements given that Select is also a partner.  
3 Your -- I don't know if they have authorization to talk  
4 about that. But I have not been given authorization to  
5 talk about our milk supply agreement.

6           Q.     Further down on page 7 you talk about Glanbia's  
7 efforts to keep costs low. The second sentence reads,  
8 "This includes negotiating the vendors and various  
9 suppliers to get the most competitive pricing, while also  
10 investing heavily in plant equipment and technology to  
11 control costs."

12                     Dr. Stephenson's study, I think, referenced the  
13 ability of operators with multiple plants to gain  
14 efficiencies in the acquisition of supplies.

15                     Has Glanbia been able to gain additional cost  
16 savings by purchasing in bulk for all of its facilities?

17           A.     That could be the case. I am not intimately  
18 familiar with our non-milk procurement systems, but I  
19 can't answer that definitively. I would hope so.

20           Q.     Further in that paragraph you reference  
21 "recovering biogas from lost milk components, heat  
22 exchange systems that take cold water from the milk and  
23 use it to cool other systems in the plant, automation  
24 product" -- "projects that reduce labor costs, and right  
25 sizing equipment."

26                     And you describe those as investments in  
27 technology, correct?

28           A.     Yeah, investments to keep our processing costs as



1 low as possible.

2 Q. So the investment was made to reduce the operating  
3 costs within those plants, correct?

4 A. Yes. There was an expected payback for those  
5 investments through lower operating costs.

6 Q. At the bottom of page 7 you start describing why  
7 cheese manufacturers cannot raise their prices to recover  
8 losses, and you give an example about cheese manufacturers  
9 raising their overage versus the CME cheese price and that  
10 gets fed back into the Class III protein price, increasing  
11 milk, correct?

12 A. Correct.

13 Q. Now, Glanbia doesn't produce any dry whey you  
14 said, correct?

15 A. Correct.

16 Q. So whatever it prices its whey products for,  
17 that -- this argument, this would not apply to any of  
18 Glanbia's whey, correct?

19 A. Yes, because it's not part of the NDPSR pricing  
20 system. But I would asterisk that in that for whey  
21 protein, we are competing in national and global markets,  
22 and we cannot, absolutely cannot, raise our whey protein  
23 prices above national clearing prices to recover any  
24 increase in manufacturing costs. We can try, but we're  
25 competing globally and -- and within the U.S., and we have  
26 limited ability to just jack up our prices because our  
27 costs are higher.

28 Q. That has nothing do with the Make Allowance for



1 dry whey, though, does it?

2 A. Whey protein has different -- different  
3 manufacturing costs than dry whey.

4 Q. So it doesn't have anything to do with the cost of  
5 dry whey -- or the Make Allowance for dry whey?

6 A. Well, if you are regulated -- if you are pooling  
7 your milk and you are paying the regulated Class III  
8 price, and by default you would be paying the Class III  
9 other solids price for milk, but you are making whey  
10 protein, you would still have the whey factor in the  
11 Class III formula determining your milk cost even though  
12 you are making whey protein. So the whey factor, in that  
13 case, and the dry whey Make Allowance is extremely  
14 important even if you are making whey protein  
15 concentrates.

16 Q. Does Glanbia pay its producers based off of the  
17 announced other solids price?

18 A. I'm not going to get into the details of our pay  
19 formulas for our various plants.

20 Q. Okay. Do Midwest Cheese and Southwest Cheese  
21 produce predominantly 640-pound blocks or predominantly  
22 40-pound blocks?

23 A. I'm not going to get into the exact product mix,  
24 but it's all in block format.

25 Q. So for a 640-pound block, your -- your example  
26 about circularity of pricing would not apply, would it?

27 A. 640-pound blocks are not reported. But I would  
28 say that if you were to tell your customer that you are



1 going to increase the price of your 640s in order to  
2 recover your costs and not have that reported into the  
3 NDPSR system -- so, for example, trying to work around the  
4 NDPSR system -- the customers would not go for that,  
5 because many of our customers, from my understanding, can  
6 use 40s or 640s, and if the 640s became too expensive, we  
7 were only raising the price on those, they would demand  
8 that they get the cheaper 40s again. So I don't think  
9 that applies.

10 Q. Does Glanbia sell at 640-pound blocks for  
11 generally higher than the announced NDPSR price for  
12 40-pound block cheddar?

13 A. I can't answer specifics on that question, but in  
14 my time in the industry, I have not noticed a large price  
15 difference between 640s and 40s.

16 Q. Okay. I'm now looking at page 9 where you are  
17 talking about Glanbia's opposition to eliminating  
18 500-pound barrels from the protein price calculation.

19 You acknowledge that Glanbia doesn't produce any  
20 barrels in Federal Order areas, correct?

21 A. Correct.

22 Q. For the milk that is brought into the Gooding,  
23 Idaho facility, does Glanbia pay the federal Class III  
24 price?

25 A. We have our own proprietary pay formula for Idaho.

26 Q. What's that formula look like?

27 A. I -- it's proprietary information. I cannot say  
28 what it is, but it is meant to do a couple things. It's



1 meant to track our real world plant revenue as best as we  
2 can, and secondly, it's meant to pay a competitive price  
3 for our dairies because if we are not paying a competitive  
4 price for our dairies in Idaho, our milk supply will go  
5 away.

6 Q. Do most of the plants in Idaho have similar  
7 contractual arrangements to pay a competitive price?

8 A. Yes, we kind of look at all of our plants as one  
9 wholistic system, and they are all under -- or I'd say  
10 most of the milk is under the same -- the same pricing  
11 regime.

12 Q. And -- and do you know if your competitors in the  
13 region use similar contractual arrangements to pay off of  
14 the -- an arrangement similar to what Glanbia utilizes?

15 A. I am not familiar with the details of our  
16 competitor's proprietary milk prices, but I would say, in  
17 general, milk handlers, processors try to pay their  
18 dairies a competitive price as best they can.

19 Q. Okay. So now on page 12, and you are talking  
20 about Proposals 10 and 11, if we simplify the end product  
21 pricing formulas, we start with a product price, we  
22 subtract a Make Allowance, we multiply that result times a  
23 yield, and we get a price, correct?

24 A. That is the basic structure of a formulaic milk  
25 price.

26 Q. So Glanbia supports updating the Make Allowance  
27 part of that formula, correct?

28 A. Correct.



1 Q. And you also have opinions upon the products that  
2 are surveyed in that formula, correct?

3 A. Correct.

4 Q. But you don't think we should look at the yield  
5 part of that formula, correct?

6 A. I wouldn't characterize that statement as  
7 accurate. I believe in my testimony we support when  
8 USDA -- hopefully we can get that legislation in place to  
9 get audited cost studies done, and we can look at the real  
10 world yields fat recovery and the entire yield formula.

11 Q. And in the interim, from now until when that  
12 occurs, or if that occurs, if yields are currently lower  
13 in the formulas than reality, that's a financial benefit  
14 to Glanbia, isn't it?

15 A. If I accepted the premise of your question, that  
16 would be correct, but I don't accept the premise of your  
17 question. Each plant has different characteristics: Some  
18 have would have lower fat recoveries; some very high fat  
19 recoveries. And it -- it really varies by plant.

20 Q. So I didn't talk about recoveries in my question.  
21 Which premise did you not accept?

22 A. Well, could you repeat your question one more  
23 time?

24 Q. I believe it was if the yields assumed in the  
25 current formulas are lower than the actual realities  
26 today, that's a financial benefit to Glanbia, correct?

27 A. Yes. Again, I deny your premise because it is  
28 possible that, for example, if the cheese yield was





1 actually higher with more fat going into cheese, that  
2 would mean that the fat yield going back to the dairies is  
3 lower.

4 Q. So I think you said in your answer that some of  
5 Glanbia's plants have higher than 93% butterfat recovery;  
6 did I hear that right?

7 A. I don't think I talked specifically about any of  
8 our of our plants, but to my knowledge, some plants can  
9 recover 93% or higher. I don't know how many, but I know  
10 some can.

11 Q. Do any of Glanbia's?

12 A. I'm not going to talk about the specific fat  
13 recoveries across our five plants.

14 Q. Are any of their recoveries at Glanbia's plants  
15 lower than 93%?

16 A. I -- I don't think so, but I'm not 100% sure.  
17 Glanbia's an extremely, extremely efficient operator.

18 Q. I agree.

19 Does Glanbia utilize whey cream in its cheese  
20 vats?

21 A. I don't want to get into specifics of Glanbia's  
22 operations on exactly how we utilize all of the fat, but I  
23 will say in my experience in the industry, some plants are  
24 able to recycle their whey cream, other plants are not. I  
25 know it can cause major quality problems if not done very  
26 carefully. I believe phage, bacteriophage, is one major  
27 problem where the whey cream coming out of the vat, if it  
28 is reused again, it can keep reintroducing bacteria into



1 the vat until the cheese make is destroyed. So it's some  
2 can do it and some can't.

3 Q. There are serious constraints about how often it  
4 can be done and the parameters under which it can be done  
5 successfully, correct?

6 A. I'm not a cheese making expert, but that's what I  
7 understand.

8 Q. Now, the paragraph on page 12 beginning "for  
9 example," where you talk about -- where you are talking  
10 about the incorrect assumption, as you characterize it,  
11 about getting fat from cheese.

12 If a plant is getting higher than 90% butterfat  
13 recovery, the impact that you describe here is minimized,  
14 right?

15 A. Okay. Let me quick read that paragraph again.

16 So if, for example, you were -- as I think your  
17 petition contends -- you -- you raised the fat retention  
18 to 93%, that would mean the cream yield would have to go  
19 down because you cannot create new milk solids. If more  
20 fat is going into cheese, less fat is coming out on the  
21 other side of the system.

22 Q. Correct. And so then further on on page 13 where  
23 you describe the issue with valuation of whey cream, a  
24 plant that is capturing more butterfat than 90% has less  
25 whey cream at the end of the day, correct?

26 A. That would be correct.

27 Q. And so to the extent that the price issue you  
28 describe in that paragraph occurs, it's mitigated by



1 higher butterfat recoveries, correct?

2 A. If your fat recovery was higher, you would have  
3 less fat revenue and -- which would be less whey cream  
4 revenue also.

5 Q. In the previous paragraph to that where you  
6 describe the butterfat losses and solids losses, are you  
7 speaking about the industry in general or Glanbia  
8 specific?

9 A. I did not want to put in Glanbia specific fat  
10 solids losses. Again, Glanbia is extremely efficient. We  
11 fight to be extremely efficient. Those numbers came from  
12 our director of engineering on what he thought was  
13 achievable for an efficient to very efficient plant.

14 Q. And, again, this is not farm-to-plant shrink you  
15 are talking about, this is total solids lost within your  
16 processing chain, correct?

17 A. Yes. So from the point where you measure the farm  
18 test to the end process, how much is lost in wastewater.

19 Q. And I know you testified that you don't  
20 specifically track farm-to-plant loss, but do you -- do  
21 you compare components of farmer milk coming in in silos?

22 A. That is a technical question. I don't have an  
23 answer for that. I'm sorry.

24 Q. That's okay.

25 Now, part of the solids loss you attribute to milk  
26 ultrafiltration processes prior to entering the vat.

27 Why would Glanbia utilize an ultrafiltration  
28 process?



1           A.     Well, the ultrafiltration process, it basically  
2 concentrates the milk going into the cheese vat. That is  
3 like -- almost like Fairlife milk, you are concentrating  
4 it, you are making it really dense, and it allows you to  
5 get a higher, more pounds of cheese per vat, which lowers  
6 your cost of production. So it's an efficiency thing, and  
7 that gets picked up in the manufacturing costs surveys.

8           Q.     Does that end up being reflected in a higher  
9 product yield?

10          A.     You don't create any new milk solids in the  
11 ultrafiltration process, so you're basically taking a  
12 hundred pounds of milk, condensing it to 80 pounds. So  
13 you could say, oh, yeah, that 80 pounds has a higher  
14 yield, but it really took a hundred pounds of milk to make  
15 that.

16          Q.     You are not creating milk solids, but it would  
17 improve the efficiencies of the process, correct?

18          A.     Yes. It improves efficiencies, and that would be  
19 picked up in the cost studies, as any efficiencies would  
20 be picked up in the cost studies.

21          Q.     Okay. You have a second statement, Exhibit 197.  
22 And my question with that is, are there any proposals for  
23 which Glanbia believes there should be a delay in  
24 implementation?

25          A.     If you are referring to anything relating to  
26 Class I, Glanbia is not taking a position on any Class I  
27 issues.

28          Q.     Okay. And I wasn't trying to be specific to any



1 proposal at all, but I just wondered if there were any  
2 that Glanbia thought there was a justification for  
3 delaying?

4 A. None that I can think of.

5 Q. Okay.

6 MR. MILTNER: Thanks. I don't have anything else  
7 right now.

8 THE COURT: Further cross-examination?

9 Ms. Hancock?

10 I'm back to try and say less on the record, so  
11 saying, "Welcome, Ms. Hancock," or things like that, just  
12 save a few lines.

13 MS. HANCOCK: Oh, thank you.

14 THE COURT: And not -- no disrespect. I don't  
15 want to recognize some and not others, but I just thought  
16 I would say that. Everybody's been real good about  
17 introducing themselves, and I think people viewing in the  
18 virtual facilities are made aware of everything, so I'm --  
19 that's what I'm doing. May change my mind tomorrow.

20 MS. HANCOCK: Fair enough.

21 CROSS-EXAMINATION

22 BY MS. HANCOCK:

23 Q. Good morning, Mr. DeJong.

24 A. Good morning.

25 Q. I think I have tried to capture all of the  
26 responses that answer my questions, so if I repeat myself  
27 or repeat what somebody else asked, I apologize.

28 I think that you said there are six plants total



1 for Glanbia; is that right?

2 A. There are six, yes.

3 Q. And you said that five of them produce cheese?

4 A. Correct.

5 Q. And what does the sixth one produce?

6 A. It is whey proteins.

7 Q. Where is that one located?

8 A. Richfield, Idaho.

9 Q. Where is that?

10 A. It is, I would say, an hour drive northeast of  
11 Twin Falls. So it's kind of South Central to Southeastern  
12 Idaho area.

13 Q. Okay. It's nice to here Idaho geography, because  
14 all the other places we're talking about, I'm nowhere near  
15 as familiar with.

16 Are all of your plants in Idaho supplied by Idaho  
17 dairy farmers?

18 A. I think most of the milk is coming from Idaho,  
19 from my understanding.

20 Q. And so I think that you said, when you were  
21 talking with Mr. Miltner, that some of them come from  
22 quite a ways away, and I'm wondering if you can quantify  
23 what "quite a ways away" means.

24 A. If somebody from our procurement department was  
25 here, they could give you some -- some more precise  
26 answers. But I know talking with our field team, that  
27 they can be driving for quite some time, and they burn  
28 through a lot of gas on our trucks going to visit dairies.



1 Q. What does "quite some time" mean?

2 A. Oh, the hour-plus drives.

3 Q. Okay. So 60, 70 miles?

4 A. I think that's possible.

5 Q. Okay. Do you know what the farthest away producer  
6 is from any of your plants?

7 A. I -- if I knew, I would tell you.

8 Q. Okay. I was just trying to get a sense of it  
9 because I know when we say that you drive a long ways, it  
10 really just depends on which part of the country you are  
11 in.

12 A. Well, Idaho, usually the roads are pretty generous  
13 with speed limits, so you can make time getting places.

14 Q. Oh, man, I know. Brad keeps telling me I'm  
15 speeding here because they are so low.

16 Okay. Let's see. I know that you provided a  
17 little bit of information about your background.

18 And what is your title now?

19 A. Senior director of dairy economics, risk  
20 management and sales planning.

21 Q. Okay. What does that mean?

22 A. Yeah. So I have a lot of jobs, and sometimes I'm  
23 not even sure what my job is. So I -- I do what I'm told  
24 to do, and that includes just -- it's -- the regular parts  
25 of my job are market analysis, any risk management that  
26 needs to be done. And then the sales planning is  
27 basically working with our commercial team for whey  
28 proteins and matching our internal supply and demand and



1 also monitoring our pricing for those products.

2 Q. So when you were engaged in your risk management  
3 activities, that's on behalf of Glanbia as the processing  
4 entity; is that right?

5 A. Yes. I do not do dairy hedges directly. Our  
6 procurement, milk procurement team, we have a risk  
7 management program that is managed by milk procurement  
8 team, and I typically only get involved in that if there  
9 are questions or something out of the ordinary has  
10 happened but. That team has that program dialed in pretty  
11 well.

12 Q. Okay. When you say "team," how many people are in  
13 that risk management team?

14 A. Well, this would be primarily our field team.  
15 They are not directly risk management people, but they  
16 are -- they work with our dairies on a variety of issues,  
17 and one of the things they are able to do is also help  
18 them on risk management.

19 Q. Okay. I don't know if I heard you answer. Did  
20 you say how many people are on your risk management team?

21 A. It's just -- I'm the only person who is officially  
22 the risk manager. So I handle all of the risk management  
23 for our plants, not for the dairies.

24 Q. Okay. And then you have fieldmen that will engage  
25 in dialogues with your dairy producers, but not that are  
26 specifically assigned to do the risk management for  
27 Glanbia?

28 A. Yeah, they are not dedicated risk management





1 consultants. If the dairies want advice on how to do risk  
2 management, there are other people they can talk to. We  
3 don't like to give them advice to tell them when to hedge  
4 and not hedge.

5 Q. And how often are you tracking the futures market?  
6 Is it something you do on a monthly basis, daily basis?

7 A. Almost daily.

8 Q. Okay. And so you're pretty in tune with what the  
9 futures market is doing if there's a shift?

10 A. For the products that impact us, yes.

11 Q. Okay. And so what product would that be that you  
12 are tracking?

13 A. Primarily -- primarily cheese, dry whey,  
14 butterfat, and to a more limited degree, nonfat dry milk  
15 just because it is an internationally-traded product and  
16 it can be sometimes a barometer for the rest of the Dairy  
17 Complex. But primarily cheese, dry whey, and butter.

18 Q. Do you have any other alert set up that you get  
19 notified if there's a change over a certain amount?

20 A. I probably get 10 to 20 e-mails a day from various  
21 subscriptions we get about what's happening in the market,  
22 and I usually only have time to read a fraction of those.  
23 But when something happens, I'm usually aware of it.

24 Q. Okay. You have a good finger on the pulse, it is  
25 fair to say?

26 A. Better than most, but I'm sure there's people  
27 better than me.

28 Q. Okay. Fair enough.



1           And in your Exhibit 197, is Exhibit 197 designed  
2 to be rebuttal testimony against any kind of delayed  
3 implementation of any of the proposed changes that we're  
4 at this hearing to discuss?

5           A.    It was mostly meant as a rebuttal to -- to anyone  
6 who wants to delay the Make Allowances for Class III and  
7 IV.  And as I stated before, I don't have a position on  
8 Class I.

9           Q.    Okay.  So when you say you don't have a position  
10 on Class I, does that include National Milk's Proposal  
11 Number 1 to update the milk components?

12          A.    Are you talking about the milk components in the  
13 skim factor?

14          Q.    In the skim -- yeah.  I'm just asking for  
15 clarification when you say that you don't have a position  
16 on it.

17          A.    Yeah.  I don't have a position on Class I issues.  
18 It is not core to Glanbia's business.  My directive is to  
19 only talk to -- only talk to issues that impact us.

20          Q.    And you're only speaking on behalf of Glanbia, not  
21 on behalf of IDFA?

22          A.    I'm speaking for myself here.

23          Q.    Okay.  I want to now talk about a couple of the  
24 items that are in your Exhibit 196.  And this is in your  
25 primary testimony related to Make Allowances, and then you  
26 have some additional responses to some of the other  
27 proposals included.

28                Is that a fair characterization?



1 A. Sure.

2 Q. Okay. I want to just take a step back and maybe  
3 at the 30,000-foot level and talk about Make Allowances in  
4 general.

5 Can you tell me how Make Allowances are preventing  
6 you from getting the milk that you need to any of your  
7 plants?

8 A. How Make Allowances are preventing us from getting  
9 the milk we need into our plants? So are you asking how  
10 the Make Allowances affect the supply of milk?

11 Q. Yeah. I'm just -- maybe I should back up and say  
12 the first question, lay the right foundation: Are the  
13 current Make Allowances preventing Glanbia from getting  
14 any milk supply?

15 A. Well, if the Make Allowances are artificially low,  
16 if anything, you would expect that to create extra supply  
17 of milk.

18 Q. Okay. So does that mean that Glanbia doesn't have  
19 any trouble right now of getting milk?

20 A. To my knowledge, our plants are getting the milk  
21 they need as of now as far as I know.

22 Q. Do the Glanbia plants operate at capacity?

23 A. To keep our cost of production as absolutely low  
24 as possible we try to keep our plants as full as possible.

25 Q. And are you mostly able to do that?

26 A. That is our goal.

27 Q. Are you mostly able to do that?

28 A. Mostly, not always.



1 Q. Okay. Because sometimes you have plant shutdowns  
2 or breakdowns or updates that will interrupt your  
3 processing?

4 A. Yes, that's correct.

5 Q. Okay. So other than normal either breakdowns or  
6 improvements that you are doing, are you able to keep an  
7 uninterrupted supply that keeps your plants at capacity?

8 A. Most of the time.

9 Q. Okay. And I think that in one of the responses  
10 that you were talking about with Mr. Miltner, you had said  
11 that if Make Allowances go up as IDFA has proposed, and in  
12 turn the Class III prices go down a corresponding amount,  
13 whatever that might be, that a plant would make more  
14 profits. And for cooperatives, that would be able to be  
15 passed through to its cooperative dairy farmer members; is  
16 that right?

17 A. If they were a processing cooperative, assuming --  
18 and I'm -- I don't see why their revenue would change,  
19 that they, in theory, should be able to pass that revenue  
20 back to their -- back to their dairies regardless of the  
21 regulated price.

22 Q. Okay. And so then for a plant like Glanbia, if  
23 you don't have a cooperative, that would just be pure  
24 profits that the plant would be able to keep; is that  
25 fair?

26 A. Well, I would say, in our case, we pay competitive  
27 prices for milk in Idaho that's outside the regulated  
28 system.



1 Q. So do you pay an excess already? Is that what you  
2 are saying?

3 A. Pay in excess of?

4 Q. The Class III prices?

5 A. We do not pay in excess of the Class III prices,  
6 typically. I would say that the competitive milk pricing  
7 for Idaho is typically -- for cheese plants, is typically  
8 below Class III, sometimes well below Class III.

9 Q. Okay. And your expectation is that if the  
10 Make Allowance is increased, that would allow Glanbia to  
11 pay a lower amount because you're priced off of what the  
12 Federal Order system would be, even if you are in an  
13 unregulated market?

14 A. Potentially, again, we have to pay a competitive  
15 price. If we do not pay a competitive price to our  
16 dairies, they will leave us and go to other processors.  
17 So regardless of what that adjustment is, it is possible  
18 we may have some ability to lower our milk price in this,  
19 but at the end of the day we have to pay a competitive  
20 milk price.

21 Q. And so if -- if you're having to pay a competitive  
22 milk price, your expectation is, is if the Make Allowances  
23 increase, that would decrease the price that Glanbia would  
24 pay for its Class III price; is that right?

25 A. We think that there could be some level of  
26 passthrough. We don't know exactly what that will be.  
27 Again, I'm very interested in seeing the USDA econometric  
28 analysis on what that passthrough rate will be. I think



1 when that happens, we will monitor the milk shed and see  
2 how it responds. But, if for example, there was zero  
3 impact in Idaho, we have to -- we're going to continue  
4 paying the price we need to to get the milk supply to run  
5 our plants.

6 Q. If there was zero impact to the prices that you  
7 would pay in Idaho, would it change the position that you  
8 have taken in Exhibit 196?

9 A. No.

10 Q. Why not?

11 A. If there was zero impacts? I still think it's the  
12 right thing for the industry. Even if there was no  
13 financial benefit for Glanbia, it's still the right thing  
14 for the industry, because we need Make Allowances that  
15 reflect reality and not ones that are 15 years old.

16 Q. Okay. If you look at page 4 of your testimony.  
17 The last paragraph there, you say, "While other factors  
18 like higher milk hauling costs, changes in the checkoff  
19 program amounts, or variances in milk components, will  
20 cause noise in the analysis, the trend line is  
21 unmistakable."

22 What's the checkoff program you are referring to  
23 there?

24 A. Oh, nothing specific. My understanding is that  
25 many dairies pay into checkoff programs, whether that be  
26 National Milk or cooperatives working together, and I am  
27 not sure how much those programs have changed over time,  
28 if those checkoff -- checkoff dollar amounts per



1 hundredweight have increased or decreased. So my point is  
2 it could create some noise in this analysis because I'm  
3 just not sure how much checkoff program amounts have  
4 changed.

5 Q. Does Glanbia use the Make Allowances that  
6 currently exist as a watermark line in your own financial  
7 analysis for the efficiencies that your plant produces at?

8 A. I can't get into our specific formulas for Idaho  
9 or our joint ventures. I will say that the Class III  
10 price in particular is very important to us and a critical  
11 benchmark for all of our plants.

12 Q. Okay. And is it fair to say that as a business,  
13 you would strive to try and do better than what the  
14 Make Allowance is that's set with the Class III price?

15 A. Glanbia is deadly efficient, and we try to be  
16 absolutely as efficient as possible and keep our costs  
17 absolutely as low as possible, which, again, would be  
18 reflected in the Stephenson study.

19 Q. Okay. And I'm -- I missed the first word. You  
20 said Glanbia is what?

21 A. Deadly efficient.

22 Q. Oh, deadly efficient.

23 And so deadly efficient means that as one of the  
24 largest cheese producers -- did you say in the country or  
25 the world?

26 A. We -- well, we -- I think we're the largest  
27 American-style cheese manufacturer in the U.S. I'm not  
28 sure in the world. Possibly.



1 Q. Okay. So as the largest American cheese  
2 manufacturer in the U.S., you say that you are deadly  
3 efficient, meaning you strive for the lowest possible cost  
4 of production possible; is that right?

5 A. We absolutely do.

6 Q. Does that mean that you implement and deploy the  
7 most innovative and modern techniques for processing and  
8 making American cheese as well as all of the other  
9 products that Glanbia makes?

10 A. We try to do that. If there is an efficiency  
11 project that has a positive payback, we will generally try  
12 to look at that investment, because one of the ways you  
13 can become more profitable is becoming more efficient.  
14 Glanbia is a publicly-traded company. We are very  
15 sensitive to get a return for our owners. And if keeping  
16 our manufacturing costs as low as possible creates a more  
17 positive return for our shareholders, we will do that.

18 Q. Okay. And, in fact, you have an obligation to do  
19 that for your shareholders; is that right?

20 A. Yes.

21 Q. Okay. And do you know how many employees Glanbia  
22 has?

23 A. That's a good question. It probably says in our  
24 website. It's in the thousands.

25 Q. Okay. Do you know how many are in your financial  
26 department?

27 A. A lot. I couldn't tell you off the top of my  
28 head.





1 Q. Okay. It's fair to say that you have a full  
2 administrative staff that can slice and dice the numbers  
3 to ensure that Glanbia's capturing any efficiencies that  
4 it can possibly capture in its plant operations?

5 A. We try -- we try to do that. I don't know if --  
6 you know, there's no analyst that's perfect, but that's  
7 our goal.

8 Q. Okay. And I think that you had articulated in  
9 your Exhibit 196 a list of things that Glanbia had done in  
10 order to build in some efficiencies. And some of those  
11 you covered with Mr. Miltner; is that right?

12 A. Yes.

13 Q. And I think you talked about this \$2.5 million per  
14 unit water polisher?

15 A. Yes.

16 Q. And it says in your testimony, I'm on page 6, that  
17 oftentimes there's multiple polishers that are required  
18 per plant?

19 A. For big plants there's multiple polishers. That's  
20 my understanding.

21 Q. How many do you have in each one of your plants,  
22 do you know?

23 A. I'm trying to remember. I think -- I think our  
24 the largest plant has at least three, if I recall.

25 Q. Okay. And then do you have any plants that just  
26 have one?

27 A. The smaller plants might have one.

28 Q. And then in that same paragraph you also talk



1 about investing in personnel who monitor the dairies and  
2 enforce the on-farm sustainability requirements.

3 A. Yes. We have a person on payroll, who -- whose  
4 main job it is to monitor sustainability, animal welfare,  
5 all of those sorts of things, to make sure our -- our  
6 plants are in compliance.

7 Q. Okay. And -- and it's true that Glanbia prides  
8 itself on its stewardship and responsibilities, that it's  
9 giving back to the community; is that fair?

10 A. Yeah. We would like to think that way, yes.

11 Q. It's part of the brand that Glanbia has built up  
12 and developed over time?

13 A. Yeah. Sure.

14 Q. And that's part of why Glanbia has these  
15 sustainability programs, is to let -- let your customers  
16 know that Glanbia is a good steward of the -- our  
17 community and of our resources?

18 A. Yeah. I would say it's dual purpose for that  
19 reason, and also it's becoming a requirement to doing  
20 business by our customers. So it's two things.

21 Q. Right. And -- and sometimes in your contracts  
22 with your customers they require that you implement some  
23 sustainability implementations in order to make your  
24 processes the most efficient as possible?

25 A. Yeah. Reduce carbon output and those sorts of  
26 things.

27 Q. Okay. And -- and then this is on top of the steps  
28 that Glanbia takes in order to make your plants deadly



1 efficient; is that right?

2 A. Sure.

3 Q. I'm just going to grab on to it because I like it  
4 now. Okay.

5 And when you have implemented these sustainability  
6 and personnel improvements at your plant, those are some  
7 of the costs that were also included in your responses to  
8 the Stephenson survey?

9 A. Yes. So any -- any additional efficiencies we  
10 have gained would have been picked up in the Stephenson  
11 survey.

12 Q. So if it allowed you to be more efficient in --  
13 in -- if you have made plant improvements that allowed you  
14 to be more efficient in producing a product, meaning  
15 either increase the yields or lower the costs with which  
16 you are producing those products, or for which you are  
17 producing those products, those would be captured in the  
18 Stephenson survey as well?

19 A. Again, any efficiency investments we have made  
20 would be captured in the Stephenson study.

21 Q. Do you know what the market valuation was that  
22 Glanbia used when it input its data into the Stephenson  
23 survey?

24 A. Do you mean the valuation of our plants?

25 Q. Yes.

26 A. So it was my understanding from our accounting  
27 controller people that the values they used came from the  
28 values we report for insurance purposes to ensure our



1 plants.

2 Q. Okay. Well, you would have also included land  
3 values on top of that as well, wouldn't you?

4 A. I'm not sure how they included the land value.  
5 The finance team did not break out to me what was included  
6 as land versus what was included as equipment.

7 Q. Because when you just insure a plant, for example,  
8 if a plant burns down, you don't have to rebuild the land,  
9 right?

10 A. Correct. The land will still be there.

11 Q. Your total market value for your plant operations  
12 that you insure is different than what your total  
13 valuation would be for both the plant and the land; would  
14 you agree?

15 A. I'm not sure how they broke that -- how they broke  
16 that out.

17 Q. Do you know what the total amount was that Glanbia  
18 reported to Stephenson survey?

19 A. If I did, I couldn't tell you. But plants, large  
20 dairy plants, are very, very expensive.

21 Q. Even the old ones; is that fair?

22 A. Even an old one would be, yes.

23 Q. Okay. And when I say "even an old one would be,"  
24 you understand what I'm asking is that even an old plant  
25 that maybe has been either fully or mostly depreciated  
26 would still have a market value, asset value that could be  
27 significant?

28 A. Yeah. A lot of the equipment would be upgraded



1 over time, so even though the shell of the plant may be  
2 older, a lot of the equipment maybe newer.

3 Q. Okay. If you look at page 7 of your testimony in  
4 Exhibit 196, there's a title there "GN fights to keep  
5 manufacturing costs low."

6 Do you see that?

7 A. Yes.

8 Q. And you talk about things like going to extreme  
9 cost to keep costs as low as possible, including  
10 negotiating with vendors and various suppliers to get the  
11 most competitive pricing, while also investing heavily in  
12 plant equipment and technology to control costs.

13 Do you see that?

14 A. Yes.

15 Q. Are you referring there to the modernizing and  
16 updating of your plant in order to find those  
17 efficiencies?

18 A. Yes. We -- you can do -- you can make an  
19 investment to directly keep your costs low, or sometimes a  
20 piece of equipment can be old and you're upgrading it with  
21 more -- a more efficient -- more efficient design.

22 Q. And then the next sentence you go on to say, "For  
23 example, since the last Make Allowance adjustment in 2008,  
24 we have spent countless millions of dollars on projects  
25 such as recovering biogas from lost milk components in  
26 wastewater heat exchange systems that could take cold  
27 water from the milk and use it to cool other systems in  
28 the plant," and then you go on further.



1 Can you quantify that "countless millions"?

2 A. I couldn't. I actually was trying to get more  
3 specifics ahead of this, but it's kind of like herding  
4 cats in Glanbia, talking, trying to find all the right  
5 people. So I had a few minutes with one of our engineers  
6 prior -- or actually when I was writing this testimony,  
7 and he gave me some high-level notes, but I don't have  
8 exact specifics. But it's substantial amounts.

9 Q. Hundreds of millions of dollars?

10 A. I don't know if I would say hundreds of millions.  
11 I'm not sure. That seems like a lot, but I don't know the  
12 exact amount.

13 Q. And I think that you said that at least as what  
14 was reported in the -- in the press, Glanbia spent above  
15 or below \$470 million on its most recently constructed  
16 plant?

17 A. Yeah. That was our joint venture plant.

18 Q. And then -- so would it be an amount equal to the  
19 amount that you spent on that plant that has been used to  
20 update your plants since 2008?

21 A. I don't know the exact amount. But over 15 years,  
22 I'm sure all of the efficiency investments would probably  
23 add up to be quite substantial, but I don't know what that  
24 number is, or even if our finance team calculates that.  
25 And if they did, it would probably take them a while going  
26 through old records to compile the exact figure.

27 Q. Do you know if Glanbia's reported a profit every  
28 year since 2008?



1           A.     I've been with Glanbia for five years, so I'm not  
2 intimately familiar with every profit statement.

3           Q.     In the five years that you have been there, has  
4 Glanbia been able to report a profit every year?

5           A.     Glanbia PLC, as far as I am aware, yes.

6           Q.     And that is not withstanding the investment that  
7 Glanbia has made of those countless millions and the joint  
8 venture plant that it constructed that cost \$470 million?

9           A.     Yes. I mean, if we're going to go into the road  
10 of Glanbia's publicly reported financials, I would  
11 asterisk -- put an asterisk on some of this.

12                   I went to some length at the beginning of my  
13 testimony breaking down the different parts of Glanbia's  
14 business. I specifically broke down our branded products,  
15 Glanbia Performance Nutrition. Their profitability would  
16 be rolled up into Glanbia PLC. Also, our joint ventures,  
17 and also Glanbia Nutritionals, which is the main entity  
18 I'm representing now, and the joint ventures.

19                   But for Glanbia Nutritionals, specifically, we are  
20 extremely diversified. I have here listed we do custom  
21 premix solutions, bioactive ingredients, edible films,  
22 Flavors by Foodarom, micronutrients, plant-based  
23 nutrition, Watson Bakery ingredients. And I would say  
24 that a substantial part of our profitability is not  
25 necessarily directly tied to the products reported into  
26 the NDPSR. And specifically, if you looked at our  
27 financial statement, we actually have line items. One is  
28 GN cheese. So we have an EBITA number for GN cheese. So



1 if you take the EBITA number and you divide it by the  
2 revenue for cheese, it comes out to something like a  
3 little over 1% margin.

4 Q. Okay. And so I want to back up for a second.

5 When you were referring to the breakdown in the  
6 entities, that was what is noted on the diagram on page 2  
7 of your testimony?

8 A. Yes.

9 Q. And so I think you are saying that Glanbia  
10 Nutritionals, which is in the center there under Glanbia  
11 PLC, is the entity that you are here to speak on behalf  
12 of; is that right?

13 A. Yes. And GN also -- also runs the joint venture  
14 plants, the operations of the joint venture plants.

15 Q. Okay. And that one is the one that's listed on  
16 the right-hand side of that diagram?

17 A. Yes.

18 Q. And Glanbia PLC at the top is the parent company  
19 for both?

20 A. It's the parent company.

21 Q. And that Glanbia PLC is the entity that is  
22 publicly traded company?

23 A. Yes.

24 Q. And then Glanbia Performance Nutrition is a  
25 separate legal entity; is that right?

26 A. It's the separate business unit, yes.

27 Q. Is it a separate business unit that is its own  
28 standalone entity?





1 A. I believe it's Glanbia PLC's reporting include all  
2 three of the -- of the parts of the business.

3 Q. So while all three of those are their own separate  
4 legal entities, they all roll up into Glanbia PLC?

5 A. Glanbia PLC is the parent company.

6 Q. So is that a yes?

7 A. I am not -- I'm not an expert on Glanbia's legal  
8 structures, so I'm trying to nuance my answer in how I  
9 understand it.

10 Q. Okay. Fair to say that you don't know if they are  
11 all separate legal entities, you just know that Glanbia  
12 PLC is the parent company?

13 A. Correct.

14 Q. And the Glanbia Nutritionals is the business unit  
15 that operates your processing plants?

16 A. Yes.

17 Q. And then the joint ventures operate the joint  
18 venture processing plants?

19 A. Yes. But Glanbia Nutritionals also handles the  
20 joint ventures.

21 Q. Okay. Is Glanbia Nutritionals, as its own  
22 separate business unit, a profitable entity?

23 A. Yes, it is. And, again, I would say that even  
24 within Glanbia Nutritionals, we have a very large piece of  
25 our business that is either, one, not directly related to  
26 dairy or, two, the piece that is related to dairy is  
27 extremely invested in value-add dairy products, like  
28 higher proteins, premixes, custom nutrition solutions for



1 all sorts of uses.

2 Q. And those are the products that are sold under  
3 Glanbia Performance Nutrition under your own brand --

4 A. No. We make those -- we make products that are  
5 for business-to-business sales for Glanbia Nutritionals.  
6 Glanbia Performance Nutrition is a business to consumer.

7 Q. Okay. And so does Glanbia Nutritionals sell some  
8 of it's B2B products to Glanbia Performance Nutrition?

9 A. I can't get into the details of who our customers  
10 are.

11 Q. Okay. Glanbia Nutritionals, though, as a  
12 standalone business unit, has a diversified portfolio, the  
13 totality of which end up being a profitable business,  
14 unit?

15 A. Yes. In total, we -- we strive to get the highest  
16 return for our shareholders.

17 Q. Okay. And, in fact, you have an obligation to do  
18 that; is that right?

19 A. Yes.

20 Q. And if you had a business unit that was not  
21 profitable, you would have an obligation to manage that  
22 business in a way that either made it more profitable or  
23 it no longer operated?

24 A. Yeah. We would try to get the highest return  
25 possible.

26 Q. And not just try to get a highest return possible,  
27 that is your obligation that you owe to your shareholders;  
28 is that right?



1 A. The shareholders would expect a return on their  
2 investment.

3 Q. Do you know -- sorry.

4 A. The shareholders would expect a return on their  
5 investment.

6 Q. Do you know if you have a legal obligation to  
7 provide that to them?

8 A. I am not sure if there's a legal obligation for  
9 every business to remain profitable.

10 Q. In -- on page 7 of your Exhibit 196.

11 THE COURT: 196, I think?

12 MS. HANCOCK: Yes. I'm still in the main  
13 testimony.

14 THE COURT: Yeah, you said 186, I think. If I  
15 misheard you, I'm sorry.

16 BY MS. HANCOCK:

17 Q. In page 7 of Exhibit 196 there's a heading there  
18 titled "new cheese plant investors working around a  
19 regulated system."

20 Do you see that?

21 A. Yes.

22 Q. And it -- it discusses that there are -- "cheese  
23 processing growth outside of the Federal Milk Marketing  
24 Order regulation is creating additional cheese capacity  
25 that competes directly with manufacturers regulated under  
26 the Federal Orders."

27 Do you see that?

28 A. Yes.



1 Q. Are you talking about -- well, hold on one second.  
2 The -- it goes on to say: "These plants have been able to  
3 attract milk needed at prices outside of the Federal Milk  
4 Marketing Order minimums, making it hard for many  
5 regulated plants to compete for cheese sales at the price  
6 that generate margins sufficient to pay the regulated  
7 price."

8 And then you go on to say, "This can contribute to  
9 disorderly marketing."

10 Can you tell me what you mean by "disorderly  
11 marketing" there?

12 A. Well, in this case, if the Class III price was too  
13 high and you were pooling all of your milk, you would be  
14 at a financial disadvantage to a plant that is either not  
15 pooling, partially pooling, or has some kind of milk  
16 supply agreement, for example, with a cooperative that is  
17 paying less than the Class III price in reblending. So  
18 there -- if you were a dairy processor pooling all of your  
19 milk, you would be at a financial disadvantage to somebody  
20 who was finding their way outside of the system.

21 Q. And so would that include a plant like the plants  
22 that you have in Idaho?

23 A. Glanbia operates outside the Federal Order system  
24 in Idaho.

25 Q. Okay. And does that give Glanbia a competitive  
26 advantage for the products that it manufactures out of  
27 those plants?

28 A. It -- it gives us more flexibility I would say.



1 Q. Does that flexibility give you a competitive  
2 advantage over -- over other plants that are making  
3 products that are within a Federal Order system?

4 A. In some ways I think it is an advantage to operate  
5 in Idaho.

6 Q. Does the size of Glanbia also give it a  
7 competitive advantage over its competitors?

8 A. In general, that there are certain cost  
9 efficiencies that could be gained with having a very large  
10 plant.

11 Q. Does Glanbia create disorderly marketing in the  
12 dairy industry?

13 A. I don't think so. It is -- even with our size, it  
14 is an extremely competitive industry, in my opinion.

15 Q. Okay. So even though you're able to operate the  
16 largest American cheese plant in the United States, if not  
17 the world, and part out of an unregulated area, you don't  
18 believe that that creates a disorderly market condition?

19 A. No, I don't -- I don't see how the size of an  
20 entity, especially if you are nowhere remotely near a  
21 monopoly position, could have -- could create disorderly  
22 marketing in and of itself.

23 Q. And that's fair. So let's take your size out of  
24 it. Let's just focus on the fact that you have plants in  
25 Idaho that are not in a regulated area.

26 A. Uh-huh.

27 Q. Does that mean that Glanbia creates disorderly  
28 marketing when it operates its plants in -- in an



1 unregulated area and competes against plants that operate  
2 in plants that are under a Federal Order system?

3 A. I think it's more difficult for some plants to  
4 compete with us in Idaho just because of the flexibility  
5 we have, but I don't know if I would call it disorderly  
6 marketing. It's may be evidence of markets working versus  
7 a regulated system.

8 Q. Can you think of any time since you have been at  
9 Glanbia where Glanbia has created disorderly marketing  
10 conditions by operating in an unregulated area?

11 A. Nothing strikes my mind.

12 Q. And prior to joining Glanbia, you were at Hilmar  
13 Cheese; is that right?

14 A. Yes.

15 Q. And how long were you at Hilmar?

16 A. About four and a half years.

17 Q. So, '95 to '99-ish?

18 A. No, I was there from 2014 through 2018, and then,  
19 2018 to current I was with Glanbia.

20 Q. Okay. I can't do math apparently backwards.

21 So 2014 to 2018, how many new plants or plant  
22 improvement projects did Hilmar engage in?

23 A. I'm not here to testify on Hilmar Cheese's behalf.  
24 I think they have a witness coming in later.

25 Q. Do you know, though?

26 A. Even if I did, I wouldn't say. Again, I'm not  
27 going to testify for Hilmar Cheese.

28 Q. Okay. On page -- on page -- I'm at the top of



1 page 8 of Exhibit 196.

2 And you state there, the last sentence on the top  
3 paragraph says, "Without Make Allowance increases, the  
4 only way for a manufacturer of NDPSR reported products to  
5 recover higher manufacturing costs is to pursue ruthless  
6 efficiency, look for opportunities outside of the NDPSR  
7 reported products, and look for escape valves out of the  
8 Class III price, invest outside the FMMO regulated dairy  
9 industry, or invest outside of dairy."

10 Do you see that?

11 A. Yes, I see it.

12 Q. Would you consider those options that you have  
13 listed there to be ways in which a business can diversify  
14 its operations?

15 A. Yes. I mean, you would be potentially  
16 diversifying your sales of products and looking for ways  
17 to control your milk cost if the Class III price was no  
18 longer reflective of reality for your business.

19 Q. Okay. Would you agree with me that there's a  
20 corporate responsibility for every business to engage in  
21 those kinds of evaluative tasks to ensure the safety and  
22 security of their business?

23 A. Yeah, sure. If you want your business to be  
24 profitable.

25 Q. But you want your business to run as efficient as  
26 possible and maximize profits wherever you can; is that  
27 right?

28 A. Yes.



1 Q. And that includes diversifying a portfolio to  
2 include products that might garner premium pricing?

3 THE COURT: Yes, Mr. Rosenbaum.

4 MR. ROSENBAUM: We have been going for an hour and  
5 40 minutes.

6 THE COURT: Yeah, I was waiting for a stopping  
7 point. I don't think -- after this question --

8 MR. ROSENBAUM: This particular line to finish,  
9 but I think we should take a break pretty soon.

10 THE COURT: Sorry to interrupt that question.  
11 Let's get a question and answer for that.

12 Do you have the question in mind?

13 THE WITNESS: What was the question one more time?  
14 (The testimony was read back as requested.)

15 THE WITNESS: I would say any business will look  
16 for opportunities to create the highest return possible.

17 BY MS. HANCOCK:

18 Q. And that would include creating a diversified  
19 product portfolio with products that include premium  
20 pricing opportunities?

21 A. Some businesses would do that, yes.

22 Q. And that's what Glanbia has done; is that right?

23 A. Yes, we have a diversified portfolio.

24 Q. Okay.

25 MS. HANCOCK: Your Honor, this would be a fine  
26 time for a break.

27 THE COURT: Thank you.

28 We went for quite a while. Why don't we take





1 15 minutes. Let's come back at five of, 9:55.

2 (Whereupon, a break was taken.)

3 THE COURT: Back on the record.

4 BY MS. HANCOCK:

5 Q. Good morning, Mr. DeJong, again.

6 I'm on page 8 of Exhibit 196, and this is the  
7 section of your testimony that goes in to you specifically  
8 addressing each proposal; is that right?

9 A. Yes.

10 Q. And this one, Proposal 7, you understand is the  
11 Make Allowance proposal from National Milk Producers?

12 A. Yes.

13 Q. And you oppose National Milk Producers'  
14 Make Allowance proposal because you have concerns that it  
15 doesn't have numbers that it's put into the record  
16 sufficient for you; is that fair?

17 A. Yes. I couldn't identify any scientific approach  
18 to the numbers they created.

19 Q. Okay. Is it fair to say that for you it is  
20 important to have a scientific approach to providing any  
21 numbers to USDA for Make Allowances?

22 A. Yes. A scientific approach that gets as close to  
23 the real numbers as possible.

24 Q. And is it important to you that those numbers are  
25 accurate?

26 A. Yes. We want accurate Make Allowance numbers.

27 Q. And is it important to you that those numbers are  
28 audited?



1 A. Preferably I would like to see audited numbers.

2 Q. Is it important to you that the survey of the  
3 costs that are used to set Make Allowance would be based  
4 on a mandatory survey to get as many of the responders to  
5 respond to the survey as possible?

6 A. Mandatory will give you much more accurate  
7 information, in theory.

8 Q. Okay. And were you here when Dr. Stephenson and  
9 Dr. Schiek both testified?

10 A. I was here all of yesterday, so I'm not sure when  
11 Dr. Stephenson started, but I heard him being  
12 cross-examined yesterday.

13 Q. Okay. And did you hear anything that either  
14 Dr. Stephenson said or Dr. Schiek said that you disagreed  
15 with?

16 A. No, I don't think so. I think that, you know, in  
17 the absence of audited studies, we are trying to find the  
18 next best solution, which is either, you know,  
19 Dr. Schiek's analysis trying to extrapolate costs out  
20 using a scientific approach from the CDFA studies or using  
21 a survey. So to me, those are the second best approaches  
22 to trying to find the correct Make Allowance number in  
23 absence of an audited survey.

24 And the third thing would just be the worst thing,  
25 would just be made-up numbers with no paper trail.

26 Q. Okay. And you are not suggesting that National  
27 Milk has made up numbers, are you?

28 A. I -- I don't know how they got their numbers



1 because they haven't provided a methodology.

2 Q. Did you listen to any of the National Milk  
3 witnesses' testimony?

4 A. No.

5 Q. Okay. So you don't know what National Milk has  
6 put into the record with respect to how it calculated its  
7 Make Allowances that it put in its proposal, do you?

8 A. I haven't -- I didn't -- I wasn't able to listen  
9 in. What I went off was their -- was their written  
10 petition which, in my opinion, if they had a methodology,  
11 should have been included in their petition.

12 Q. Okay. And you understand that the petition is not  
13 part of this record?

14 A. I am not -- I'm not intimately aware with how  
15 things are admitted into the record.

16 Q. And -- but you are aware that National Milk has a  
17 membership that's comprised of many cooperative members;  
18 is that fair?

19 A. That's my understanding, yes.

20 Q. And -- and has memberships that include people who  
21 process -- people and entities who process milk into  
22 finished products as well?

23 A. Yes, that's true. But I don't recall seeing any  
24 type of table where they said, these are our weighted  
25 average costs. I don't recall seeing that level of  
26 specificity.

27 Q. And if -- if you did see it, it would be important  
28 that -- to you, that if National Milk put those numbers



1 in, that they be precise, accurate, and reflective of the  
2 actual Make Allowances; is that right?

3 A. Yes, I would like to see them as accurate as  
4 possible.

5 Q. If they had numbers that they could put into the  
6 record, and they weren't confident that the numbers were  
7 going to be accurate and reflective of the totality of the  
8 industry, do you think it's fair that they didn't put in  
9 numbers that were potentially misrepresenting what the  
10 actual Make Allowance costs would be?

11 A. You want respondents to any type of survey for  
12 Make Allowances to be honest and accurate.

13 Q. And you don't want partial information to be the  
14 basis for setting those Make Allowances; is that fair?

15 A. You -- again, audited cost studies are the gold  
16 standard. Second would be surveys. And third would be  
17 numbers that don't have a clear methodology behind them.

18 Q. Is that the ranking priority that you would assign  
19 to them on what could be used for setting Make Allowances?

20 A. Yeah. I would say the more scientific the  
21 approach, the more transparent the approach, the better.

22 Q. Well, you would agree with me that you can have a  
23 scientific approach that still gives you inaccurate  
24 information, right?

25 A. It's possible. These -- the science of this is  
26 not perfect. Again, audited cost studies are preferable.

27 Q. And the science can be perfect, right, because it  
28 is math? Is that right?



1           A.     I mean, you can use a mathematical equation that  
2 will give you a number. But, again, until you do audited  
3 cost studies, you don't know for sure. But we do know,  
4 for example, that there has been a lot of inflation, so --  
5 especially recently, so I would expect that, for example,  
6 with Dr. Schiek's study, that they would be definitely  
7 directionally correct, given the mass amount of inflation  
8 we have seen.

9           Q.     Uh-huh. And you can be directionally correct  
10 without being right on the number; is that fair?

11          A.     You may not be -- you may not be exactly precise,  
12 but I think you're -- you're hopefully getting close to a  
13 number or relatively close in the ballpark.

14          Q.     And you can exceed it if you are just using a  
15 directional methodology; is that right?

16          A.     You can exceed it or go under it. Using a  
17 statistical approach in theory, if the statistical  
18 approach was correct, it would be roughly a 50/50 chance  
19 that you could exceed or go under the actual.

20          Q.     Okay. And -- and we won't know for sure until we  
21 have an audited mandatory cost survey; is that right?

22          A.     Yes. And if I understand, given the glacial  
23 speeds at which sometimes things move, that could be a  
24 while, which I think necessitates the need for something  
25 to not wait another however many years. So to get at  
26 least some scientific -- scientifically-based change in  
27 place before we wait -- while we're waiting for the  
28 audited numbers.



1 Q. And did you hear Dr. Stephenson say that the  
2 sample size matters?

3 A. Yes. The sample size matters in any statistical  
4 analysis.

5 Q. And did you hear him say that his response rate  
6 depending on the category ranged anywhere between 10% of  
7 the volumes produced in those categories up to about 50%?

8 A. I know there are ranges. I don't recall the exact  
9 percentages.

10 Q. Okay.

11 A. I will say that we did participate in the cheese  
12 study, and I am sure we had a substantial impact on that.

13 Q. When you provided your responses for the cheese  
14 that is produced by Glanbia, was it just the cheese  
15 that's -- cheese produced and reported for NDPSR?

16 A. We -- Dr. Stephenson's questions pertain to all of  
17 the cheese produced at the plant. So he asked for the  
18 product mixes, and all of the costs associated with  
19 producing all of the cheeses, which in our case were all  
20 hard cheeses, American-style, mostly cheddar and then, you  
21 know, Colby, Colby Jack, etcetera, hard cheeses.

22 Q. Okay. And so did Glanbia provide the responses  
23 for all of its cheeses, whether it was reported on NDPSR  
24 or not?

25 A. Yes. So Dr. Stephenson's questions pertained to  
26 all of the cheese produced at that plant.

27 Q. I just wanted to make sure that you answered the  
28 next part of that, which is whether or not Glanbia



1 responded with all of the cheese that was produced.

2 A. Yes. We responded with all of the cheese that was  
3 produced. We answered his questions as he -- as he  
4 directed us to.

5 Q. And you understand that IDFA's proposal takes  
6 Dr. Stephenson's numbers that he reached in 2023 from that  
7 survey that was sponsored by IDFA and -- and Dr. Schiek's  
8 numbers that he reached using his trend line methodology,  
9 and combined the two, created an average, and then used  
10 that as the number that would create Make Allowances; is  
11 that right?

12 A. That's how I understand it, yes.

13 Q. And you understand that that is based on  
14 Dr. Stephenson having the range of anywhere between 10 and  
15 50% depending on the product lines that he was surveying;  
16 is that right?

17 A. Yes, that's how I understand it.

18 Q. And you understood that Dr. Schiek was using  
19 methodology that was based on CDFA studies that ended in  
20 2016?

21 A. Yes.

22 Q. And that was surveying or doing a cost study on  
23 products that were specific to California and California's  
24 cost structure?

25 A. Yes. CDFA numbers are specific to California.

26 Q. And as you sit here today, do you believe that  
27 that's the right methodology to use when establishing  
28 Make Allowances for the entire United States?



1           A.     Again, audited cost studies for the whole U.S. are  
2     the gold standard. In absence of that, we have to lean on  
3     the next best things that are available, which I would  
4     include as Stephenson's study and trying to extrapolate  
5     out the CDFA studies using econometric analysis. So not  
6     ideal but second best.

7           Q.     Is it second best or is it second and third best  
8     averaged together?

9           A.     I don't know if I -- in my opinion -- I'm not a  
10    statistician, but in general, I would probably give the  
11    survey a little bit more weight because it comes from  
12    actual plants. But I think looking at both approaches is  
13    also valid.

14          Q.     And you understand that Dr. Stephenson also had a  
15    2021 survey as well?

16          A.     Yes.

17          Q.     And you understood that those survey results came  
18    from actual plants as well?

19          A.     Yes.

20          Q.     And those numbers in some cases were pretty  
21    significantly different than what he came up with in 2023?

22          A.     I believe that for Class IV products, there was  
23    some changes in the numbers.

24          Q.     Do you have any concerns about the accuracy of the  
25    survey that he conducted in his 2021 results?

26          A.     Well, Dr. Stephenson is -- I mean, he has an  
27    impressive background, so I would defer to him in regards  
28    to the quality of his survey.





1 Q. And did you hear him testify yesterday where he  
2 said he didn't believe that there was anything wrong with  
3 his 2021 survey results, just that it was affected by the  
4 sample size and that sample size matters?

5 A. I will let Dr. Stephenson speak to his own  
6 results.

7 Q. Did you hear him say that?

8 A. I believe I did. I don't recall word for word.

9 Q. Do you have any concerns with anything that he  
10 said in the way in which he characterized his 2021 study?

11 A. I will say that there is no study that is perfect,  
12 and if I claimed that it was perfect, I would not be  
13 speaking on an area that I could accurately talk about.

14 Q. And you don't have any reason to disagree with his  
15 characterization of the 2021 study's accuracy?

16 A. I will -- I will defer to Dr. Stephenson on the  
17 veracity of his own study.

18 Q. What year would you estimate was the year in which  
19 costs of making products exceeded the Make Allowance that  
20 is set under the Federal Order system?

21 A. Well, that's kind of a difficult question because  
22 I think each plant has its own cost structure.

23 Q. Okay.

24 A. You can't say this point I think it depends on  
25 which plant you are specifically talking about across the  
26 entire U.S.

27 Q. While you were at Hilmar, was there a time in  
28 which the cost of producing the products exceeded the



1 Make Allowance that was set by the Federal Order?

2 A. I am not going to speak on Hilmar Cheese's behalf.  
3 I'm not a witness for Hilmar Cheese.

4 Q. Since you have been at Glanbia has there been a  
5 time that the cost of making your cheese products has  
6 exceeded the Make Allowance that's set by the Federal  
7 Order?

8 A. I can't speak to Glanbia's specific cost of  
9 production. I'm not authorized to talk about proprietary  
10 information in that detail.

11 Q. In your experience as a dairy economist, can you  
12 estimate for me what year it was or around -- the date  
13 range within which Make Allowances were known to be  
14 exceeding the Make Allowances that are -- strike that.  
15 Let me say that better.

16 In your experience as a dairy economist, can you  
17 give me a date range which you believe that the cost of  
18 making cheese exceeds the Make Allowance that is set by  
19 Federal Order?

20 A. If I gave you a date, it would imply on that date  
21 that was our cost of production, and I am not going to do  
22 that.

23 I will say that since post-COVID, when inflation  
24 really took off, it became a much bigger problem for us,  
25 and our financial team -- it became very glaring on our  
26 radar that manufacturing costs were greatly accelerating.

27 Q. Okay. So that would be 2021 going forward to have  
28 realized that cost?



1           A.     That's where the costs really started  
2 accelerating, I would say.

3           Q.     And that would explain why you or anyone on your  
4 IDFA team has not requested a hearing prior to this last  
5 year?

6           A.     I think prior to that there was discussions. I  
7 believe even prior to COVID we had had meetings with IDFA  
8 saying, hey, it's been, you know, well over ten years,  
9 12 years, since we touched these things, the costs have  
10 gone up, these are no longer accurate, and then I think  
11 since COVID hit and inflation accelerated, I would say  
12 it's just become a much, much more glaring problem and  
13 that urgency has increased rapidly.

14          Q.     Thank you.

15                 MS. HANCOCK: I have no further questions, your  
16 Honor.

17                 THE COURT: Further examination?

18                                 CROSS-EXAMINATION

19 BY MR. MILTNER:

20          Q.     Thank you. Ryan Miltner representing Select Milk.  
21 I just have a couple of things that I wanted to touch on.

22                 On page 5 of your statement you state, "Given milk  
23 cooperatives control about 85% of all the milk in the  
24 U.S., this places them in an extremely strong position to  
25 bargain for premiums above the FMMO class prices,  
26 providing enough value is being generated from dairy  
27 products in that milk shed."

28                 Are you suggesting that if Make Allowance changes



1 are adopted, cooperatives will therefore negotiate  
2 over-order premiums to recapture some of the loss in the  
3 minimum price?

4 A. I would imagine they would try.

5 Q. Within those areas regulated by the Federal Orders  
6 and where Glanbia has plants, are those supplied by  
7 cooperatives?

8 A. Yes.

9 Q. Does Glanbia intend to renegotiate any of those  
10 milk supply agreements if the Make Allowances are changed?

11 A. Yeah. Earlier in my testimony I noted that I  
12 wasn't going to get into any proprietary milk supply  
13 agreements, and I am extra sensitive to our joint ventures  
14 and not getting into any specifics there.

15 Q. You spoke to increases in the costs of operating  
16 your Idaho plant and that they had increased by 50% since  
17 2008.

18 Did I get that correct?

19 A. Yes. That's what our -- our internal analysis  
20 showed.

21 Q. Do you recall when Southwest Cheese began  
22 operating?

23 A. That was well before my time at Glanbia, but I  
24 believe it was somewhere around the range of 2006-ish.

25 Q. I think that's probably correct.

26 Did you do a similar analysis for Southwest  
27 Cheese?

28 A. I did not. The plant was also smaller back then



1 too. It was a different business.

2 Q. But you have not done a comparison of the per  
3 pound manufacturing costs at Southwest cheese in 2006-ish  
4 and today?

5 A. No, I have not.

6 Q. Okay.

7 MR. MILTNER: I think that's all. Thank you  
8 again.

9 THE COURT: Further questions?

10 AMS?

11 CROSS-EXAMINATION

12 BY MS. TAYLOR:

13 Q. Good morning.

14 A. Good morning.

15 Q. Thank you for being here yesterday and today.

16 A. You're welcome.

17 Q. I think you talked about how big Glanbia is in  
18 regard to its employee numbers, and I ask because we're  
19 charged with getting information regarding small  
20 businesses on both the dairy farmer and the processor  
21 side.

22 So do you know about how many employees Glanbia  
23 has as a whole?

24 A. I would have to Google it on my phone. I don't  
25 know the precise number off the top of my head. Maybe I  
26 should know.

27 Q. More than 1200?

28 A. Yes, I would -- I would say so. And it depends on



1 what part of the business you are looking at, Glanbia PLC  
2 versus Glanbia Nutritionals.

3 Q. Okay. Thank you.

4 I want to start on page 3 of your statement,  
5 Exhibit 196. And you stated that Glanbia participated in  
6 the 2022 survey.

7 Does that mean you did not participate in the 2019  
8 survey?

9 A. We participated in that survey as well.

10 Q. Okay. The same -- the same set of plants?

11 A. The Michigan St. Johns plant was not finished or  
12 completed at the time, so that plant was not in the  
13 survey.

14 Q. Okay. Thank you.

15 And on the costs that have come out of both the  
16 Stephenson 2022 survey and Dr. Schiek's methodology he  
17 used and the numbers he came up with, can you give us an  
18 idea of -- and how does that compare -- I don't want  
19 confidential information, but if you can speak to kind of  
20 how you see Glanbia's numbers represented in those  
21 averages.

22 A. We -- Glanbia's extremely efficient. I -- Nicole  
23 and I have a favorite word now, deadly efficient.

24 Q. Deadly, uh-huh.

25 A. So I would say, if anything, we probably help pull  
26 those numbers down.

27 Q. Thank you.

28 I want to talk for a second on the marketing



1 allowance of \$0.0015 per pound, that you support  
2 continuing that inclusion.

3 Can you talk about what you think should be  
4 covered by the marketing costs? Like, what do you include  
5 in your head when you think marketing costs? What does  
6 that include?

7 A. Well, the process of selling our cheese for cheese  
8 specifically.

9 Q. And for this \$0.0015 per pound, is that just the  
10 commodity side of things? Because you talked a lot about  
11 the value-added products that Glanbia also produces.

12 A. Yeah. I'm talking specifically to the products  
13 that would be in the NDPSR survey.

14 Q. Okay. But you don't have any -- well, let me ask  
15 this a different way.

16 How do Glanbia's marketing costs numbers compare  
17 to this kind of benchmark number that's been included for  
18 a while?

19 A. That's a good question. I didn't do that specific  
20 analysis and divide it out. I kind of used the rough  
21 assumption in my head that since these were introduced in  
22 the previous decision on one hand, labor costs in  
23 particular have continued to go up, while on the other  
24 hand, as our business has grown, it -- when you add more  
25 cheese volume, you don't necessarily have to add more  
26 sales people at the same rate. There is a certain level  
27 of efficiency that you can get at scale.

28 Q. Okay. On page 4 is where you start referencing



1 Figures 2 through 5, but I wanted to know in your  
2 statement -- and maybe I missed the reference to Figure 1.

3 A. Oh, where did I reference Figure 1?

4 Q. Yeah. I might have looked over that by accident.

5 A. Okay.

6 Q. Oh, now, I see it. That's on page 9 when you are  
7 talking about removing the barrels.

8 A. Okay. Did they -- did the numbers get out of  
9 order? That's possible.

10 Q. Yeah. Okay.

11 A. I think we moved some things around after I wrote  
12 it, and that's probably --

13 Q. I can sympathize.

14 A. -- that's what happened.

15 Q. Okay. All right. Then we'll come back to that in  
16 a second.

17 And I think you did state earlier, but just to  
18 make sure I'm clear why you picked those four states or  
19 regions to highlight for Figures 2 through 5?

20 A. Why I picked them? I just thought that they were  
21 substantial milk sheds with multiple component order  
22 pricing that had a long history. If California had had a  
23 longer history, I would have loved to include that in the  
24 analysis.

25 But I know -- I think it was last week we had some  
26 other questions, just we were talking about internally  
27 with IDFA, and I believe I did the same analysis that's  
28 not included in here for I think the New England states.





1 And if you were to run that same analysis for the New  
2 England states, it shows exactly the same decrease in  
3 mailbox prices versus the regulated price. So I would  
4 suspect if you do that to any of the orders, you would  
5 find a similar trend.

6 Q. Okay. And so if I understand, those figures  
7 are -- what you are inferring through looking at what  
8 that -- those figures show and the downward trendline, is  
9 that because Make Allowances are inadequate, in your mind,  
10 mailbox prices -- or what the producer received is  
11 steadily getting -- is steadily decreasing because there  
12 has to be some balance there, some rebalancing, and  
13 manufacturers have to account for that by paying less to  
14 their producers --

15 A. Yes. I think --

16 Q. -- is that accurate?

17 A. Sorry. Yeah, I think that's an accurate  
18 characterization because at the end of the day, the  
19 Class III and IV prices can be set to any level, but at --  
20 they have to align with the actual revenue being generated  
21 and the real world costs for these plants. And if those  
22 don't align by necessity, the mailbox prices have to go  
23 down to -- to clear the market.

24 Q. Okay. On page 5 you start to discuss premiums.

25 Can you talk a little bit at all about Glanbia,  
26 and do you pay premiums to your suppliers, and you know,  
27 in a general sense that you can talk about?

28 A. Premiums versus Class III?



1 Q. Yeah.

2 A. I can't get into the specific supply agreements  
3 with our joint venture partners. Obviously we're partners  
4 with DFA and Select, and I want to be really careful  
5 around that.

6 But I would say in Idaho, that the market  
7 competitive milk prices in Idaho are -- are -- for cheese  
8 plants, are often, if not almost always, below Class III.

9 Q. Okay. But in federally-regulated areas?

10 A. That, I can't get into the details. What I can  
11 say is that cooperatives and proprietary handlers can lock  
12 into any milk agreement they see fit, below the class  
13 prices or above, and they will reblend those proceeds to  
14 their dairymen.

15 Q. There's been some discussion from other parties  
16 about the ability to renegotiate those premiums, and I'm  
17 just curious if you would share, how often does that  
18 discussion occur when it comes to Glanbia and your milk  
19 suppliers?

20 A. So how often does that discussion occur? So  
21 within Idaho, we are unregulated. So if we're on  
22 contract, we keep within our contract. If the producers  
23 are off contract, then it's up to us. Glanbia has  
24 discret- -- full discretion over their milk price. But,  
25 again, we don't abuse that because we have to pay a  
26 competitive price, and second, if our plants run out of  
27 milk, that is a huge problem for us.

28 For our joint venture plants, we have contractual



1 agreements in place that are set to renew at specific  
2 amount -- at specific intervals. And I'm sure if those  
3 weren't -- you know, were -- something wrong with them,  
4 the executive teams from all the different parties could  
5 talk about those agreements and if changes needed to be  
6 made.

7 Q. Okay. And when you say "intervals," is that  
8 annual or kind of just depends?

9 A. It can be multi-year intervals.

10 Q. Okay. On your bottom of page 5 when you talk  
11 about under the heading "importance of Make Allowances for  
12 pooling dollar distribution," and you give an example --  
13 well, you're basically saying "a situation can be created  
14 where pool revenues are not distributed in a fair or  
15 economical justifiable manner." And then you have an  
16 example, is if the Class III make was too low, creating an  
17 artificially high Class III price, but the Class IV price  
18 was set too high by a -- Class IV make was set too high  
19 creating an artificially low Class IV price, then Class IV  
20 handlers would have an unfair advantage because pool  
21 dollars flow to the lowest class value of the milk.

22 And I had to read that sentence a few times to try  
23 to figure out what you are trying to tell us. So I think  
24 I know, but I would prefer you to maybe expand on that.

25 A. Okay. I know, some of these -- this pooling stuff  
26 is complicated, and it's -- sometimes it's hard to convert  
27 into proper English.

28 But I would describe it as you don't want



1 distortions to occur. You can talk about, you know, oh,  
2 the Make Allowances need to be -- need to be, you know,  
3 increased by such and such, but you also need to be  
4 cognizant of the relativity between each other, that they  
5 actually reflect -- you want to get to the truest cost of  
6 production as possible, because you don't want the  
7 situation -- I'll use the -- you know, a reverse example,  
8 where the Class IV Make Allowance was set -- was set  
9 incorrectly to the point where they -- the regulated price  
10 was way too high, and that they are losing lots of money  
11 versus the regulated price, and they are not getting any  
12 pool revenue to help compensate them for that.

13 Q. But the pool revenue doesn't flow to them --

14 A. It would typically --

15 Q. -- to the bottom --

16 A. -- flow to the lowest class price.

17 Q. But what I'm trying to distinguish is, the pool  
18 revenue doesn't flow to the manufacturer and their bottom  
19 line, that eventually flows to the producer through --

20 A. Yes, it would flow -- it would flow through --

21 (Court Reporter clarification.)

22 BY MS. TAYLOR:

23 Q. The pool revenue doesn't -- it flows to the  
24 producer, not the manufacturer?

25 A. Correct. That's an important distinction.

26 Q. Okay. And then -- thank you, Todd.

27 And in the next sentence you say, In this case,  
28 the Class IV handlers could be financially strong while



1 also pulling in extra pool revenue. The Class III handler  
2 could be struggling and not getting any pool revenue.

3 And then where there you are talking about the  
4 financially strong or not is in regards to the  
5 Make Allowance piece that does go back to the  
6 manufacturer; is that correct?

7 A. Ordinarily, the pool revenue would ultimately go  
8 back to the producer.

9 I guess what I meant there, I think it's -- in my  
10 world, it goes -- the milk handler handles the pool  
11 distribution, and then it flows back to the producer. So  
12 I think of it from a milk handler perspective.

13 Q. That's understandable. Thank you.

14 A. Yeah.

15 Q. The next page you talk about the impact of higher  
16 manufacturing costs on Glanbia, and you talk about your  
17 total costs. And I think you might have answered this  
18 earlier in the earlier question with someone, but I didn't  
19 catch it.

20 Are you -- you are talking about per unit cost  
21 there in your Idaho plant, not total cost?

22 A. Yeah, per unit cost. So you divide the total cost  
23 allocated to that plant divided by the cheese production,  
24 and you do that in both years 2008 and 2022.

25 Q. Okay. And I know you didn't do an analysis for  
26 your other plants. But given your knowledge of the  
27 company, can you speak to whether you might see similar  
28 costs in those other plants?



1           A.    I expect you would.  And part of -- part of the  
2    reason I didn't have those other plants is not necessarily  
3    out of nefarious intent.  It's that in my office I -- my  
4    office was -- the previous -- one of our directors of  
5    finance office, and they had old binders from a long time  
6    ago of all of our old plants with dust on them.  And I  
7    said, oh, wow, the 2008 costs.  But, in there, I don't  
8    think they had the Southwest Cheese numbers.  And our  
9    finance team is currently in budget season.  They are  
10   preparing for next year and --

11           Q.    Don't ask them.

12           A.    -- and the tight turnaround in getting this.  So I  
13    can look those numbers up, but that's -- part of the  
14    reason is, one, the Twin Falls plant hasn't changed much  
15    over time, and two, those numbers were literally right  
16    three feet next to me.

17           Q.    And I know you talked about all the investments in  
18    making things more efficient.

19                    Would you think that your other plants are more  
20    efficient than your Idaho plant that seems to be older or  
21    you wouldn't make that statement?

22           A.    I would say, in general, there would be a  
23    correlation between plant size and cost per unit to  
24    produce, the largest plants I would say.  In looking at  
25    Glanbia's plants are the most efficient per unit of  
26    product produced.

27           Q.    And your Twin Falls plant is not the largest?

28           A.    No.  The Blackfoot, Idaho is very small.  That



1 would have the highest costs.

2 Q. Okay. On page 7 you talk about new cheese plant  
3 investors working around the system, and you talk about  
4 cheese processing growth outside of the Federal Order  
5 regulation.

6 We have heard some discussion in the past few  
7 weeks about new investments and plants opening up. But  
8 where specifically are you talking about in that  
9 paragraph?

10 A. I could think of multiple plants that are being  
11 built right now. So I think a Panhandle Products plant in  
12 the Texas Panhandle. I think Leprino has a plant being  
13 built. I think Hilmar has a plant being built in Dodge,  
14 Dodge City. So those are a few that are on my mind.

15 Q. All outside of Federal Order areas?

16 A. No. Some of those are in Federal Order areas, but  
17 I think in -- especially for Western plants where you have  
18 high transportation costs to market, it's very expensive  
19 to move cheese from an area out west to where the demand  
20 centers are, you know, somewhere like Wisconsin or to the  
21 east, and that takes -- to be competitive, with a cheese  
22 maker more on the eastern side of the U.S., that  
23 transportation cost takes a lot out of your -- out of your  
24 ability to pay for milk.

25 So for example, if it costed, I don't know, \$0.15  
26 a pound to move cheese to -- you know, West Texas to New  
27 York or something like that, I'm just -- I don't know if  
28 those are the exact numbers, but, you know, you are



1 essentially at a \$0.15 disadvantage per pound to someone  
2 else who was like really close to those demand centers.

3 So, in general, I would say Western plants have  
4 the hardest time paying the Class III price, and when --  
5 when something doesn't work, you have to find ways around  
6 the system, escape valves, whether that be through not  
7 pooling, partially pooling, or making contracts directly  
8 with milk handlers that are not necessarily -- or below in  
9 this case -- the Class III price for cheese plant.

10 Q. Okay. On your elimination of the 500-pound  
11 barrels, Proposal 3 that's on page 9, I think that's what  
12 Figure 1 is, your Figure 1 is referenced.

13 A. Yes.

14 Q. You talk about barrels frequently use a basis to  
15 Class III to buy or sell milk for plant balancing  
16 purposes. And you -- your argument is you want to keep  
17 the barrel price in.

18 A. Uh-huh.

19 Q. So I guess my question is, if you are already  
20 selling barrels at some basis to Class III, and then we  
21 just got rid of barrels -- and this might be a naive  
22 question, but I don't sell barrels, so I'm going to ask  
23 it -- why can't you just sell barrels at Class III with a  
24 different basis?

25 A. So you mean change how we price barrels, like, for  
26 example, price our barrels off a different index?

27 Q. Well, yes. But right now, right, you price  
28 barrels, I guess, plus or minus the Class III price.





1           A.    Oh.  You would typically price barrels versus the  
2 CME spot market at an underage or overage versus the CME  
3 spot market, and then those get reported into the NDPSR  
4 price survey, which then ends up in Class III.

5           Q.    Okay.  Because you do talk about later on, it was  
6 on this one, if the CME barrels -- if the CME eliminated  
7 the barrel market, none of this would be a problem.

8                   And am I interpreting that last paragraph correct?

9           A.    Yes.  So that just dovetails into what I just  
10 described.  So currently how it works is barrels are  
11 priced, typically, in my experience, almost all the  
12 barrels or virtually all the barrels are priced off the  
13 CME spot average barrel market, and then that gets  
14 reported into the NDPSR.  In fact, if you did a  
15 statistical analysis of the NDPSR barrel price versus the  
16 CME barrel price, and you lagged it by seven to ten days,  
17 so a little over a week, you would get something like a  
18 99% correlation between those two markets.

19                   So my reasoning there is that if barrels were  
20 removed from the CME, it would force the industry to, in  
21 my opinion, likely reprice the barrels off blocks.  So if  
22 you priced your barrels off blocks, those get reported to  
23 the NDPSR, and then basically you have two -- two price  
24 series, both related to the CME block market.  Your blocks  
25 are still related, and then your barrels, basically, are  
26 now tracking the block market, so you end up with a  
27 Class III price that tracks blocks only.

28           Q.    Okay.



1           A.     So it's a -- it's a way that you can address the  
2 problem outside the Federal Order system.

3           Q.     Okay. And we heard testimony earlier in the  
4 hearing from a different barrel maker that was of the  
5 opinion that regardless if the CME barrel market is here  
6 or not, removing barrels from the formula will force  
7 barrel makers to price off of blocks is essentially I  
8 think what he said.

9                     And I take it you don't agree with that statement?

10          A.     It -- not necessarily. I think it's -- it's  
11 difficult. And one reason we support the status quo in  
12 leaving it in is that there are so many unknowns how it  
13 would all shake out. So if you removed barrels from the  
14 NDPSR, maybe the CME market goes away, maybe it doesn't.  
15 We make a lot of barrels, and it is a huge strategic risk  
16 for our business to disconnect it. So that's the view  
17 point I'm coming from.

18          Q.     Okay. Thank you.

19                     I want to move to page 12, and we're talking about  
20 butterfat recovery and farm-to-plant shrink. In the  
21 bottom of that first paragraph, under that heading, you  
22 talk about, I believe, the proposal is only focusing on  
23 the price enhancing aspect of Class III formula while  
24 ignoring the parts that overvalue -- excuse me, I should  
25 start the sentence below -- or above.

26                     I think what you are saying is -- I read the  
27 sentence and it made sense to me before, but now I feel  
28 like I'm missing a word. But I think the general



1 sentiment is, we shouldn't focus on yields that would  
2 enhance prices unless we focused on all -- ignoring the  
3 parts -- other parts that overvalue milk in Class III.

4 Would that be correct?

5 A. Yeah. My whole point in this section is not to  
6 cherry-pick the formula. If you find something that says,  
7 oh, well, maybe the fat recovery is higher, well, then,  
8 okay, you change that, but then what about the other parts  
9 of the formula? And I specifically mention the amount of  
10 fat shrink we see through our manufacturing plants and the  
11 fact that the whey cream coming off the plants is not --  
12 the revenue is not commensurate with what you would see  
13 for Grade A sweet cream.

14 Q. Okay. Okay. So those are the parts that you  
15 think that are not being addressed in the current  
16 rulemaking?

17 A. Correct. I think the fat -- the fat section of  
18 Class III is overvalued. And that is my experience in my  
19 career, what is actually the case.

20 Q. Okay. We have heard a lot about plant investment  
21 over the last few weeks, and you have talked about it some  
22 yourself in Glanbia's case to improve efficiencies.

23 So would you agree that there has at least in  
24 some -- for some pieces been improvement in yields over  
25 since whenever these yields were adopted in the current  
26 price formulas?

27 A. Well, I would be careful with that because you --  
28 you can't create product out of thin air. Everything is



1 being created from milk solids. So if you increase the  
2 fat retention in cheese, that means more fat is going into  
3 cheese, which allows to you get a higher yield, but that  
4 means you have less fat coming out the other side of the  
5 process. So there's no new solids created. You boost  
6 cheese yield, and you lower the fat yield in the formula.  
7 So there's no -- not really a free ride.

8 Q. Okay. I understand that point. I -- okay. So  
9 one other question is, during cross-examination you stated  
10 that a decrease in the Class III and IV pricing formulas  
11 doesn't mean a loss of revenue. But you also state in  
12 your testimony that manufacturers of NDPSR products are  
13 limited to receiving the Make Allowance because the rest  
14 of the value is paid to producers.

15 So I'm just trying to square the statements, and I  
16 think it's because you are talking about in the first  
17 selection, doesn't mean it's a loss of revenue to co-ops  
18 that have manufacturing assets; would that be correct?

19 A. If you would state it one more time. I just want  
20 to make sure I answer your question precisely.

21 Q. Sure. So during cross you stated that a decrease  
22 in the Class III and IV prices does not mean a loss of  
23 revenue.

24 A. Correct.

25 Q. And in that statement are you just -- I thought I  
26 heard you elaborate that that -- you would apply that to  
27 cooperatives.

28 A. Yeah. In the case of a cooperative, if you lower



1 the Class III and IV price, assuming that they are  
2 manufacturing their own products, that does not change the  
3 nonfat dry milk market. It does not change the butter  
4 market necessarily. It does not change the cheese market.  
5 So all other things equal, the revenue coming into the  
6 plant would be the same. And if your revenue -- if your  
7 milk price drops but your revenue stays the same, that  
8 would mean your profit margin has increased. And if your  
9 profit margin is increased, the cooperative could choose  
10 to give that money back to its dairies.

11 So in theory, for a co-op manufacturing its own  
12 products, only the -- only the class benchmark has  
13 changed, but the amount of money coming in is the same, so  
14 the producers, in theory, would get paid the same. They  
15 could choose to do something else with that extra money.  
16 They could reinvest it. They can, you know, do whatever  
17 legally they could do with that but --

18 Q. So then how would you extend that thought to say  
19 direct shippers or cooperatives that don't have  
20 manufacturing plants or cooperatives for the milk they  
21 supply to other manufacturing plants they don't own?

22 A. That's a really good question. So let's say --  
23 let's take the other extreme where it is a cooperative who  
24 sells all of their milk. When the regulated price  
25 changes, it depends on how the contract was written. So  
26 if their supply contract was written that we are supplying  
27 you at flat Class III, and that is a deal we secured for,  
28 I'll just make up a number, to five years, then the



1 revenue in that case would drop. Class III would drop  
2 with the new Make Allowance change, and it would be  
3 between the milk handler and the processor whether they  
4 wanted to renegotiate that agreement.

5 For example, the milk cooperative that is selling  
6 milk in this case could say, like -- like, hey, this is  
7 not a competitive price for milk, I think that we need to  
8 renegotiate this contract, or they could make the case  
9 that, hey, the dairies cannot withstand this level of  
10 decrease, we need to renegotiate this contract. But that  
11 would be a private agreement between the milk processor  
12 and the cooperative on how they want to handle that.  
13 That's how I would interpret that.

14 Q. Okay.

15 MS. TAYLOR: I think Mr. Wilson has a question.

16 MR. WILSON: Thank you.

17 CROSS-EXAMINATION

18 BY MR. WILSON:

19 Q. Todd Wilson, Dairy Programs. Good morning.

20 A. Good morning.

21 Q. In looking at your Figures 3 through 5, I think I  
22 understand in your testimony you're relating the trend, if  
23 you will, to basically the erosion of premiums, maybe,  
24 through the -- through the Make Allowance ability, right?

25 A. I think the Make Allowances are an important piece  
26 of it. Certainly there's other noise in there, like I  
27 mentioned. Transportation costs are another thing that  
28 could exacerbate this trend.



1 Q. Some of them seem to be a lot different trend. If  
2 you look at the Northwest, it's pretty flat throughout the  
3 years until 2021, and then it really drops. But the other  
4 ones, I don't know, it just seems like the trend line  
5 itself relates more with your differences between mailbox  
6 and uniform prices more than say the Pacific Northwest  
7 area.

8 Would you -- do you have any feeling on that?

9 A. Yeah, I don't have a perfect explanation for all  
10 this noise. There was a few things that I thought were  
11 happening. I think recently you really see it fall off in  
12 the last few years of this analysis. And I suspect a lot  
13 of that has to do with the rapid increase in inflation for  
14 processing, and that increase in processing costs is  
15 already finding its way into mailbox prices.

16 And also, I think 2020 is kind of an interesting  
17 year, where there's kind of like a little bit of a  
18 deviation or a substantial deviation in the trend. And  
19 what I suspect, but I don't know if I would be able to  
20 approve -- prove this -- maybe with your information you  
21 could -- that there was a lot of depooling happening in  
22 2020 with the rapid changes in markets.

23 For example, if a Class III handler depooled their  
24 milk, that money would come out of the pool, and it would  
25 make the -- it would make the uniform price at test look  
26 relatively lower because that high value milk is coming  
27 out of the pool. But that money didn't disappear. That  
28 money is going to find its way back into producer



1 paychecks. So that would almost give the mailbox price a  
2 boost in 2020 versus the regulated price. That's my --  
3 that's what I suspect happened in 2020.

4 Q. Thank you.

5 One more question on Figure 2, just so I -- I  
6 think I know this. But the NDPSR block minus CME barrel  
7 part of the graph is the small little up and down, over  
8 and over under zero, right?

9 A. Yes.

10 Q. Is that simply the gap in the two other colored  
11 lines, above it?

12 A. Yes. That would be the gap. Well, let me --

13 Q. Sometimes it looks like it doesn't quite fit, but  
14 I think it's just kind of skewed, I don't know, left or  
15 right it seems like somehow.

16 A. Yeah. I think I would have to -- I'd have to  
17 double-check this. I put this graph together about six  
18 weeks ago. But it was meant to show the volatility  
19 between blocks and barrels.

20 Q. Relation -- taking into relationship between the  
21 NDPSR block and the CME barrel?

22 A. Uh-huh. Yeah. So that's -- that's kind of our --  
23 I think the point there was if, in Idaho, that Class III  
24 became 100% weighted by NDPSR blocks, but our revenue was  
25 related to CME barrels, we would see a much more volatile  
26 relationship between the sales of our products and a  
27 Class III price that was 100% blocks.

28 Q. And the barrel -- the CME barrel would be the





1 weekending price to relate that to the week --

2 A. Yeah, I think I used the week average. I used the  
3 week average.

4 Q. All right.

5 MR. WILSON: Thank you very much.

6 MS. TAYLOR: That's it from AMS. Thank you.

7 THE COURT: Anyone else?

8 Redirect?

9 REDIRECT EXAMINATION

10 BY MR. ROSENBAUM:

11 Q. Steve Rosenbaum for International Dairy Foods  
12 Association.

13 If you -- I want to just follow up on a few of the  
14 other questions that have been asked of you.

15 If you look at your main testimony, which is here  
16 in Exhibit 196, and turn to page -- pages 12 and 13, this  
17 is where you address Proposals 10 and 11, correct?

18 A. Yes.

19 Q. And as AMS, I think, accurately drew out, your  
20 point here is that even if you assumed that butterfat  
21 recovery in Class III is 93%, and even if you assumed  
22 there was zero farm-to-plant shrink in milk being used for  
23 Class III, that there are other parts of that particular  
24 formula that would also need to be addressed if one were  
25 to make -- engage in an effort to make it more accurate,  
26 correct?

27 A. Yes. You don't want to cherry-pick the formula.  
28 You would want to have an overhaul of the entire formula



1 preferably based on accurate --

2 Q. And I want to confirm my understanding of what  
3 your bottom line is. That if you were to make the  
4 assumptions that Proposals 10 and 11 want to make, namely  
5 that butterfat recovery in Class III is 93% and there is  
6 zero farm-to-plant shrink, that if you also corrected for  
7 the fact that the formula currently doesn't reflect any  
8 shrinkage in the plant itself, correct?

9 A. It -- I believe the formula has a small --  
10 currently a small amount of shrink built into it going  
11 into the cheese yield but not the fat section.  
12 Specifically the fat -- excess fat recovery, that's what I  
13 was honing in on.

14 Q. It doesn't have that, and it assumes that the 10%  
15 of the fat that is not going to cheese, which is whey  
16 cream, is worth the Grade AA butter price, which you think  
17 is too high, correct?

18 A. Correct.

19 Q. If you corrected for those two things, the net of  
20 all the corrections, both the ones being asked in  
21 Proposals 10 and 11 and the two corrections you think  
22 would also need to be made, the net of all that would  
23 probably be lower milk prices, right?

24 A. Yes, it would be.

25 Q. And by that I mean lower minimum regulated milk  
26 prices for Class III?

27 A. Yeah. The corrections to the fat value would  
28 outweigh what -- the changes the petitioner is asking for.



1 Q. Now, on page 9 of your testimony you address the  
2 question of whether barrels should be removed from -- make  
3 sure I have got the right page.

4 I was correct. On page 9 of your testimony,  
5 Hearing Exhibit 196, you address your opposition to  
6 removing 500-pound barrels from the price survey that is  
7 used to set the protein price, correct?

8 A. Correct.

9 Q. And obviously, AMS has no control over whether CME  
10 would continue to have a spot market for barrel cheese,  
11 even if 500-pound barrels were removed from the formula,  
12 correct?

13 A. My understanding is Dairy Programs has no control  
14 over the CME.

15 Q. So let's assume a scenario under which the CME  
16 continues to have a spot market for 500-pound barrels,  
17 correct?

18 A. Uh-huh.

19 Q. Now -- you need to say yes or no. Is that a  
20 "yes"?

21 A. Yes.

22 Q. All right. So -- and I think your testimony was  
23 that, in fact, that's how most barrels are actually  
24 priced, off of the CME announced barrel price; is that  
25 correct?

26 A. Correct.

27 Q. And so if -- if one removed the barrels from the  
28 formula for setting minimum milk prices and yet -- well,



1 if you did that, then the regulated Class III price would  
2 be set solely based upon blocks, correct?

3 A. That's how I understand it.

4 Q. Okay. And so what would be the practical impact  
5 of the fact that a barrel manufacturer would be selling  
6 his product based upon the CME's spot market, and yet his  
7 minimum milk price obligations would be established based  
8 upon blocks, not barrels?

9 A. Yeah. It would create a disconnect between your  
10 revenue and your milk cost, which is direct financial  
11 risk.

12 Q. And do you view that as a substantial issue?

13 A. Given how volatile the barrel market has become  
14 versus blocks, for barrel markets -- sorry -- for barrel  
15 manufacturers, it is extremely important.

16 Q. Extremely important, therefore that barrels stay  
17 in the formula for setting minimum milk prices?

18 A. Yes.

19 Q. Okay. And do I understand that your view is that  
20 even if CME would -- and it's in their decision -- were to  
21 remove -- eliminate, I should say, the spot market for  
22 barrels, that from your view, the practical effect would  
23 not be to increase payments to farmers?

24 A. Can you ask that one more time?

25 Q. Yeah. So let's assume there's no longer a barrel  
26 spot market and -- and the barrels have been removed from  
27 the formula, but obviously barrels are still being  
28 produced. And so what would the ultimate impact be of



1 that system?

2 A. Okay. I think I -- I think I understand your  
3 question. So the -- first the Class III price would be  
4 100% blocks.

5 As far as the impact to the Class III price,  
6 though, the absolute price that's going to dairymen, that  
7 could get a little bit fuzzy to measure in an alternative  
8 universe because you can look at the back analysis and  
9 say, oh, well, if they were only getting paid blocks, you  
10 know, they would have got this many cents per  
11 hundredweight higher price.

12 But I think what that view is not looking at is if  
13 the manufacturers -- if you had excess cheese, and you had  
14 to clear that, and you were taking losses on clearing that  
15 excess cheese by selling it at a discount, and you weren't  
16 getting any relief from the Class III price, for example,  
17 selling the barrels -- excess barrels because there's too  
18 much cheese in the market, you would probably seriously  
19 look at selling blocks instead to clear the market.  
20 Because at least if you are selling blocks, those get  
21 reported into the NDPSR, and they would give you milk  
22 price relief whereas -- and it would be 100% impact.  
23 Right now, when the barrel price goes down, it's only 50%  
24 of the formula.

25 But if you go to 100% block weighted system, and  
26 you have too much cheese that needs to clear the market,  
27 and you start making blocks because that's the only format  
28 where you can get milk price relief from that excess



1 cheese, it's going to be virtually 100% impact on  
2 Class III. So there could be unintended consequences.

3 Q. Would that tend to drive down the Class III price  
4 because you're now including, in setting that price, this  
5 block cheese that's being sold under conditions that to  
6 clear the market?

7 A. Yeah. So if you were -- if you started making  
8 block cheese and sending it to the CME in order to clear  
9 the market, that would have almost a 1 to 100% passthrough  
10 to the Class III price, instead of a 50% that currently  
11 exists with barrels.

12 Q. Okay. Now, you -- you gave some sort of quick  
13 testimony relating to the question of the profitability of  
14 Glanbia. And I just want to make sure that's made clear  
15 on the record because you -- for example, you made  
16 reference to a phrase EBITA, and yet actually we haven't  
17 had anyone define that term so far in the hearings.

18 So let me start by having you tell us what that  
19 phrase means.

20 A. Estimated was the -- estimated --

21 Q. Is it earnings before interest --

22 A. Yeah, yeah, yeah. Earnings before interest, tax,  
23 and amortization.

24 Q. And E-B-I-T-A, right?

25 A. Yeah, yeah, yeah.

26 Q. Thank you.

27 And you made reference to Glanbia having that  
28 EBITA of a little over 1% with respect to something. Can



1 you just explain a little more what it was you were  
2 referencing there?

3 A. Oh, that was on our published financials, that is  
4 the margin on the U.S. cheese business.

5 And I should add that that is, you know, that  
6 of -- you know, being in Idaho, having our own proprietary  
7 milk formulas, and having our own milk supply agreements.  
8 Again, I'm not getting into that. So that's not even  
9 necessarily for all the cheese reflective of the current  
10 Make Allowances.

11 Q. Is that a pretty low number?

12 A. 1% seems low to me for an investment.

13 Q. Then, lastly, you were asked some questions about  
14 the sample size for Dr. Stephenson's survey.

15 Now, do you understand that IDFA's Make Allowance  
16 proposal is based upon the most recent survey conducted by  
17 Dr. Stephenson, namely the survey conducted -- published  
18 in 2023 of 2022 costs?

19 A. Yes. 2022 costs.

20 Q. Okay. And there were some questions asked that  
21 sort of asked you, assume relatively low percentage of  
22 sample size, like on the order of 10% for certain  
23 commodities.

24 Do you recall being asked that?

25 A. Yes, I remember that.

26 Q. We will have testimony by Mr. Brown when he  
27 retakes the stand on this subject, but let me ask you to  
28 assume that what the actual statistics are, are as



1 follows:

2 That 91.2% of all nonfat dry milk produced in 2022  
3 was included in the survey. Okay? Assume with me, that  
4 80.1% of all the butter produced in the United States in  
5 2022 was included in the reported information to  
6 Dr. Stephenson for the 2022 survey; that 55.6% of all  
7 cheddar cheese produced in 2022 was included in the  
8 survey; and that 50.8% of all whey produced in 2022 was  
9 included in the survey.

10 Do you view those as robust sample sizes?

11 A. In my opinion, that would sound like a very large  
12 sample size.

13 MR. ROSENBAUM: That's all I have.

14 THE COURT: Anyone else?

15 MS. HANCOCK: I do.

16 RE CROSS-EXAMINATION

17 BY MS. HANCOCK:

18 Q. Mr. DeJong, you were here when Dr. Stephenson  
19 testified, at least on cross-examination yesterday?

20 A. Yes. I -- I don't recall word for word everything  
21 he said.

22 Q. That's fair. That's why we have a transcript.  
23 And you recall when I was asking him about his  
24 sample size?

25 A. I remember you asking him about it. I don't  
26 recall the specifics.

27 Q. Do you recall him ever saying that he had a sample  
28 size that matched up with the numbers that Mr. Rosenbaum





1 just gave you?

2 A. I don't recall him -- I don't recall any specific  
3 numbers he said.

4 Q. It makes sense that Dr. Stephenson would know his  
5 sample size better than Mr. Brown; is that right?

6 A. I would defer to Dr. Stephenson in regard to his  
7 samples.

8 Q. Okay.

9 Really quick. You just were answering some  
10 questions about barrels on Exhibit 196. And as I  
11 understand it, you're hoping to maintain the current  
12 status quo; is that right?

13 A. That's Glanbia's position, yes.

14 Q. Okay. And that means also not including 640s --  
15 640-pound cheddar cheese blocks to be added to the  
16 Class III price?

17 A. We are opposing the 640s.

18 Q. Okay. And one of the reasons that you are  
19 opposing the 640s is that you say, on page 10, it would  
20 not add any new information to the survey; is that right?

21 A. That's one of the reasons.

22 Q. Okay. Would it add volume to the survey?

23 A. By definition, adding a new format would add  
24 volume.

25 Q. Okay. Is it fair to say, though, that you are  
26 saying that's not enough of a reason to add 640s into the  
27 Class III price?

28 A. In my opinion, no, because there's no new



1 information being introduced, or I would say very minimal.

2 Q. And another reason that you give for not wanting  
3 640s to be added to the Class III price is that 640s is a  
4 small -- has a smaller pool of buyers and sellers versus  
5 the more liquid 40-pound block on the CME; is that right?

6 A. Yes.

7 Q. Is it also true that barrels represent a smaller  
8 pool of buyers than the 40-pound block?

9 A. I would say generally that's true. There -- the  
10 blocks are a wider format.

11 Q. And when Glanbia produces barrels, does it  
12 generally have a customer on the other side of the  
13 transaction already at the time that it's produced those  
14 barrels?

15 A. We try to precontract as much volume as possible.

16 Q. Okay. So it's fair to say that the goal at least  
17 for Glanbia is that you have a buyer before you produce  
18 those barrels?

19 A. Ideally, yes.

20 Q. Okay. And is Glanbia able to achieve that goal  
21 most of the time?

22 A. Most of the time.

23 Q. And you are worried if 640-pound blocks were added  
24 to the Class III price, that at some point later in the  
25 future, somebody could be asking to pull those back out  
26 just like we're asking to pull barrels out right now to  
27 have it priced off of just one product?

28 A. That is a potential risk.



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

2 THE COURT: Anything else?

3 RECROSS-EXAMINATION

4 BY MR. MILTNER:

5 Q. Very quickly.

6 Did Glanbia consider submitting a proposal in this  
7 hearing to address any elements of the yield factors?

8 A. We did not. Our position was primarily defensive  
9 at this point.

10 Q. Are you aware that IDFA proposed to adjust the  
11 valuation of whey cream the last time that the formulas  
12 were examined?

13 A. I know in past hearings -- this is well before my  
14 time in the industry -- that these issues were discussed  
15 before.

16 Q. And your -- and are you aware that USDA said there  
17 was insufficient justification to make the requested  
18 change at that time?

19 A. I don't have the financial decision memorized. So  
20 if that is the case, I will take your word for it.

21 Q. I don't have it memorized either.

22 But there's nothing that would have prevented IDFA  
23 or Glanbia from submitting any proposal to update parts of  
24 the yield factors they believed were inaccurate or needed  
25 to be reviewed, right?

26 A. Technically true. Given the tight time  
27 constraints and the kind of how hectically everything came  
28 together and we didn't know what the scope of the hearing



1 would be, maybe as a practical matter I'm not sure that's  
2 true, but technically I can agree with your premise.

3 MR. MILTNER: Thank you.

4 MR. ROSENBAUM: Your Honor, I would ask that  
5 Hearing Exhibits 196 and 197 be admitted into evidence.

6 THE COURT: Any objections?

7 Seeing none, Exhibits 196 and 197 are admitted  
8 into the hearing record.

9 (Thereafter, Exhibit Numbers 196 and 197 were  
10 received into evidence.)

11 THE COURT: Let's -- we have been going for about  
12 an hour and 20 minutes. Ten-minute break. Let's come  
13 back at 11:25.

14 (Whereupon, a break was taken.)

15 THE COURT: On the record.

16 Mr. Rosenbaum.

17 MR. ROSENBAUM: Your Honor, Steve Rosenbaum for  
18 the International Dairy Foods Association. We call as our  
19 next witness, Mr. Wes Eveland.

20 THE COURT: Please raise your right hand.

21 WES EVELAND,

22 Being first duly sworn, was examined and  
23 testified as follows:

24 THE COURT: Your witness.

25 DIRECT EXAMINATION

26 BY MR. ROSENBAUM:

27 Q. Mr. Eveland, you have before you a document that's  
28 marked as IDFA Exhibit 26. Is this your written



1 testimony?

2 A. Yes.

3 MR. ROSENBAUM: Your Honor, I would ask that this  
4 document be marked with the next exhibit number.

5 THE COURT: I have 198. The exhibit is so marked.  
6 (Thereafter, Exhibit Number 198 was marked  
7 for identification.)

8 BY MR. ROSENBAUM:

9 Q. Mr. Eveland, could you please read your written  
10 testimony into the record?

11 A. This testimony is submitted on behalf of Hilmar  
12 with respect to Proposals 7, 8, and 9, relating to  
13 Make Allowances.

14 My name is Wes Eveland, and I am the director of  
15 procurement for Hilmar, who I'm representing today. I've  
16 worked for Hilmar since February of 2023. My main  
17 responsibilities at Hilmar include leading the milk and  
18 non-milk buying teams, procurement strategy development,  
19 contract negotiations, market analysis, and risk  
20 management.

21 MR. ROSENBAUM: Slow down just a little.

22 THE WITNESS: Okay. I'll slow down.

23 Prior to working for Hilmar, I spent 13 years in  
24 progressive procurement leadership roles at Kerry  
25 Ingredients and Beyond Meat. Over my career, I have led  
26 the procurement of a variety of different agricultural  
27 commodities, ingredients, packaging, and indirect spend  
28 categories both within the U.S. and globally.



1           As for a company background, Hilmar is a cheese  
2 and whey manufacturer with processing locations in  
3 California, Texas, and soon to be Kansas. We work with  
4 dairymen in the California, Southwest and upon completion  
5 of the Kansas facility, the Central Federal Milk Marketing  
6 Orders.

7           Our primary product lines include natural hard  
8 American-style cheeses, such as cheddar, Colby, and  
9 Monterey Jack, while some of our main whey products  
10 include whey protein concentrate 80 (WPC-80), whey protein  
11 isolate (WPI), whey protein hydrolysate (WPH), and various  
12 grades of edible lactose.

13           We package our cheese in 40-pound block, barrels,  
14 and 640-pound block. We employ over 1,500 people across  
15 the country and sell finished products domestically and  
16 internationally to over 50 countries around the world.

17           Hilmar Cheese Company was started in 1984 by a  
18 group of innovative and market orientated dairymen who  
19 wanted to maximize their return on their high-quality  
20 milk. The company was founded on the idea that dairymen  
21 should receive a competitive price for their milk and one  
22 that is driven by actual market conditions. Dairymen  
23 continue to own the company and manage its business as  
24 active corporate board members.

25           Our Hilmar, California cheese and whey  
26 manufacturing site processes 12% of the state's milk. Our  
27 Dalhart, Texas cheese and whey manufacturing site  
28 processes 31% of the state's milk. The vast majority of



1 milk we process is bought from independent dairymen who  
2 are not part of a co-op. This emphasis will continue with  
3 respect to the investment being made in the Dodge City,  
4 Kansas manufacturing location.

5 Hilmar is supportive of Proposals 8 and 9 as  
6 submitted by Wisconsin Cheese Makers Association and  
7 International Dairy Foods Association ("IDFA"), and  
8 against Proposal 7 as submitted by the National Milk  
9 Producers Federation ("NMPF").

10 Further to, we support the testimony of IDFA's  
11 Mike Brown as an expert in the field and a representative  
12 of the industry. Our testimony will speak to Hilmar's own  
13 experiences with cost of production, the alignment between  
14 our costs and the Stephenson Survey, and the importance  
15 that future Make Allowances are able to keep pace with  
16 changing costs of production. Due to the competitive  
17 environment and proprietary nature of our costs, we will  
18 not speak to their specifics in this testimony. Our  
19 testimony will begin with an overview of the markets that  
20 influence Hilmar's costs.

21 Akin to the inflation all Americans are  
22 experiencing day to day, dairy processing costs are up  
23 markedly. The FRED Producer Price Index data shows a  
24 39.5% increase between when the current Make Allowance was  
25 created in 2008 and the prices in 2022. On top of general  
26 cost pressures interest rates have increased  
27 significantly, over 276% versus the 20-year average. Cost  
28 and rate pressures make the hurdle to borrow and invest



1 much more challenging for processors. These increases  
2 have impacted processors' capacity and efficiency projects  
3 that provide dairymen the opportunity to expand their  
4 business, thereby increasing efficiencies on the farm.

5 Speaking to specific markets and components of  
6 cost, while Hilmar has seen significant increases in many  
7 areas, I will focus on the areas of utilities, packaging  
8 and labor.

9 Beginning with utilities, when compared to the  
10 20-year average, the Henry Hub spot natural gas market is  
11 45.1% above the average and the cost per kilowatt-hour is  
12 26.3% above the average.

13 Between 2008 and 2022 corrugated shipping  
14 containers have increased by 76.3% and wood and lumber  
15 products (an input for crates and pallets) have increased  
16 by 109.6%.

17 Labor is a similar inflationary story. From 2000  
18 to 2022, the FRED Private Industry Workers Cost Index  
19 reflects a 42.5% increase in wages and salaries. As with  
20 utilities and packaging, the labor market indicators align  
21 with what the Hilmar business has experienced and the  
22 Stephenson Survey found.

23 All of these data points show a consistent message  
24 that whether Hilmar, those who participated in the survey,  
25 or the market as a whole, there has been significant  
26 inflation that the industry has experienced that requires  
27 quick action to address on the part of USDA.

28 Hilmar's belief is that given the scale of the





1 required change, a Make Allowance update needs to go  
2 through in full, albeit IDFA has proposed a phased  
3 approach to partially recognize and address concerns from  
4 NMPF.

5 While there needs to be action to catch processors  
6 up to a now past market, there also needs to be  
7 consideration for the creation of a market influenced and  
8 regularly updating Make Allowance formula. An updating  
9 and data driven Make Allowance formula ensures that inputs  
10 remain relevant to the then current cost scenario. If we  
11 want to keep FMMO pricing formulas relevant, we need to  
12 keep its functioning components current and relevant as  
13 well. This means whether costs go up or down, the  
14 formulas should reflect processors' actual cost dynamics.

15 The lack of consideration for future changes and  
16 the disconnect from available data are significant reasons  
17 why Proposal 7 as submitted by NMPF is flawed. In NMPF's  
18 proposal they readily admit that they don't believe that  
19 their proposal meets the true cost of inflation impacting  
20 processors. Their reasoning for not implementing the full  
21 change is a lack of confidence in IDFA's cost survey and  
22 hardships on dairymen due to the scale of the required  
23 change.

24 As a processor with dairymen owners, Hilmar are  
25 confident in the results of the cost survey. It aligns  
26 with our own experiences, has validation, and is  
27 correlated with the Schiek study. The lack of data and  
28 procedure with NMPF's own approach provides less comfort.



1           Finally, it needs to be recognized that we have  
2   representative data via the Stephenson survey. Relying on  
3   the timeliness of Congress to agree to a Make Allowance  
4   audit process via the Farm Bill is at best uncertain.  
5   While an update to the current Make Allowance is sensible,  
6   keeping it decoupled from available market and data inputs  
7   is not.

8           Simply put, there is an opportunity to solve an  
9   underlying problem with how the Make Allowance remains  
10  relevant to processor input costs, thereby ensuring that  
11  there continues to be strong and willing processing  
12  capacity for milk to find a home.

13         Q.   Thank you very much. I have a few follow-up  
14  questions.

15           We heard testimony a few minutes ago from Glanbia,  
16  whose representative testified that they were the largest  
17  producer of American-style cheese in the United States.

18           Did you hear that?

19         A.   I did.

20         Q.   And who is number two?

21         A.   That would be us. It's not a competition.

22         Q.   But you are the second largest manufacturer of  
23  American-style cheese in the United States, correct?

24         A.   Correct.

25         Q.   And that includes cheddar?

26         A.   Correct.

27         Q.   And did your company participate in the  
28  Dr. Stephenson's survey of 2022, manufacturing costs?



1 A. We did.

2 Q. And was that with respect to both of your plants?

3 A. Sorry. Can you repeat that?

4 Q. Did you participate with respect to both of your  
5 plants?

6 A. Yes, we did.

7 Q. Now, one item of potentially particular interest  
8 is the fact that you are, as we speak, in the process of  
9 building a new plant in Kansas; is that correct?

10 A. That's correct.

11 Q. And I know you have told me that you are not  
12 willing to share the exact cost of the plant for  
13 competitive purposes.

14 Is it fair to say that that plant is costing  
15 hundreds of millions of dollars?

16 A. That. And I can share what's in the public  
17 record, which is \$600 million, which is what it was  
18 estimated at at the beginning. Our true cost is far  
19 greater than that.

20 Q. Okay. Now -- now, just ask the basic question:  
21 Do you intend to pool that plant on the Federal Order?

22 A. Not at this time. We have had to make contractual  
23 arrangements with dairy processors to be able to justify  
24 the expansion at Dodge.

25 Q. If -- if -- if -- if you were in the Federal  
26 Order -- strike that.

27 If the plant were pooled today and you -- let me  
28 put it a little differently.



1           If at the time that a decision was being made  
2 whether to build the plant, would you have built it if the  
3 plant was subject to the current Make Allowances?

4           A.    It would be a much harder justification.  In  
5 looking at today's inflation rates and interest, it would  
6 have been difficult to impossible to move forward with.

7           Q.    And of course by staying out of the pool, you  
8 don't have an ability to share in the Class I proceeds,  
9 correct?

10          A.    Correct.

11          Q.    And nonetheless, the economics are such that you  
12 have made the decision at this point, at least, you are  
13 not going to pool, correct?

14          A.    Correct.

15          Q.    Now, your company is actually owned by dairy  
16 farmers; is that correct?

17          A.    Correct.

18          Q.    I mean, when you -- just to be clear, when you use  
19 the term "dairymen," I want to make clear, you are not  
20 just talking about people who have some role in the dairy  
21 industry --

22          A.    No --

23          Q.    -- these are actual dairy farmers.

24          A.    -- they are active farmers that provide milk to  
25 our facilities.

26          Q.    Okay.  Now, do you have other farmers who are not  
27 owners of Hilmar but who also provide milk to your  
28 facility?



1 A. Correct.

2 Q. And what -- and you've engaged in, I take it,  
3 discussions with some of them regarding their supplying  
4 milk to the Kansas plant once it opens, correct?

5 A. Correct.

6 Q. And are they aware that you are not intending to  
7 pool the plant?

8 A. Correct.

9 Q. And what is their reaction to the overall  
10 situation? I'm talking about your non-owner farmer  
11 suppliers.

12 A. Our non-owner suppliers, they are eager to grow.  
13 Expansions are critical to their businesses, just as it is  
14 to ours. So I think that they are willing to partner with  
15 us to help both businesses grow.

16 Q. And your new facility provides an opportunity for  
17 the sale of a lot of additional milk, I take it?

18 A. Correct.

19 Q. So why is it -- why does Hilmar still care about  
20 Make Allowances?

21 A. So accuracy in pricing signals is important. It  
22 it's a key input into vast amounts of milk in the U.S.  
23 Inaccuracy is going to lead to pricing signals that are  
24 distorted to processors, to producers, as well as end  
25 customers. So whether we are buying inside or outside  
26 isn't relevant. It is accuracy that's key.

27 Q. And tell us what -- what kind -- what -- what kind  
28 of cheese is made in your California facility, your



1 current facility?

2 A. We make American-style cheeses, inclusive of  
3 cheddar, Colby, Monterey Jack, etcetera.

4 Q. Okay. And for the cheddar, what size, if you  
5 will, cheese are you making?

6 A. So we do 40-pound block and 640s.

7 Q. And tell us about the Texas facility, same  
8 questions.

9 A. They do 40-pound block, 640s, and barrels.

10 Q. And -- and do the -- do you make some cheese other  
11 than cheddar cheese?

12 A. Correct. Yep.

13 Q. Is it the same varieties you mentioned a minute  
14 ago?

15 A. Same varieties.

16 Q. Okay. And what's the -- what's the plan for your  
17 Kansas facility?

18 A. They will be doing 640s, 40-pound block, similar  
19 cheese styles as the other facilities.

20 MR. ROSENBAUM: Your Honor, the witness is  
21 available for cross-examination.

22 CROSS-EXAMINATION

23 BY MR. MILTNER:

24 Q. Good morning, Mr. Eveland.

25 A. Good morning.

26 Q. My name is Ryan Miltner. I represent Select Milk  
27 Producers.

28 In your California plant, what's the rough



1 division between cheddar cheeses and Jack Colby cheeses?

2 A. I'm not going to be able to get into specifics of  
3 the business.

4 Q. What's the division between 640s and 40s?

5 A. Same answer, I won't be able to get into  
6 specifics.

7 Q. Does California's plant produce barrels?

8 A. They do not.

9 Q. Okay. That's a specific. Why that one and not  
10 the others I asked about?

11 A. So for that one, I think that that's less -- gets  
12 into less about some of the business than the other  
13 pieces.

14 Q. Okay. And at your Texas plant, are you able to  
15 switch production between blocks and barrels, depending on  
16 market conditions?

17 A. I believe so. I'm not sure.

18 Q. When asked by Mr. Rosenbaum about why Hilmar cares  
19 about Make Allowances, you said accuracy is key.

20 The accuracy of what?

21 A. So the accuracy of pricing information in the  
22 market. So if we are talking about Make Allowances,  
23 specifically, if they are predicated on a 15-year-old  
24 system, or pricing component, it's less relevant today  
25 than it was 15 years ago.

26 Q. How would Hilmar utilize an accurate  
27 Make Allowance figure as it would be contained in the  
28 Class III formulas?



1 A. We would probably look closer at -- at rejoining a  
2 pool. So we might -- might go back.

3 Q. So it's not the accuracy, it's about the economic  
4 decisions that Hilmar will make based on that data.

5 A. I think it's just as much about accuracy as -- the  
6 economics are, sure, a component, but I think the actual  
7 accuracy when we're talking about pricing discussions with  
8 customers, along with other things, if that's inaccurate,  
9 it's just not valuable.

10 Q. So I think we'd all like to get to a mandatory  
11 audited cost survey.

12 But in the absence of that, do you think that the  
13 reports from Dr. Stephenson and Dr. Schiek allow us to get  
14 to an accurate number?

15 A. I think given the available data, we participated  
16 in the survey, we found it to be representative of our  
17 costs, largely.

18 Q. If USDA were to adopt Make Allowances premised on  
19 those reports, would that -- would that be the type of  
20 accurate information you would like to see the Federal  
21 Order adopt?

22 A. Yeah, I think that the Stephenson survey -- again,  
23 speaking to our own specifics -- it's -- the methodology  
24 seems sound, the participation was a good striation of the  
25 market. Yeah, I think it was a good way to go.

26 Q. So really you have already got the data you are  
27 looking for, don't you?

28 A. Yeah, I think it's using that when we're talking





1 about redefining the Make Allowance.

2 Q. Okay. So you also talk about the whey products  
3 that Hilmar produces.

4 I notice you don't produce any dry whey; is that  
5 correct?

6 A. We do produce dry whey.

7 Q. Okay. I'm -- I may have -- I -- you said your  
8 main whey products include WPC-80, WPI, WPH, and various  
9 grades of edible lactose.

10 So dry whey is not a main whey product for Hilmar;  
11 is that correct?

12 A. Correct. Yeah. Just straight dry whey.

13 Q. Do you report information on dry whey sales to the  
14 NDPSR?

15 A. I'm not aware one way or the other.

16 Q. Generally speaking, would you agree that WPC-80  
17 and WPI and WPH are value-added products as compared to  
18 dry whey?

19 A. Yes. I would consider value added.

20 Q. They come with an additional manufacturing cost to  
21 Hilmar, don't they?

22 A. Correct.

23 Q. And also additional revenue to Hilmar because they  
24 are value-added products, correct?

25 A. Presumably correct.

26 Q. Hilmar views those whey products as an important  
27 part of its business model, don't they?

28 A. I believe so. I'm not a part of the finance



1 community, but I believe so.

2 Q. So when Hilmar takes in raw milk, they convert  
3 that to products, they convert it to cheese, they convert  
4 it to whey, and/or whey products, and lactose, correct?

5 A. Correct.

6 Q. So the Class III formulas are premised on the  
7 production of 40-pound blocks or 500-pound barrels and dry  
8 whey.

9 Does the fact that Hilmar manufactures different  
10 whey products affect your view as to whether the  
11 Make Allowance for cheese is an accurate benchmark for  
12 your plants?

13 A. Sorry. Can you repeat the question?

14 Q. Yeah. I mean, since -- since Hilmar doesn't  
15 produce dry whey in significant quantities, and -- but  
16 your whey products are an important part of your business  
17 model, how accurate is the federal Make Allowance for  
18 cheese to Hilmar as a benchmark?

19 A. I can't really speak to that.

20 Q. Okay. On page 2 of your statement you stated that  
21 the vast majority of milk whey process is bought from  
22 independent dairymen who are not part of a co-op.

23 Does that statement apply both to your plant in  
24 California and your plants in Texas?

25 A. Correct.

26 Q. Do you pay your producers on a proprietary cheese  
27 yield formula?

28 A. Yes. We have a proprietary formula.



1 Q. How does that price compare to the federal  
2 Class III price?

3 A. I can't get into specifics about our business.

4 Q. Were you here this morning for Mr. DeJong's  
5 testimony?

6 A. I was.

7 Q. Did you see the graphs that he included in his  
8 statement?

9 A. I didn't look at them.

10 Q. Okay. If producers in West Texas, overall, are  
11 receiving a lower mailbox price than the Class III price,  
12 wouldn't there be an economic incentive for producers who  
13 wanted to expand to contract with a plant like Hilmar?

14 A. I think that dairy farmers are smart businessmen.  
15 If they want to grow their business, they will look for  
16 stainless to put the milk at.

17 (Court Reporter clarification.)

18 THE WITNESS: They will look for stainless to put  
19 the milk at.

20 BY MR. MILTNER:

21 Q. And by "stainless," you mean silos at a plant and  
22 not a truck, right?

23 A. Correct.

24 Q. If the mailbox price in Texas is lower than the  
25 uniform price, do you attribute that to inadequate  
26 Make Allowances?

27 A. Yeah, I think it's a good key indicator of that.

28 Q. Do you think there are any other factors that



1 might contribute to that occurring?

2 A. None that I would see.

3 Q. Hauling wouldn't be one?

4 A. No. I think that -- I think that's a key piece if  
5 terms of where -- where they are trying to grow the  
6 business. I think hauling is an input, but I don't know  
7 that much about it.

8 Q. So the relative distance from the farm to an  
9 available market is not -- doesn't bear on that  
10 relationship?

11 A. Sorry, I think it does. I think that's some of  
12 that in terms of where you would have to haul your milk,  
13 yes.

14 Q. You note that interest rates have increased 276%  
15 versus the 20-year average, and you cite the St. Louis  
16 Fed.

17 Are you familiar with the St. Louis Fed's  
18 five-year break-even analysis?

19 A. I'm not as familiar with that. I think the  
20 question was asked yesterday about that as well. I don't  
21 think that it's as familiar.

22 Q. Okay. You also talk about utilities.

23 How do the utility costs for Hilmar compare to  
24 your California plant versus your Texas plant?

25 A. I haven't looked at that specifically.

26 Q. If the industrial insurance rate per kilowatt hour  
27 for California was four to five times the rate in Texas,  
28 as reported by the U.S. government, would that surprise



1 you?

2 A. I suppose it wouldn't be a surprise.

3 Q. So when Glanbia's witness was testifying, they  
4 made a case that processor co-ops are indifferent to  
5 Make Allowances.

6 And I know Hilmar isn't a co-op, but is that -- it  
7 is a similar model, isn't it, where the farmer-owners that  
8 supply the plant also own the plant?

9 A. It's much more indirect than a traditional co-op.

10 Q. Are the contracts that Hilmar provides to its  
11 supplying farmers the same terms for all farmers  
12 delivering to a plant, the same plant?

13 A. We -- excuse me -- we try to be consistent with  
14 all the producers that we work with. Whether they are  
15 owners or whether they are non-owners, we treat everybody  
16 equally.

17 Q. On the milk supply end of things?

18 A. Correct.

19 Q. And then so the owners get a distribution of the  
20 profits of the plant, correct?

21 A. I believe so. I'm not -- I'm not privy to that,  
22 though.

23 Q. Okay.

24 MR. MILTNER: Thank you. I don't have any other  
25 questions.

26 THE WITNESS: Thanks.

27 THE COURT: Further questions, other than AMS?

28 ///



## CROSS-EXAMINATION

1  
2 BY MS. HANCOCK:

3 Q. Good afternoon. I'm Nicole Hancock representing  
4 National Milk.

5 A. Good afternoon.

6 Q. Was today the first day that you were here  
7 listening to testimony?

8 A. No, I have listened a few days.

9 Q. Were you here in person or listening online?

10 A. Yeah, just lurking in the back.

11 Q. Okay. A little creepy but --

12 A. Work doesn't stop while you're here.

13 Q. That's fair. So partially tuned in, partially  
14 working.

15 A. Yep.

16 Q. Did you hear Mr. DeJong talk about the deadly  
17 efficiency of his plant?

18 A. Yes. You two enjoyed that comment.

19 Q. You know, I'm going to keep it going.

20 Do you believe that your plant operates equally as  
21 efficiently?

22 A. I -- I think that we're very neck-in-neck. Both  
23 operations have to be efficient. That's key in the space.

24 Q. Okay. And do you have any plants that -- you said  
25 that you don't plan to operate your Kansas City plant as a  
26 pool plant; is that right?

27 A. Correct.

28 Q. And is that a decision that you will make based on



1 the market conditions that exist at the time when it  
2 opens, and then over the course of the duration of  
3 operation of that plant?

4 A. At this time we don't see any reason to pool based  
5 on the current Make Allowances and FMMO setup.

6 Q. And that's based on the financial analysis that  
7 the folks that you work with at Hilmar have conducted; is  
8 that accurate?

9 A. Correct. Yep.

10 Q. And does that take into account a potential  
11 increase in the Make Allowance as well?

12 A. At this time we have just considered the facts as  
13 they are available to us.

14 Q. Which means the proposals for the increase in the  
15 Make Allowance are included in that as well.

16 A. We haven't looked -- when we did our  
17 justification, we wouldn't have looked at proposals. We  
18 started looking at this -- this is a few years in the  
19 making.

20 Q. Okay. And I think that of the resources that I  
21 looked at, it sounds like you broke ground on that Kansas  
22 City plant somewhere in the fall of 2022?

23 A. Correct.

24 Q. And when do you anticipate that it's going to be  
25 completed and ready to be opened?

26 A. Q4 of 2025.

27 Q. Okay. So about a three-year construction period?

28 A. Yep.



1 Q. And what was -- you said, reported in the media  
2 that it would be about a \$600 million capital investment.  
3 That's what was planned before it was started; is that  
4 right?

5 A. Correct.

6 Q. And then now, as we see with most construction  
7 projects, they always seem to go over the budget, don't  
8 they?

9 A. Yes. That's true.

10 Q. And I think you characterize it as it's gone far  
11 greater than what was originally estimated for this  
12 project.

13 A. Correct.

14 Q. And even at the time that the project was  
15 originally estimated, in addition to the 600 million that  
16 was estimated for construction of the plant, Hilmar was  
17 estimating another \$500 million to be invested as soon as  
18 it was done being completed.

19 A. It was \$500 million into the local communities.  
20 That's what they thought that the communities would  
21 generate.

22 Q. Okay. And so that's what was contemplated at the  
23 time that it was initially budgeted for before it has now  
24 far exceeded its original budget estimates.

25 A. Yeah. So 600 million, the local communities  
26 thought that they would be generating about \$500 million  
27 locally with the businesses that were going to be  
28 supported by the plant expansion.





1 Q. And that 2022 break-even construction, that's  
2 about a little more than two years into the global  
3 pandemic that we all know too well.

4 A. Correct.

5 Q. And that's when inflation was reaching new growth  
6 heights and increasing even still at that point in time.

7 A. Correct.

8 Q. Does Hilmar produce its cheese products at a cost  
9 that is lower than the currently set Make Allowance?

10 A. Do we produce -- can you repeat that back, please?

11 Q. Yeah. Are your costs of production lower than the  
12 current Make Allowance?

13 A. That gets back to, we're not willing to share that  
14 information.

15 Q. Can you just tell me if it is below or above?

16 A. I'd prefer not.

17 Just to speak on that for a moment. This is  
18 obviously broadcast, as well as put into the public realm.  
19 As a former purchaser at a customer, I would use this  
20 information in pricing discussions. So I would prefer not  
21 to be talking about specifics for that reason.

22 Q. How long have you been at Hilmar?

23 A. Eight months.

24 Q. Okay. What did you do before Hilmar?

25 A. I worked for about 12 years at Kerry Ingredients,  
26 and then about a year at Beyond Meat, all in purchasing.

27 Q. Okay. And at what point in time over your career  
28 did you start to have concerns about whether Federal



1 Orders establish Make Allowance was sufficient?

2 A. I would say I'm a lot closer to it now in this  
3 role than I have been in past roles, obviously.

4 Q. So sometime in the last eight months?

5 A. Correct.

6 Q. Are you involved in any of the financial reporting  
7 at Hilmar?

8 A. I'm not.

9 Q. What -- in your role in procurement, do you have  
10 an established budget that you are in charge of managing  
11 each year?

12 A. I am, yes.

13 Q. Okay. When you are reporting your budget numbers  
14 to your management team or your leadership team, is it  
15 important that your numbers are accurate?

16 A. Correct.

17 Q. And do you have a responsibility in your role to  
18 manage costs the best that you can?

19 A. We do. I think just as any budgeting practice,  
20 that we understand there is going to be underage and  
21 overage versus those budgeted numbers, just for reasonable  
22 considerations.

23 Q. And similar to the construction of the plant,  
24 right? Sometimes you can't help but go over budget; is  
25 that fair?

26 A. Yeah, or under. I mean, you obviously seek to be  
27 below budget wherever possible, but sometimes that's  
28 outside of your control.



1 Q. In the last six years -- did you -- did you --  
2 were you listening to the testimony online before you were  
3 here in person?

4 A. I popped in here and there. Who specifically?

5 Q. Paul Bauer. Did you hear him talk about barrel  
6 elimination?

7 A. I think I missed him.

8 Q. Okay. He testified that barrels have subsidized  
9 the lack of Make Allowances, or maybe the deficiencies in  
10 perceived Make Allowances, and I'm wondering if you agree  
11 with that statement.

12 A. I think the barrels are an important part of the  
13 market. They are traded. They provide a balancing aspect  
14 of 40-pound block. I think their removal takes away a  
15 significant portion of available market data.

16 Q. Does the inclusion of barrels provide a value to  
17 those who produce barrels, in having it priced in the  
18 Class III market?

19 A. I think it -- it provides a value insofar as  
20 there's available data and using the data is important.

21 Q. Does it provide a financial value as well?

22 A. I am not sure. I'm not sure exactly how our  
23 customer contracts are set up.

24 Q. Okay. So you don't know if it would -- if it  
25 could potentially be providing some kind of a subsidy to  
26 any deficiencies in Make Allowance?

27 A. I don't know.

28 Q. Okay.



1 MS. HANCOCK: That's all I have. Thank you for  
2 your time.

3 THE WITNESS: Thank you.

4 CROSS-EXAMINATION

5 BY MR. ENGLISH:

6 Q. I was going to say good morning, but looks like  
7 good afternoon, sir.

8 My name is Chip English for the Milk Innovation  
9 Group.

10 Does Hilmar receive any Grade B milk?

11 A. Not at this time.

12 Q. Was there a time that you stopped receiving  
13 Grade B milk?

14 A. About two years ago or so we -- we went all to  
15 Grade A. We no longer accept Grade B.

16 MR. ENGLISH: Thank you, sir.

17 THE WITNESS: Thanks.

18 CROSS-EXAMINATION

19 BY MR. MILTNER:

20 Q. In my previous attempt to be brief I neglected to  
21 ask one question.

22 Mr. DeJong offered some information about the  
23 butterfat recovery at his plants.

24 Does Hilmar achieve higher than 93% butterfat  
25 recovery at its Texas facility?

26 A. I don't know.

27 Q. Do you know if it achieves higher than 90%  
28 butterfat recovery at the facility?



1 A. It would be outside of my purview.

2 MR. MILTNER: Thank you.

3 THE WITNESS: Yep.

4 THE COURT: Further questions?

5 AMS?

6 CROSS-EXAMINATION

7 BY MS. TAYLOR:

8 Q. Good afternoon.

9 A. Good afternoon.

10 Q. Thank you for coming to testify today.

11 A. Thank you.

12 Q. I just have a few questions.

13 So Hilmar is owned by a group of dairymen. May I  
14 ask how many dairymen?

15 A. I'm not sure of the exact number, to be honest. I  
16 can get the number and get it to you because that's going  
17 to bother me as well. I don't know off --

18 Q. A rough estimate?

19 A. I want to say that it's in the 20 range, but I  
20 need -- I'll get you a specific number because that's  
21 going to drive me nuts.

22 Q. And for those dairymen, if you would know, we're  
23 collecting -- we're charged with also collecting  
24 information on small businesses. And so for dairy  
25 farmers, that is defined as farmers making \$3.75 million  
26 in gross revenue annually on a whole farm basis.

27 Do you know about what percentage of your farms  
28 might meet that definition?



1 A. I don't. I don't.

2 Q. Okay. And then when it comes to the processor  
3 side of the business, for Hilmar, the cheese company,  
4 small businesses for cheese companies are defined by  
5 employees, and for cheese manufacturers that -- that are  
6 those with 1250 employees or less.

7 Would Hilmar, altogether, for the total company,  
8 would Hilmar meet that definition?

9 A. No. We have 1,500 employees.

10 Q. On page 2 you state that your California plant  
11 processes 12% of the state's milk, and your Texas plant  
12 processes 31% of the state's milk.

13 How did you calculate those numbers?

14 A. I worked with my finance team. We looked at total  
15 reported milk, and then we looked at what our consumption  
16 was.

17 Q. So NASS numbers or --

18 A. We used NASS numbers.

19 Q. And you talk about how a lot of your milk is --  
20 that Hilmar buys is from independent dairymen.

21 Would you know the rough estimate of what you buy  
22 from your independent farms versus co-op supplied?

23 A. Co-op supply would be a very, very small  
24 percentage, maybe 1, 2%, something like that.

25 Q. And does Hilmar buy milk from dairymen who are not  
26 Hilmar owners then, that would be independent shippers to  
27 them?

28 A. Correct.



1 Q. Okay. On the bottom of page 2 into 3, you have a  
2 lot of different statistics that you reference for cost  
3 indices, and I made this request of other witnesses  
4 earlier in the hearing, if IDFA would provide those  
5 references on your official notice --

6 A. Yeah, I have the --

7 Q. -- web link?

8 A. I have the actual websites on the last page.

9 Q. Did I miss that? Oh, I missed those. Thank you.  
10 That's very helpful. Thank you.

11 A. No problem.

12 Q. On the top of page 3, the bottom -- or the last  
13 sentence in that kind of carryover paragraph, and you are  
14 talking about cost increases. And you say, "These  
15 increases have impacted processors' capacity and  
16 efficiency projects that provide dairymen the opportunity  
17 to expand their business, thereby increasing efficiencies  
18 on the farm."

19 And I wondered if you could expand on how the  
20 processor efficiency projects feed into dairymen's  
21 opportunities.

22 A. Certainly. I'll preface that when we're having  
23 conversations with -- with producers, we have more  
24 conversations about expansion than anything else, how can  
25 we -- what can we do to bring in more milk from the  
26 producers. Our Dodge City facility, that's part of its  
27 purpose, so we're actually going to be moving milk from  
28 our Dalhart facility up to Dodge, thereby giving



1 opportunity for growth.

2 So when we -- we're talking about this, the  
3 expansion is important because it allows dairy producers  
4 to expand their businesses. And that -- in our  
5 experience, that's a critical request from -- from all of  
6 the producers we work with.

7 Q. So just so I'm clear, since Hilmar seems to have a  
8 unique ownership structure, that's the dairymen owners of  
9 Hilmar?

10 A. No. Third party as well.

11 Q. Okay.

12 A. So I -- I won't go into the breakdown of that, but  
13 it's both.

14 Q. Okay.

15 A. And I suppose to that end I will just comment that  
16 the same as we treat our owners and our processors -- or  
17 our larger producers equally. When we are talking about  
18 growth, we -- we treat them all equally for that as well.

19 Q. Okay. We have had other discussion and earlier  
20 witnesses, and one was just on, the witness before you,  
21 talking about decreases in mailbox prices when compared to  
22 the uniform prices for Federal Orders, and he correlated  
23 that to decreases in premiums as a result of inadequate  
24 Make Allowances.

25 Could you speak to -- maybe speak to that point  
26 about, I don't know, any premiums you pay your dairy  
27 suppliers or your efforts as Hilmar as a business to deal  
28 with what you see as inadequate manufacturing allowances?





1           A.     I won't be able to get into specifics.  What I  
2 will say, though, is that we always endeavor to pay a fair  
3 amount to our producers.  That's -- in the article that  
4 was brought up about the plant expansion at Dodge, our  
5 chairman actually even commented about that our -- that's  
6 our goal, is to be good stewards of the industry, treat  
7 producers fair.  And I will just leave it at that.

8           Q.     Okay.  And we also had discussion about -- from --  
9 from producers saying about the difficulties in  
10 negotiating -- or renegotiating over-order premiums, and  
11 then we have heard other discussion about how, well, if  
12 there's a change, then, you know, the other side has the  
13 ability to come to us to renegotiate those things.  So  
14 there are kind of, not surprisingly, diverging viewpoints  
15 on that.

16                     But I'm curious how often, without disclosing any  
17 confidential information, you know, how does that work for  
18 Hilmar?  How often do you have those discussion with your  
19 suppliers?  And I know you don't have very much co-op  
20 supply, but your direct shippers as well, on kind of  
21 negotiating those things.

22           A.     We generally pre-agree on a formulaic setup, and  
23 then we follow that with our producers.  I can't get into  
24 specifics about how often we do that.  I'm just not aware  
25 of how often that comes up.

26           Q.     Okay.  You mention that Hilmar participated in the  
27 2022 Stephenson survey.

28           A.     Correct.



1 Q. Did Hilmar participate in the earlier one?

2 A. Correct.

3 Q. Both plants?

4 A. Uh-huh.

5 Q. And as you look at the results of the Stephenson  
6 survey, and as you look at the results of Dr. Schiek's  
7 study, I was wondering if you could expand on how you  
8 think those results pan out and compared to what Hilmar  
9 has experienced. And I know you discuss kind of like  
10 general cost increases, but those aren't specific to  
11 Hilmar in your testimony.

12 A. Yeah. We saw the Stephenson survey was very  
13 representative of what we experienced as a business.

14 The Schiek study, the correlation to the  
15 Stephenson study, we thought that that was -- it was very  
16 akin to what we experience as a business.

17 Q. I'm not sure if I saw it in your testimony about  
18 has Hilmar -- with the two plants that you do own, have  
19 you gone through any investment projects to try to gain in  
20 efficiencies, say, in the last 15 years since the current  
21 Make Allowances were established?

22 A. Yeah. I think I'll crib Mr. DeJong's statement,  
23 we have had to be ruthlessly efficient. So we do have to  
24 reinvest. I think with Make Allowances, the way that they  
25 are, we need to be very cost conscious.

26 Q. So that's a "yes"?

27 A. That's a yes.

28 Q. Okay. Then on page 4, the first sentence of the



1 full paragraph says there, "The lack of consideration for  
2 future changes and the disconnect from available data are  
3 significant reasons why Proposal 7 are submitted" -- "as  
4 submitted by National Milk is flawed."

5 If you could elaborate on what you want to -- on  
6 the lack of consideration for future changes. Are you  
7 talking about automatic updates in the future, or what do  
8 you mean by that?

9 A. Yeah. So we would -- we would like to make this a  
10 model that is continually relevant to the markets. I  
11 think we have obviously decoupled significantly from 2008,  
12 so I think we want to use available data to kind of inform  
13 those decisions. We -- from our perspective, the  
14 Stephenson survey does that, and I think that's where we  
15 would like to be able to use that continually as a way to  
16 keep things relevant.

17 Q. So you would echo other thoughts expressed during  
18 this hearing about a regular audited survey?

19 A. Correct.

20 Q. Okay.

21 MS. TAYLOR: I think Mr. Wilson has a few  
22 questions, and then I have one or two at the end.

23 THE WITNESS: Okay.

24 CROSS-EXAMINATION

25 BY MR. WILSON:

26 Q. Todd Wilson, Dairy Programs.

27 Good morning.

28 A. Good morning.



1 Q. Just to follow up a couple that Ms. Taylor asked  
2 about the percentage of milk that your facilities in  
3 California and Texas process as a comparison of state  
4 production.

5 You mentioned that you -- this is on page 2, top  
6 paragraph -- that you looked at NASS production for both  
7 California and Texas?

8 A. Correct.

9 Q. It seems like that the -- the 31%, are you pretty  
10 comfortable with that number?

11 A. Yes.

12 MR. WILSON: Okay.

13 CROSS-EXAMINATION

14 BY MS. TAYLOR:

15 Q. I wanted to take this opportunity, since Hilmar  
16 produces barrel cheese, and I don't believe your statement  
17 has anything in regards to the proposal we have in front  
18 of us on removing barrel cheese from the price formulas,  
19 do you have any thoughts on that?

20 A. I had written a statement on that. Could you --  
21 maybe I missed it.

22 So we would -- I'll maybe summarize, and we can  
23 try to get that document. But -- so we would be opposed  
24 to the removal of barrel cheese from -- from the -- from  
25 the survey. It represents a significant part of the  
26 traded market. Having readily available data and then  
27 removing it, it just really starts to dilute what's --  
28 what's available.



1 I'm not being nearly as articulate as my paper is,  
2 so I'm trying to go through this off memory.

3 Q. That's fair. I'm usually not as articulate either  
4 when I haven't written it down.

5 So there's been discussion about -- we have heard  
6 testimony about, well, if you remove barrels from the  
7 formulas, then eventually they will get priced off of  
8 blocks, and there will be a transition, but everybody will  
9 figure it out. I'm very much summarizing what the general  
10 sentiment has been.

11 And then there's been other testimony that says,  
12 we can't remove barrels because the CME would still have a  
13 barrel market, spot market, and that would --

14 A. Correct, it introduces a risk.

15 Yeah. Because there would -- it would certainly  
16 introduce a price risk, and there's a lot of -- there's a  
17 lot of unknowns to that in terms of what it would actually  
18 do pricing-wise to a processor in terms of the cost.

19 And I think in the previous two hearings on this  
20 point, USDA maintained that the barrels should remain in  
21 the survey. And we feel that was the right decision at  
22 the time, and it continues to be the right decision.

23 Q. Okay. So as a barrel manufacturer -- and you do  
24 pool milk; am I right about that?

25 A. From time to time.

26 Q. Okay. So if you are paying a Class III price that  
27 has blocks in it, and assuming that barrels are under  
28 blocks, we'll make this -- you can make that assumption



1 for me now, I mean, how does that impact you as a barrel  
2 maker that you would have to pay a Class III price for  
3 which isn't reflective of what you get out of the market?

4 A. That would kind of get into some of the pricing  
5 specifics that we have. It's hard to get into detail on  
6 that with you.

7 Q. Okay. So I take that as Hilmar's figured out how  
8 to deal with that?

9 A. I would say it's -- yeah, we would -- we would --  
10 we would have to look into it a little bit closer. I  
11 don't have a good answer for you.

12 Q. Okay. I think my last question is on risk  
13 management, because I have tried to ask that of many  
14 witnesses. We have some proposals, and not just one  
15 necessarily, to talk about the impacts to risk management  
16 positions if any of these proposals are immediately  
17 adopted versus delay in the adoption of those.

18 And I wondered if you could speak to -- I don't  
19 know if you could speak to the Hilmar producers' use of  
20 risk management tools and how any impact into the formulas  
21 would impact them. But you might not be here to speak  
22 necessarily on that side of the business, which I would  
23 respect.

24 A. Yeah. I wouldn't be able to speak to what our  
25 producers do. Yeah. That would be outside of my -- my  
26 core responsibilities.

27 Q. Okay. And does Hilmar, the business, use risk  
28 management tools to hedge inputs?



1           A.     We would -- we would use hedging tools in some  
2 areas of the business.

3           MS. TAYLOR:   I think that's it from AMS.  Thank  
4 you.

5           THE WITNESS:  Thank you.

6                               RECROSS-EXAMINATION

7 BY MS. HANCOCK:

8           Q.     I have a brief follow-up.

9                     I think you were just talking with AMS about the  
10 fact that Hilmar provided data in response to both of the  
11 Stephenson surveys; is that right?

12          A.     Correct.

13          Q.     You have seen the results of both of those  
14 surveys?

15          A.     Yes.  I won't remember them off the top of my  
16 head, though.

17          Q.     Okay.  So in 2021 survey results, Stephenson  
18 concluded that the Make Allowance for cheese was \$0.2476.

19                     Does that sound right?

20          A.     I am not sure.

21          Q.     Okay.  Well, if that's right, is that a number  
22 that you believe correlates well to Hilmar's cost of  
23 making cheese?

24          A.     I -- I would have to defer to our finance people.  
25 Again, it gets into the proprietary nature of costs and  
26 some of the customer conversations on the competitive side  
27 of things.

28          Q.     Yeah.  And I don't want to know your number.



1 A. Sure.

2 Q. I just -- when you said that you had a comfort  
3 level when you compared Hilmar's cost of production to  
4 what Dr. Stephenson had come out with, I just wanted  
5 to ask you if you felt that confidence with his 2021  
6 survey results?

7 A. Yeah. We feel that the survey was put together  
8 well, we participated in it, and we felt it was reflective  
9 of what our experience was. I'll leave it at that.

10 Q. You do have some concerns with National Milk's  
11 proposed number; is that right?

12 A. Correct.

13 Q. And are you aware that National Milk's proposal is  
14 \$0.24?

15 A. Our bigger concern is the lack of data. We -- a  
16 significant amount of processors participated in the  
17 Stephenson survey. It's my understanding that the --  
18 there was other processors that were asked to participate  
19 who would be part of National Milk that chose not to  
20 provide their data.

21 I think all the data is helpful to get to an  
22 accurate number, and that's really what we want is, data.

23 Q. Okay. And accuracy, right?

24 A. Correct.

25 Q. Yeah. Thank you. I appreciate that.

26 I'm just curious, if Stephenson's cheese cost is  
27 \$0.2476, and you felt comfortable just by comparing that  
28 with whatever it is that Hilmar has for cost of producing





1 its cheese, how come you couldn't do the same by comparing  
2 the proposal from National Milk's \$0.24 with the cost of  
3 production to see if it -- if it felt like it was in the  
4 right range?

5 A. Yeah. I think we would like to go back and look  
6 at the data a little closer. I won't be able to speak to  
7 it specifically. It gets back to our financial team.

8 Q. Did you go back and look at Stephenson's data any  
9 further when you saw his number?

10 A. We -- that was a separate team. I wasn't a part  
11 of the review.

12 Q. Okay.

13 MS. HANCOCK: Thank you. Nothing further.

14 THE COURT: Redirect?

15 MR. ROSENBAUM: Could I have five minutes to --  
16 the witness made reference to a separate document. I need  
17 to see if I can talk to him about it. Could we have a  
18 five-minute break?

19 THE COURT: Or we could come back after lunch.

20 MR. ROSENBAUM: Fine. Why don't we come back  
21 after lunch.

22 THE COURT: Yeah. Absolutely, Mr. Rosenbaum.

23 MS. TAYLOR: Just for everyone's notification, we  
24 do have three dairy farmers with us today, and so we can  
25 talk about -- we would like them to go right after lunch  
26 because they are driving back this evening.

27 THE COURT: We'll probably let Mr. Rosenbaum  
28 finish up, I guess, unless he has a lot to talk about.



1 MR. ROSENBAUM: Yes. Before I do anything,  
2 though, I didn't ask for your business address. I'm  
3 supposed to get that on the record. So could you provide  
4 that?

5 THE COURT: I appreciate that. I don't seem to be  
6 able to remember it either.

7 THE WITNESS: 9001 North Lander Avenue, Hilmar,  
8 California, 95324.

9 MR. ROSENBAUM: Thank you.

10 THE COURT: Okay. Let's break for lunch. Come  
11 back at 1:25.

12 (Whereupon, a luncheon break was taken.)

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1 THURSDAY, SEPTEMBER 14, 2023 - - AFTERNOON SESSION

2 MR. ROSENBAUM: Your Honor, we went back and  
3 checked, and Mr. Eveland had written out something about  
4 barrel and block cheese, but we feel that the oral  
5 testimony he gave adequately covered that subject, so at  
6 this point we don't feel a need to have another exhibit  
7 introduced.

8 And so at this point we simply would ask that  
9 Hearing Exhibit 198 be entered into the record.

10 THE COURT: Any objection to Exhibit 198 coming  
11 in?

12 Seeing none, Exhibit 198 is deemed a part of the  
13 record. Thank you.

14 (Thereafter, Exhibit Number 198 was received  
15 into evidence.)

16 THE COURT: Thank you.

17 THE WITNESS: Thanks.

18 THE COURT: I understand we have some producers,  
19 dairy farmers.

20 MS. TAYLOR: Yes, we do, your Honor.

21 THE COURT: And this will be virtual?

22 MS. TAYLOR: No, they're here.

23 THE COURT: Okay. Welcome. Thank you for coming.  
24 Raise your right hand when you get settled.

25 TIM HOOD,

26 being first duly sworn, was examined and  
27 testified as follows:

28 THE COURT: Your witness.



1 MR. MUNCH: Thank you. My name is Danny Munch.  
2 I'm an economist with the American Farm Bureau  
3 Federation -- first time up here, stepping in for Dr.  
4 Roger Cryan this week.

5 We have three producers representing Michigan Farm  
6 Bureau that have volunteered today to come spend their  
7 time and testify on behalf of their operations. Those  
8 three will be Tim Hood, Brad Ritter, and Brian Preston.  
9 The first of which is Tim Hood.

10 So with that, I will let him introduce himself and  
11 explain some of his own testimony.

12 THE COURT: Is there a written statement?

13 MR. MUNCH: There's not a written statement. They  
14 will just be using notes and their own experience. That's  
15 about all they have is notes.

16 THE COURT: No requirement for that. I'm glad to  
17 have you all here.

18 And you're Mr. Hood?

19 DIRECT EXAMINATION

20 BY MR. MUNCH:

21 Q. And, Mr. Hood, if you would, state your first and  
22 last name and spell it, and then a good business address,  
23 they need for the record.

24 A. Tim Hood. H-O-O-D, just like it sounds.

25 41488 County Road 358, Paw Paw, Michigan, 49079.

26 So I'm Tim Hood. I have a farm -- dairy farm in  
27 southwestern Michigan. I have four children, me and my  
28 wife Debbie, and all four children are part of our farming



1 operation, which I feel very lucky to have. I get to see  
2 them all everyday, and my grandchildren, and it's been --  
3 it's been a real pleasure for me. And I feel things have  
4 been going well.

5 We have a 1200-acre operation. We milk 500 cows.  
6 And it's -- I also have a son-in-law that's involved. A  
7 daughter married a young fella that's been interested in  
8 the farm, and he helps, too.

9 I'm also a member of the Michigan Farm Bureau and  
10 serve on the dairy advisory committee. Our committee  
11 developed the original recommendations for American Farm  
12 Bureau Federation to establish a dairy working group and  
13 to host the Federal Milk Marketing Order forum, where many  
14 of the final recommendations for the Federal Order Reform  
15 were generated.

16 As you are aware, Farm Bureau is a grassroots  
17 organization. The policies we advocate for come directly  
18 from farmers which are voted on at the county and state  
19 level before making their way to the delegate session at  
20 AFBF's annual meeting to be supported nationally. We  
21 boast our role as the voice of agriculture, where a Farm  
22 Bureau of over 2,800 counties in every state and Puerto  
23 Rico, with nearly 6 million members, encompassing the  
24 diversity of agriculture operations in the nation.

25 An example of the strength of our grassroots is my  
26 participation in USDA's Federal Milk Marketing Order  
27 hearing here today. Dairy farmers in Michigan, like much  
28 of the country, have faced years of unworkable margins,



1 rapid changes in prices, and market signals resulting  
2 competitive inequities within the industry.

3 Between 2018 and 2023, just five years, the nation  
4 has lost 9,546 licensed dairy herds, or 25% of its total  
5 dairy herds in Michigan. There -- the loss has been -- in  
6 Michigan the loss has been more extreme with 34%, or 510,  
7 fewer licensed dairy herds than in 2018.

8 I served 18 years on the Michigan Milk Producers  
9 Cooperative board, and I just retired here in -- in April  
10 this year. And during those years, I had one local that I  
11 was in charge of that was in Indiana, because that was  
12 part of my area, and up around the Middlebury, Shipshewana  
13 area.

14 And when I started being a director, on those  
15 local meetings, we would have 300 dairy farms represented  
16 at that meeting. When I retired here, and I had my last  
17 local meeting there, back in January of this year, there  
18 were 75. And there's something -- it makes me felt as a  
19 co-op director, why can't I, you know, keep these farmers  
20 in business? Why do they keep going out, you know? And  
21 it's -- it kind of -- it wears on you, you know. It seems  
22 like we have the same number of cows, but we have fewer  
23 farms. And so there's -- they are not spread over as wide  
24 an area, you know, and so I'd like -- I'd like here to  
25 change that.

26 We hope USDA considers the work farmers have put  
27 in to thoroughly considering what adjustments matter most  
28 to modernize the system. We speak strongly in support of



1 the following proposals, being considered by USDA, during  
2 this hearing:

3 Proposal 1, from National Milk to increase skim  
4 milk component factors for nonfat solids, protein, and  
5 other solids;

6 We support Proposal 3 from National Milk to  
7 eliminate the cheddar cheese 500-pound barrel price series  
8 from the protein price formula;

9 Proposal 4 from AFBF to add 640-pound cheddar  
10 cheese blocks to the protein price formula;

11 Proposal 5 from AFBF, to add unsalted butter to  
12 the butterfat and protein price formula;

13 Proposal 13 from National Milk Producers, to  
14 switch back to the higher-of Class I mover;

15 In principle, Proposal 17, from Edge Dairy Farmer  
16 Cooperative, which would switch back to the higher-of  
17 using the advanced pricing instead of the announced;

18 Proposal 18, from AFBF, eliminating advanced  
19 pricing and using announced values;

20 And Proposal 19, from National Milk Producers, to  
21 increase Class I differentials in all locations in varying  
22 amounts;

23 And Proposal 21, from AFBF, to update the Class II  
24 differential.

25 The Federal Milk Marketing Order system directly  
26 impacts my bottom line. Even very small few cent changes  
27 here and there can mean a big difference in being able to  
28 put food on the table or paying my bills.



1           Having to give up the farm, as its origins -- as  
2           origins of milk market regulations were partially intended  
3           to prevent predatory behavior from milk handlers and  
4           ensure farmers were being compensated fairly for the value  
5           of the milk they produce. The above adjustments that I  
6           mentioned, when combined with our other legislative  
7           efforts, will help realign class prices, reduce incentives  
8           to depool, bring more transparency to milk pricing, and  
9           ensure the Federal Milk Marketing Order remains focused on  
10          promoting orderly marketing of milk.

11           At this end of this process, we will be dairy  
12          farms -- farmers who vote on whether or not to accept  
13          these changes.

14           I appreciate the opportunity to comment today, and  
15          I look forward to Federal Order Reform that offers  
16          positive change for the entire dairy industry, and most  
17          importantly, the dairy farmers. We need to keep them in  
18          business.

19           Thank you.

20           THE COURT: Are there questions?

21           You may come back up.

22          BY MR. MUNCH:

23           Q. Thank you, Tim.

24           Do you mind going over the impacts of depooling  
25          and negative PPDs in your region of the state and sort of  
26          your -- how your neighbors were impacted as well?

27           A. So the extreme on the depooling was -- was back  
28          during the COVID when we saw negative PPDs of \$8-plus on





1 our milk checks, and that was because the cheese -- cheese  
2 was higher. We've seen times when Wisconsin has sent milk  
3 into Michigan to capture some of the pool milk for the  
4 Class I sales that we had that they didn't have. I have  
5 seen -- and that would make our pool not -- not so much  
6 for our area but would raise theirs.

7 I have also seen our co-op depool milk trying, you  
8 know, to raise the income of their farmers, but that --  
9 that seems like it's always -- it's -- you just -- it's  
10 like you are playing a game, you know. You play a game.  
11 You're pulling -- you pull the milk, you know, depool milk  
12 here this month, you -- you know, you pool the milk the  
13 next month and just trying to get the best you can.

14 And we were talking here earlier, you know, at  
15 dinner time, you know, the -- seems like there's a lot of  
16 plants -- there's new plants being built, a lot of money  
17 being put into plants, and we need that to -- to have a  
18 place to sell our milk. But there's -- you know, the  
19 money isn't coming back to the farmer like it should.

20 Q. Would you agree that when a plant depools, and as  
21 you mentioned, farmers in one place are receiving a  
22 different price than another place, that that means they  
23 are not receiving uniform prices?

24 A. Right. That's the reason they have -- they are  
25 doing that. They are trying to -- to raise their price,  
26 you know. And it lowers -- but you are lowering  
27 another -- in another pool, you are lowering their price  
28 when you do that, you know. So it kind pits one farm



1 against another, you know. It creates -- that creates  
2 issues.

3 Q. Would you agree on the issue of Make Allowances  
4 that the most appropriate -- as AFBF has advocated for --  
5 the most appropriate way to update Make Allowances is by  
6 using a mandatory audited survey of processor costs?

7 A. Yeah. When I look at Make Allowances, I think of  
8 co-ops having to balance their milk. When sitting on a  
9 co-op board, you would always go into -- you have your  
10 Thanksgiving weekend, which is four days, and then you  
11 would have -- here comes the Christmas holidays, and  
12 sometimes they start earlier. And you want to know if the  
13 holidays, you know, if they encompass two weekends and the  
14 Friday before, and sometimes it's ten days, sometimes it  
15 can get more than that.

16 And, you know, people want time off from their  
17 job, and so you have these processors that will just stop.  
18 You know, they just shut down for ten days. Well, the  
19 cows don't shut down for ten days, they have to keep  
20 producing milk, so somebody has to take that milk. And if  
21 you don't have co-ops that can take milk and make a  
22 product out of it, and so they have the capacity to do  
23 that, that creates a problem, because then you get into  
24 where you have heard dumping of milk, you know, because  
25 something happened in the system.

26 So you need -- you need that capacity there, but  
27 it's not being used when the other plants are open and  
28 there's not a holiday.



1           And so the plant -- your plants at the co-op level  
2 are running on weekends, so Saturdays and Sundays, that's  
3 when those people are working, and then -- and then the  
4 holidays, the times when nobody else wants to work. So  
5 you -- it's hard to keep people at those plants who want  
6 those jobs, you know.

7           So it's -- it's -- that's what I consider the  
8 Make Allowance and paying the extra money for the  
9 Make Allowance is so that the co-ops have the capacity to  
10 have -- to take the milk on those situations.

11           MR. MUNCH: Thank you. Further cross -- or cross?

12           THE COURT: Yes, thank you.

13           Anyone in the audience have questions for this  
14 witness?

15           Hearing none -- not quite yet -- we have AMS.

16                                   CROSS-EXAMINATION

17 BY MS. TAYLOR:

18           Q. Good afternoon, Mr. Hood.

19           A. Good afternoon.

20           Q. Thank you very much on behalf of the Department  
21 for coming to testify today.

22           Just a couple questions. You mentioned you all  
23 milk about 500 cows.

24           A. Yes.

25           Q. The questions we're asking of producers is if they  
26 would meet the Small Business definition, which for dairy  
27 farmers is \$3.75 million or less in gross revenue on a  
28 whole farm basis for the year.



1           Would your farm meet that?

2           A.    Oh, definitely.

3           Q.    There's also been some discussion at this hearing  
4 on the impact of any changes to the price formulas, the  
5 impact it would have on risk management positions of dairy  
6 farmers.

7           Do you all use any risk management tools?

8           A.    The Dairy Margin Coverage Program is what we use.

9           Q.    Thank you.

10          You mentioned you were on the board of Michigan  
11 Milk.

12          A.    Yes.

13          Q.    And then, I'm just going to assume, hopefully  
14 correctly, that you are still a Michigan Milk member even  
15 though you are not on the board.

16          A.    Oh, yes.

17          Q.    Okay. In your time at -- on the board, how did  
18 you all, if you could characterize, kinda deal with what  
19 the co-op saw as inadequate Make Allowances? So can you  
20 talk a little bit about how they had to adjust or make  
21 decisions based on the fact that, as testified to here,  
22 the cooperative members of National Milk think that the  
23 Make Allowances need to be increased?

24          A.    Well, if they didn't -- I'll tell you one thing,  
25 if they didn't have capacity or enough silo tanks to hold  
26 the milk, then the -- then we would take the milk, pull  
27 all the fat, you know, and the protein out of it, and you  
28 would dump skim, you know. You would try to make it --



1     downsize the volume as much as you could, condense the  
2     volume.

3           Q.     And get as much out as you possibly could --

4           A.     Right.

5           Q.     -- before dumping --

6           A.     Yes.

7           Q.     -- what you couldn't? Uh-huh.

8                   Can you speak about -- we have heard about -- and  
9     people have put on some exhibits showing the decline in  
10    mailbox prices to producers. Can you talk about whether  
11    you have seen that decline or decline in your mailbox  
12    price?

13           A.     I think my mailbox price is -- is good if you put  
14    it five, six years ago. What has changed on our farm is  
15    the cost. Our costs have escalated in the last two years.  
16    We went first from not being able to get things, you know,  
17    that were readily available before, to now it's like five,  
18    six months, sometimes a year out you have to -- and you  
19    don't know what you are going to -- what's going to break  
20    on your farm or operation to know what to do on that. You  
21    have a tractor that goes down, and you have a three-month  
22    wait on a part, and so it can't be used for three months.  
23    It's hard to -- it makes it hard to deal, and you have to  
24    have backups and -- and all that stuff just increases your  
25    cost. But the cost of just doing business has really  
26    escalated to the point where we used to dream about \$20  
27    milk? \$20 milk just doesn't cut it anymore. We're just  
28    trading dollars.



1 Q. Uh-huh. You talked a little bit about your  
2 support for the National Milk proposal on Class I  
3 differentials.

4 A. Yes.

5 Q. And we haven't gotten to that yet, but I did want  
6 to ask, how far does your milk travel to go to a plant?

7 A. So our milk right now is going about 35 miles.

8 Q. Okay. Have you seen your hauling costs increase  
9 in the recent years?

10 A. No. In my -- my situation, they have not.

11 Q. Okay. I think my last question is, you mentioned  
12 Farm Bureau has other legislative efforts in conjunction  
13 with the support it's showing here for various proposals.  
14 Could you elaborate on what those legislative efforts are?  
15 Is that the Make Allowance -- or the manufacturing cost  
16 survey? Is that what you are speaking to that people are  
17 seeking to have Congress authorize?

18 A. I think one of my colleagues will get into that --

19 Q. Okay. That's fair.

20 A. -- and answer that question.

21 MS. TAYLOR: Thank you. That's all I have. Thank  
22 you so much.

23 THE COURT: Anyone else?

24 With that, we don't have an exhibit for you, but  
25 thanks so much for coming out, and you may step down.

26 Please raise your right hand.

27 ///

28 ///



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BRAD RITTER,

Being first duly sworn, was examined and testified as follows:

THE COURT: Your witness.

MR. MUNCH: This is our second witness from Michigan Farm Bureau, Brad Ritter.

DIRECT EXAMINATION

BY MR. MUNCH:

Q. Brad, if you would spell your first and last name and then give a business address.

A. Brad Ritter, B-R-A-D, R-I-T-T-E-R. I live in Byron, Michigan, B-Y-R-O-N. Address, 13542 New Lothrop Road -- I'll spell that as well, N-E-W, L-O-T-H-R-O-P -- zip code, 48418.

Q. And with that, I'll let you make any comments you want to make today.

A. Thanks for letting me sit up here.

And I operate a 300-cow dairy in Byron with my wife and my parents. I have three young kids. I say young, but my oldest went off to college a couple weeks ago. I have three boys who all tell me they want to come back to the farm, which would be a dad's dream. And the oldest is at MSU right now in the dairy science program, and so there's nothing more that I would like than to continue our legacy, and he would be the fourth generation.

I tell them all the time that this is not an easy industry, and you must love what you do, because it will



1 eat you up and spit you out. And that's part of the  
2 reason I'm here today is because it's hard enough, and you  
3 know, it sure would be nice if we could get some things  
4 settled and, you know -- we're not getting more dairy  
5 producers, that's the bottom line.

6 So I'd like to also echo what Tim said. I'm a  
7 proud member of Michigan Farm Bureau and the Dairy  
8 Advisory Committee. And I was proud to serve on that  
9 committee that helped initiate a lot of these hearings  
10 that they got started.

11 One of the things I would like to talk to you  
12 today about is the higher-of issue in terms of the Class I  
13 price.

14 So the Class I mover issue has been front and  
15 center in the Federal Milk Marketing Order modernization  
16 discussions. Prior to 2019, the formula to calculate  
17 base I -- or base Class I skim milk was the higher-of  
18 Advanced Class III and Class IV skim milk prices. The  
19 2018 Farm Bill included a small provision that swapped the  
20 higher of formula for the -- for the simple average of  
21 Advanced Class III and Class IV milk price plus \$0.74.

22 The change was made at the request of IDFA and  
23 National Milk Producers Federation and was intended as a  
24 revenue neutral way to improve risk management  
25 opportunities for beverage milk. Disruptive marketing  
26 conditions induced by the COVID-19 pandemic quickly  
27 revealed a lackluster performance from through the new  
28 formula.





1           Significant spreads between Class III and Class IV  
2 prices paired with the delay associated with advanced  
3 pricing resulted in more money being paid out in Class III  
4 component values than what was collected from the plants  
5 across all classes of milk. This combined with the tactic  
6 of depooling used by many manufacturing plants captured  
7 higher market prices, led to vast imbalances in pool value  
8 reflected on farmers' checks as negative producer price  
9 differentials --

10           THE COURT: Slow down a little.

11           THE WITNESS: Okay. Sorry.

12           At first this imbalance was linked to COVID-19  
13 forces. However, the losses in pool value have continued  
14 through early 2023 as Class IV prices have become the  
15 driver of the dairy market.

16           Cumulative pool losses have reached nearly  
17 \$920 million since the formula went into effect in May of  
18 2019, a clear reason why many organizations, including  
19 Farm Bureau, support a swift return to the higher-of  
20 formula.

21           I mean, I guess I can add that, I mean, just for  
22 my perspective, I have several friends through being a  
23 dairy farmer and things, that I have friends in New York,  
24 Wisconsin, and Arizona, and through the pandemic, you  
25 know, we -- we're farmers, we like to talk. We get bored  
26 in tractors. Bluetooth is our friend.

27           So I remember for years talking to a couple people  
28 in Wisconsin and how the milk was priced with all the



1 cheese plants over there, never thinking that our basis in  
2 Michigan would be totally reversed during that time. And  
3 the higher-of was part of that.

4 So the crazy thing is, is the co-op I ship to, I'm  
5 not sure if we're still at 30% Class I utilization or not,  
6 but there was such a spread between III and IV that with  
7 the new formula, that made huge dividends -- or lack of,  
8 you know.

9 So it got to the point where every month you would  
10 look at Class III and Class IV prices, you could do your  
11 own math, and it wasn't hard to figure out what we were  
12 losing, just simply on a -- you know, less than a third of  
13 our milk being Class I. So this one -- this one sticks  
14 home with me pretty good. I can't imagine in a marketing  
15 order that has much higher Class I utilization what that  
16 did. Thank you.

17 BY MR. MUNCH:

18 Q. Thank you, Brad.

19 Like Tim, can you speak to the impacts of  
20 depooling and negative PPDs to you and your neighbors?

21 A. So when those checks started arriving, I mean, we  
22 heard rumors of the massive depooling and what that was  
23 going to be -- what effect that was going to be on the  
24 milk check. And it doesn't hit home until you open that  
25 up or look at it online and say -- I mean, to see what you  
26 should have gotten or what, you know, could have been from  
27 all the -- you know, when they do pool that and -- I mean,  
28 when you see a negative eight there -- I mean, when we're



1 talking margins, you know, \$0.50 make a pretty big dent.  
2 And then you swing that eight bucks? That's huge.

3 Q. There's been much discussion over picking the best  
4 methodology to set Make Allowances, and it has been clear,  
5 at least from AFBF's perspective, that a comprehensive  
6 mandatory survey of processing costs would be best to  
7 update Make Allowances.

8 Would you agree with that?

9 A. Absolutely.

10 Q. And can you speak to, you know -- actually, strike  
11 that.

12 There's been some proposals from groups in the  
13 room to use other methodologies to update Make Allowances,  
14 some of which, you know, averaging different numbers or  
15 utilizing other statistical methodologies to update  
16 Make Allowances.

17 If -- if a Make Allowance is set too high, even by  
18 \$0.02, what kind of impact would that have on your farm?

19 A. A pretty good size one. I mean, I'm a 300-cow  
20 dairy, which is slightly above average anymore, which is  
21 crazy to say. But we still -- 300 cows will put a lot  
22 of -- I mean, you are talking, you know, 8 million pounds  
23 of milk a year. You start figuring pennies on 8 million,  
24 it adds up quick.

25 Q. Thank you.

26 And at the end of this whole process it will be  
27 farmers who vote in this system, correct?

28 A. Yes.



1 Q. And if they vote no, there's potential that the  
2 order gets removed, correct?

3 A. Yes.

4 Q. So if they believe that the Make Allowances set --  
5 or decided on the final rule are too high, then basically  
6 the options are either to vote for Make Allowances they  
7 believe are too high or potentially lose the order,  
8 correct?

9 A. Yes. Correct.

10 Q. So would you say that there is an imperative to  
11 make sure those Make Allowance numbers are at the lowest  
12 levels possible so that farmers have a clear pathway,  
13 based on mandatory data, but pathway forward?

14 A. Yes.

15 Q. Thank you.

16 MR. MUNCH: No further questions.

17 THE COURT: Anyone else? Other than AMS?

18 AMS.

19 CROSS-EXAMINATION

20 BY MS. TAYLOR:

21 Q. Good afternoon.

22 A. Good afternoon.

23 Q. Thank you very much for coming down to testify  
24 today.

25 You mentioned you had 300 cows. I was -- I wanted  
26 to know if -- I asked Mr. Hood the same question about the  
27 small business definition. Would your farm meet that  
28 definition?



1 A. Yes.

2 Q. And could you talk about whether you use any risk  
3 management tools that are available these days?

4 A. Yes. We in the past, at different times, have  
5 done futures contracts. We have done revenue insurance.

6 Q. We have had some discussion over the past few  
7 weeks about how any changes in the price formulas could  
8 impact risk management positions of dairy farmers, and  
9 there's some talk of whether any changes should be delayed  
10 or not because they could impact those positions.

11 So when you look to make decisions on the risk  
12 management side, and you look out and do futures  
13 contracts, you know, how far out do you look to try to  
14 lock stuff in, generally?

15 A. Me personally, I tend to stay within the next  
16 12 months.

17 Q. Thank you.

18 And I don't -- well, I -- I did.

19 One last question. As we've been talking and  
20 heard a lot of discussion over the past few weeks about  
21 the impact of what farmers see as -- or not farmers -- as  
22 the cooperatives are talking about on the Make Allowance  
23 portion, which is what we're talking about generally this  
24 week, and how they have had to kind of deal with that, and  
25 proprietary dairy plants, too, how they manage through  
26 what they see as inadequate Make Allowances. And what  
27 we've generally heard is the market is accounting for that  
28 because farmers are receiving -- ending up receiving a



1 lower pay price.

2 Could you say that you have seen the same types of  
3 things in the milk checks that you have received, just  
4 generally lower?

5 A. Yes. Yeah. I mean, it's -- it's definitely not  
6 what it -- what it was. And much more erratic.

7 Q. Okay. And can you speak to the same type of --  
8 Mr. Hood talked about the costs that he has seen on the  
9 farm over the past few years.

10 Would you like to talk about how costs have --  
11 how -- what -- what you have seen in costs that have  
12 impacted you on your farm?

13 A. Oh. I mean, fuel, electricity, the big one labor.  
14 And we're all dealing with that. I mean, I'm dealing with  
15 it no different than a processing plant is dealing with  
16 it. Our labor goes up, our utilities go up. But at the  
17 same time, we're always trying to strive to be the most  
18 efficient that we can be, you know. And this is my own  
19 personal feeling, but, you know, I don't think we're  
20 building plants that are less efficient, you know. They  
21 are always getting more efficient too. So we're all  
22 striving for the same thing here. But -- but, yeah.  
23 Interest rates, a big one right now, so --

24 Q. Have you seen your hauling costs increase or  
25 decrease, stay the same, over the past few years?

26 A. Mine have not. I have had -- I know that some on  
27 the same truck have, but it's because of their  
28 volumes/distance, where I'm one of the biggest stops on,



1 so I have been told that's why, you know. I -- but mine  
2 hasn't went up in probably the -- five years.

3 Q. Okay. And how far do you -- does your milk get  
4 shipped?

5 A. Ours is going about 30, 35 miles.

6 Q. Okay.

7 A. So we're not terrible in terms of distance.

8 MS. TAYLOR: That's it from AMS. Thank you so  
9 much.

10 THE COURT: Anyone else? Any follow-up?

11 You may step down. Thank you so much for being  
12 here, Mr. Ritter.

13 MR. MUNCH: And then last but -- oh, sorry.

14 THE COURT: Let me swear him in.

15 Please raise your right hand.

16 BRIAN PRESTON,

17 Being first duly sworn, was examined and  
18 testified as follows:

19 THE COURT: Your witness.

20 MR. MUNCH: Thank you. Lastly, but not least, we  
21 have Brian Preston.

22 DIRECT EXAMINATION

23 BY MR. MUNCH:

24 Q. Brian, could you spell your first and last name  
25 and give a business address?

26 A. Brian Preston, B-R-I-A-N, P-R-E-S-T-O-N. Our  
27 business address is 1097 Central Road, Quincy, Michigan,  
28 49082.



1 Q. And with that, I'll let you make any comments that  
2 you would like to make.

3 A. Thank you, Danny.

4 My kids tell me I'm the slowest storyteller ever,  
5 so hopefully that's appreciated today, at least by one  
6 person.

7 I'm the fourth generation to farm on our farm. I  
8 came home to the farm in 2003, so this is 20 years that I  
9 have been home on our dairy farm. I do farm with my dad  
10 and uncle and cousin. So four of us there.

11 And we have -- my wife and I, we have three boys.  
12 The oldest is a senior, the middle one really wanted to  
13 stay home from school today to mow hay, but he got plenty  
14 of that last night. So a freshman and a fifth grader.  
15 And they all -- this summer has been really, really  
16 rewarding to see them all really take an interest in the  
17 business and the farm and start to be able to be helpful  
18 helpers instead of present helpers, I guess.

19 But we milk a thousand cows and farm 1500 acres.  
20 We also contract finish about 10,000 hogs a year.

21 So the -- when I came home to the dairy, we were  
22 milking about 120 cows, and my dad and uncle were ready to  
23 be done with that to a certain extent. But my cousin and  
24 I took off with that, and we grew that over the last  
25 20 years from 120 cows to a thousand cows now.

26 And dairy is where our passion has been and is.  
27 We love this industry, and I hope that there's an  
28 opportunity for a fifth generation on our farm as well.





1           So full disclosure, I'm a Michigan Farm Bureau  
2 member, and I'm also a director at Michigan Milk Producers  
3 Association on their Board of Directors. I have been a  
4 director there for two years, so --

5           Brad and Tim did an excellent job outlining some  
6 of the proposals that we support. One of the  
7 opportunities I also had was to serve on AFBF's dairy  
8 working group. For two years we met as a working group,  
9 listened to industry experts, took a lot of different  
10 input into consideration, and then ultimately hosted the  
11 forum in Kansas City where we, as an industry, and then  
12 also as an organization, came up with proposals for this  
13 hearing. So we really appreciate the opportunity to be a  
14 part of this.

15           At the Kansas City forum there were three things  
16 that were really widely accepted, unanimously adopted.  
17 First and foremost, the return to the higher-of for  
18 Class I. I think that would be Proposal 19 from National  
19 Milk. Be increase the Class I differentials in all  
20 locations; that was the second one that was wide ly  
21 accepted. Then thirdly, understanding and advocating for  
22 a processing cost survey that would be mandatory and  
23 audited. We feel that that is vital to establishing what  
24 the Make Allowances should be.

25           One of the previous witnesses today talked about  
26 accuracy being important, and that's what we're asking for  
27 is we understand that there's a difference between a  
28 survey of finished products and a raw material input, and



1 so there has to be an adjustment there. That's the  
2 Make Allowance. And that number needs to be accurate. So  
3 we accept that that's part of the minimum price that we're  
4 all trying to determine what should be established, but we  
5 would ask that there would be a survey, that would be  
6 mandatory and audited to establish those things.

7 I think I'll just enter into the record here too,  
8 Proposal 1 from National Milk, we support increasing the  
9 skim component factors for nonfat solids, proteins, and  
10 other solids.

11 We support Proposal 3 from National Milk to  
12 eliminate the cheddar cheese 500-pound barrel price series  
13 from the protein price formula.

14 AFBF has Proposal 4 to add the 640-pound cheddar  
15 cheese block to the protein price formula.

16 Another proposal from AFBF was to add salted  
17 butter and butterfat -- unsalted butter to the butterfat  
18 and protein price formula.

19 And then also Proposal 21 from AFBF to update the  
20 Class II differential.

21 So with those comments, I guess I would be happy  
22 to answer any questions.

23 Q. Thank you, Brian.

24 Can you confirm that the dairy working group that  
25 we held had members from all different parts of the  
26 country?

27 A. There were, yes. Members from every major  
28 production area of the country.



1 Q. And some of these members sold to independents and  
2 some of these members sold to cooperatives?

3 A. That's correct.

4 Q. And do you recall that the package of  
5 recommendations the dairy working group made to our  
6 delegates was unanimously approved by our dairy working  
7 group?

8 A. It was unanimously approved.

9 Q. So then you would agree that that package was  
10 unanimously approved by a group that represented all  
11 different regions of the country and all different types  
12 of structures of how they sold their milk?

13 A. It was.

14 Q. And at the Federal Milk Marketing Order forum that  
15 was held last year, you might not recall the specific  
16 number, but would you say there was close to 200 farmers  
17 in attendance? Does that seem --

18 A. Seems close.

19 Q. And at that forum there was farmers from all  
20 different parts of the country?

21 A. Yes.

22 Q. And there were representatives from cooperatives,  
23 from processors, and from government, or other aligned  
24 industries?

25 A. There were.

26 Q. And can you explain at all how the structure of  
27 the forum was, how was it sort of set up?

28 A. So each session would have a -- kind of a focus



1 area, whether it would be maybe the higher-of or the  
2 Make Allowance, or whatever the session was focused on, we  
3 would have a speaker that would address that, maybe two.  
4 And then following their presentation there was a  
5 considerable amount of time, I don't remember, a  
6 considerable amount of time for each table, and you were  
7 assigned a seat at your table, and so there was processors  
8 at each table and industry organizations and several  
9 producers at each table. There were more producers there  
10 than any other group. And they would discuss and  
11 brainstorm and come up with solutions -- potential  
12 solutions for the issue that we were talking about.

13 Q. And you would say, based on what you said earlier,  
14 the vast majority of the tables were in support of the  
15 three proposals or -- that you mentioned?

16 A. The tables, the people there, yes.

17 Q. Thank you.

18 Also as a -- we usually ask at Farm Bureau, can  
19 you talk about depooling and the impact of depooling on  
20 you and farmers in your area?

21 A. So our co-op has done a really good job of  
22 managing depooling. We have three different plants that  
23 make various products and -- but it is certainly a case  
24 where producers -- neighboring producers can receive a  
25 wide differential in what they would receive for the milk.

26 In our -- in our county, I think -- there's only  
27 three dairies left in our county, and we all ship to the  
28 same co-op. In the neighboring county I have a couple of



1 friends that ship to other co-ops, and -- and we compare  
2 milk checks from time to time, not every month, but we do.  
3 And there's -- when depooling happens is when you see the  
4 widest discrepancy between what producers -- what we have  
5 experienced as a discrepancy between our neighboring farms  
6 receiving for our milk.

7 Q. And you would consider those market effects a form  
8 of disorderly marketing?

9 A. Yeah. I think -- so from disorderly marketing or  
10 whatever you want to call it, we have a problem in our  
11 industry, and the problem is dairy farmers are not able to  
12 stay in business the way milk is being priced today. And  
13 maybe that's a -- maybe we're producing a product that  
14 people don't want to buy anymore, but I don't think that's  
15 the case. I think that there's a lot of demand for dairy  
16 products. And we have seen a dramatic drop in the number  
17 of dairy farmers, and that's concerning to me.

18 Q. And there was a number of legislative efforts that  
19 also were priorities out of the dairy working group you  
20 were a part of.

21 A. Uh-huh.

22 Q. Do you agree that one of them was AFBF pursuing  
23 language for a mandatory cost processing survey?

24 A. Yes. Yes. That was definitely one of them.  
25 So -- and we're talking about legislative priorities  
26 outside of this hearing is -- was your question. And one  
27 of the biggest vulnerabilities that I believe we have in  
28 this industry is -- and Tim was alluding to it -- is the



1 cost to balance the production across the industry.  
2 And widely the co-ops have accepted that, so that means  
3 the farmers do. So it is so expensive to balance milk,  
4 and I don't think that the way we handle things today  
5 adequately addresses that. I think the co-ops that -- I  
6 think the balancing plants need to be recognized somehow  
7 for doing the job that they are doing.

8 MR. MUNCH: Thank you. That's all I have.

9 Other questions?

10 THE COURT: Any questions from anyone other than  
11 AMS?

12 Seeing none, AMS.

13 CROSS-EXAMINATION

14 BY MS. TAYLOR:

15 Q. Good afternoon.

16 A. Good afternoon.

17 Q. Thank you for coming down to testify with us  
18 today.

19 A. You're welcome.

20 Q. You mentioned your farm where you have a thousand  
21 cows, 1500 acres, and 10,000 hogs.

22 Would your farm meet the Small Business  
23 definition?

24 A. We would not.

25 Q. And can you talk on if whether, at least on the  
26 dairy side, you use any risk management tools?

27 A. We do. So we participate in DMC. That's been a  
28 big deal this summer for the first time ever. The Tier 2



1 milk has hit. I think that speaks to the tight margins  
2 that we have been under this summer. Has been by far the  
3 least profitable of my 20 years on the farm. But, yeah,  
4 we use DMC and DRP. We try to have some DRP -- at least a  
5 third to half of our milk covered with DRP. And in the  
6 past we have used futures and options both as well.

7 Q. And when you look to lock in things with DRP or on  
8 the futures market, how far out do you go?

9 A. Right now we have six months, we're six months  
10 out, but we're pretty consistently looking within a -- we  
11 have never gone more than a year.

12 Q. Can you talk a little bit about, since you are on  
13 the board of Michigan Milk, how you all have had to deal  
14 with, I'll use the phrase inadequate Make Allowances since  
15 that seems to be what everyone is contending at this  
16 hearing?

17 A. So on our milk checks we have a line that says  
18 "market adjustment." And if the -- that's where -- that's  
19 the catch-all. If -- if there's not -- the plants aren't  
20 making money, if they are making money, that's -- it goes  
21 in that market adjustment line.

22 Q. Have you seen those market adjustments become  
23 larger in recent times?

24 A. Well, we're doing our best to get them down.  
25 Transportation costs has been one of the major drivers of  
26 that. But certainly energy costs -- the -- not many years  
27 ago, the market adjustment was much smaller than it is  
28 now. It has gone up. In the last year we have been able



1 to whittle it down. But it is -- it's significantly  
2 larger than it was five years ago.

3 Q. Is Michigan for the milk that you sell able --  
4 MMPA able to get premiums out of the market?

5 A. To the -- the co-op's goal is to market the milk  
6 to the greatest advantage possible. So they do everything  
7 they can. They do an excellent job of getting premiums.  
8 I believe that we need more Class I premiums than what  
9 we're currently getting. They do their best to negotiate  
10 those. So we -- we get whatever the market possibly will  
11 bear.

12 Q. Have you seen a decline in those?

13 A. There was a pretty drastic decline a few years  
14 ago, and then just in the last couple months, we have seen  
15 the Class I premium come back. But it's not where it was  
16 when we added another Class I bottler in the region.

17 Q. Okay. In regards to the transportation cost you  
18 mentioned, on your farm have you seen an increase in the  
19 transportation cost?

20 A. We have, yeah. We're now paying \$0.65 per  
21 hundred. We were at \$0.56 for years. About a year ago  
22 our hauler came to us -- our haulers, they are the other  
23 group in this industry too -- so when he started hauling  
24 our milk -- well, the same families have been hauling our  
25 milk for 40 years, and they had 25 trucks on the road, and  
26 they were stopping at about 200 farms. Now, they do one  
27 and a half loads per day, and they stop at four farms. So  
28 it just speaks to the industry as a whole. But, yeah,





1 that -- and we're a single-stop farm. They come to our  
2 farm, they pick up our milk, and they go right to the  
3 plant. But even with that efficiency of not having to  
4 make multiple stops, we're seeing our costs go up.

5 Q. And how far does your milk travel?

6 A. Just over 40 miles.

7 Q. And so the co-op, when you have to balance milk,  
8 does the co-op kind of spread that cost out on to all of  
9 its members?

10 A. Owners. Yes.

11 Q. Owners?

12 A. Yeah. Exactly. We get to -- we get to pay for  
13 that.

14 MS. TAYLOR: That's it from AMS. Thank you.

15 THE WITNESS: Thank you.

16 THE COURT: Yes.

17 MS. HANCOCK: I don't have any questions for you.  
18 I just wanted to, on behalf of National Milk, thank you,  
19 Mr. Hood and Mr. Ritter, not just for your time testifying  
20 today, but for the support for National Milk's proposal.

21 THE WITNESS: We thank National Milk for all of  
22 the work that they do on our co-op members' behalf too.

23 THE COURT: Very good, sir. Thank you too for  
24 coming. It's great that you were here. You may step  
25 down.

26 Anything else -- is it Mr. Munch?

27 MR. MUNCH: Nothing further. Thank you.

28 THE COURT: Very good. Thank you for being here



1 too.

2 Okay. What's next?

3 Welcome. Please raise your right hand.

4 ALISON KREBS,

5 Being first duly sworn, was examined and

6 testified as follows:

7 THE COURT: Your witness.

8 MR. NIELSEN: Good afternoon, your Honor. Erik  
9 Nielsen, counsel for Leprino Foods Company. I'm just  
10 going to pass out our exhibits.

11 THE COURT: Very good, sir.

12 MR. NIELSEN: We have just circulated a document I  
13 would like to mark for identification, I think we're on  
14 Exhibit 199?

15 THE COURT: Yes. Exhibit marked in the top  
16 right-hand IDFA Exhibit 23 is marked for identification as  
17 Exhibit 199.

18 (Thereafter, Exhibit Number 199 was marked  
19 for identification.)

20 MR. NIELSEN: Thank you, your Honor.

21 THE COURT: You may proceed.

22 DIRECT EXAMINATION

23 BY MR. NIELSEN:

24 Q. Please state your name for the record.

25 A. Alison Krebs.

26 Q. Ms. Krebs, you previously testified in this  
27 hearing and provided your background info, both  
28 professionally and academically.



1 Has anything changed since you last testified?

2 A. No, it has not.

3 Q. And you're still director of dairy and trade  
4 policy at Leprino Foods Company?

5 A. I am. It's been a while but not that long.

6 Q. So in front of you is a document marked  
7 Exhibit 199 for identification purposes.

8 Is Exhibit 199 an accurate representation of the  
9 testimony you are prepared to present today?

10 A. Yes.

11 Q. All right. Please proceed with your testimony.

12 A. Thank you.

13 I am Alison Krebs, Director of Dairy and Trade  
14 Policy for Leprino Foods Company (Leprino), headquartered  
15 in Denver, Colorado. As I have previously provided my  
16 full introduction in prior testimony during this hearing,  
17 that information has already been entered into the record  
18 so I will not repeat it here. In this tranche of  
19 testimony, I will address Proposals 7 through 9.

20 Opposition to Proposal 7, Support for Proposals 8  
21 and 9 on Manufacturing (Make) Allowances.

22 On the proposals to update manufacturing  
23 allowances, hereinafter referred to as "Make Allowances,"  
24 Leprino Foods strongly supports Wisconsin Cheese Makers  
25 Association ("WCMA") Proposal 8 and International Dairy  
26 Foods Association ("IDFA") Proposal 9. Related to this,  
27 Leprino Foods strongly opposes Proposal 7 from National  
28 Milk Producers Federation ("NMPF"); it is unsubstantiated



1 and insufficient.

2 As a reminder, all nine of the plants Leprino  
3 operates in the United States receive milk priced in  
4 reference to the Federal Milk Marketing Orders, therefore  
5 Leprino has a strong interest in the decision by USDA  
6 based on this hearing.

7 Across the industry it's widely agreed that  
8 Make Allowances are out of date. In fact, given the  
9 inflationary spiral of the past two years, one can safely  
10 say that Make Allowances are now disruptively out of date.

11 I want to first clarify, for the record, how USDA  
12 (the "Department") defines a Make Allowance. As published  
13 in the Federal Register on both November 22nd, 2006, and  
14 June 20th, 2008, "The Make Allowance factor represents the  
15 cost manufacturers incur in making raw milk into one pound  
16 of product." In other words, a Make Allowance is not a  
17 "cost credit" to cover a portion of these conversion  
18 costs, a Make Allowance is intended to represent the cost  
19 of converting milk into dairy products.

20 As noted in the February 7th, 2013, Final Decision  
21 from USDA: "The ability of a manufacturer to offset cost  
22 increases is limited by the level of Make Allowances in  
23 the Class III and Class IV price formulas."

24 Given the current system, if manufacturing costs  
25 are not covered in their entirety, over time, the math  
26 just doesn't work. Essentially, processing assets get run  
27 into the ground and the industry lacks financial incentive  
28 for the investment needed to maintain or build sufficient



1 processing assets.

2 Let me give you a view into cost of processing  
3 changes at Leprino Foods. As a historically innovative  
4 dairy processor with relatively large plants, Leprino  
5 Foods is perceived to be an efficient dairy processor.  
6 And while Leprino Foods produces mozzarella as opposed to  
7 cheddar cheese, we do manufacture two products which are  
8 included in the milk pricing formulas. We manufacture  
9 sweet whey at two plants: Allendale, Michigan, and  
10 Waverly, New York. And due to the relative size of our  
11 footprint in Colorado, we manufacture nonfat dry milk  
12 ("NFDM") at our Greeley, Colorado plant to help balance  
13 the state's milk supply. 2022 data from all three of  
14 these plants was included in Dr. Stephenson's latest cost  
15 of processing study.

16 Leprino's Allendale and Waverly plants have  
17 produced sweet whey since before 2006, when the  
18 Make Allowance was last updated. Our Greeley plant is  
19 newer, producing nonfat dry milk since only 2017, so the  
20 following examples on cost of processing increases will be  
21 compared to those respective years.

22 Across our two sweet whey plants, Leprino's  
23 Processing Non-Labor costs increased 159% between 2006 and  
24 2022, utilities increased 32%, and packaging grew 53%.  
25 Overall, our total cost, as defined in the 2022 Stephenson  
26 study, grew by 58%.

27 With respect to nonfat dry milk, since just 2017  
28 our processing non-labor costs have skyrocketed 79%, with



1 a 67% increase in utilities, and a 69% increase in  
2 packaging costs. These increases over just six years  
3 exceed those of the weighted industry average between the  
4 two Stephenson studies that bookend the current 17-year  
5 lag in updating Make Allowances.

6 As the industry is aware, despite the outdated  
7 Make Allowances and the recent inflationary spiral,  
8 Leprino Foods is building a new plant in Lubbock, TX. We  
9 have continued with this project because Leprino Foods  
10 believes in the long-term future of the U.S. dairy  
11 industry, and because we want to uphold longstanding  
12 commitments to our customers.

13 That said, this is a very difficult time to build  
14 a new plant. For example, when we run the cost of  
15 manufacturing estimate for sweet whey at this new plant,  
16 including depreciation, the cost is projected be over 80%  
17 higher than the cost of manufacturing sweet whey at the  
18 two plants where we already produce this product.

19 Because of numbers like this, many other  
20 processors have put expansion and greenfield plant plans  
21 on hold. It is now extremely difficult for almost any new  
22 investment to cash flow. In fact, Leprino's President has  
23 said: "If Make Allowances aren't updated, the Lubbock  
24 plant will have to be the last plant Leprino builds in the  
25 U.S." With this latest bout of inflation on top of the  
26 decades-plus-long delay in updating Make Allowances, the  
27 economics just do not work.

28 Why does this matter to producers? As noted in my



1 earlier testimony, producers need a market for their milk.  
2 Without sufficient processing capacity within a reasonable  
3 distance, dairy farms cease to be economically viable.  
4 Further suffocating dairy processors will just cascade and  
5 suffocate dairy farms. Outdated Make Allowances have  
6 become an unhealthy chokepoint for America's dairy  
7 industry.

8 Producer members of manufacturing cooperatives may  
9 already be experiencing these consequences, and we heard  
10 testimony during this hearing to that effect. In addition  
11 to base/excess programs, which are currently needed  
12 because milk production is being overstimulated by the  
13 inflated regulated price, cooperative manufacturers of  
14 formula products are almost certainly incurring processing  
15 losses. This is apparent as the deficit between current  
16 Make Allowances and 2022 manufacturing costs for the  
17 average of low-cost processors ranges from a minimum of  
18 10% up to 53%, depending on commodity.

19 As common banking practices require owners to  
20 absorb significant cash flow gaps, these losses are no  
21 doubt being passed on to producer milk checks, either  
22 directly or indirectly. Press announcements over the past  
23 year have noted this practice. Cooperative members may  
24 see a direct deduction for manufacturing losses on their  
25 checks, or these losses are being assessed via reblending  
26 by adjusting rates, which would indirectly allocate  
27 manufacturing losses across members.

28 So the concern within manufacturing cooperatives



1 that raising Make Allowances will reduce milk checks is  
2 outdated; adjustments are already taking place. For the  
3 long-term, current Make Allowances are not sustainable for  
4 any entity that manufactures Class III or Class IV formula  
5 dairy products, regardless of ownership structure, and no  
6 reasonable banker would lend new money to a business which  
7 absolutely cannot cash flow.

8 National Milk Producers Federation's proposal  
9 states: Raising Make Allowances to levels above those  
10 proposed by NMPF will reduce producer prices to levels  
11 that would narrow margins and negatively impact the  
12 availability of adequate supplies of milk, and thereby  
13 create disorderly marketing.

14 There are multiple issues with this presumption.  
15 First, while farm level margins may initially decrease and  
16 contract milk supplies, economics 101 dictates market  
17 forces will subsequently pull farm-level prices higher to  
18 reach a new equilibrium between supply and demand.  
19 Further, margin protection programs such as Dairy Margin  
20 Coverage ("DMC") will insulate farms, particularly smaller  
21 ones, from lower margins as the market adjusts.

22 As to disorderly marketing, NMPF clearly  
23 misinterprets the term given today's realities. Whereas  
24 tighter supplies of milk relative to demand will drive  
25 prices higher, "disorderly marketing" instead refers to  
26 situations where there is an excess of milk relative to  
27 available processing capacity within a milk shed. This  
28 occurs when milk is overpriced relative to demand, not





1 when milk is underpriced. Said another way, disorderly  
2 marketing occurs when the price does not clear the market  
3 of the available milk volume. Typical symptoms of  
4 disorderly marketing include milk dumping and/or unusually  
5 low spot milk prices. Again, the Upper Midwest has  
6 extensively experienced both phenomena in 2023.

7 More accurately, lower regulated milk prices that  
8 reflect current conversion costs and tighter milk supplies  
9 would instead enhance orderly marketing of milk as the  
10 market moves beyond the current overpricing of milk  
11 relative to available processing capacity. If the U.S.  
12 dairy industry wants to thrive, or even remain status quo,  
13 Make Allowances must be updated to competitive levels to  
14 maintain existing assets and encourage adequate investment  
15 to be made in its processing sector.

16 And NMPF's proposal clearly states: "Subsequent  
17 analyses by NMPF and other interested parties have  
18 estimated that unit costs of inputs have subsequently  
19 risen even further above these 2018 levels," and that  
20 "average manufacturing costs... are considerably higher than  
21 the current Federal Order Make Allowances." This speaks  
22 to the need for significant and adequate updates to  
23 Make Allowances.

24 The NMPF proposal then goes on to note that "when  
25 manufacturing costs of commodity products exceed the  
26 established Make Allowances, the calculated classified  
27 prices will essentially overvalue raw milk as an input."

28 NMPF next states that "negative impacts from



1 outdated Make Allowances are unfairly borne by cooperative  
2 dairy farmers."

3           These statements are oversimplified.  
4 Manufacturing cooperatives and proprietary processors are  
5 incurring losses while marketing cooperatives and  
6 independent producers are benefiting from the current  
7 marketplace distortion. The industry is in essence  
8 robbing Peter to pay Paul by placing the financial burden  
9 of outdated Make Allowances on manufacturing cooperatives  
10 and proprietary processors.

11           The NMPF proposal suggests that Make Allowances  
12 based on updated weighted average costs would assure  
13 profitability to all processors, no matter how inefficient  
14 or high cost. Of course, this presumption doesn't make  
15 sense mathematically, as a weighted average takes plant  
16 size as well as production cost into account. So if  
17 anything, weighted averages encourage plants producing  
18 commodity products to be sized to achieve economies of  
19 scale or achieve other above-average efficiencies or get  
20 left behind.

21           Further, the NMPF Make Allowance proposal is  
22 conclusory and lacks supporting data. In prior decisions,  
23 USDA has clearly noted the need for publicly available  
24 data from reputable sources to drive changes to Federal  
25 Orders.

26           While the WCMA/IDFA proposals leverage such data  
27 from respected long-time industry economists, the NMPF  
28 proposal notes the need for "increasing Make Allowances



1 from their current inadequate levels," but then states,  
2 without any evidence or data to support their position,  
3 that their proposed increases are "adequate, acceptable  
4 and reasonable."

5           Proposals 8 and 9 from Wisconsin Cheese Makers  
6 Association and International Dairy Foods Association,  
7 respectively, offer an economically sustainable approach.  
8 First, the phase-in approach is explicitly designed to  
9 help mitigate farm-level margin shock and therefore  
10 stabilize milk supplies as the industry adjusts to long  
11 overdue Make Allowance updates.

12           That said, even this phased-in approach only aims  
13 to cover 2022 costs by 2028. This is still a six-year lag  
14 to actual costs, which may continue to limit processing  
15 investment. While this may still constrain the industry,  
16 the WCMA and IDFA proposals seek to find a best and  
17 minimally disruptive path forward.

18           Another reason why the WCMA/IDFA Proposals 8 and 9  
19 are valid and warranted is that previous Make Allowance  
20 updates have been based off a similar data approach. In  
21 fact, the Final Rule for the last national hearing,  
22 published February 7th of 2013, stated: "This decision  
23 finds that it is appropriate to rely on cost data from  
24 California (CDFA survey) and the rest of the country  
25 (CPDMP survey)."

26           As a reminder, the CPDMP survey was conducted by  
27 Dr. Mark Stephenson, author of the latest plant survey  
28 study, and Dr. Bill Schiek's estimate are built directly



1 from CDFA data. The latest Stephenson data set is based  
2 off very robust participation, representing a majority of  
3 processing capacity and including many large  
4 manufacturers, while the Schiek estimations begin with the  
5 CDFA mandatory study data and leverage a highly accepted  
6 statistical modeling approach. Given these Make Allowance  
7 proposals are based on weighted average costs, the bar for  
8 remaining competitive is higher than overall average  
9 profitability.

10 Waiting on mandatory cost study data at this point  
11 is not a viable solution. USDA should update  
12 Make Allowances based on the data presented at this  
13 hearing. While various parties have suggested that  
14 Make Allowance updates should not be made until after  
15 mandatory cost of processing study data is available, USDA  
16 believes it does not yet have the authority to conduct  
17 such mandatory studies, and that this authority needs to  
18 be granted by Congress. This would most likely happen in  
19 the Farm Bill.

20 Even if a new Farm Bill (granting this authority  
21 and funding the studies) were to move through Congress and  
22 into law this year, which is not a given due to political  
23 realities, it is unlikely that implementation of updated  
24 Make Allowances from mandatory cost of processing study  
25 data would take place prior to 2028. To get to that  
26 point: Rulemaking, hiring and training staff, study  
27 design, study programming, training manufacturers,  
28 implementing surveys, auditing (as needed), analysis,



1 communication of results, a hearing request, and a  
2 hearing, would all need to happen.

3 Despite the anticipated time lag on  
4 implementation, for the long-term health of the U.S. dairy  
5 industry it is essential that the Department be granted  
6 this authority and routinely produce updated cost study  
7 information going forward. Otherwise, the industry will  
8 remain at odds and focused inward as opposed to seeking  
9 market opportunities that await. While Europe and New  
10 Zealand are poised to implement costly environmental  
11 regulations on their respective industries, creating a  
12 greater opportunity for the U.S., outdated US milk pricing  
13 regulation controls our potential and ability to grow.

14 For these reasons Leprino Foods Company opposes  
15 Proposal 7 and supports Proposals 8 and 9.

16 Q. Thank you, Ms. Krebs.

17 Before we open you up for cross-examination, I'm  
18 just going to ask you a few follow-up questions.

19 First, you testified about the two specific  
20 products that Leprino Foods Company produces that are  
21 included in the formula. Given that much of what Leprino  
22 Foods Company produces is mozzarella cheese, why is the  
23 Make Allowance important to Leprino in that context?

24 A. Yeah. Thanks very much.

25 Yeah, we produce mozzarella cheese, and there's  
26 been talk during the hearing that cheese makers have --  
27 just have flexibility to raise price. Obviously, we are  
28 in a competitive marketplace, but I think there's a couple



1 of other things that are important to mention on how  
2 outdated Make Allowances specifically impact Leprino Foods  
3 Company.

4 Basically they are putting us at a competitive  
5 disadvantage. A couple of these have been brought up  
6 within the hearing, but specifically, competitors who  
7 depool and can pay below order prices for their milk puts  
8 us at a competitive disadvantage. Competitors in  
9 unregulated regions where they are not required to pay  
10 Federal Order minimum prices, that's a competitive  
11 disadvantage. And finally, where we have cooperative  
12 competitors who can then reblend the price they pay to the  
13 their farmers and therefore pay less for their milk also  
14 puts us at a disadvantage.

15 Q. Thank you.

16 Second, you testified about some of the  
17 inflation-related challenges associated with building new  
18 processing assets. In general terms, how has inflation  
19 impacted construction of Leprino's forthcoming Lubbock  
20 facility?

21 A. Yeah. Well, not surprising, costs continue to go  
22 up. You can say it's over budget, but I would suggest  
23 that it is more overall inflation relative to plant. When  
24 we announced the plant in late 2021, I believe the  
25 announced price was an \$870 million investment, and we are  
26 now at a position at this time, given recent inflation,  
27 that that is estimated to be a \$1 billion investment at  
28 this time.



1 Q. Thank you.

2 Finally, were you present for Dr. Stephenson's  
3 testimony on cross-examination with respect to Leprino's  
4 forthcoming Lubbock facility?

5 A. Yes.

6 Q. And relating to that testimony, do you know  
7 whether any costs associated with construction of that  
8 Lubbock facility were included in Dr. Stephenson's  
9 dataset?

10 A. No, they were not.

11 Q. Thank you.

12 MR. NIELSEN: The witness is open for  
13 cross-examination.

14 THE COURT: Questions.

15 CROSS-EXAMINATION

16 BY MS. HANCOCK:

17 Q. Good afternoon, Ms. Krebs.

18 I didn't hear the last question and answer.

19 A. The last question was about whether depreciation  
20 for our new plant was included in our cost of  
21 manufacturing data that we submitted, Dr. Stephenson's  
22 study. And, no, it was not. Those are two older plants  
23 where we have made sweet whey for an extended period of  
24 time.

25 Q. Okay. Thank you for that. I was trying to refine  
26 my questions and missed that one, and I didn't want to  
27 repeat it.

28 I wanted to start with, you have a Colorado plant,



1 or Leprino has a Colorado plant?

2 A. We have two.

3 Q. And what -- do either one of those perform any  
4 kind of balancing role in the market?

5 A. When you think of -- yes. I mean, to my  
6 testimony, our Greeley plant does manufacture some nonfat  
7 dry milk, and that is to help balance milk supply in  
8 Colorado because we take a large share of milk in  
9 Colorado.

10 Q. And do you use that for an internal use or for  
11 domestic sales or both?

12 A. Primarily, that would be used internally.

13 Q. And then is it fair to say that you have  
14 experienced seasonality impacts at that Greeley plant as  
15 well?

16 A. I think there's seasonality across the entire  
17 dairy industry. If you have tremendous heat waves or  
18 things like that, you can have some differences in  
19 production.

20 Q. Okay. So sometimes you are under capacity and  
21 sometimes you have times where you are at capacity?

22 A. We typically run our plants -- particularly the  
23 Greeley plant runs 24/7, 365 days a year. Our Greeley  
24 plant typically is not shut down.

25 Q. Okay. So even though you offer services as a  
26 balancing plant, you still -- does that mean that you  
27 reserve some capacity in case there's additional milk  
28 supplied there?





1 A. We also work with our supplier partners.

2 Q. And that gives you the leverage that you can  
3 control?

4 A. Yes. That's part of -- of our contracting.

5 Q. And were you here when Dr. Stephenson and  
6 Dr. Schiek testified?

7 A. Yes.

8 Q. Was there anything that they testified to that you  
9 can recall that you feel like you would like to disagree  
10 with?

11 A. I don't know that I would disagree with any of  
12 their testimony.

13 Q. Okay. And you heard both of them provide some  
14 characterizations about some of the inadequacies with  
15 respect to their studies; is that fair?

16 A. I would not call it inadequacy. I would say it's  
17 more limitations to the methodology. I think that the  
18 work that they have done is very solid work given the  
19 tools and information that was available.

20 Q. Okay. That's fair.

21 So if it's limits to the methodology, you heard  
22 both of them talk about, with respect to each one of their  
23 methodologies, that there were some limits on their  
24 ability to achieve an accurate result that they -- that  
25 they reached; is that fair?

26 A. Well, neither one was a full population survey,  
27 but I think that they are very representative of -- you  
28 know, from two different approaches, very representative



1 of what we have seen in the industry. And the output that  
2 we saw on the products that we manufacture and the  
3 relative increases in cost certainly looked realistic and  
4 sounds like it is very much in line with what many others  
5 have testified to as well during this hearing.

6 Q. Okay. And -- and did Leprino participate in both  
7 of Dr. Stephenson's surveys?

8 A. We participated in this latest one. My  
9 understanding is that the twenty -- whatever we're calling  
10 it, 2021, the prior survey, we provided data to  
11 Dr. Stephenson but apparently missed a deadline.

12 Q. Okay. So do you know if your -- if Leprino's data  
13 was included in the 2021 survey?

14 A. My understanding is it was not.

15 Q. But you were able to review that survey?

16 A. Yes.

17 Q. And even without Leprino's data being included in  
18 that, did you believe that that survey was reflective of  
19 Leprino's costs?

20 A. For the products that we manufacture, yes.

21 Q. And so cheese would be the category that you're  
22 primarily looking to?

23 A. Well, again, our cheese manufacturing, it's a --  
24 there's a very different process to it, with different  
25 type of -- or style of cheese, so we don't manufacture  
26 cheddar cheese. So we don't -- it's not apples to apples  
27 on the cheese side. We felt that the whey data was  
28 representative.



1 Q. Okay. What about nonfat dry milk?

2 A. Yeah. We didn't see any issues or concerns there.

3 Q. Okay. And you don't do butter?

4 A. No.

5 Q. Okay. So with respect to Dr. Stephenson's 2021  
6 results for cheese, whey, and nonfat dry milk, you felt  
7 like the results that he obtained were fairly reflective  
8 of the cost structure that Leprino is able to observe in  
9 its own plants?

10 A. Yeah. You know, I think, as what Dr. Stephenson  
11 testified to, he used a different methodology for cost  
12 allocation, and that seemed to have had some level of  
13 impact on the Class IV allocation. So, again, we don't  
14 have a lot of experience there, but we felt comfortable  
15 with what we saw for whey, for dry whey, on the Class III  
16 side.

17 Q. Okay. And -- and did you hear Dr. Stephenson's  
18 testimony where he believed that his allocation of costs  
19 using the transformational values didn't have an effect on  
20 the results for his survey, that his survey was more of  
21 just a reflection on the sample size and the sample data  
22 that he had included in that report?

23 A. Could you repeat that, please?

24 Q. Sure. Did you hear his testimony when I asked him  
25 about whether he believed that his allocation of costs  
26 using his transformative value ratings, whether that was  
27 impacting the results that he got in 2021?

28 A. Yes.



1 Q. And you recall that his answer was he did not  
2 believe that that methodology affected his results, he  
3 thought his results were more reflective of the sampling  
4 of the pool that he had in that survey?

5 A. I interpreted his testimony differently.

6 Q. You believed that he was testifying that he did  
7 have an effect on his results based on his methodology?

8 A. That there was some -- my understanding was that  
9 the transformation cost approach -- or transformation -- I  
10 can't remember exactly how he phrased it -- that  
11 methodology had some impact on the results as compared to  
12 the traditional methodology that he had used copying the  
13 prior historical CDFA studies and then the methodology  
14 which he, again, then invoked for his latest study.

15 Q. Okay. Are you sure that's what he said?

16 A. That's my recollection.

17 Q. Okay. Fair enough.

18 But nonetheless, when you looked at the categories  
19 that he was able to -- that came out of his 2021 results,  
20 you felt like they were at least in the ballpark of where  
21 Leprino was experiencing?

22 A. For the products which apply to us.

23 Q. And that's --

24 A. Again, on the Class IV piece, it seemed like there  
25 was some things there that was a question mark, but,  
26 again, I think some of that comes down to some methodology  
27 change on his part.

28 Q. Okay. And if you look at cheese, for example,



1 he -- his results in 2021 came out with \$0.2476 cents.

2 Does that sound right?

3 A. I would have to look to confirm that, but I can't  
4 dispute that.

5 Q. Okay. And do you know that National Milk's  
6 proposal is \$0.24?

7 A. Correct. However, the data collected for  
8 Dr. Stephenson's 2021 study on average was collected in  
9 2019, and so there's -- as we talked, there's been quite a  
10 bit of inflation that's happened since that time. So,  
11 again, that's part of why I think Dr. Stephenson repeated  
12 the study here more recently, was to try and capture some  
13 of the inflation that we have seen since.

14 Q. Do you think that the inflation cost numbers that  
15 we saw in 2022 are reflective of what we're seeing in  
16 2023?

17 A. Well, I think it depends on what part of those  
18 costs. As I mentioned, the cost increases that were seen  
19 with our Lubbock plant certainly suggest that equipment  
20 and building costs are continuing to increase and  
21 escalate. Labor costs almost never goes down. We can  
22 gain some efficiencies, but in terms of your cost per unit  
23 of labor, that doesn't go down. You had some  
24 adjustments -- in 2022 you had the shock of the  
25 Russia/Ukraine conflict which pushed energy prices higher  
26 for a period of time, but they also have -- they have  
27 adjusted down somewhat. And the entire 2022 average was  
28 not extraordinarily high.



1           So I -- I think, on average, the 2022 data from  
2 Dr. Stephenson's study, remains valid and it's not  
3 something where we would see a huge change. But I think  
4 that also speaks to the opportunity for the industry to  
5 have regular cost of manufacturing studies in the future  
6 going forward so that we can capture any changes from a  
7 longer-term perspective.

8           Q. Do you agree it would be better for us to have  
9 mandatory audited cost surveys that capture the actual  
10 costs on a larger representative sampling?

11          A. The ideal world is mandatory studies. But I think  
12 in the meantime we have had a 17-year delay, and there's a  
13 lot of stress financially on the processing sector at this  
14 time, and you can't necessarily wait another four or five  
15 years to get to that point. The margin of error between,  
16 you know, a -- how far off could a sample study be or  
17 Dr. Schiek's work be relative to the deficits that we  
18 currently have in the changes in costs, there's a  
19 tremendous difference on that.

20          Q. Would you agree that the pressures that your  
21 business as a processor are experiencing, such as labor,  
22 and some of the supplies, and the energy, and the fuel  
23 costs, are also costs that dairy farmers are also  
24 experiencing?

25          A. Oh, I don't deny that at all. Everybody's seeing  
26 higher costs.

27          Q. And you would agree with me that in order to make  
28 sure that there are orderly market conditions, we have to



1 make sure that we don't run dairy farmers out of business  
2 in the meantime?

3 A. And that I think is part of what International  
4 Dairy Foods Association and Wisconsin Cheese Makers are  
5 trying to do with that stepped-in approach, is to try and  
6 maintain a healthy dairy industry as we go forward, to  
7 move the Make Allowances higher so that processors can be  
8 healthier, but to help ensure that we have a steady supply  
9 of milk over that longer-term timeframe as the markets  
10 adjust to changes.

11 Q. Okay. Appreciate that.

12 I just want to make sure our record's clear. So  
13 is your answer yes, that you believe that it is important  
14 to avoid creating a disorderly market by running dairy  
15 farmers out of business and interrupting the supply of  
16 milk?

17 A. I don't agree that we are looking to run dairy  
18 farmers out of business and destroy our milk supply. Our  
19 business is dependent on a strong and steady supply of  
20 milk, and our customers' business is dependent on a supply  
21 of dairy products, supply of cheese, for pizzas, things  
22 like that. So it's -- we have a mutual interest here, and  
23 I think keeping the dairy industry healthy should be all  
24 of our interest.

25 Q. And I wasn't asking you if your position was that  
26 you were trying to run them out of business. I'm just  
27 asking the question of, do you agree that it would create  
28 disorderly market conditions if dairy farmers were run out



1 of business because of the inability to withstand  
2 increases in costs in a way that would interrupt supply?  
3 Is that an example of how disorderly market conditions can  
4 be created?

5 A. I don't believe that there are any proposals on  
6 the table that would create such a situation.

7 Q. That's not my question.

8 Do you agree that if supply were interrupted  
9 because dairy farmers are run out of business, that that  
10 would be in and of itself a situation in which disorderly  
11 market conditions would be created?

12 A. I think anytime you would have any extreme shift  
13 in supply, that would be disorderly.

14 Q. In your statement in Exhibit 199, you state that,  
15 "Given the inflationary spiral of the past two years, one  
16 can safely say that Make Allowances are now disruptively  
17 out of date."

18 A. I'm sorry. Where are you?

19 Q. I'm on the first page of Exhibit 199, your second  
20 sentence of the second paragraph.

21 And you state, "Given the inflationary spiral of  
22 the past two years, one can safely state" -- I'm sorry --  
23 "one can safely say that Make Allowances are now  
24 disruptively out of date."

25 Do you see that?

26 A. I still don't see where you are. Oh, I see it  
27 now. Okay. Yes.

28 Q. What do you mean -- or can you tell me what you





1 mean by saying that Make Allowances are now disruptively  
2 out of date?

3 A. Well, I think from some of the testimony that we  
4 have seen from several different people during the  
5 hearing, and I also provided some information on that in  
6 my initial testimony, you can see of the very deep  
7 discounts in spot milk prices that we're seeing across  
8 much of the Upper Midwest. I think some of the other  
9 disruption that we have seen is a fair amount of dumping  
10 of milk this year, particularly this spring, and you're to  
11 a point where there is really no excess capacity available  
12 to absorb your spring flush this time of year. You just  
13 don't have the processing capacity available at this point  
14 because there has not been the capital available and  
15 returns available for the processing sector to build the  
16 assets to have that capacity for the marketplace.

17 Q. And have you had producers that have had to dump  
18 milk?

19 A. I don't know. Most of our milk moves through  
20 cooperative partners, so I can't speak to that.

21 Q. And you understand that when it moves through  
22 cooperative partners, those cooperatives have agreed to  
23 take the milk and find a place for it; is that right?

24 A. I could assume that's the case. I'm not  
25 intimately familiar with our milk purchasing agreement.

26 Q. As you sit here today can you think of an example  
27 of when you have any knowledge about milk being dumped?

28 A. I know we work very, very hard with our partners



1 to try to avoid any situation where that would happen. It  
2 seems to me that I have a recollection of, you know, an  
3 extreme weather event when a load couldn't get to a plant  
4 or something along those lines. I think that's happened a  
5 couple times since I have been with Leprino. Those are  
6 very isolated events.

7 Q. Like if there was a freeze and a truck couldn't  
8 get the milk transported?

9 A. Yeah. Icy roads, snowstorms, whatever.

10 Q. Okay. So other than those isolated events can you  
11 think of any reoccurring event when milk is being dumped?

12 A. For the places where we operate in our milk sheds,  
13 that is fairly rare. I have heard of situations in the  
14 Northeast where that could happen. And, again, it's been  
15 very much an issue in the Upper Midwest this year.

16 Q. And do you know what percentage of the U.S. milk  
17 supply has been dumped on an annual basis?

18 A. I have not looked at that data recently. Yeah.

19 Q. Do you have any reason to dispute that it would be  
20 less than one-tenth of 1%?

21 A. I would hope it is. I don't have a reason to  
22 dispute that.

23 THE COURT: Ms. Hancock --

24 THE WITNESS: But if it is your milk, it is a lot  
25 of milk.

26 THE COURT: If there's a stopping point -- I  
27 really hesitate to interrupt, but I know you're --

28 MS. HANCOCK: Yeah. I think -- I mean, can I just



1 finish? I just have a couple sections on -- questions on  
2 milk dumping, and then we can take a break.

3 (Off-the-record.)

4 THE COURT: Ten minutes. Let's come back at 3:20.

5 (Whereupon, a break was taken.)

6 THE COURT: On the record.

7 THE WITNESS: So just -- I know right as we --  
8 right as we departed you had talked about .1% percent of  
9 milk being dumped in the United States. And I -- the  
10 comment I made that I just want to make sure it's on the  
11 record is that if it's your farm, that's a lot of milk.

12 BY MS. HANCOCK:

13 Q. Yeah. But -- that's fine.

14 You are not aware of any, though, as you sit here,  
15 other than the ice storm?

16 A. Well, I think it tends to be seasonal, but there's  
17 a lot of other impacts that we can see that demonstrate  
18 disorderly marketing. There's the premiums that we have  
19 talked about. Mr. DeJong had charts in his testimony. I  
20 had a chart in my testimony. We have seen the erosion of  
21 milk premiums over time. Then you can also have  
22 situations where you are forced to move milk much larger  
23 distances because of lack of available processing  
24 capacity. So there's a lot more to disorderly marketing  
25 than just milk dumping.

26 Q. Yeah. You were the one that was talking about  
27 milk dumping. I was just asking you what evidence you had  
28 of milk dumping.



1 A. Yep.

2 Q. Yeah. So you are not aware of any yourself other  
3 than the ice storm. I think that's where we landed. Is  
4 that right?

5 A. Well, again, this spring in the Upper Midwest,  
6 there was quite a bit in the popular press as well as the  
7 industry press about issues with milk dumping.

8 Q. And the Upper Midwest, do you know what caused  
9 that milk dumping?

10 A. A lot of it was lack of available processing.

11 Q. Is it --

12 A. Relative to the supply of milk. It is all -- it's  
13 a supply and demand and a balancing.

14 Q. Yeah. Do you know if it was weather related?

15 A. I didn't hear that any of it was weather related.

16 Q. Okay. In your Exhibit 199, still on the first  
17 page in that second paragraph under the opposition to  
18 Proposal 7 header, the last sentence says, "Given the  
19 current system, if manufacturing costs are not covered in  
20 their entirety, over time the math just doesn't work."

21 A. That's correct.

22 Q. Okay. And is that the manufacturing cost of every  
23 plant?

24 A. It is the manufacturing cost for, I mean, any  
25 business. If you are not covering your costs over the  
26 long-term, you are not going to be in business.

27 Q. Okay. Are you saying that the manufacturing --  
28 that the Make Allowances are designed to cover the



1 manufacturing costs of all of the plants?

2 A. Well, as I quoted earlier in that paragraph, USDA  
3 has published in the Federal Register that the  
4 Make Allowance factor represents the cost manufacturers  
5 incur in making raw milk into one pound of product. And  
6 so the design of Make Allowances is that they are to cover  
7 manufacturing costs.

8 Q. For all plants?

9 A. For dairy products.

10 Q. For all plants, though?

11 A. For all plants, for -- what do you mean by "for  
12 all plants".

13 Q. I'm asking what you mean. When you say that, are  
14 you talking about manufacturing costs for all plants have  
15 to be covered in their entirety?

16 A. This is -- I don't see where you picked all plants  
17 out of my text, though, I guess.

18 Q. It doesn't say that. That's why I'm asking the  
19 question. Are you talking about all plants or are you  
20 talking about on average or something less than all  
21 plants?

22 A. Oh, I see what you are referring to. Yeah, you  
23 know, it's -- I think the methodology that has been used  
24 historically by USDA in setting Make Allowances, where you  
25 are looking for Make Allowances to be set at a weighted  
26 average, seems like an appropriate approach. That's what  
27 has been done historically. So you are talking about a  
28 weighted average for a Make Allowance.



1 Q. Okay. That's what I was trying to clarify. Thank  
2 you.

3 A. Yes.

4 Q. And would that be a weighted average of the  
5 accurate actual costs of those plants?

6 A. Yes.

7 Q. And then you go on in the next paragraph and talk  
8 about Leprino Foods there, and you say that "Leprino Foods  
9 is perceived to be an efficient dairy processor."

10 Is Leprino an efficient dairy processor?

11 A. We hope we are.

12 Q. Is that the goal?

13 A. Sure.

14 Q. And in your opinion, is Leprino Foods an efficient  
15 dairy processor?

16 A. To my knowledge, I think we work very hard to be  
17 an efficient dairy processors. I'm not close to a lot of  
18 our cost data. But, you know we look at performance  
19 information that's available across the industry, which  
20 obviously is limited. But, you know we want to be  
21 competitive and efficient.

22 Q. And is one way that you can measure that is to  
23 know whether you're beating the Make Allowance that's set  
24 by USDA?

25 A. It could be. But, again, a lot of the products  
26 that we manufacture are not directly in the Make Allowance  
27 formula. Again, we don't manufacture cheddar cheese. We  
28 manufacture products beyond just dry whey or sweet whey.



1 So there's limited direct comparison in that regard.

2 Q. But to the extent that it is comparable and used  
3 as a basis for measurement, you would agree with me that a  
4 goal would be to manufacture your products at a cost that  
5 would be better than the Make Allowance provided by the  
6 Federal Order system?

7 A. We would hope to get there, if there is the  
8 opportunity to get there.

9 Q. And has Leprino Foods been able to historically,  
10 since 2008, been able to manufacture its products for  
11 lower than the Make Allowances for the products that you  
12 could measure against in the Federal Order system?

13 A. I'm not going to discuss our company  
14 profitability. We're a privately held company and don't  
15 want to disclose proprietary information in that regard.  
16 But we will do everything we can as a company to be an  
17 efficient processor of dairy products. That's what makes  
18 us a reliable market for our suppliers' milk and a  
19 reliable supplier to our customers.

20 Q. And I don't want your proprietary information.  
21 I'm just curious to know if there are times since 2008  
22 that Leprino Foods has been able to manufacture its  
23 products that can be measured based on the Make Allowances  
24 published by the Federal Order system, whether Leprino  
25 Foods has been able to manufacture those products below  
26 that number.

27 A. I can't -- honestly, I can't speak to that. I  
28 don't have that data.



1 Q. Do you know what timeframe it was that Leprino  
2 Foods began to feel like the Make Allowances were not  
3 sufficient?

4 A. Well, I can say that over time, I know there have  
5 been many places where we as a company have engaged with  
6 others across the industry to try and look for ways to  
7 keep the system up to date and current, to keep the  
8 industry as healthy as possible. So I would say that  
9 there have been concerns for many years that the system is  
10 not in a position to keep the industry healthy.

11 Q. What is "many years"?

12 A. Well, my predecessor, Sue Taylor, who you had the  
13 opportunity to meet the other day, she told me of being  
14 involved in industry efforts that go back to -- oh, gosh,  
15 I think she talked about some things back in 2006, 2008  
16 timeframe. There were some other efforts in 2012,  
17 forward, and has been ongoing over time.

18 Q. Well, you already testified that the data that was  
19 collected in 2006 went into place in 2008 that increased  
20 the Make Allowances then; is that right?

21 A. Yes. That's correct.

22 Q. Okay. So what I'm talking about is from that date  
23 forward.

24 A. Uh-huh.

25 Q. At what point in time, did Leprino Foods have  
26 concerns that the Make Allowance were insufficient for its  
27 own operations?

28 A. I think we have been in a situation where we have





1 been very concerned about the outdated Make Allowances.  
2 It's a matter of is there an opportunity to have a hearing  
3 such as this to help the industry remain healthy and  
4 vibrant. Certainly the inflationary spiral we have seen  
5 over the last couple of years has put more strain on  
6 profitability. It's a challenging environment.

7 Q. Okay.

8 A. But I think it goes back further than just the  
9 last couple years.

10 Q. Yeah. And the pressure that you were talking  
11 about in the last couple of years, that -- that really  
12 came to light with the global pandemic and the conditions  
13 that were created related to that; is that right?

14 A. Well, I -- the pandemic's part of it. The -- you  
15 know, there's a lot of different pieces that have come out  
16 of that. You had some costs go up because of the  
17 Russia/Ukraine conflict that started last year. There's  
18 just a plethora of things that have been going on.

19 Q. And in page 2 of your testimony, you have at the  
20 top of the page there listed some percentages of cost  
21 increase that Leprino has experienced between 2006 and  
22 2022; is that right?

23 A. That's correct.

24 Q. And those percentages are just percentages in  
25 increases of Leprino's costs between 2006 and 2022?

26 A. That's correct.

27 Q. You're not saying there that those are  
28 increases -- I'm sorry. Strike that. Let me say that



1 again.

2 You are not saying there that those percentages  
3 are the amount over the Make Allowance that Leprino's  
4 costs are now, are you?

5 A. No -- well, those are percent increases that we  
6 have seen since that timeframe.

7 Q. And so if back in 2008, for example, when the last  
8 time the Make Allowances were increased, if Leprino was  
9 operating efficiently, as you described on the first page,  
10 and was able to beat those Make Allowance costs, it  
11 doesn't mean that you were exceeding them for those  
12 numbers of years; is that right?

13 A. Doesn't mean that we were "exceeding them." What  
14 do you mean by "them"?

15 Q. Yeah. That was a really bad question. I'm sorry.

16 When you were talking about the percentages of  
17 increase here, I just wanted to make sure we're clear.  
18 You're not saying that the percentage by which Leprino is  
19 exceeding the Make Allowance that's currently set by the  
20 Federal Order, are you?

21 A. Well, I think it's a little more complicated  
22 because the Make Allowances that were set at that time  
23 were based off of CDFA data from that 2006 timeframe as  
24 well as data from Dr. Stephenson's last study, and so  
25 these percentage increases are very similar to or aligned  
26 to that as opposed to the cost increases we have seen  
27 since then.

28 Q. Okay. I think you testified already that you



1 didn't want to provide me with -- with information about  
2 whether you were meeting or exceeding or even beating the  
3 current Make Allowance; is that right?

4 A. Yes, that's correct.

5 Q. And so it's fair to say that these percentages  
6 that you have included here are not giving me the math to  
7 do that calculation; is that right?

8 A. That's correct.

9 Q. Okay. I got there. It just took me a back door.  
10 Okay. And so let's talk about the plant that you  
11 have built -- or in the process that you are building in  
12 Lubbock, Texas.

13 A. Uh-huh.

14 Q. Is that -- I think that we have heard testimony,  
15 Mr. DeJong said that if you build a plant today, it's  
16 about \$650 million. Is that about right, the cost of  
17 construction for your plant?

18 A. I mentioned earlier, you must have missed it, that  
19 our original estimate as of late 2021 was \$870 million,  
20 and given the inflation that we have seen more recently,  
21 our estimate is now \$1 billion.

22 Q. Okay. I did miss that. So thank you.

23 And when are you expecting that plant to be  
24 completed?

25 A. Completely operational in late '25.

26 Q. And when did you break ground on it?

27 A. June of '22, I believe.

28 Q. Okay. So about the same time I think that Glanbia



1 broke ground on theirs -- or Hilmar I guess it was that  
2 broke ground on theirs as well?

3 A. I think we broke ground a couple months earlier  
4 but similar timeframe.

5 Q. Nobody's competitive here, are we?

6 And what products will you be processing out of  
7 that plant?

8 A. You will be surprised. Mozzarella cheese.

9 Q. Okay. Consistent with the rest of your portfolio  
10 now?

11 A. That's right. And then some whey products as  
12 well.

13 Q. Okay. And you state on page 2 of your testimony  
14 that it is very difficult to build a new plant and --  
15 because of these numbers, many other processors have put  
16 expansion in plants on hold.

17 A. Uh-huh.

18 Q. Can you think of any examples of any processors  
19 that you are aware of that's put the -- put their plant  
20 constructions on hold?

21 A. I believe a couple that come to mind, there was  
22 one that was going to go in up in Idaho that's on hold.  
23 There's another one, I believe the ESL plant that CDI was  
24 going to build has been on hold. Seems to me that there  
25 has been at least a couple of other announcements of  
26 plants on hold, but I can't recall any additional details  
27 right now.

28 Q. Do you know who it was that was going to build a



1 plant in Idaho that put it on hold?

2 A. No, I can't recall that right now.

3 Q. Okay.

4 A. Sorry.

5 Q. But you have heard testimony that in addition to  
6 Leprino building a new plant, that both Hilmar and Glanbia  
7 have built plants as well, or are in the process?

8 A. Hilmar, yes.

9 Q. And Glanbia recently had one that they opened?

10 A. The Michigan one?

11 Q. Yeah?

12 A. Yep. Their joint venture.

13 Q. And then there's another new plant going up in  
14 Great Lakes as well?

15 A. That I understand is primarily -- two things about  
16 that. One, it's primarily a replacement for another plant  
17 that they have right now. And then the other is a lot of  
18 that is going to be what they call cut-and-wrap. So it's  
19 the conversion of bulk product to a retailer/consumer  
20 ready.

21 Q. Okay. And even if somebody's replacing a plant,  
22 it is still a really expensive endeavor, isn't it?

23 A. I'm sure it is. Yeah.

24 Q. It doesn't get less expensive just because you are  
25 replacing a plant, does it?

26 A. No. But at some point you have to replace the old  
27 assets.

28 Q. Yeah.



1 A. And it takes money.

2 Q. And hopefully it builds in some efficiencies as  
3 well to make you operate more cost effectively?

4 A. Yeah. One would hope.

5 Q. Do you believe that there are too many dairy  
6 farmers?

7 A. No.

8 Q. Do you believe that there's too much milk  
9 production in the current market?

10 A. I believe that we have a situation where the  
11 interest that we have heard others, farmers, co-ops,  
12 testify to, the interest in producing milk does not align  
13 with the processing capacity that's currently available.  
14 So you have a mismatch between where the industry could be  
15 as to what its potential is right now.

16 Q. What about for the ultimate sales outlets, do you  
17 feel like the market is insufficiently supplied with the  
18 final products?

19 A. Well, ultimately, it's supply and demand, price,  
20 is what tells us what the market needs and what the  
21 consumer is willing to pay, whether it's here in the U.S.  
22 or global markets.

23 Q. And you say on page 2 of your testimony that "milk  
24 production is being overstimulated by the inflated  
25 regulated price."

26 Is that what you were talking about there, that  
27 there's more milk production than there is plant capacity?

28 A. That would be what we have seen in the Upper



1 Midwest for I think several months so far this year. And  
2 you really don't have the availability of -- balancing  
3 assets is more limited these days. In other words, you --  
4 your ability to take in additional milk seasonally or --  
5 the base/excess programs that co-ops have in place that  
6 limit milk production. I thought -- the gentleman from  
7 Hilmar who talked about building a new plant because their  
8 producers want to grow, there's limitations on that  
9 because of limited processing capacity these days.

10 Q. When you said "milk production is being  
11 overstimulated by the inflated regulated price," does that  
12 mean that there's too much milk being produced in the  
13 current market?

14 A. It really means that the regulated minimum price  
15 is too high.

16 Q. And by increasing Make Allowances, you believe  
17 that that would lower the regulated price that would be  
18 paid to dairy producers; is that right?

19 A. It lowers the regulated minimum price. It does  
20 not necessarily lower the price to dairy farmers because  
21 you have supply and demand responses within the  
22 marketplace. Again, to -- some of the evidence that's  
23 been presented in the erosion of milk premiums over time  
24 really illustrates that particular point.

25 Q. I'm really trying to get through this, but that  
26 means I need you to answer the question that I'm asking.

27 A. Okay.

28 Q. If Make Allowances are increased, do you believe



1 that that will lower the price that's paid to dairy  
2 producers today?

3 A. If you are looking at a day one response, that  
4 would be day one. But the market, again, responds.  
5 There's supply and demand. And as that works into the  
6 marketplace in the system, the market would adjust.

7 Q. And do you believe that on day one, and for that  
8 period of time until the market makes an adjustment again,  
9 do you believe that there will be dairy farmers who will  
10 go out of business as a result of those prices going down?

11 A. I can't guarantee that that would be the case  
12 because I think that, again, you have got some programs  
13 like the Dairy Margin Coverage Program that helps to  
14 provide some margin insurance, particularly for smaller  
15 farms. I think thinking about this as an adjustment  
16 that's completely in isolation and separate from the  
17 overall marketplace isn't the right way to look at it.

18 Q. When you say "I cannot guarantee that that's what  
19 the outcome would be," would you agree with me that it is  
20 a very real risk of lowering prices to dairy farmers that  
21 at least some dairy farmers will go out of business?

22 A. I guess my response is that I think that the  
23 marketplace is going to adjust. You could see some  
24 initial decrease in demand for milk products, but that's  
25 going to adjust and -- you know, the market works, supply  
26 and demand.

27 So I -- I think looking at this in isolation is a  
28 very -- it's a very limited way to look at it. So I'm not





1 trying to be elusive or not answer your question. I think  
2 you are just looking at it in such an isolated way.  
3 Markets react to information. They -- supply and demand  
4 is part of this. The initial day one response would be a  
5 decrease in milk price based on that, but you are going to  
6 have a reaction from the consumer side pulling through for  
7 on the demand side, and prices will adjust to an  
8 equilibrium.

9 Q. And I understand your point about you can't look  
10 at this in such isolation, but I can only ask one question  
11 at a time. So I'll get there, but I have to get  
12 through --

13 A. Okay.

14 Q. -- each question at a time first. Does that make  
15 sense?

16 MR. ENGLISH: Your Honor?

17 THE COURT: Mr. English rises.

18 MR. ENGLISH: I rise because that may be what  
19 Ms. Hancock is trying to do, but the witness is saying, I  
20 don't buy your premise. And I think that, you know, first  
21 of all, the question changed from regulated to price, and  
22 I think the witness answered there's a difference between  
23 a minimum regulated price and a price.

24 And I think that the problem is that Ms. Hancock  
25 is trying to take things in such a narrow way that this  
26 witness said, I don't agree with you. I think the witness  
27 has actually answered the question four times.

28 MS. HANCOCK: Your Honor, I disagree. I actually



1 think Mr. English is trying to signal the answer he would  
2 like his witness to give now, but unfortunately it is his  
3 witness that gets to testify and not him.

4 THE COURT: Well --

5 MR. ENGLISH: I didn't signal anything. That's  
6 what she said four times already.

7 THE COURT: That's fine.

8 I mean, in fairness, does what he says help you  
9 sharpen your question? I think she basically has said  
10 that she disagrees with your premise, although --

11 MS. HANCOCK: I mean, I think the record will  
12 speak for itself for what she said. I was just explaining  
13 that this is why I haven't asked her everything in the  
14 totality of the supply and demand markets. I think I'm  
15 entitled to ask my own questions. I mean, if we want to  
16 piece apart everybody's questions, we can do that for  
17 everyone.

18 THE COURT: No, I'm definitely -- no, don't take  
19 offense. I'm definitely not doing that. I think you did  
20 ask, is --

21 MS. HANCOCK: I'm not saying you did, but I'm  
22 saying that's what Mr. English is doing.

23 THE COURT: Well, he doesn't -- I'm your protector  
24 here. I think what -- try it again and --

25 MS. HANCOCK: I think she answered it. I was just  
26 giving an explanation.

27 THE COURT: Okay. That's fine, if you are  
28 satisfied with the answer. I think she did say, I



1 disagree with your premise, there may be -- things may go  
2 up in the short-term, but the market heals everything.  
3 And, you know, it's -- you know, it's a little long. It's  
4 not a yes or no answer exactly. But if you don't -- I  
5 leave it up to you.

6 BY MS. HANCOCK:

7 Q. Ms. Krebs --

8 A. Yes.

9 Q. -- it's fair to say that you believe that in day  
10 one and in the short-term that there are some dairy  
11 farmers that may go out of business if milk prices were to  
12 be lowered?

13 A. I don't think anybody goes out of business in one  
14 day. I -- again, I'm not trying to be evasive to you. I  
15 just think you just can't look at all these pieces in  
16 isolation.

17 I think the other piece that I would bring into  
18 this discussion is that if the market tells us that there  
19 is the demand for the dairy products as prices adjust,  
20 then you are going to have premiums that come into the  
21 market, that would be above the minimum. I think it all  
22 is about getting to a regulated minimum price that enables  
23 us to clear the market. And with that, given the way the  
24 system is set up, that Make Allowances are adequate so  
25 that we can have a healthy dairy processing sector, and  
26 that will be good for everybody in the industry.

27 Q. And one way that markets can adjust, especially if  
28 you have a milk production that's being overstimulated by



1 the inflated regulated milk price, would be to reduce that  
2 price, and then you reduce the volume that's on the market  
3 and available for that supply; is that right?

4 A. Typically, if milk prices go down, just like what  
5 we're seeing right now, you tend to see cow numbers  
6 decrease and maybe changes in feed. And so you see  
7 farmers adjust and milk supplies decrease in response to  
8 that. So, again, market dynamics.

9 Q. Meaning the market will correct itself if you can  
10 get prices where they should be in your view?

11 A. The market, yes, will tend to work if you have an  
12 appropriate regulated minimum price. But that is not  
13 necessarily the price of milk for farmers.

14 Q. That's one factor, though; would you agree?

15 A. One factor relative to?

16 Q. To driving the supply of milk.

17 A. Oh, I would suggest that regulated minimum price  
18 should not be driving the supply of milk.

19 Q. Because you believe that you should be able to pay  
20 over the minimum price if the market warrants it?

21 A. By the system being set up where you have a  
22 product price, a Make Allowance, and then the price to the  
23 farmer that comes from that, again, you are -- what you  
24 are wanting to do is to have -- again, back to those  
25 principles that have been talked about within this  
26 hearing -- of wanting to have a regulated minimum price  
27 that provides for a supply of Class I milk to the industry  
28 and enables orderly marketing. That's my understanding of



1 the intent of the Federal Order system.

2 Q. On page 3 of your report, you have some concerns  
3 about -- about National Milk's proposed numbers and  
4 instead proffer that USDA should rely on Dr. Stephenson  
5 and Dr. Schiek's surveys and the numbers proposed by IDFA.

6 Is that a fair characterization of your testimony?

7 A. Yes, that's correct.

8 Q. And you understand that IDFA is proposing to use  
9 the numbers that Dr. Stephenson used and can be found in  
10 the 2023 study, not the 2021 study; is that right?

11 A. Dr. Stephenson along with Dr. Schiek's work, yes.

12 Q. Okay. Again, I'm just going to -- one question at  
13 a time.

14 But to the extent that Dr. Stephenson's numbers  
15 are being used, it is only his 2023 numbers; is that  
16 right?

17 A. That's correct.

18 Q. So it's not a blend of the 2001 and 2023 --  
19 sorry -- it's not a blend of the 2021 and 2023 numbers, it  
20 is just the '23 numbers?

21 A. Yes.

22 Q. And then that's averaged out with the numbers  
23 under Dr. Schiek's modeling, those two were added together  
24 to create an average, and that's the number that's being  
25 proposed by IDFA over a four-year implementation?

26 A. Correct.

27 Q. And do you feel like that is an appropriate way to  
28 accurately measure the Make Allowances?



1 A. Do I feel that? So are you referring to the  
2 approach of the doctors averaging Dr. Schiek and  
3 Dr. Stephenson's studies?

4 Q. Yes.

5 A. Okay. Yes.

6 Q. Do you think that the number that you get when you  
7 average both of those two together, and then I guess it --  
8 do you feel like the number you get when you average both  
9 of those two together creates an accurate number?

10 A. The best data we have as an industry right now,  
11 it's accurate, yes. It is accurate enough.

12 Q. You believe it is accurate enough?

13 A. Yes.

14 Q. Would you place a percentage on it on the amount  
15 that you would estimate it is accurate?

16 A. Well, I think Dr. Stephenson had robust  
17 participation in his latest study. Dr. Schiek's are  
18 projected estimates from actual mandatory survey. So,  
19 yes.

20 Q. Do you think it is greater than 50% accurate?

21 A. I would certainly think so, but I don't know.

22 Q. Does that mean you also don't know if it is less  
23 than 50% accurate?

24 A. I would be very surprised at that.

25 Q. Okay. But as you sit here today, we don't know  
26 the percentage of the accuracy because we don't have a  
27 mandatory audited cost survey; is that right?

28 A. The -- all of the historical updates to



1 Make Allowances, none of them have had mandatory cost  
2 surveys, and as an industry, we have worked under this  
3 system for 23 years now, I think, so --

4 Q. And on your last page of your testimony, you  
5 describe some of the concerns with how long it would take  
6 in order to get to that mandatory audited cost survey; is  
7 that right?

8 A. Yes.

9 Q. You think that -- do you have an estimate on how  
10 long it would take to go through all those steps that you  
11 have outlined there?

12 A. You know, I've talked about this with some other  
13 folks across the industry, and I think from a historical  
14 perspective, could we get all of this done before early  
15 2028? Folks seem to think that that would be fairly  
16 ambitious to get to that point.

17 Q. So you think about three years in order to get  
18 through all these steps, to get to a mandatory audited  
19 cost survey that would be reliable and accurate?

20 A. I would say that's going to be at least another  
21 three years, and that assumes that we have a Farm Bill,  
22 that this gets included in a Farm Bill.

23 Q. But yet, you feel confident in the study that  
24 Dr. Stephenson did in less than two months as being an  
25 accurate enough representation upon which you're  
26 suggesting USDA should rely in order to increase the  
27 Make Allowances for the industry; is that right?

28 A. I disagree with your characterization of



1 Dr. Stephenson's work. I think he does good quality work.  
2 I think he's a respected dairy economist. And prior  
3 Make Allowance updates have been based upon his similar  
4 study work. So I have confidence and respect the work  
5 that he does. I also respect the methodology that was  
6 used by Dr. Schiek.

7 Q. And how long did it take Dr. Schiek to conduct his  
8 study?

9 A. I don't know precisely. I know he was working on  
10 it over a period of months.

11 Q. And you stated in your testimony that the  
12 president of your company said that if Make Allowances  
13 aren't updated, the Lubbock plant will have to be the last  
14 plant that Leprino builds in the U.S.; is that right?

15 A. That's correct.

16 Q. And if the Make Allowances are updated, when's the  
17 next time that Leprino is planning to construct a plant?

18 A. It's probably going to be a while off. We don't  
19 make \$1 billion investments on a regular basis. You know,  
20 it's a matter of having a system that is updated and  
21 works. And I think we're all hoping we can get to that  
22 place where we have that mandatory cost study data for the  
23 future. But in the meantime, we need to have some relief  
24 and keep Make Allowances more up to date than they have  
25 been.

26 MS. HANCOCK: Thank you for your time.

27 THE COURT: Further questions?

28 ///





## CROSS-EXAMINATION

1  
2 BY MR. MILTNER:

3 Q. Good afternoon, Ms. Krebs.

4 A. Good afternoon.

5 Q. Ryan Miltner representing Select Milk Producers.

6 I'll have somebody actually testify to this, but  
7 Select does not have a position on any of the  
8 Make Allowance proposals right now. Our board does not  
9 have one. We're trying to hear all the evidence before we  
10 make a decision. But I want to try to find some things  
11 that I think we agree upon, like Mr. Rosenbaum did.

12 A. Okay.

13 Q. Can we agree Make Allowances are stale?

14 A. That's a good word for it.

15 Q. Okay. Can we agree that they need to be updated,  
16 therefore?

17 A. Yes.

18 Q. And that a mandatory audited cost survey would be  
19 the best solution?

20 A. The best solution, yes.

21 Q. We don't have that, though, correct?

22 A. That is correct.

23 Q. So we need to look to another option, right?

24 A. Yes.

25 Q. Dr. Stephenson and Dr. Schiek have -- they have  
26 presented options, and National Milk has also presented an  
27 option, and each of them have imperfections, correct?

28 A. To the ideal world, I would agree with that.



1 Q. None of them are perfect, correct?

2 A. Correct.

3 Q. And so we're going to task the folks over here at  
4 the front table with getting us the best option we have  
5 based on what we're all presenting over this hearing,  
6 correct?

7 A. We need solutions to help us keep a healthy  
8 industry.

9 Q. Okay. So I want to try to find -- those are easy  
10 things to agree upon, I think.

11 A. Okay.

12 Q. I'm looking at some language in your statement,  
13 and I want to try and see if we can get some agreement on  
14 a couple other things. And I'm looking specifically at  
15 page 2 of your statement and -- actually, no, we're going  
16 to start with page 1. You -- you state that "in other  
17 words, a Make Allowance is not a cost credit to cover a  
18 portion of these conversion costs, a Make Allowance is  
19 intended to represent the cost of converting milk into  
20 dairy products."

21 Correct?

22 A. Yes.

23 Q. And that -- to be clear, that's your sentence,  
24 that's not a quote from a USDA decision, right?

25 A. That is my sentence that follows a quote from USDA  
26 identifying Make Allowances, representing the costs  
27 manufacturers incur in making raw products into dairy  
28 product -- or raw milk into dairy products. But, yes,



1 that is my sentence.

2 Q. Okay. So can we agree that there's a universe of  
3 cheese that's produced?

4 A. Sure.

5 Q. Can we agree that there is no single cost to  
6 produce cheese?

7 A. Sure. Yes.

8 Q. And if we narrow that universe to say cheddar, can  
9 we agree that we cannot determine the cost to produce  
10 cheddar cheese?

11 A. I would agree with that, yes.

12 Q. And even if we narrow that universe to say  
13 40-pound blocks, we can't determine the cost to produce a  
14 40-pound block, can we?

15 A. You wouldn't even get that out of a mandatory cost  
16 study.

17 Q. If we look at this more narrower over the 40-pound  
18 block cheddar cheese, and we can't determine the price --

19 A. The cost -- I'm sorry.

20 Q. I'm sorry, the cost of manufacturing.

21 A. Okay.

22 Q. -- what are retrying to get a Make Allowance --  
23 what do we want the Make Allowance to represent?

24 A. Well, the way it's been looked at historically,  
25 which I assume would be a way to look at it again, is  
26 based on weighted average costs of production from prior  
27 Mark Stephenson studies as well as some of the prior CDFA  
28 work.



1 Q. So you think a weighted average is the price we're  
2 trying -- or the cost we're trying to get to?

3 A. Again, you know, if you are trying to get  
4 something that represents the industry, and you need to  
5 come up with the one value, I -- that seems like a  
6 reasonable methodology for getting there.

7 Q. Okay. So if we're asking USDA to establish a  
8 regulation which pegs a Make Allowance at a weighted  
9 average cost of production for those defined  
10 commodities -- and is that what we think we're trying to  
11 achieve, or what you think we're asking USDA to achieve?

12 A. To -- if I understood you correctly --

13 Q. Okay.

14 A. -- you are looking for a weighted average  
15 manufacturing cost for cheddar cheese to establish a  
16 Make Allowance; is that --

17 Q. Correct.

18 A. Okay.

19 Q. And you agree that's the task -- well, I shouldn't  
20 say you agree.

21 Is that the task that Leprino is asking USDA to  
22 do?

23 A. Well, that and the other products, butter, nonfat  
24 dry milk, dry whey --

25 Q. Great.

26 A. -- products in the formula.

27 Q. So there's been a lot of discussion from  
28 witnesses, and you have alluded to it, too, that



1 raising -- that a manufacturer who raises their cost of  
2 sale doesn't achieve the benefit of a higher sales price  
3 because that feeds back into the calculation of the  
4 component price; is that correct?

5 A. In the price of what they sell their product at?

6 Q. Yes.

7 A. Because they have that fixed relationship with the  
8 Make Allowance price, the Make Allowance, and then the  
9 price to the farmer, yeah.

10 Q. Correct.

11 A. Yes, it is a fixed relationship for a seller of a  
12 commodity dairy product.

13 Q. Can we agree that that description only holds if  
14 the manufacturer is buying milk at the regulated price and  
15 producing the commodity that is surveyed for the NDPSR?

16 A. Yes.

17 Q. We're doing well. I want to move on to 20  
18 questions about your plants.

19 A. Okay. I don't know that I can answer them all,  
20 but we'll see where we go.

21 Q. Your statement says you -- you, Leprino --  
22 manufactures sweet whey at the plants in Allendale and  
23 Waverly.

24 A. Yes.

25 Q. Is there sweet whey produced at any other Leprino  
26 plant?

27 A. No.

28 Q. And when you refer to sweet whey, is the end



1 product of those plants dry whey?

2 A. Yes.

3 Q. Do those plants also produce any other whey  
4 products?

5 A. I don't believe so.

6 Q. Do you know if the dry whey that is produced, if  
7 the sales of those products is reported to the NDPSR?

8 A. I believe it is not. And the reason why is  
9 because we produce Grade A dry whey as opposed to extra  
10 grade, and that's the grade that's reported through the  
11 NDPSR.

12 Q. Do you have any opinion or knowledge about whether  
13 the costs to produce Grade A versus extra grade whey are  
14 different?

15 A. I don't have any knowledge of that.

16 Q. So can I conclude that Leprino does not produce  
17 any whey product that would be reported to NDPSR?

18 A. That's my understanding.

19 Q. So -- okay. The Greeley, Colorado plant that  
20 produces nonfat dry milk --

21 A. Yes.

22 Q. -- is that nonfat dry milk reported to the NDPSR?

23 A. When we sell product, yes.

24 Q. Do you otherwise use the product within your  
25 organization to manufacture other products?

26 A. From time to time.

27 Q. And you may have answered this, and I don't  
28 remember. Did the Greeley plant report its manufacturing



1 costs for nonfat dry milk to Dr. Stephenson?

2 A. Yes, we did.

3 Q. Okay. You have existing plants that produce  
4 mozzarella and other Italian cheeses, correct?

5 A. Yes.

6 Q. In Allendale?

7 A. Yes.

8 Q. And in waiver lie?

9 A. Yes.

10 Q. And in Greeley?

11 A. Yes.

12 Q. And Roswell, New Mexico?

13 A. Right.

14 Q. That's where my knowledge runs out.

15 A. Tracy, California; Lemoore -- we have two plants  
16 in Lemoore, California; Remus, Michigan; Ft. Morgan,  
17 Colorado. Is that nine?

18 Q. All total that is nine plants.

19 A. There you go.

20 Q. To be clear, none of those plants produce any  
21 Class I or Class II products, right?

22 A. That is correct.

23 Q. Is there any requirement that Leprino pool any of  
24 those plants?

25 A. I don't believe so. I am not in charge of that  
26 aspect of our business. They are all in Federal Orders.

27 Q. You testified that Leprino competes against other  
28 cheese manufacturers. Of course, it does.



1           And you argued that Leprino might be at a  
2 competitive disadvantage because of plants that are paying  
3 below order prices or otherwise depooling; is that  
4 correct?

5           A.    Yes.

6           Q.    What would prevent Leprino from purchasing milk  
7 below order prices or depooling if it needed to do so to  
8 be competitive?

9           A.    We have contractual obligations and agreements  
10 with suppliers --

11          Q.    So it's your --

12          A.    -- that limits some of our flexibility.

13          Q.    So it is a contractual limitation, not a  
14 regulatory limitation, that is restricting your ability to  
15 do so?

16          A.    That is correct.

17          Q.    You also suggested, I believe, that co-ops that  
18 have the ability to reblend and manufacture mozzarella  
19 could cause competitive imbalance.

20                Is that actually occurring in your experience?

21          A.    I believe at least one competitor that I'm aware  
22 of has been doing that.

23          Q.    Is that occurring in the Upper Midwest?

24          A.    Yes.

25          Q.    At the top of page 3, you are describing -- you're  
26 discussing order -- disorderly marketing. And you state  
27 that disorderly marketing -- let me read the whole  
28 sentence so you have context: "Whereas tighter supplies





1 of milk relative to demand will drive prices higher,  
2 disorderly marketing instead refers to a situation where  
3 there is excess milk relative to available processing  
4 capacity within a milk shed."

5 Is that the extent of what constitutes disorderly  
6 marketing to your understanding?

7 A. You know, I -- when I read this, I added "given  
8 today's realities." I think that when orders were first  
9 founded, you had -- part of the purpose of the orders was  
10 to guarantee a reliable supply of Class I milk, so I would  
11 suggest that that is a piece of it. But I have not seen  
12 or heard of any issues along those lines. And so given  
13 where we -- where we are as an industry today, I think  
14 this is an accurate representation.

15 Q. Your next sentence reads, "This occurs when milk  
16 is overpriced relative to demand, not when milk is  
17 underpriced."

18 Are you suggesting that abnormally low milk prices  
19 are not a disorderly marketing condition?

20 A. I think it could be in certain situations. But,  
21 again, the market tends to adjust and respond to supply  
22 and demand signals. And so if you have low prices, demand  
23 will pull those prices higher to incentivize production.

24 Q. You were here today for Mr. DeJong's testimony,  
25 correct?

26 A. Yes, I was.

27 Q. Did you have a chance to see his statement as he  
28 presented it?



1 A. I did.

2 Q. Okay. Do you recall the figures he showed  
3 charting mailbox prices against uniform prices?

4 A. Yes.

5 Q. Okay. The figure for West Texas, which that would  
6 include Lubbock, right?

7 A. It will.

8 Q. And it's also a milk shed that might service the  
9 Roswell area, correct?

10 A. I suppose it could.

11 Q. And so that Figure 5 -- and if you want me to grab  
12 you a copy, I'd be happy to -- but for 2022, it shows the  
13 mailbox price running more than \$2 under the uniform  
14 price.

15 A. Yes.

16 Q. Is that evidence of disorder in that market?

17 A. I think that the erosion of premiums over time is  
18 a strong signal that there is disorder in that market,  
19 yes.

20 Q. And 2022 was a relatively good year for producers,  
21 was it not?

22 A. At the end of the day, yes.

23 Q. And so through April 2023, that same figure shows  
24 the mailbox price in West Texas at about \$2.50 below the  
25 uniform price. Is a price at that level evidence of  
26 disorderly marketing in that part of the world?

27 A. Seems to indicate that.

28 Q. In response to some questions from Ms. Hancock you



1 wanted to talk about a dynamic analysis of what would  
2 happen to prices over time if certain proposals were  
3 adopted, correct?

4 A. Yes.

5 Q. And we don't -- we don't have that analysis to  
6 talk about today, do we?

7 A. That's correct.

8 Q. In preparing for this hearing, did you look at all  
9 at the econometric analysis from the last time USDA  
10 changed Make Allowances?

11 A. I looked at it, but it's been quite a while since  
12 I have looked at it, so I don't recall it.

13 Q. So I'm going to give you some data from it. If  
14 you -- if you have questions about what I'm suggesting,  
15 please let me know --

16 A. Okay.

17 Q. -- but I'm -- I'm just going to share with you  
18 what is in there, certain parts of it.

19 So USDA calculated the cheese Make Allowance was  
20 increased by 19%, the butter Make Allowance increased by  
21 about 43%, the nonfat allowance increased by about 7, and  
22 dry whey by about 2.

23 And what the analysis showed -- and there was also  
24 a slight change to the butter yield baked in there too.  
25 So that actually is going to raise, it's going to offset  
26 some of that Make Allowance change.

27 In the first year, the all-milk price was  
28 calculated to drop by about \$0.14.



1 A. Okay.

2 Q. And at the end of a nine-year average, the  
3 all-milk price was still \$0.04 lower than its initial  
4 baseline. Okay? So we go from \$0.14 to \$0.04.

5 A. Uh-huh.

6 Q. Now, that's a lot of lead-up.

7 I looked at the percentage changes in  
8 Make Allowances for IDFA's year one.

9 A. Okay.

10 Q. And so cheese was then about 20% --

11 A. Uh-huh.

12 Q. -- butter was about 31%, nonfat was about 30%, and  
13 whey was about 32%.

14 And so what I have just given you in the last two  
15 minutes about what USDA analyzed last time, do you have  
16 any thoughts about what the adoption of IDFA's proposal in  
17 the first year might have on producer income and whether  
18 that would cause a hardship to dairy farmers?

19 A. Well, I think to the numbers that you have shared  
20 from the last change, it shows that there's a decrease in  
21 milk price, but that over time, that is moderated out, not  
22 completely, because, again, the way supply and demand  
23 works is you have -- you know, if you've reduced your  
24 supply of milk, then you have to have a higher price to  
25 pull that supply back up after a price decrease.

26 So I -- and I have never said that there wouldn't  
27 be any decrease in milk price. I think the expectation  
28 that it is going to be a prolonged decrease in milk price



1 that will not get adjusted out or moderated by supply and  
2 demand factors is a simplification and not accurate.

3 Q. If I look at year -- the full implementation of  
4 IDFA's Make Allowance changes, so the year four, the total  
5 change from now to then, so all of it, cheese would be  
6 41%, butter is 61%, nonfat is also 61%, I hope my math was  
7 right, and whey 39%. So much larger increases in total  
8 than the changes made in 2007.

9 Does the magnitude of that Make Allowance  
10 change -- change your opinion on the scope of the impact  
11 on dairy farmers?

12 A. I think the magnitude of what you are looking at  
13 could have -- well, it's a larger magnitude, but I think  
14 that we have got is a situation that unfortunately you  
15 have gotten so far out of date, and there's been such a  
16 long time since the last update in Make Allowances, that  
17 we're just at a very difficult time for the industry. And  
18 so how do you keep a healthy processing sector and have  
19 investment to have those processing assets so that  
20 producers have a market for their milk, if you don't have  
21 that as a healthy sector.

22 So I am not denying at all that there will be some  
23 impact on milk prices. But, again, part of the design  
24 specifically of that IDFA proposal is to try and moderate  
25 that impact over time to enable the producer sector to be  
26 as healthy as possible, as you return the processing  
27 sector to better health.

28 Q. Has Leprino done any analysis about overall demand



1 for its products and the amount of additional milk  
2 production that would be needed to satisfy those demands?

3 A. Well, we continually look at opportunities in the  
4 U.S. as well as globally to try and grow our business, to  
5 provide more of a market for the U.S. produced milk.

6 Q. You refer to econ 101. But part of econ 101 is  
7 that there has to be a demand curve to match a supply  
8 curve, right?

9 A. Yeah, absolutely.

10 Q. And so producers may want to produce more milk,  
11 and one of the constraints might be available plant  
12 capacity.

13 A. Yes.

14 Q. It could be that there's not enough plant capacity  
15 because there's no end product demand, right?

16 A. Could be. But I don't think that's the case.  
17 That's not the signal that we have been seeing from the  
18 marketplace.

19 Q. I think this will be my last set of questions.

20 On page 2 you state: "First, while farm level  
21 margins may initially decrease and contract milk supplies,  
22 economics 101 dictates market forces will subsequently  
23 pull farm level prices higher to reach a new equilibrium  
24 between supply and demand. Further, margin protection  
25 programs such as Dairy Margin Coverage (DMC) will insulate  
26 farms, particularly smaller ones, from lower margins as  
27 the market adjusts."

28 Now, in Lubbock, Texas, in West Texas, where



1 Leprino is building its new plant, do you have any  
2 information about how much of the milk produced there is  
3 covered by Dairy Margin Coverage?

4 A. I don't have any information on that.

5 Q. So -- and I'm trying to summarize, not to put  
6 words in your mouth, but you are advocating for  
7 Make Allowance changes which will reduce producer prices  
8 in the short-term, correct?

9 A. Yes.

10 Q. And that you believe will eventually move toward  
11 an equilibrium at a higher price, correct?

12 A. Yes.

13 Q. And you are suggesting that while that equilibrium  
14 works out, producers should rely on Dairy Margin Coverage  
15 and other programs to help them through that period,  
16 correct?

17 A. I'm arguing that that is a piece that would help.  
18 The word I used there is insulate farms, cushion farms,  
19 support any pressure from that margin strain.

20 Q. If only 10 to 15% of the milk in West Texas were  
21 covered by Dairy Margin Coverage, does that change your  
22 opinion about what you stated?

23 A. No, it doesn't. I think that -- I realize that  
24 Dairy Margin Coverage has limitations on the volumes of  
25 milk. I believe it is 5 million pounds that -- per year  
26 that's covered. I -- you know, particularly for smaller  
27 farms, as I state, that can help insulate that initial  
28 stress of the change in price from a Make Allowance. And



1 I expect any farm, even if it's a large farm, would  
2 participate in Dairy Margin Coverage, even if it's a small  
3 portion of their milk production. But large farms also  
4 tend to be much more efficient and have lower costs of  
5 production.

6 So I -- yeah, I'm comfortable. And I'm not  
7 surprised that you are saying 10 to 15%.

8 Q. So DMC, it's a countercyclical payment program,  
9 correct?

10 A. Correct.

11 Q. First tier, heavily, heavily subsidized by the  
12 federal budget, right?

13 A. Yes.

14 Q. So Leprino is asking to lower prices, while a  
15 federal government program fills the hole, and \$1 billion  
16 company expands their plants, right?

17 A. I don't think that that's -- I don't appreciate --  
18 or I don't think that's a real accurate characterization.  
19 But, you know, we're trying to create an expansion, we're  
20 trying to provide a -- you know, be a secure, reliable  
21 supplier for our customers, as they want to grow. In  
22 that -- in doing that, it provides a market for farmers  
23 who want to expand and grow as well.

24 And so, again, I feel that it's a partnership that  
25 we look at as an industry, and we need to help keep both  
26 sectors of the market, the producer as well as processors,  
27 viable for the health of the industry.

28 MR. MILTNER: Thank you.





1 THE COURT: Mr. English.

2 CROSS-EXAMINATION

3 BY MR. ENGLISH:

4 Q. Good afternoon. Chip English for the Milk  
5 Innovation Group. I'll try to keep this as short as I can  
6 so we can try to get done with one more witness today.

7 Ms. Krebs, does Leprino accept Grade B milk?

8 A. No.

9 Q. So in response to some questions about Mr. Miltner  
10 where he seemed to be comparing audited surveys and  
11 then -- which he called perfect, correct?

12 A. Yes.

13 Q. -- to what he called imperfect for Dr. Stephenson,  
14 Dr. Schiek, and NMPF, I want to suggest an analogy to you.

15 A. Okay.

16 Q. And forgive me if you are not a baseball fan, but  
17 let me try.

18 So a pitcher gives up one hit in a game. Another  
19 pitcher gives up seven runs in the first inning. Neither  
20 pitcher pitched a perfect game, but one performed a lot  
21 better than the other, right?

22 A. Yes.

23 Q. Okay.

24 A. Assuming the other pitcher that gave up one hit  
25 didn't give up, like, 30 walks.

26 Q. Yeah. You are clearly a baseball fan. Thank you  
27 very much. I accept that assumption for my predicate.

28 That -- so -- do you think it's fair to equate



1 Dr. Stephenson and Dr. Schiek's work to the information  
2 such as we have from National Milk?

3 A. Not at all.

4 Q. And then I may have misheard or whatever, so I'll  
5 be very careful to say that there was a conversation  
6 between you and National Milk's counsel about  
7 Dr. Stephenson's work and the 2019 data that ended up  
8 being called 2021 study, correct?

9 A. Yes.

10 Q. And there was conversation about, okay, we're  
11 talking about the butter and nonfat dry milk allocation  
12 which he called transformation, correct?

13 A. Yes.

14 Q. And then National Milk's counsel discussed sample.  
15 As I thought I heard it -- and, again, I may have  
16 misheard it -- I thought I heard her asking, implying that  
17 there was an either/or, it was either transformative or a  
18 sample.

19 How did you take her question?

20 A. That's what I understood is that she was implying  
21 that it was the sample that created that unusual result.

22 Q. Okay. Is it -- what is your view about the two?  
23 Is it -- is it an either/or or is it a combination?

24 A. Well, you know, Dr. Stephenson testified that  
25 there was some overlap in sample with the last study and  
26 this study, so you have some differences in sample, and  
27 that could always have some level of impact. But my  
28 understanding from his testimony was that the degree of



1 the difference that we saw in those cost allocations was  
2 more driven by that change in his methodology as opposed  
3 to just being attributed to sample.

4 Q. And that's at least what you heard, correct?

5 A. Yes.

6 MR. ENGLISH: Okay. I have no further questions.

7 THE COURT: Anyone else other than AMS?

8 Seeing none, AMS.

9 CROSS-EXAMINATION

10 BY MS. TAYLOR:

11 Q. Good afternoon.

12 A. Good afternoon.

13 Q. Thanks for coming back today.

14 A. I came back.

15 Q. And you are still here.

16 Okay. I'll try to back clean up a little bit. Go  
17 Orioles. Woo, woo. I can't say that very many years, but  
18 I can say that this year, so I will say that.

19 Okay. So I want to just try to summarize some of  
20 the thoughts that came out in your statement and through  
21 cross-examination to make sure I understood them, because  
22 I had some of the same questions, but I think you did  
23 clarify, but I want to make sure.

24 A. Okay.

25 Q. On page 1 you talk about how Make Allowances are  
26 out of date and are now disruptively out of date. And I  
27 think what I heard from you -- and the question is how are  
28 they or why are they that way. You see deep, deep



1 discounts on spot milk prices and milk dumping as an  
2 indication of that, because the Make Allowances are not  
3 adequate to provide adequate returns to manufacturers to  
4 build additional plant capacity.

5 Would that be correct?

6 A. Additional plant capacity, you know, some plants  
7 close over time, those kinds of things. Basically,  
8 processing capacity is not keeping up with that milk  
9 supply.

10 Q. Got you.

11 And in the next paragraph you talk about your  
12 plants that produce NDPSR products.

13 I know it states that your plants were in the 2022  
14 Dr. Stephenson study.

15 I don't know if I heard if they were in the  
16 earlier study?

17 A. Yeah. What I understand from Dr. Stephenson is we  
18 had submitted data on our whey plants, but I think we  
19 missed his deadline.

20 Q. Okay.

21 A. And so the data was not actually included in that  
22 2019, 2021 study.

23 Q. Okay. On your next few paragraphs you talk about  
24 the increase in cost that you have -- or that Leprino has  
25 experienced.

26 Is that on a total cost or a per unit cost that  
27 you were looking at?

28 A. Well, what we did was we went back and looked at



1 the data for our plants relative to the way Dr. Stephenson  
2 looked at it for his entire study, so we were trying to  
3 look at it as an apples to apples. And so this would be  
4 for the whey product at those plants.

5 Q. And then when you say relative to how he looked at  
6 it, like, the same cost categories?

7 A. Yep, same categories, etcetera.

8 Q. Okay. And then so you did look at it at a per  
9 unit, per pound basis?

10 A. Yes.

11 Q. Okay.

12 A. So 2006 versus 2022.

13 Q. Okay. I know you talked some with Ms. Hancock  
14 about these percentages, and you looked at them comparing  
15 to your -- or to Leprino's actually 2006 cost, not the  
16 2008 Make Allowances.

17 A. Correct.

18 Q. Okay. Would you say that the -- I am trying to  
19 see how I want to word this question. For your plants,  
20 when you look at the survey results, do you see Leprino's  
21 costs represented in those, even though in the one  
22 particular study it wasn't able to be in those results?

23 A. Yes, I would say that the results of  
24 Dr. Stephenson's studies looked very reasonable to us.

25 Q. And for your plant in California -- well, you have  
26 plants in California, but that's not one of these plants  
27 that produce NDPSR products?

28 A. That's correct.



1 Q. But since Dr. Schiek's study just looked at  
2 California costs, I'm curious if you had looked at your  
3 California plants just to see if you saw similar increases  
4 in those costs as to what was projected by his study  
5 methodology.

6 A. Yeah. Where that gets difficult is the fact that  
7 we don't make dry whey at our California plants, so  
8 there's really no way to compare that. If we were to look  
9 at like Dr. Schiek's results relative to percentage  
10 changes that we might see on the cheese side, again, you  
11 know, it's kind of an apple and an orange with mozzarella  
12 versus cheddar, again, it looks like it's reasonable and  
13 valid data.

14 Q. Okay. Because I was just curious, because he used  
15 a lot of indexes, energy index, labor wage rate, and none  
16 of that is particular to any product. So, you know, would  
17 those -- you kind of see those costs increases as those  
18 look similar to what your California plants have  
19 experienced?

20 I mean, we don't have any California specific data  
21 on the record, right?

22 A. Right.

23 Q. But we have Dr. Schiek's study saying we should --  
24 these costs -- we're projecting these costs -- or what's  
25 occurring in California. I'm just trying to get something  
26 on the record to say, does that make sense to you, you  
27 know.

28 A. We didn't see anything that was concerning to us.



1 And, you know, as a result, we looked at those things as  
2 part of -- or the results that Dr. Schiek had as part of  
3 saying, hey, are we on board with what the IDFA proposal  
4 is. And we agreed with the methodology, the approach, and  
5 the results and felt that that was indicative of what we  
6 have experienced as a company.

7 Q. Okay. Thank you.

8 On your Lubbock, Texas plant you talked about, and  
9 it's going to produce sweet whey, and I assume mozzarella  
10 will be what else it produces.

11 A. Yes.

12 Q. You talk about when you estimate the cost for  
13 sweet whey, the cost is projected to be 80% higher than  
14 the two plants that you already. But that -- because you  
15 included the clause "including depreciation," am I right  
16 to assume then that's a lot of that is because that is a  
17 new capital investment and rates have increased?

18 A. Yeah. And part of why I included that is to  
19 convey that, you know, it is expensive and costly to build  
20 new plants and that investment takes money, and if we  
21 don't have Make Allowances that enable the industry to  
22 invest, then you are not going to have a healthy dairy  
23 industry that's able to maintain or grow.

24 Q. So out of that plant, if you looked at the -- you  
25 said the milk going into that plant. How much will be  
26 going into the sweet whey part and how much into the  
27 mozzarella part?

28 A. Well, I would say 100% for both because the sweet



1 whey is the byproduct of the mozzarella. But did I --

2 Q. I think Mr. DeJong talked about, oh, you still  
3 only have a hundred pounds of milk going in, so that's a  
4 similar response.

5 A. Yes.

6 Q. But I'm just trying to get at -- I mean, that  
7 investment decision was made in conjunction with the fact  
8 that you're also selling mozzarella at that plant?

9 A. Yes. Correct.

10 Q. Or whatever price you get out of the market?

11 A. Right.

12 Q. Lower in the page you talk about milk production  
13 is being overstimulated by the inflated regulated price.  
14 And I know that -- I think you had some discussion about  
15 that. Perhaps it was Mr. Miltner. I'm not sure.

16 But are there other reasons why milk production  
17 might be overstimulated other than the regulated price, or  
18 are you attributing it all to that?

19 A. I'm trying to think of what other things. I mean  
20 if when you get -- certainly the market goes through  
21 cycles, and if you have extremely high prices -- well, we  
22 had good prices for farmers in 2022, and so there was  
23 probably more milk produced there, and now you have got  
24 lower prices this year, and it looks like our supplies are  
25 tightening up.

26 So certainly other -- other factors can impact  
27 milk production and -- but in terms of, again, sort of  
28 that sustained low price that we saw in the Upper Midwest





1 and the discount to the class price, that's really a  
2 pretty extended, pretty severe disruption that suggests  
3 that there's really something amiss here in terms of the  
4 capacity to process milk relative to the supply of milk  
5 that's available. So there -- there's a mismatch there.

6 Q. Uh-huh.

7 A. But certainly other factors can periodically play  
8 into that.

9 Q. On page 3 of your statement, kind of in that  
10 middle paragraph, the last sentence there talks about  
11 "robbing Peter to pay Paul by placing a financial burden  
12 of outdated Make Allowances on manufacturing cooperatives  
13 and proprietary processors."

14 And I just want to make sure I'm clear on who is  
15 Peter and who is Paul in this situation.

16 A. I would say that Peter would be a manufacturing  
17 cooperative of whose -- or whom a significant share of the  
18 their milk goes into Class III and Class IV processing  
19 assets. The other Peter would be a proprietary processor.  
20 And then Paul is the independent farmer, somebody who is a  
21 member of a marketing cooperative that doesn't have the  
22 burden of processing assets, Class III/IV processing  
23 assets at this time. And so you have got that movement of  
24 value that is favoring one segment of the industry over  
25 another.

26 Q. And this is talking about manufacturers, whether  
27 proprietary or co-op that are regulated?

28 A. Yes.



1 Q. Where do unregulated --

2 A. Yes. This would all pertain to regulated --  
3 regulated regions, processors, etcetera.

4 Q. You talked about your Greeley, Colorado plant and  
5 how it helps balance the state's milk supply?

6 A. Yes.

7 Q. And I know you talked about how a new plant  
8 operator, of course, would like their plant to run as if  
9 full as possible.

10 A. Uh-huh.

11 Q. But I think we talked earlier in the hearing of  
12 other witnesses have been asked, was the plant more of a  
13 supply driven plant or a demand driven plant. So kind of  
14 asking you that question, and also, as a follow-up, you  
15 know, can you just elaborate on how your plant does serve  
16 to balance the state supply.

17 A. Supply driven versus demand driven. Well, we try  
18 our best to match those two as closely as possible. As  
19 prior witnesses testified, if you are making large  
20 investments and have expensive plants, if you are not  
21 running them as full as possible, then you're having a  
22 very large cost burden on anything you produce, so we try  
23 to run the plants as full as possible. And so as a  
24 consequence, we need to then make sure that we have got  
25 the demand in the marketplace to accommodate that milk.  
26 And we work very hard to be a very reliable supplier to --  
27 to our customers. We work very hard on things like  
28 quality and customer service so that we can try and



1 maintain a very steady and reliable pull from the demand  
2 side of the industry as well.

3 Q. Okay.

4 A. And then you had a follow-up part that I forgot.

5 Q. Me too.

6 Just a little, I believe --

7 A. You asked about balancing --

8 Q. Yeah, I mean --

9 A. -- in Colorado.

10 Q. -- there's been talk, too, of other plants serving  
11 balancing -- as a balancing function in their respective  
12 markets and do they see higher costs because of that  
13 service or perhaps not if you generally try to run at full  
14 capacity no matter what anyways.

15 A. Yeah. We -- again, because we are a large -- if  
16 you look at a map of where the dairy cows are in the U.S.,  
17 Colorado is kind of its own milk shed. And so if you have  
18 excess supply of milk for that Colorado milk shed, it's  
19 going to have to move a very long distance to find another  
20 home. And so we have that basically nonfat dry milk  
21 capacity to help ensure that we can keep that milk supply  
22 in balance for that Colorado milk shed.

23 Q. Okay. And I don't know if I asked this or if  
24 anybody else did. Are your plants primarily direct ship  
25 plants or are they co-op supplied?

26 A. Almost all co-op supplied.

27 Q. Okay. On page 2, just a couple last questions  
28 that came in, you state -- excuse me -- "For the



1 long-term, current Make Allowances are not sustainable for  
2 any entity that manufactures dairy products regardless of  
3 ownership structure."

4 Can you kind of give a timeframe of what you  
5 consider to be long-term?

6 A. You know, and I would also suggest that that  
7 applies to -- primarily to Class III and IV formula  
8 products. But long-term I would say, you know, if you are  
9 looking out -- well, useful assets, usefulness of a plant,  
10 you know, if you go out another five years with  
11 Make Allowances where they are, I think you will run into  
12 bigger issues and more disruptive issues for the industry.  
13 If you go out ten years, 20 years, I think you will see  
14 the more severe impacts. I think it's important for --  
15 just based on the design of the current pricing system,  
16 the pieces need to be kept up to date to enable the  
17 industry to function well.

18 Q. Okay. On your discussion with Mr. Miltner about  
19 how to -- what you think is a proper Make Allowance level,  
20 and I think you said -- did I hear you right, you think it  
21 should be set at some weighted average level, not a  
22 minimum -- you know, we get minimum costs, we get high  
23 costs, you know, when information comes out of this. But  
24 that implies on each of those numbers that there's winners  
25 or losers for lack of better words to use this late in the  
26 day.

27 But, you know, kind of where do you stand on that?

28 A. Well, I think the methodology that has been used



1 historically, which to my understanding has been looking  
2 at weighted average costs, seems like a good approach  
3 because, you know, like any industry, people need to be  
4 able to demonstrate that they are efficient, productive,  
5 and relevant in order to continue their business.

6 And so if a processor has extremely high costs  
7 relative to the rest of the industry, is that somebody --  
8 I -- I'm not -- I don't think we should be subsidizing or  
9 even consider subsidizing somebody who would be in that  
10 type of a situation. I think you need to enable and allow  
11 the industry to compete. I think that's -- that's at the  
12 farm level. That's at the processor level. That's at our  
13 customers as well.

14 MS. TAYLOR: That's it from AMS. Thank you.

15 THE COURT: Any further questions, other than  
16 redirect?

17 Mr. Nielsen.

18 MR. NIELSEN: No redirect, your Honor. At this  
19 time I would move to admit Exhibit 199 into evidence.

20 THE COURT: Any objections?

21 Exhibit 199 is entered into the record for this  
22 proceeding.

23 (Thereafter, Exhibit Number 199 was received  
24 into evidence.)

25 THE COURT: Thank you. You are dismissed.

26 MR. NIELSEN: Thank you, your Honor.

27 THE COURT: All right. We've got about six  
28 minutes to 5:00.



1 MS. TAYLOR: May I suggest -- may I suggest just a  
2 quick five minutes so that we can kind of discuss where we  
3 need to be tomorrow, and then come back on the record to  
4 talk about that?

5 THE COURT: Go off the record and discuss -- yeah,  
6 let's go off the record.

7 (Off-the-record.)

8 THE COURT: Let's reconvene.

9 Ms. Taylor, are you going to report for the  
10 record?

11 MS. TAYLOR: Yes, I probably drew that straw.

12 So tomorrow we will start promptly at 8:00 a.m.,  
13 and we will have Terry Brockman from Saputo. And then  
14 from the Wisconsin Cheese Makers Association we'll have  
15 Kim Heiman and Bob Wells. We also will have two producers  
16 here in person tomorrow, who hopefully can get on in the  
17 morning.

18 Then we will plan to break for lunch early again,  
19 11:00-ish, maybe we'll go a little tad into that hour,  
20 depending. And then we will do dairy farmer virtual  
21 testimony starting at noon tomorrow. I believe we have  
22 nine farmers registered to testify virtually tomorrow.

23 We might, your Honor, possibly take a shorter  
24 lunch than an hour tomorrow in order to get through those  
25 three morning witnesses.

26 So we'll see where the day goes, but we do have  
27 another hard stop at 3:00.

28 THE COURT: Very good.



1 MS. TAYLOR: So that leaves -- assuming we get all  
2 through that tomorrow, then we will start Monday again.  
3 And I believe Mike Brown from IDFA will be left to  
4 testify. And John Umhoefer from Wisconsin Cheese Makers  
5 Association, who is here today, has graciously agreed to  
6 come back later in the month to testify, as there's not  
7 enough hours in our day tomorrow. So I do appreciate that  
8 flexibility.

9 THE COURT: Thank you, sir.

10 Okay. Anyone else have anything before we sign  
11 off for the day?

12 Very well. See everyone at 8:00 tomorrow. Thank  
13 you.

14 (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.

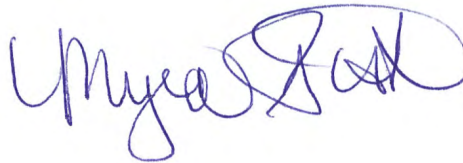
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10 DATED: October 11, 2023

11 FRESNO, CALIFORNIA

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