CERTIFIED TRANSCRIPT

NATIONAL FEDERAL MILK MARKETING ORDER
PRICING FORMULA HEARING

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

Before the Honorable Jill Clifton, Judge

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Carmel, Indiana

September 26, 2023

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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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IN CHRONOLOGICAL ORDER:

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TUESDAY, SEPTEMBER 26, 2023 - - MORNING SESSION

THE COURT: Let's go on record.

We're back on record in the milk hearing. It is approximately 8:01 a.m. Eastern. It's September 26th, 2023. It's Tuesday.

And I would like first to hear from AMS as to what you anticipate for today.

MS. TAYLOR: Good morning, your Honor.

Let's see. So today, I think this morning Dr. Schiek would like to get back on the stand with a few additional comments from yesterday.

And then I think Ms. Dorland is here, so we'll put her up after that to finish her cross-examination from last week.

And then Mr. Umhoefer is here.

And then we have two other IDFA witnesses, Herlache and Greenbaum -- and I apologize, I don't have their first names written down -- that need to go on today. So -- and two dairy farmers -- are they here now -- so they can go on anytime. They would like to go on today.

And that's our agenda for today, I believe.

THE COURT: Excellent. Thank you.

If there's no objection, then I'll wait to see -- any objection by someone standing up, if there's no objection to my recalling Dr. Schiek, I will do that at this time.

No objection. You may come forward.

DR. SCHIEK: Good morning.

THE COURT: Good morning. I'm happy that you are still here. I know you are flying out early tomorrow morning. And you remain sworn.

WILLIAM SCHIEK,

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

THE COURT: Please again state your name.

DR. SCHIEK: William Schiek.

THE COURT: Would you spell both names?

DR. SCHIEK: W-I-L-L-I-A-M, S-C-H-I-E-K.

THE COURT: Thank you. You may proceed.

DR. SCHIEK: Yes. I wanted to correct one statement that I made that was in my testimony that was in error. Three o'clock in the morning, woke up thinking about milk pooling, and realized I made a mistake.

So the statement begins on page 9 and -- excuse me -- IT begins on page 10 and continues on page 11.

MS. TAYLOR: Exhibit number?

DR. SCHIEK: Exhibit Number 249.

So this is where I was making the statement that increasing Class I revenues would further disadvantage operating co-ops compared to marketing co-ops. And thinking through how the pooling works and how operating co-ops can reblend, whether they are in the pool or out of the pool, I have concluded that it does not increase the disadvantage or make them more disadvantaged by increasing the Class I revenues.

So that was the correction I wanted to make.

THE COURT: Would you explain why?

DR. SCHIEK: Because the marketing losses that -- or the losses from inadequate Make Allowances that operating co-ops incur can be passed through to their producers through reblending if they are in the pool or if they are out of the pool. Class I prices are increased. In all likelihood there's more Class I revenue available in pooling, and so that revenue is available to those producers, so it does not increase their disadvantage relative to marketing co-ops.

THE COURT: Would you like to add anything before I invite cross-examination?

DR. SCHIEK: I don't think so.

THE COURT: Who would like to question Dr. Schiek about his testimony today?

Does Agricultural Marketing Service have any questions for Dr. Schiek at this time?

MS. TAYLOR: No, we don't. I'm just -- I guess one technical question. Did you want that sentence stricken from exhibit to make a change?

DR. SCHIEK: I -- I don't really know. I'm -- it's inaccurate, and I have corrected it on the record. I don't know if it needs to be stricken or not.

THE COURT: I recommend you strike it. It's for -- even for people who know everything about milk, it's very confusing trying to get a handle on what each witness said when part of it's in the exhibit and it doesn't match the testimony. So I recommend that we strike it.

DR. SCHIEK: I concur with the Judge.

MS. TAYLOR: So that will be the sentence that's at the bottom of page 10, starting at the end with, "The additional Class I revenues available" -- and then to the next page, page 11 -- "to Federal Order milk pools will further disadvantage producer cooperatives that own manufacturing plants and that are already contending with inadequate Make Allowances." So we will strike that sentence.

THE COURT: Dr. Schiek, is that the sentence you intended?

DR. SCHIEK: Yes.

THE COURT: I observe that wonderful things happen when you wake up at 3:00 in the morning.

DR. SCHIEK: It's amazing. Very productive time.

THE COURT: Thank you.

And will the next witness come forward and be seated in the witness chair?

MS. HANCOCK: Your Honor, while Ms. Dorland is getting set up, I'll just give you a little bit of the background. She has previously been on the stand, completed her direct testimony, a portion of her cross-examination, and we were in the midst of her cross-examination when we ran out of time. So we have -- she's returning from last week, and we're just picking up where we left off.

And I do have a correction to her testimony. I guess I'll take the pulse of the room and your guidance, but we can either put that on now so that people can have the opportunity to talk about that with her or I can do that on redirect. I'm open to either one.

THE COURT: I would like you to do it now.

MS. HANCOCK: Okay.

THE COURT: Ms. Dorland, please state and spell your name.

THE WITNESS: Sara, S-A-R-A. Last name is D-O-R-L-A-N-D.

THE COURT: You remain sworn.

SARA DORLAND,

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

THE COURT: You may proceed, Counsel.

MS. HANCOCK: And I believe that USDA has a copy of what we have to update, and Mr. Prowant is going to e-mail to the counsels just so you have it. But it's an updated spreadsheet.

THE COURT: The last part of your sentence trailed off because you walked away. What did you say?

MS. HANCOCK: It's an updated spreadsheet.

MR. ROSENBAUM: Steve Rosenbaum, International Dairy Foods Association.

THE COURT: Welcome.

MR. ROSENBAUM: Nice to meet you, your Honor.

THE COURT: We were thinking of you yesterday.

MR. ROSENBAUM: Thank you so much.
I don't think we have a -- your Honor, I don't think we have a copy of this spreadsheet she's -- I don't know how we're supposed to cross-examine if we don't have a copy of the spreadsheet. We don't have it yet.
MS. HANCOCK: He's e-mailing it to you.
THE COURT: Okay.
MR. ROSENBAUM: I don't believe we should start her testimony until we have a copy at least.
THE COURT: All right. Then let's start her testimony on -- or where you would have begun today.
MS. HANCOCK: Okay. Well, then I'll sit back down and open it up for cross-examination.
THE COURT: No, no, no. Oh, because you don't have anything further on that until later.
MS. HANCOCK: That's correct.
THE COURT: Okay. That works.
MS. VULIN: What is the correction? Because if it's a small thing, we can maybe figure it out on the fly. But if it's substantive at all, we haven't had any time to review it, talk with our experts. I have no idea what questions to ask about it.
THE COURT: All right. Give me your name before you sit down.
MS. VULIN: Ashley Vulin with the Milk Innovation Group. Thank you.
MS. HANCOCK: Last week, when this -- this is Nicole Hancock again.

Last week when Ms. Dorland was on the stand, Dr. Bozic had pointed out that she had a formula in one of her spreadsheet cells that was missing a number, so she has a correction to that.

The testimony will be that it's nominal and she doesn't have -- it doesn't change her testimony in any way. We just wanted to make sure it was updated.

THE COURT: Okay. I'm still going to honor the objection and wait until people have a chance to see the updated spreadsheet.

So we'll resume cross-examination of Sara Dorland. Who will be the first?

CROSS-EXAMINATION

BY MS. VULIN:

Q. Good morning, Ms. Dorland.

A. Good morning.

Q. So I'll reserve questioning related to the spreadsheet for now, but I -- do you have your exhibits in front of you, your testimony and your PowerPoint?

A. I do.

Q. If you could turn to page 33 of your PowerPoint, please, which is Exhibit 240, I believe.

A. Page 33 of the PowerPoint? I have only got 13 pages.

Q. The PowerPoint is 241. I can't recall what the testimony is. 238? Thank you.

THE COURT: Say again what you want us all to turn to?

MS. VULIN: Page 33 of Exhibit 238. It is also found on slide 3 of the PowerPoint, which is Exhibit 241.
BY MS. VULIN:
Q. So you see this table, or Exhibit Number 9, the month-over-month price change, May 2019 to June 2023?
A. It's a chart.
Q. Chart? Thank you.
The blue line tracks what the Class I price change was month over month; is that right?
A. Correct. Adjusted for 3.25% butterfat.
Q. And the orange line tracks the retail price?
A. As reported by USDA.
Q. Okay. And so you'd agree with me that the Class I price is more volatile than the retail price is for whole milk?
A. Correct.
Q. Okay. And so either processors or retailers are not passing along the price swings to the consumer.
A. Somebody wouldn't be passing along those price increases.
Q. And it would either be the processor or the retailer, correct?
A. That's -- that's likely. Yes.
Q. And are you aware of any difference in how HTST products may be priced for retailers versus, for example, an ESL product?
A. I have experience with how that's priced, yes.
Q. Can you tell me about that, please?

A. So it -- and again, it varies because there are some HTST products that follow a similar pricing scheme, but oftentimes ESL or extended shelf life products are -- they can be more fixed in nature, so -- and some of them have national pricing strategies from what I have observed, so that -- you can see that with ESL products.

Sometimes -- some HTST products, normally those are single-serve products, ready-to-drink products, where we'll tend to see that.

HTST it depends, because we can see that most of the HTST sold in the country is private label, and there's a different pricing strategy you can see based on any observation of a website as to how some of the larger retailers go about pricing branded HTST, which -- which tends to be at a higher price point than the private label HTST. Those can move and tend to move more with where we would see that Class I price.

Q. Okay. So we had talked, I believe, last week about kind of passing through the price changes in the formula. And just -- just to track, the HTST -- and not every time I know, we don't know what everyone does every time -- but at base, is more likely to pass through those price changes to a retailer and then a consumer, whereas you see more fixed pricing with ESL-type products?

A. What I can say is as a consumer I can observe similar pricing strategies when I go out and look at websites. You know, I have observed -- I think in my testimony I provided all these, but all -- it's not unique to them. You can see that Instacart I have looked at, some of the various store websites, you can see that there's a distinct pricing pattern with some of those ESL products.

Q. And that's why -- I believe it was on page 10 of your testimony you said, "A processor that buys Class I milk and sells a branded product with a national pricing program (fixed price) may have risk." Is that right?

A. Yes. That's correct. Because if you happen to be somebody who's selling product on a fixed price and you are buying Class I milk, which is on a variable price, there could be risk exposure. I think we reviewed this last week, where variable price and fixed pricing can create price risk.

Q. And in that same kind of paragraph you had also said a restaurant that buys 2% gallon milk that has a fixed price menu is also going to carry more risk, correct?

A. That will depend on how their contract works. And again, that's a different category of risk exposure. The one we just went through was buying raw milk from a farm and then turning around and pricing that product out. The one you just provided is actually buying a product, 2%, from a processor, and then using it within a restaurant setting.

So it would depend wholly on the contract structure. And once you understood the contract structure, you could determine if there was any risk

present.
Q. Got it.
So would it be fair to say, just as a general principle, if you -- whether you are a processor or a retailer or selling a product at a fixed price, you likely would carry more risk if you are having to purchase it based on the Class I formula?
A. Not -- more risk than -- than whom? Who am I comparing it to?
Q. Than someone who passes through the cost entirely to the consumer.
A. Not necessarily. It -- really it depends. And that's where some of our discussion last week, how long does take to establish risk management? It's understanding that.
For instance, if I process ESL milk and I hold inventory, that can mitigate risk of fixed pricing without doing anything else. So that in and of itself, inventory management, can be effective risk management in that scenario.
If I'm passing through cost -- pricing to customers, it -- it really depends on whether -- again, you would have to look at the particulars of each contract structure to understand each of the categories of risk. If I'm buying raw milk and selling 2%, that has a different risk connotation, because even though I may attempt to hedge Class I milk, if I'm selling Class II, I have at least 1.5% butterfat and skim that goes along with

that cream that goes into a different classification. And we haven't even talked about the complications of -- of what you do with the excess product.

Q. So I'm struggling a little bit, because I'm -- I'm -- and this happened last time, the answers I'm getting are very nuanced and complex, and I get -- I appreciate that. But the statements in your testimony don't reflect that always.

And so the statement, "If a processor buys Class I milk and sells bottled milk" -- oh, sorry, wrong sentence -- "a processor buys Class I milk and sells a branded product with a national pricing program, fixed price may have risk."

That's true, right?

A. It "may have risk."

Q. Okay. So given how the formulas operate, would -- would you agree that the more volatile the price, if you are selling a fixed price product, that could increase your risk?

A. What level of volatility and what's my fixed price?

So, understand, I'm not trying to be difficult, but risk management is extraordinarily nuanced. So just saying that some price changes happened, if I have a fixed price, which some people do today, at $20 milk, and there's a lot of volatility between 13 and $15, my risk exposure is very different than if I sold $20 milk and I have a lot of volatility from 17 to $25. It's all -- it's all contextual, you have to understand this. That's why risk management isn't cookie-cutter. It's not simple. You have to sit down and break down all of the risks and understand what's happening.

So you are giving me examples that -- that I look at and say, there are a thousand possibilities. But without details, I can't answer your question fully.

Q. So what do we do with your testimony when we're trying to determine if you can hedge under the higher-of or the average-of? Because if it is so nuanced, what I recall you saying last week was, under the higher-of or the average-of, for example, it's very difficult to hedge organic milk but --

A. That's actually not what I said. I said organic milk largely wouldn't be exposed to the same sort of risk as others, because, if you recall, I said that organic milk is purchased under one- and two-year contracts, if not longer, typically.

If I have fixed price milk and I am selling a fixed price product, then I have pretty well matched my risk. If I have operational costs and things of that nature that cause my mar- -- you know, impact on my margins, that is typically not something that we deal with in risk management. More often we're dealing with, I have something variable and I'm making it fixed, or I have something fixed and I need to make it variable.

Remember I talked about the matching game and mismatch? That's where a lot of the risk is created.

That's where we spend most of our time.

What I would say is, under any scenario with Class I, as I have said before, whether it's higher-of or average-of, there's nuance. But there's nothing inherent in the higher-of risk management that makes it any more challenging than average-of. Average-of has just as many challenges.

Q. How can -- so how can you make a blanket statement like "there's nothing more challenging under the higher-of than the average-of," when hedging is so nuanced for every particular entity and contract that they are trying to hedge?

A. Exactly. You have to be -- you have to have conducted a study internally of what's happening in that organization to understand how you are going to approach that risk management.

Even if we were sitting and talking about a product as simple as milk powder, milk powder surprisingly has a lot of nuance to it. How are you pricing it? Where is it going? All of these things. It's the same challenges that you would -- that exist on the Class I side.

The question I think that I was attempting to answer is, is there anything in the two pricing methodologies, that using a variety of derivatives, are you limited or precluded from using them if they are average-of or higher-of, or is one more effective than the other? And my answer was, I don't see that there's significant differences.

Q. But you can't know that for every entity because you don't know what their internal structure is like, you don't know what their purchase contracts are, you don't know what their sales contracts are. So wouldn't that statement have fairly limited value when looking at the specific hedging opportunities of a particular entity?

A. Each hedging -- each entity has to review its own risk profile and its approach to risk management and hedging. And again, hedging is very specific. That has an accounting and financial implication.

But if we're just talking about risk management, each company approaches it differently. But what we can say is, if -- like some of the hypotheticals, if I'm attempting to hedge a fixed price Class II product, can I do that if it's under the higher-of based on the formula that was proposed, I think, in Proposal 13, or as it exists today, or under any of the other proposals?

And the answer is, yes, if we -- if we correlate the Class III futures to that price and the Class IV futures to that price, we can determine whether or not it's even feasible.

Q. So let's go -- let's go back to the organic example, if we can, because I want to try and understand how -- how this is playing out in your examples.

The -- the kind of conclusion sentence that I pulled out, and tell me if this is right --

A. Where are we?

Q. Page 11 of your testimony. And I believe actuality the conclusion is on page 12.

You say, "Based on the hypothetical hedge, an organic handler's attempts to use Class III and IV milk futures to hedge equalization payments are unpredictable and unlikely to mitigate costs, while doing little to stabilize milk prices and drive consumptions, as the average-of trade had assumed."

So the hypothetical hedge that you used, what were the terms, assumptions, parameters used for that hedge?

A. You might want to wait on this because that's the spreadsheet that we were talking about just a moment ago that was corrected. But this is -- it's a very, very small case.

Somebody said that potentially organic processors may attempt to hedge their obligation to the pool for any milk that was basically pooled on the Federal Order system, so it's a very small subset of what an organic processor may or may not attempt to hedge.

Q. Okay. So let me see then if I can understand the reasons or why the hedge was not working.

So the hedge was trying to manage the risk of changing equalization payments; is that right?

A. That's correct.

Q. Okay. And the equalization payments being what that processor would owe to the pool every month; is that right?

A. Correct.

Q. Okay. And that would fluctuate over time depending on utilization, depooling?
A. Plant exposures.
Q. Yep. A number of factors.
A. Correct.
Q. In the attempt to hedge that, were you hedging the Class III price, the Class IV -- like, walk me through what the attempted hedge was.
A. So the attempted hedge was basically saying if I'm going to hedge Class I, under today's formula with the average-of, I would use one Class III contract, you know, assuming that that's what I -- if I did choose not to go to the OTC market, I would use one Class III contract and one Class IV contract, which would say my minimum hedge would be approximately 400,000 pounds of milk.
So then it was to say, do the price changes there reflect what you would see in your equalization payment, as a theoretical, and the answer was there was no relationship.
Q. And is that specific to the fact of the processor being organic or wouldn't that apply to a conventional processor too?
A. I suspect it could apply to a conventional processor too, but they -- they would likely have the underlying Class I, II, III, or IV -- like, they would have the utilization in that market, so they may approach it differently. But if anybody attempted this, it would look a little odd.

Q. Okay. So there was nothing about the fact of, for example, conventional milk not being a substitute for organic that played into the complication of the hedge here?
A. No.
Q. Okay. And in terms of the processor's inability to hedge, did you compare that with the higher-of formula or was this an example just on under the average-of?
A. I think this was just under the average-of --
(Court Reporter clarification.)
THE WITNESS: Sorry. Just one second. I'm just looking at my spreadsheet.
This was just under the average-of, basically the current milk pricing.
BY MS. VULIN:
Q. So you are not making any conclusions as to whether or not this organic processor would have been better off hedging under the higher-of formula versus the average-of. It is just given the average-of formula, I was not able to construct an effective hedge for this Class I processor, organic?
A. That's correct.
Q. My order of words there was not quite right, but I fit them all in the sentence.
THE COURT: Would you go back to what you just said about the minimum amount of milk before considering whether a hedge would be effective?
THE WITNESS: So today the formula says I have 50%

Class III and 50% Class IV. If I were going to use a futures contract, my minimum contract volume is 200,000 pounds of milk in each contract. So if I'm going to construct something, the minimum I could do is one Class III futures contract at 200,000 pounds and one Class IV contract at 200,000 pounds, saying the minimum amount of milk I could hedge is 400,000 pounds of milk.
BY MS. VULIN:
Q. Okay. And the corrected spreadsheet is a correction to this organic example?
A. That's correct.
Q. And you said after making -- there were the three errors we identified, right?
A. Uh-huh.
Q. Did you correct all three in the spreadsheet that's coming up?
A. So the first one was not an error. I just forgot that I didn't key punch, I actually copied the data, and so that -- the fourth digit was available on Federal Order 126's website. And then also on the AMS API, I checked both, they both had fourth digit of precision. The report that was provided to me that day, for some reason, only went to three digits. So that was a non-issue.
But I did correct the other two aspects of that formula. So instead of .4%, the comparison was 4%.
Q. And with those corrections, doesn't make a difference to your conclusion?

A. 4% is still really far from 80%. So, no, it did not change my --
Q. And you had testified previously that you have helped Class I processors develop effective hedges, correct?
A. Correct.
Q. Why didn't you do an example of that here?
A. I did. I provided the Class II example.
Q. The Class II example?
A. Should be in the --
Q. Or a 2%?
A. 2%. Excuse me. 2%, sorry.
Q. Let's go to that one.
A. And just to confirm, you are looking at page 35 and 36?
Q. I believe I'm on page 12 now, but that's where the tables are, and we'll -- right, on 35 and 36?
A. Sure. Charts.
Q. The charts. Thank you.
Let's start on page 12, if we can. So explain to me, just at a high level, what this 2% hedge example is -- what the hedge is and what it shows.
A. So this is a simplified version because it's -- actually a 2% Class I hedge is a pretty complicated hedge compared to most dairy products. That's why I keep saying it lends itself to over-the-counter markets where somebody can structure it exactly how folks need it. Because we have rigid requirements, when you use futures and options,

you have to use the structured construct size, 200,000. You also have to use the standardized components, which is 3.5%.

So what that means is in every 400,000 pounds of milk, you have 1.5% butterfat, which -- with the associated cream that is not going to go into a Class I product, which means it's got to go somewhere else. Because of the advanced nature of that price, it creates a complication in hedging because, typically, if I'm going to hedge the advanced price, so if I wanted to sell milk in November, I would use October futures to do that, because that best correlates, gets me the best relationship, because that's the pricing period for which I would be establishing the cost for that November sale.

The issue is, though, that 1.5% fat, with the associated skim, that product is going to go into the following period, which means if it's Class -- let's say I sell the cream to an ice cream person, or a manufacturer, then my skim is going to be based off of Class IV, which means I'm overhedged because Class III is not a cross-hedge of IV, and IV is not a cross-hedge of III, so I'm overhedged. And then my fat is being priced off of October when indeed, according to AMS, my fat for Class II will be priced off of November.

So just to kind of explain just the correlation piece of it, I ignored all of that because that is a complicating factor under any hedging program. Whether it is average-of or higher-of, someone has to address that.

And this was just simply looking at how well does Class III hedge the change in the higher-of, and then how well does Class IV do the same thing, and then how well do both of them approach and do the same thing for average-of.

While people like to just say, I can just ignore all of that, and it's a one-to-one correlation, if I'm buying raw milk, you could argue that that is the case. If I'm hedging a 2% sale, that is not the case because everything doesn't match. And if the critical terms don't match, then you can't have that, you can't use that simplifying assumption.

Q. So this hedge is not on the purchase price of milk, it's on the sale price?

A. Sale price.

Q. Okay. And what was the hedge purchased here under this hypothetical?

A. Under this hypothetical -- let's see, what did I say here? I have to look at the big spreadsheet. I can't recall. It's --

Q. What spreadsheet are you looking at?

A. The one that everybody was talking about that is so tiny, tiny, with the font size, because it reflects all of the futures contracts.

THE COURT: Does it look like this?

THE WITNESS: Yes, the eye chart.

THE COURT: Do we know what number that is?

MS. TAYLOR: 240.

THE COURT: Say it out loud.
MS. VULIN: 240.
THE COURT: Thank you.
BY MS. VULIN:
Q. So while you are looking, just to confirm, Exhibit 240 has all the underlying data and formulas for the 2% hedge example?
A. That's correct.
Q. Okay.
A. And I think what I did here was I established this as a rolling three-month hedge, saying if I'm in the month of January, I'm hedging the month of March, February, April, so on and so forth.
Q. And what -- what are you hedging: Class III, Class IV, both?
A. Both, because you would look at them independently. You wouldn't actually look at them together for hedge accounting unless -- unless, of course, you have stipulated in your contract that you are buying 2% based on 50% Class III and 50% Class IV, that wouldn't be an appropriate review, because it's actually how Class III relates to the 2% and how Class IV relates to that product as well.
Q. Okay. And your conclusion -- please let me know if I get this right -- is that this hedge is more or less equally effective under the higher-of versus the average-of?
A. At that time, the timeframe that I looked at for

that time period, the Class III was about the same under both scenarios. Class III was 88, you know, percent effective with the average-of, 91.8% effective with the higher-of.

Q. And how effective was the Class IV hedge?

A. The Class IV was 71%, which fails for effectiveness. And then it was 45%, which also fails for effectiveness at that time.

Q. The Class IV hedge was 70?

A. 71% under the average-of and 45% under the higher-of.

Q. Okay. It was more effective under the average-of than under the higher-of?

A. Neither were effective.

Q. The higher-of formula produced a less effective hedge than the average-of formula?

A. They are both ineffective.

Q. Yes, I understand. But in terms of their ineffectiveness, the average-of was more -- was less than effective?

A. If you are asking me if the R-squared was higher --

Q. Yes.

A. -- it was.

Q. And so this conclusion that the average-of -- oh, sorry. Let me correct another -- or clarify something.

The average-of formula you used in this hedge example was the current one in place, correct?

A. That's correct.
Q. And so you didn't run a hedge example, I don't believe, in any of your examples for Proposal 15's version of the average-of?
A. No. That would have actually negatively impacted the results, just knowing the basis of the formula. So keep in mind -- so there's two issues with those formulas that I have tried to make clear. First, the only benefit you have got with the current formula is that the $0.74 is constant, so it really has no impact on that relationship over time.
The issue that you have though with these other proposals, I think it's 14, 15 and 16, is that that difference changes over time. So what we do in -- for any regression is you have got to have a lookback. Typically accountants like about 60 periods. We don't want to go too far because then we tend to average out anything that's occurring. But you have to have a substantial dataset, so we typically look at five years.
If you take a look at that, under each of those proposals, that number, that difference, will change each period, which will effect the correlations because each time we are replacing that every following year, and as you do that, the relationship will change because what's happening in Class III and IV today is not necessarily what's being transmitted in that number. And because that number is changing, you will reduce your effectiveness.
So by the very nature of wanting hedge accounting,

the proposals are actually defeating hedging.
Q. So, again, I'm struggling because you said that a statement like, a processor who buys Class I milk and sells a branded product with a national pricing program may have risk, it's so complicated, you can't make a blanket statement.
But just looking at the Proposal 15 formula, you can tell not going to work for hedging, less effective?
A. Yes, because you are changing a substantial portion of the price over time. I mean, I think -- I don't have the exact numbers in front of me, but I want to say IDFA's number this year would have been about a $1.54. Let me look. I got it.
And this one should be under Exhibit 16, I believe. It's another big spreadsheet. I'm looking at the colorful section that's colored in orange.
Q. What is it you are looking at, the language of the proposal?
A. No, no, no -- oh, sorry, this is my -- this is a sub exhibit of mine. It's one of the numbers. I got my numbers different. Sorry. It's -- it's the National -- NMPF-32, and what I referred to as Dorland-13.
MS. TAYLOR: 239.
MS. VULIN: Exhibit 239 I am told.
THE WITNESS: Thank you, yes.
BY MS. VULIN:
Q. So the -- your conclusion that this hedge is more or less equally effective under the higher-of versus the

average-of is contrary to what the industry was saying at the time the average-of was adopted; isn't that right?
A. I don't know what the industry was saying, in particular. I have read a few things. But, clearly, if you look at the data at the time, it would have provided you -- I think I have got some histograms in here that would have said that it was not appropriate at the time.
Q. Okay. So despite -- you are aware that IDFA and NMPF jointly supported Congress adopting the statute that put the average-of in place, correct?
A. With conditions, yes.
Q. And at the time, the reason that was done, was to -- you know, NMPF's interest was to be revenue neutral and IDFA's interest was to support hedging for Class I, correct?
A. For producers and processors.
Q. And the -- your statement is, at that time, everyone, despite thinking this would help hedging, they were all wrong?
A. Yes. It's common. The industry does that often, unfortunately.
THE COURT: May I interrupt? You were looking for a number. You were looking for 154 or something like that?
THE WITNESS: I was. And -- and the -- and if you look on that spreadsheet, I think I'm looking at the IDFA numbers, so when you look at what their 24-month number for 2023 would be based on their calculations, it would be

$1.52. 2024 would be $0.94. Currently we're using $0.74. That variation would impact it because we're seeing price changes on one side that you are not necessarily seeing on the other.

Not having to look at anything further than that, you can tell that that's going to have an impact on the results of the effectiveness.

Because remember, I think Dr. Bozic did an exhaustive review of when we look at correlations, we're trying to tell if a price change in one product has an impact on the other product and to what level. One product is changing, the other one isn't reflecting that change. That, in and of itself, would have an impact on that calculation.

BY MS. VULIN:

Q. Despite knowing the number in advance?

A. Yeah. Because we don't know what Class III and IV are going to be tomorrow. We don't know what they are going to be a year from now. We know what the proposal -- the IDFA, I think it's Proposal 14, number is going to be, because it was based on several years ago.

Same thing with the -- with the MIG proposal. Same thing with the Edge proposal. That is, as I said, an echo of past markets that may not pertain to the market we're going into. And as a result, we have got two markets changing -- two prices changing independently of each other, and when we get independent changes, it's going to reduce the effectiveness of that hedge.

Q. But under the higher-of, we have no idea every month what any portion of that number is going to be, correct?
A. Well, we have a futures curve. And there are people who make markets. I think I walked through that last week when I showed the statement of traders. There's a lot of qualified people that didn't exist ten years ago, 20 years ago, but they are there.
And I think also, you know, even in that paper that Dr. Bozic gave me that acknowledged that even back prior to 2012, that there were over-the-counter markets in Class I.
Q. And you said the underlying data for this 2% hedge was in Exhibit 240, right?
A. I think -- I don't have all those numbers handy, so I can't say for certain.
Q. And would you --
THE COURT: Just a moment. AMS agrees --
MS. VULIN: Confirmed.
THE COURT: -- agrees with that number, 240.
MS. VULIN: 240. Thank you.
BY MS. VULIN:
Q. So if you could go to, I believe it's slide 11 in Exhibit 241.
A. Is that the PowerPoint?
Q. The PowerPoint, yes.
A. Okay.
Q. I believe in your prior testimony you had

mentioned that reliability and predictability can make for more effective hedging; is that right?

A. Reliability and predictability -- I mean, to a point, meaning the formulas make -- make our hedging far more straightforward than if you were trying -- attempting to do it in China, in Europe, because we have transparent data that the USDA provides us with, and we have formulas where we can understand relationships. It's not to say that I need perfect information to hedge or to perform risk management. It's, I can interpret the data based on the information that we have and the formula structure we have today.

Q. And so looking at the chart here -- I think I used it right that time, chart -- can you just give us in a single sentence what this reflects?

A. So -- so that is -- this is just a summation of the larger spreadsheet, calculating -- so basically I took each of the proposals, I validated the calculation to make sure that I matched any of the small data sets that they provided, and then I ran the numbers over a longer timeframe to see how they would change. Because of the lag that's built into, I believe it is Proposals -- I think it is 14 and 15, the IDFA and the MIG proposals, even the Edge proposals, because they -- they are backward looking, we can project what the price will be in some cases. So just ran that from, I believe, 2016 to all the way through July 2023.

Q. Okay. And I'm looking at the chart on page 11 of

your PowerPoint.
A. Yes.
Q. That goes from May 2019 to July 2023.
A. Right. I selected from implementation to current.
Q. And it looks like, under your chart, other than 2020, MIG's Proposal 15 would generate, you know, roughly equal and sometimes slightly more revenue than NMPF's Proposal 13; is that right?
A. That's correct. Because it's picking -- it's incorporating time frames that had higher markets.
Q. Okay. So this 2020 where Proposal 13 is much higher, that's kind of carried out a little bit more under Proposals 14 and 15; that's what you are saying?
A. Under Proposals 14 and 15, there's a significant lookback that varies between I believe 24 and 36 months. So it's going to incorporate past markets, and it's going to report them in current pricing twice, if not three times.
Q. So -- and what portion of that lookback makes up this price, do you know?
A. Which year are we looking at?
Q. We'll pick 2022. Or let's go 2021. That's $11.03 for Proposal 15. Of that $11.03, what part makes up the adjuster?
A. So for IDFA, that was August 2018 to July 2020. And let's see here. MIG changes monthly, so it just depends -- I happen to have highlighted January 2023 was based off of January 2020 to December 2021. So it just --

it's a 12-month gap with, what, 24 months.
Q. Understood. And I'm just asking is the majority of that total price -- you know, for '23, it's $10 -- is the majority of that from the adjuster or from the average-of?
A. I'm sorry, in which year?
Q. Any year. I'm just trying to understand -- you had made a statement about the lookback, and I would like to know if the majority of the price generated from the average-of calculation or from that adjuster.
A. Well, I mean that wouldn't -- I understand your question. It doesn't make a lot of sense. But the majority of it is from the underlying milk price.
Q. From the average-of calculation?
A. So in that instance, it's -- if it's a combination of the Class III and IV, yes, it's the average-of the Class III and IV price.
Q. So I'm still struggling with this chart. And I had asked some witnesses about it yesterday, because if you are talking about producer revenue, why is Proposal 15 not attractive?
A. Because Proposal 15 stops short of continuing the calculation. And if you can continue the calculation forward, you would see that by 2024 -- let's see, by April of 2024, the number drops back down below a dollar again, and there's no baseline. So if nobody is proposing that the $0.74 makes sense, because it certainly was disproportionate -- and I think you had mentioned that

part of the condition for going forward with it on this was that processors and producers over time would tend to share in that difference. And -- and as no one has said status quo is appropriate, anything where you start to drift towards, and potentially with the MIG proposal below status quo, would automatically seem to me to say it doesn't make sense.
Q. But you don't know what the Class III and IV prices are going to be in 2024, right?
A. I don't.
Q. Okay.
A. But what I -- but -- hold on a second. But what I do know is that those prices are going to be based off of something that happened when prices were lower. So if we take a look at it, and, sure, Class III and IV are higher -- let's say -- let's say we go to $30. If you attach $0.90 to $30, $30 says we are really, really tight milk, and milk's got to move all over the place. Remember that discussion we had last week? We really got to move milk. We have got to entice it into these fluid markets away from manufacturing. That's the purpose of the system.
If you are going to tack on to it $0.90. And let's say Class IV is $30 and Class III is $20, okay? That's the part that matters. It's not what -- the part you are missing is it is not the overall, where is Class III and where is Class IV? It is what is the relationship on the skim value of Class III and Class IV.

If that is really wide, and let's say it's $10, $0.94 is wholly inadequate. If both of them are $20, okay, $0.94 maybe fine.

But what you are telling me is $0.94 was wholly adequate two years ago, three years ago with the lag. But it may not be appropriate today. Because you are locking in a relationship that happened in the past, that relationship may not exist in the future.

Q. And it's inadequate because that particular month, it will send the wrong signal to the market? That's what you are saying?

A. It would send an echo of the past to today. It would be like saying, I'm going to go out and trade Netflix based on what happened at Blockbuster 20 years ago. It doesn't make any sense.

Q. Proposal 15 doesn't look 20 years ago, though, does it?

A. But you are looking -- in dairyland, three years is a long time. Three years ago, if I remember correctly, we wouldn't be sitting here because we were in the middle of a pandemic. Three years is a lot of time. So to -- to suddenly say that I'm going to transmit something from that far back, it's -- it's a long time.

Q. And this --

A. You understand -- the part also that we seem to be glossing over here is -- is this idea that if -- you know, today, yeah, the numbers are big. They are bigger than the higher-of. It's a $1.74 to -- $1.58 to $1.74. The

issue is, is when that signal is transmitted in 2020 and again in 2022, the dairy producers that got $0.74, 3,750 of them aren't here today.
Q. Because of the base Class I skim price?
A. That is going to likely be a part of it, especially in parts of the country where we have high Class I utilization, which specifically I'll say from Maine on down to the Florida, yes. It's a big deal when we monkey with that number. Nothing on a dairy or at a dairy plant happens on average. You are trying to say life is average. It's not. And that's where I'm saying it can't.
An example for you. If I said, I'm going to pay you, on average, $250,000. Now, in year one I'm not going to give you anything, but in year two I'm going to give you $500,000. You still have mortgages. You still have -- you still have braces, you know, tuition, whatever -- you have to pay for things.
Averages don't work in real life, and that's why it is important to time these things. It's the timing with which that happens. That's what allows these markets to move. That's what sends the signal properly.
Q. And you are saying instead farmers should be reacting month to month to the price swings in their milk production?
A. They -- they do. These farmers -- consider -- remember, I said -- I believe I said, approximately 80% of the milk in the country is coming from around 20% of our

dairy producers today. Those farms are highly sophisticated businesses, family-owned operations, but there are -- there are people there that are watching markets as much as I watch markets. They are making those decisions.

When the milk price dropped below $14 in the second quarter and into the third -- and into July, they reacted, and they reacted very quickly. They make those decisions every day. If you are ever at a dairy co-op, they are moving cows.

If you ever want to look at -- no offense to my friends at the USDA, I love the dataset, but it's the worst dataset -- it's -- it is the cow numbers. It's, where are those cows? What state are they in? How many do we have? It's a tough number to collect. Why? Because dairies are moving things around. They are looking at genetics. They are looking at everything.

So do I think they react to the information every day? Absolutely, I do.

Q. And so in December of 2020 when Class III is at $20 and it drops to ten in January of 2020, you believe that farmers can react with their herds, with their milk productions, and with their milk contracts to respond to that?

A. Yes, they do. They absolutely -- I don't know -- when -- when I gave a presentation yesterday, and I said, I'm going to talk about all of these things, and it has something to do with bottled milk. Okay.

It's the same thing. You want to know what's going to happen in the market? Why did milk prices shoot up? Why is -- why is what's happening today? Because a bunch of dairy farmers said, the price is too low, I'm unprofitable, I'm better off to sell my feed and my cows than I am to continue to milk. And some people made that decision permanently, some people just adjusted their herd size.

But, yes, they do respond to prices, and they respond effectively.

Q. Month to month?

A. Month to month.

MS. VULIN: Nothing further. Except I do reserve examination on this spreadsheet that I haven't seen yet.

THE COURT: Thank you. That was very enlightening, to me especially, since I missed you before.

I want to take a five-minute stretch break. Please don't leave the room unless you must. We're going off record at 8:58. Be back ready to go at 9:03.

(Whereupon, a break was taken.)

THE COURT: Let's go back on record.

We're back on record at 9:03 a.m. Now, I've lost my witness.

And the witness may go back to the witness chair, and the next person to cross-examine may come forward.

DR. BOZIC: Marin Bozic for Edge Dairy Farmer Cooperative.

CROSS-EXAMINATION

BY DR. BOZIC:
Q. Good morning, Sara.
A. Good morning.
Q. Do you recall our conversation from last week regarding the statement on page 13 and 14 of your testimony? I'm going to read the sentence from your testimony: "Fundamental to risk management, changes in the hedged item (milk price) should be offset by the derivative and vice versa."
Do you recall us discussing that?
A. We talked about a lot of stuff, so I don't know.
Q. So I -- we can cover it again.
So the -- my question last week was to clarify what changes are we discussing, whether those are month-over-month changes, year-over-year changes, and we agreed that it really should be projected versus actual changes.
Do you recall that? It's the bottom of page 13, 13 out of 39.
A. I think here, what I'm referring to is the changes in the hedged item is really that correlation. So if you are going to use a derivative, let's say like Class III, the change, we want that to be highly correlated with the item that -- that's at risk, the hedged item.
Q. Yes.
A. And we want those two prices to change at a level that exceeds at least 80%.
Q. So changes in the hedged item should that be

calculated as a difference between two numbers?
A. Changes, yes. I believe so.
Q. And what should be those two numbers to -- that are used to calculate a change?
A. So what we're looking at here is the change in the -- let's say, the milk price, right --
Q. Right.
A. -- the Class I milk price, and if you were using a Class III futures contract --
Q. Right.
A. -- we would want the change in the price level of the Class III contract to mirror what's happening -- or to mirror what's happening on that Class I price.
Q. So on the futures side it should be presumably the change between the date when you open the hedge and the date when you close the hedge? Is that the change?
A. Yes.
Q. So is there -- should there be a change in the other side as well?
A. That's correct.
Q. What is the change on the other side?
A. So what we would expect is when -- if we have an expected price, so if I'm hedging -- let's say I want $18.
Q. Right.
A. I would expect that at the end of this, whatever the change was on the cash side, so my settlement, whatever my actual milk price was, that it would have been offset hopefully in its entirety by the change in the

derivative. Oftentimes it is less than that.
Q. Yep. Yep. Agreed.
So -- but that $18 expected price, you cannot just choose what your expected price is. I cannot just say, I will evaluate my hedging, I'm going to set my expected price at $43, right? It has to be some reasonable expectation of what your hedged item will be, right?
A. You would hope that. I spend a lot of time, you know, setting expectations for folks. But, yes, you would hope that it would be based in some sort of analysis or based on reality.
Q. We need to first project what the expected item is, then calculate what the actual value of the hedged item is --
A. Correct.
Q. -- take the change, projected versus actual, correlate that with the change in the futures, close versus open?
A. That's right.
Q. Okay. Is that what you do in your organic example?
A. The organic example I was just actually plotting the price change of the one product versus the other. So I wasn't actually looking at the projected.
And honestly, it was a hypothetical that I don't know that anybody does, and if they do, I would seriously caution them against doing it because it doesn't make any sense. The reason is, is you are trying to control too

many variables that no one organization can control.
Q. So -- okay. I'm a little bit confused. We just spent five minutes agreeing of arriving at the agreement that the proper way to calculate hedge effectiveness is to correlate the changes in the futures position to the unexpected shocks in the hedge items.
A. And that's -- and that's basically -- if you take a look at that example, I believe --
Q. Would you please point us to which tab you are referring to?
A. So here I was looking at the change in the settlement fund compared to the gain or loss on the futures contract.
Q. So I'm sorry, we don't see in this screen what you are pointing to.
A. Sorry. So I don't -- let's see. It's -- it's the section that's dark blue, right after the orange section that's called milk cost.
Q. Would it be possible to pull it on the screen? I'm a little bit lost.
A. Let's see, I had to push a button.
Q. Okay. Go ahead.
A. So -- so it's just simply plotting the settlement fund, so the change here, what the actual settlement fund would have been for the cash settlement versus the hedged gain loss.
Q. I'm sorry, Sara, I lost you. What is the change in the settlement fund?

A. This is just the settlement. So this would have been the difference between what we discussed last week -- and, again, this is changed -- between the Class I milk price at test versus the uniform price, which -- which was attempting to calculate what the settlement obligation would be. That's that figure here. And this was just simply plotting that against the hedge gain/loss, so if I attempted to take on a Class III or IV futures contract to achieve an expected result.

Q. Sure. So I'm a little bit slow, so just walk me through this.

Are you saying that the change in the hedged item is the difference between the uniform price at test and the Class I at test?

When I use the phrase "change in the hedged item," I'm referring to how you phrased it in the bottom of page 13, I believe.

A. Yes. So that's what we're looking at here is the -- is just can -- do I have an ability to mitigate the cost of my producer fund settlement by using Class III and IV futures?

Q. So -- okay. On the bottom of page 13, we agreed that the changes in the hedged item should be the difference between the actual and projected value for the hedged item.

Did I understand correctly that the column R, settlement fund, is the change in the hedged item, meaning the difference between the actual and the projected value

of the hedged item?
A. Why don't we do this, because this took forever last week. Why don't you just ask me what it is that you -- obviously you have an issue with the methodology. If I could strike this entire spreadsheet from the record, I would, because it's a crazy little hypothetical that I truly don't know if anybody in the industry is actually using.
But what is it that you would like to get to?
Q. Well, I apologize if my question wasn't clear enough.
On the page 13, you state that fundamental risk management changes in the hedged item should be offset by the derivative. We -- and I can perhaps ask the court reporter to read back the transcript.
DR. BOZIC: Can I?
THE COURT: No.
DR. BOZIC: No? Okay.
BY DR. BOZIC:
Q. That, you know, we agreed that the changes in the hedged item should be calculated as a difference between projected and the actual value of the hedged item.
So what I'm looking for is where is the projected value of the hedged item in your spreadsheet?
A. I simply was taking the settlement fund and saying, can I mitigate my obligation to the pool by going out and taking on Class III and IV futures?
This is not something that I would recommend.

This is not something that I would do. But it was relayed to me that people are attempting to do this.

So all I did was try to recreate what that is, to say, one, if they are saying they are doing this, this probably isn't a valued way of dealing with risk management.

And, two, it doesn't even -- whether it's average-of, higher-of, Tuesday's price, BFP, it is not a great way to manage risk. There are too many unknown variables.

And really, at the end of the day, all I was attempting to say with this example is if somebody is saying that this is the cornerstone with which we fundamentally change the Federal Order system, it is not a great idea. Whoever is doing this -- I'm just replicating what they explained to me. If they are doing it, I would advocate that you wouldn't do it because there is nothing in the relationship that says it makes any sense.

So hopefully that answers it. If you are trying to exhaustively go through and see what that is, I was just replicating what I have been -- what I have -- what was relayed to me that folks have done as an example. This is not going to have the price change at inception to current. That is not what is in here.

Q. Would you then concede that this spreadsheet actually does not show where the hedging gains are successful in offsetting unexpected shocks to the settlement fund payments?

A. If I did what folks have told me they have done, which is I go and buy Class III or IV futures to mitigate my exposure to the producer settlement fund, what I would say is, that is what you are seeing here. And if that is the case, they do not mitigate changes in the producer settlement fund.

I'm not sure how it would, because as a processor, especially a Class I processor, I am mandatorily regulated. I cannot control yogurt plants. I cannot control cheese plants. I cannot control powder plants. And clearly, there's been a long discussion about depooling and the impact of that on these markets. So all it takes is one person depooling, and my entire hedge fails to function properly.

Q. Ms. Dorland, you -- I believe you said that your spreadsheet shows that the hedge does not mitigate changes in the settlement fund.

Did I hear you correctly?

A. Not in consistent and expected ways.

Q. Okay. So what changes in the settlement fund should we be looking at? Is it the month-to-month changes or is it the change actual versus projected settlement fund payments?

A. I don't think based on what was relayed to me that they are considering in this exercise projected settlement fund obligations. They are just attempting to say, I would like to make sure that it -- I guess it would be. It would be a projected number that says, I would like to make sure my number sticks close to where my -- where my contracted value is or what I can afford.

And what I'm saying is, is if that's what you are attempting to do, if you are sitting down and saying, okay, I don't -- you know, I want a milk price that is $33, undertaking Class III and IV futures to do that isn't necessarily going to get you there. Sometimes your price is lower, sometimes it's substantially higher. The results are all over the map.

Q. Would you concede that the methodology used in the amended exhibit National Milk-32B is in contradiction to your statement on page 13? In the page 13, again, we determined that the change in the hedged item is the actual versus projected. In the Exhibit 32B National Milk, it is not the actual versus projected settlement fund, it is some sort of month-to-month changes in settlement fund.

Could we agree that those are two different methodologies?

A. Yes. This is what I wrote. This is an example that I was attempting to replicate.

Q. But you are using the example that you are attempting to replicate to show that the hedging is ineffective; is that correct?

A. In this particular example, this is actually talking about a totally different section that I don't even think has anything to do with risk management, because that section doesn't come up for quite some

time -- or actually, it was prior to that.
This is a very specific example.
Q. So, again, you know, what I'm now -- what I think I hear you say is that sometimes we should evaluate hedge effectiveness as a change in the hedged item, projected versus actual, versus the change in the derivative, and sometimes to show that other people don't know what they are doing, we should not use the changes in projected versus actual, we should just use month-to-month changes?
A. No. That's not what I am saying.
Q. What I'm trying to understand is if we don't use the changes projected versus actual in the producer settlement fund, how can we be sure that the example actually illustrates what you are trying to show?
Like, in the example there, you are -- you have hedging gains, and on the other side there is no mention of unanticipated shocks. Hedging is an activity of mitigating unanticipated shocks. I cannot find unanticipated shocks anywhere in your spreadsheet.
And to the best of my ability, I understood your rationalization of that is that you don't think it should be done this way, others have told you that they are doing it this way, and you are showing that they don't know what they are doing.
A. Is there a question in there?
Q. The question is, like, how does your spreadsheet help us understand whether hedging can mitigate unanticipated shocks to the settlement fund payments?

THE COURT: I would ask that you answer a different question.

I would ask that you answer whether there is a hedging strategy that you recommend that does mitigate unanticipated shocks --

THE WITNESS: No.

THE COURT: -- such as he's describing. Answer that question, if you would.

THE WITNESS: Sure. That one I can answer.

No, I wouldn't take on a hedge like that because there are too many moving pieces.

What we try to do with risk management -- so part of risk management is that we bring certainty to earnings. That's really what we're attempting to do.

BY DR. BOZIC:

Q. Right.

A. Right? If somebody sets a budget target, I'm going to go to retail at $20, I -- my target for my milk is $18, that's a $2 spread in there for everything else, let's say. Okay?

The goal -- the objective of risk management is to try and get that number to $2 as often as we possibly can, as efficiently as we possibly can.

And as I have said before, sometimes with risk, we focus on the negative impacts of it. The positive impacts also have an have an implication to earnings. Meaning, if I make a bunch of money and I don't, A, know why, and B, I can't replicate it, it doesn't do me any good.

And so that's -- to answer the question as asked, this is an impossibility, because you are trying to miti- -- you are trying to manage things that are outside the company's control.

It's one thing to say, I need to buy milk and I want to go to the -- to the shelf at $4 a gallon. It's another thing to say, I may or may not have an obligation -- well, I will have an obligation to the pool because I am in it.

But what that number looks like, it comes down to somatic cells, audit adjustments, what the utilization was, all of those things. Can we predict it somewhat? Yeah, I can look at last year and kind of see what happens. But if suddenly Class III is $20 and Class IV is $15, I'm going to get an unexpected result, and I was unlikely to be able to mitigate that with anything that would replicate III or IV.

Q. But you still do believe that the appropriate way, as you say, fundamental to risk management, is to correlate changes in the hedged item to the changes in the hedging instrument?

A. Changes in the item, yes, the expected price.

Q. I won't belabor the point on the organic spreadsheet, but could we turn to your Exhibit 11, on page 35.

THE COURT: Which --

DR. BOZIC: It's Exhibit National Milk-32. And I apologize, I don't know what the Hearing Exhibit Number is.

238. The Exhibit 238.

BY DR. BOZIC:

Q. And then on page 35, unfortunately the word "exhibit" is again used, and so there are two charts on page 35. My next questions are about those charts.

A. Okay.

Q. Did you have a chance to find it, Sara?

A. Yes.

Q. Okay. So do these charts reflect the changes in Class I on horizontal axis and changes in Class III, open versus closed, on the vertical axis?

A. These are reflecting the Class I price adjusted to a 2% butterfat and the Class III futures I believe.

Q. Are those Class III futures at a time when the hedge was initiated or the time when the hedge was closed, or are those announced Class III prices for the prior month?

A. Announced Class I adjusted to 2% butterfat, and it looks like it must be at announced Class III.

THE COURT: Say that again.

THE WITNESS: It is the announced Class I price in the -- in the milk pricing period, and the previous month's closing value of the Class III price. So, for example, if you were looking at January 2018 as the milk pricing period, that is the expected Class I price, and then the futures month is actually the closing value of the December 2017 Class III price.

BY DR. BOZIC:

Q. Sara, to make sure that I understand this correctly, is it correct that the horizontal axis does not present the difference between the projected Class I and the actual Class I?

A. It does not reflect the difference.

Q. Is it also correct that the vertical axis does not reflect the difference in the open versus closed -- or the open hedge, closed hedge Class III?

A. Correct.

Q. And that is also the case for Class IV?

A. That's correct.

Q. And you do maintain that the R-square of the regression where neither the dependent or the explanatory variable reflect the changes in the hedged item or that change the derivative is still appropriate for evaluation of hedge effectiveness?

A. Correct.

DR. BOZIC: I think I'll stop here. Thank you very much.

THE COURT: As we continue with the cross-examination of this witness on her last week's testimony, who would like to go next?

DR. CRYAN: Good morning. Roger Cryan for American Farm Bureau Federation.

CROSS-EXAMINATION

BY DR. CRYAN:

Q. Hello, Ms. Dorland. It's nice to see you.

A. Nice to see you.
Q. We have known each other for a long time.
A. Yes.
Q. And I'm -- I'm always impressed with your facility with this stuff. The degree to which you introduce dairy risk management to the -- for the co-op, and then all your customers. And you are a very -- a very impressive witness, and I'm reluctant to ask you any questions at all. But let me ask you a couple.
You talked about -- you really kind of emphasize the importance, that you said Class I primacy is vital. That was a theme; is that correct?
A. That's correct.
Q. You also talked today about how three years is a very long time in dairyland, and not just Wisconsin but the whole industry?
A. The whole -- yes, the entire dairy world.
Q. Yeah. Dairy world, right. Dairy world is in Orlando and Dairyland is in California. Okay.
Would you agree also that six weeks is a long time in dairy world?
A. It can be. I have complained about six weeks, yes. But I'll take six weeks over three years.
Q. Sure. Sure. That makes sense.
And I agree with that. I mean, the six -- the six weeks versus the three years is the whole -- it is a different level of --
A. Time. Yeah.

Q. -- complication, complexity, with respect to Class I proposals.

So Class I advanced pricing creates a roughly six-week lag in pricing Class I milk. I recognize there are issues for bottlers that they like to have the advanced pricing.

But would you -- would you agree that ideally we -- for the purposes of pooling and reducing negative PPDs and reducing the -- kind of the misalignment between Class I and Class III and Class IV, that ideally we would have everything priced at the same month?

A. I would say ideally, yes, but I'm going to take a pause.

One of the first things when I came to dairy, I was accounting, finance. My background was gaming and hospitality and construction. Nothing to do with agriculture. And my job was the annual audit.

And so I came in, and I sat down with somebody, and I said, okay, let's -- let's go over your -- let's go over your earnings.

And the gentleman looked at me, and he said, well, we don't know it quite yet.

And I'm like, well, what do you mean you don't know it quite yet?

He said, well, we know what it costs us to make this stuff, but we have to wait until next month when the government tells us, and then we go back and we fill in the pieces.

So do I like a six-week lag? No. Could you conceive of a world where maybe that doesn't happen? Possibly.

Realistically, though, from a processing perspective, it is really tough to plan and try and figure things out in the rearview mirror when somebody says, oh, by the way, this is what happened.

So, you know, I like timely information. I like transparent information. All of us do who are in markets.

But will we, at times, concede perfection for the good? Yeah. And I would say that six weeks is the good. It makes -- it -- it's got some side effects, but we as an industry collectively seem to understand them. And the issue with having that perfect information creates a lot of disorder and chaos in a product that, you know, we're consistently -- the sales are on the decline, holistically. Not all products within that category.

So to make it easier on retailers to make sure that they can go to market, it -- you know, I would concede the six weeks.

Q. So that's the advantage of the Class I pricing is to make the pricing easier between bottlers and retailers?

A. It makes the whole system a little bit easier. Yes -- you know, yes, we have got to do some work on the hedging side and things of that nature. And, yeah, it can create some other, you know, noise in the system that we understand until -- you know, when we get fast moving markets. But that ability to budget, plan, and price are pretty important.

DR. CRYAN: Thank you. Thank you.

THE COURT: Thank you, Dr. Cryan.

CROSS-EXAMINATION

BY MR. ROSENBAUM:

Q. Steve Rosenbaum, International Dairy Foods Association.

If you are a Class I handler that wants to hedge, and the milk that you are buying has more cream in it than you need for your product, don't you just sell future -- sell in the futures market that excess cream at the same time you enter into the hedge?

A. I'm unaware that there is a cream contract today.

Q. Butter. Don't you sell a butter contract?

A. So butter is 80% fat, 20% moisture, 5.25%, thereabouts, solids nonfat. And when we look at a Class IV contract or a Class III contract, the composition looks like the standard components that we use today in milk, which is 3.5% butterfat.

So, yes, I could. But you have to understand, in order to get that to work, I have to factor in, let's see, what is that, 17,500 pounds of butterfat, and then I have to back-calculate that to 400,000 pounds of milk, which have roughly 12,000 pounds, so I have got to keep escalating my contracts until such time I find balance.

Q. If you are a sophisticated company, surely you can make those calculations to handle the excess cream, can't you?

A. You surely can except that's a sizeable amount of milk that you are hedging.
Q. Can't you understand --
THE COURT: Slow yourself down.
BY MR. ROSENBAUM:
Q. Can't you enter into this --
THE COURT: Let her finish.
MR. ROSENBAUM: I think she finished, your Honor.
THE COURT: Okay. Then pause before you rapid-fire another question.
MR. ROSENBAUM: I appreciate that, your Honor.
BY MR. ROSENBAUM:
Q. Can't you enter into swaps at smaller sizes than $400,000?
A. Of course. I have been advocating that up here all day. I mean, that's the -- that's the beauty of it, higher-of, average-of.
One of the things that I showed last week was the --
Q. I asked a simple question. I'm not asking --
MR. ROSENBAUM: Your Honor, she's giving long answers. I asked whether you can do it. It's a yes or no question.
THE COURT: I'm not in favor of a yes or no question when a better answer could happen -- be taken from this witness.
MR. ROSENBAUM: All right.
THE COURT: And you really need to slow yourself

down.
MR. ROSENBAUM: All right, your Honor.
THE COURT: I'm trying to take notes.
BY MR. ROSENBAUM:
Q. My question is, if I can repeat it, can a Class I handler deal with the cream in excess of the needs of its own finished product by entering into a swap for that cream?
A. And my answer is, as I stated last week and showed on slide 7 -- and I apologize, I don't know the exhibit for the presentation -- but on slide 7, I showed a commitment of traders where we have got a lot of buy-side liquidity that's coming from outside money, hedge funds, brokers, swaps. You will see a big gold section in there. And I would say that's actually probably the best place for folks to go get liquidity when you are hedging Class I.
But that doesn't say that the average-of is superior than the higher-of. Anybody can go out and -- and get those swaps. And I would say that's probably -- with folks that I have worked with, that's an area that we spend a lot of time, because there is -- there are other people who are willing to take the other side of that transaction, customize it exactly for my needs, which the futures and options market won't. They will tailor it for 2%, 1%, what -- and that's the beauty of the over-the-counter market.
Q. And so is the answer, yes, you can, that's how you

can deal with your excess cream?
A. So if I'm trying to swap cream, I could do cream or I could use a butter contract.
So are you asking about Class I milk or are you asking me about cream?
Q. I'm saying a Class I handler who has excess cream.
A. So let me -- let me help you ask me -- me the question.
Are you saying I should, if I'm a Class I handler, use Class III and IV to hedge my milk and swaps to hedge my excess cream?
Q. I am trying to focus not on the question of how best to hedge the underlying risk, because that's a separate issue. But I'm trying to deal solely with the question of the fact that you have excess cream, and I'm asking you whether you can deal with that excess cream by -- if you have enough volume to enter into a futures contract for butter, and if you lack that volume, you can do it through swap?
A. That's an inferior way of dealing with things because it would be way easier to go and say, could I have a Class -- or a 2% skim -- or 2% milk Class I hedge versus I'm going to go take on Class III and IV and then a swap. You just cut out the middleman and just go straight for the swap.
Q. Can I do that or not, what I described?
A. Yeah. We have been doing swaps for a long, long time.

Q. So you can do that with your excess cream; is that correct?
A. You can. I wouldn't do it. It doesn't make any sense.
Q. Now, in terms of the -- you do understand -- do you -- is it your understanding that under the IDFA proposal, which is Proposal 14, the Class I skim milk mover would have two components. One would be the average-of the Class III and IV price, correct?
A. Correct.
Q. And the other would be $0.74, except that if their lookback indicated that there had been an underpayment based upon what it would have been had it been a higher-of, that additional amount would be higher than $0.74.
Do you understand that to be the proposal?
A. What do you mean by underpayment?
Q. As compared to what the farmer would have received had it been a higher-of system.
A. So you are just saying -- you are comparing the difference of between the higher-of and the average-of. There's actually no fund to accumulate money for restitution.
Q. I'm saying, is it your understanding -- let me start the question again.
Is it your understanding that under the IDFA proposal, when it comes time to determine what the Class I skim mover is in a given month, it will be the average-of

the Class III and IV advanced prices, plus a fixed amount. Just start there. Do you understand that to be the system? I'll get to what the fixed amount is in a minute, but do you understand that to be the proposal?
A. It is fixed over a period of time, but it does change each period.
Q. Well --
A. It is fixed over a horizon. Right? If I look at what Mike Brown put forward, it's fixed over, I believe it's a 12-month period. But that -- so fixed -- fixed means -- for -- to me it means for a long period of time, so it is a 12-month, but it can change.
Q. Well, let me be more precise then. Do you understand that in any given year, in any given calendar year, under the IDFA proposal, the Class I skim milk mover is a combination of the average-of the higher -- excuse me -- the average-of the Class III and Class IV advanced price plus a fixed amount, for any given year, that's a fixed amount?
A. Yeah, I believe so over a -- over a 12-month horizon, a calendar year.
Q. And do you understand that that fixed amount will either be $0.74, that's a minimum, or it will be a higher amount, if during a 24 lookback period it turns out that the farmers would have been paid more than $0.74 had the higher-of approach been in effect?
A. Yeah. I believe it's -- it's the difference between the higher-of and the average-of. If the number

is greater than 74, use that; otherwise it is $0.74.
Q. So that a Class I handler who is engaged in hedging activity will know in advance what the add-on is above the average-of the Class III and Class IV price, correct?
A. Yeah, I -- like I said, I was able to calculate it, as did Mike Brown, for next year.
Q. So that the only -- so there -- there is -- hedging is designed to address risk of unexpected changes in costs, correct?
A. No. Hedging is -- so I have explained that I have a very -- so hedging is -- is the accounting definition. And if we take a look at that, that's the correlation that we're looking at. We're -- and it's the price change and all sorts of fun stuff. But you have to have a relationship that's at least 80% related.
So hold on a second. Your fixed timeframe only lasts 12 months. In accounting we have to use a price series of 60 months. So in that 60-month price series, I'm going to have, under that proposal, five potential price changes based on markets that happened quite a while ago, and then I have got to compare that to price changes in the current period.
Q. You will know what that fixed amount is going to be six months before it comes into effect, correct? Under the IDFA proposal?
A. I'll know it six months before it comes in. It doesn't change how the relationship works. I'm relating

something that happened in the past to something that's happening today.

Q. And I'm asking for hedging purposes whether by the time you enter into the hedge you will know what that fixed amount is?

A. I know what the amount is, but it doesn't -- it doesn't improve the relationship. When I'm -- when I'm assessing how my hedge is performing, I have to do retrospective and prospective testing to make sure that the relationship holds up.

You are asking -- you're asking me to explain what hedging is. And what you are saying is, is as long as you know what the price is on the difference six months in advance, your hedge is going to be fine. And my answer is no, because the piece that you are entertaining may be moving, and the relationship between III and IV, six months, 12 months, 18 months down the road may not reflect the relationship between Class III and IV 24 months ago.

Q. But you are going to be hedging the potential movement in Class III and IV, correct? That's what you are going to be hedging?

A. No.

Q. If you enter into a hedge, that's what you are going to be hedging, correct?

A. Must -- I -- I must not have done a very good job.

So when you're hedging -- and this is the difficulty with analyzing any of these proposals, because nobody has explained what risks are they managing. And this was the example I gave you. Ford makes trucks. Are we talking about the construction of the F-150 or the Lightning? Is it the Ranger? What is it?

So you're asking me to make a blanket statement. And as you heard earlier, this is a lot of nuance in here, and you can't make a blanket statement.

So here what it is. Everybody is saying, I'm just hedging the raw milk. That's not hedging. Hedging -- when you say "hedging," that is an accounting-specific term. Risk management is one thing; that's an economic transaction. Hedging is very, very different.

And everything I believe talks about -- a little bit about risk management, but most of us are doing this for hedging, especially larger companies. Your CPAs, the first thing they want to look at is risk management. They don't like it. You have to qualify for it. You can't just get it.

So when we sit down and take a look at hedging and what's happening here, you are saying, this is easy. No. I'm hedging 2% milk. Because if -- if I'm hedging raw milk, I have to have something over here; otherwise, why would I go out and buy a futures contract, unless I have a fixed price commitment on this side?

So if I have a fixed price commitment on this side, I'm pretty certain there isn't that much raw milk being sold in the U.S., so we're -- we're doing something where the butterfat's been standardized. Once you standardize that butterfat, this isn't just looking at the price change over here. This is considering all of that movement in that product, butterfat included, and how well that Class III or Class IV contract moves with it.

That's why I keep saying a swap is much easier, because I can say give me a Class II swap; I don't have to worry about it. I can go to somebody and say, give me a Class II fixed price; I don't have to worry about it.

Once you standardize that butterfat, a lot of complication comes in the door behind it, regardless of whether it's average-of or higher-of.

Q. And are you saying that you -- you would ignore the fact that you have taken care of the excess cream by entering simultaneously into a futures contract for that --

A. So as I said --

Q. -- for that --

A. -- just a moment ago, there is no cream futures contract.

Q. Enter into a butter -- I said enter into a futures butter contract. If you enter into that, you are saying you ignore that for purposes of determining the adequacy of what you are doing to -- to mitigate your risk on the on your raw milk cost?

A. It has to be -- all of the terms of the deal have to align with the contract. So if I have 2%, that butter hedge has got to get me the 2%.

Q. Right.

A. Okay? If I don't, I could be disqualified. And I can tell you, I have sat with enough -- enough auditors and enough people of public companies that said, look, if I have to go and release earnings and say my earnings were negatively impacted because the milk price went to $25, I'm fine. If I have to release earnings and say, my earnings were negatively impacted because my hedge was ineffective, that is a no-go.

Q. And -- but people -- okay. And -- and don't you -- haven't you addressed your risks over the cream that you don't need for your own product by entering into a contract to sell that under -- as a futures contract? As a butter contract? Haven't you addressed that?

A. No, you haven't.

And I apologize. I got to stop here for one second to see if I can answer the question.

Sorry. I need a calculator. It is not on the fly.

Okay. So you heard me earlier say, if you want to hedge 50/50, 50/50 average-of Class III and IV, futures contracts are structured, they are 200,000 pounds. At 3.5% butterfat, that's 14,000 pounds of butterfat. Okay?

In a butter contract, that is 80% butterfat, 20,000 pounds. That's 16,000 pounds. What do I do with the extra 2,000 pounds?

That's how strict the auditors are. That's how strict CPAs can be.

So then I have increase the size of my contract, and then I have to increase it. And you can mathematically get there. I actually did that for somebody. You have to be -- as much as I gave the example with dairy producers, 87% of dairy producers are highly unlikely to go out and seek Class I hedging because they don't have enough cows to do it.

When you mathematically balance perfectly the butter contract to the Class III and IV contract, you have eliminated a lot of folks from Class I hedging.

Q. Are you talking about processors or farmers?

A. Processors.

MR. ROSENBAUM: That's all I have. Thank you.

THE COURT: I think this might be a good time for a ten-minute break. Let me see what time it is. It's 9:48. Please be back ready to go on record at 9:58.

(Whereupon, a break was taken.)

THE COURT: Let's go back on record.

We're back on record at 10:01. Who will be the next to ask cross-examination questions of this witness?

CROSS-EXAMINATION

BY MR. MILTNER:

Q. Good morning, Ms. Dorland.

A. Good morning.

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

Earlier in your testimony today you drew a distinction between risk management and hedging, and I wondered if you could just revisit the topic and fill me in again, because I -- that's a distinction that I had

never really given thought to.
A. Sure. So all hedging is risk management, but not all risk management is hedging.
Hedging is a specific accounting connotation. It's what we do -- so a lot of -- there are a lot of similarities. We're trying to mitigate risk. We're trying to drive predictability and earnings.
I think Dr. Bozic mentioned shocks. We're trying to avoid those shocks coming through our earnings, whether processor or producer.
But hedging has specific rules, generally accounting -- GAAP stipulates. So we have to do retrospective and prospective testing. We have to look at price changes, all sorts of things. Not everybody qualifies for hedge accounting.
Hedge accounting is something that came out of -- it started in 1999. It really got cooking after Enron with a lot of off-balance sheet transactions. It is the bane of most CPAs. They -- they -- they don't like it. It's complicated. And so they make you qualify for it.
So sometimes you will hear people use it interchangeably. Because my background is accounting and finance, and I spend a lot of time with that group, hedging is specific as to how you record these transactions and what qualifies and where it lands in the financial statements. Risk management is more the economics of the transaction.
Q. Okay. So given that distinction, let's talk about

risk management.

And given the breadth of questioning you have already gotten, and we have got a few days between your statement and today, I'm going to apologize in advance if I duplicate questions here that have already been asked.

But your analysis that's in the Excel spreadsheet you have had a lot of questions about. I notice that was for the Southwest order.

Is there a reason why you chose Order 126 over others for that analysis?

A. They have really good data. Not all orders give us the same data, and they have that statistical handbook, which means I can copy and paste the information to avoid key-punch errors. That was simply it.

And they have got a good -- certainly, Federal Order 32 better represents utilization nationwide, but I think that order gives a pretty decent representation of utilization.

Q. If the same data were available for other Federal Orders, would you expect the same output and conclusions that you have drawn?

A. It's -- it's going to be -- it's going to be different, but the complications that exist in that order will exist everywhere. Because you're attempting to manage something that has multiple variables that can impact the outcome of the price.

Q. Okay. And so let's talk about risk management. And I want to first focus on a Class I handler who is

buying conventional milk.
A. Okay.
Q. In very broad terms, can that handler construct an effective risk management program for their raw milk costs under the current average-of mover?
A. They can construct a program.
Q. Can that same handler construct an effective program using the higher-of?
A. I believe they can.
Q. Would the effectiveness of those programs be similar?
A. I think so. Because, in both cases -- it comes down -- it comes down to that relationship between the Class III and Class IV advance skim price. And as I have said before, there's nothing in our system. We control a lot of things, we formulate a lot of things, but the relationship between those two prices we don't. So what affects one will affect the other. Some folks may just say it's easy, we can just use the average-of. But based on the proposals, it's going to get complicated.
So my answer is, I think you could do it under both scenarios. Each have complications.
Q. Now, I want you to consider a -- the proposal similar to that of IDFA, or the Milk Innovation Group, where we're using an average plus a rolling or a delayed add-on.
Can -- can that Class I handler of conventional milk build an effective risk management program under that

scenario?
A. You can manage risk -- hedging could be more complicated because that average rolling number, that price change is happening based on a past period, and how the Class III and IV price changes are happening today. We have got two different sets of time that may or may not relate to each other. So I think that could impact things.
Q. But they could build an effective risk management program?
A. Yes. I think if anybody has the understanding of risk management and will go through the diligence to establish a program, whether it's WPC or Class I milk, you should be able to construct a program.
Q. Now, this is a question coming from someone who does not construct risk management programs. I do not buy milk, and I do not sell milk. Superficially, it seems to me, that it would be easier or perhaps more effective to build a risk management program if you knew that the price you were hedging off of or building a risk management program off of was half Class III and half Class IV in every single month versus a regulatory program where you don't know until very close in which price is going to drive your decisions.
Why -- why can you still build an effective program when you don't know whether Class III or IV is going to be the operative price?
A. So what's interesting is one of the other aspects

of hedging that was -- I believe is a specific outcrop from Enron, is that you have to document what you are doing contemporaneously. And I would say even if you are doing risk management, that's a good idea. What -- what was -- what did I intend to do, and how well did I do? Because then you can evaluate it, make modifications.

And the reason I'm taking you over to that documentation piece of it, is that when we sit down and look at these programs and how we construct them, I would tend to say that in every case there are swaps, there are other things that make risk management pretty straightforward.

What you keep hearing -- and this is the part I keep saying -- I haven't seen any testimony that says, I have this sort of risk, and here's how I mitigate it. It's just, I want to manage my risk in Class I. And as I keep saying, that is a lot of different -- means a lot of different things to a lot of different folks.

But if I were going to manage risk, it would be because if I'm going to say, I'm going to buy Class I milk, which is the example everybody keeps saying, it is the interaction with either a co-op or a dairy producer, something over here has caused me to do that. And it's the something over here that nobody is disclosing, and that's where the complication lies.

Because if I'm a Class I handler, especially if I'm making HTST, my contract, by the very nature of the fact that I can pass it through, I can buy it from a farmer co-op and pass it to a retailer, I'm pretty well -- my risk is mitigated. Okay?

But if I suddenly say, I need to fix the price that I'm buying from the producer or the co-op, that means something over here has been fixed. And when something over here gets fixed, what I'm saying is, is whole milk demand is on the rise, but we still consume a lot of 2% milk. And if you are hedging 2% milk, suddenly a complication popped in.

And that's where I'm saying, look, Class I lends itself to the over-the-counter swaps market because you can customize it. Because when we go to the futures market, it is a fixed number. The structure of it is pretty rigid, and we have to do a lot of math to make that thing fit.

And so that's where -- way longer than you were probably hoping for on a response -- but the answer is, everybody's pointing to this interaction over here, but that is the cause, not the effect. Something happened over here that made you want to deviate from basis pricing that milk, or basically allowing that milk price to float. Something caused you to want to change that.

And that's the piece I'm saying, nobody's been explicit about this, and that's where under higher-of or average-of, whatever happened over here, has equal impact on what's motivating this transaction.

THE COURT: I -- I just need your help, because we -- we can watch you using the left hand and the right hand, and we know that the Class I milk is the left hand, and you referred to it as "this."

And then we know that the right hand probably refers to something going on in Class III and Class IV?

THE WITNESS: No, this is more like -- this is a gallon of milk.

THE COURT: Okay. Now you are on your right hand.

THE WITNESS: This is a gallon of milk, and this is a dairy cow, where the milk's coming from.

THE COURT: So left hand is the source of the milk.

THE WITNESS: Source of the milk.

THE COURT: All right.

THE WITNESS: And the right hand is the --

THE COURT: The product.

THE WITNESS: -- the product.

THE COURT: Now I understand.

THE WITNESS: Yeah. So what's happening is, is everyone is pointing to the interaction that has to do with the raw milk, and that's what we want to hedge. Dairy producers want to hedge it. Processors want to hedge it.

I get why a dairy producer would want to hedge it, but based on the construct, we're going to eliminate 87% of the dairy producers based on the size of contract that they would have to entertain.

The processor is saying, I want to hedge the raw milk. The only reason you would want to hedge raw milk is the gallon jug or something over here got fixed, and that's why you would want to hedge it.

And that's the piece I'm saying, in all of the discussion that we have had, everybody is saying, I want to do something over here, but --

THE COURT: With the raw milk.

THE WITNESS: With the raw milk.

But that is a reaction to what happened -- holding my gallon jug -- what happened with the gallon jug, or whatever size it is. But something here initiated the transaction, which everyone's being silent on.

The reason you are silent on it is that is where all the complication lies, regardless of average-of, higher-of, however you want to do it. But this is the impetus of the transaction, not that I want to go out and do something with the farm. Because if you didn't have to, you wouldn't.

THE COURT: So your right hand, is it always packaging or is it sometimes class?

THE WITNESS: It's -- so you -- I'm going to go through my little analogy. If you ever have kids, grandkids, and you play the matching game, right? And you pick up the card and you want two things to match? It's a simplification of risk management.

If I have something that's got a variable price and over here I'm selling something that has a variable price, variable price, variable price, theoretically, no risk.

If I pick up something that has a fixed price and a fixed price, no risk.

If I have something that's variable price and fixed price, now I got a problem. And if I have a fixed price and a variable price, I have a problem.

So that's where I'm saying, if it's variable to variable, I'm buying raw milk, it goes through my formula and passes on to a retailer at the Class I value, there's really no risk.

If I buy fixed price organic milk and sell fixed price organic milk, not so much risk.

If I'm buying milk from a farm and the retailer says, "Eh, I'd like that to be $3.50 for the next three months," risk.

And that's where I'm saying, that's the piece that's missing in this whole conversation.

We're diving into correlations in this, that, and the other, and it's like, but what's -- what's your risk?

The risk is something on this side causes --

THE COURT: On the right hand.

THE WITNESS: The right hand.

Something on the package side of the product made me want to do something.

MR. MILTNER: Thank you for your answer.

And thank you, your Honor, because I was trying to figure out how to help convey that to the record, what -- what this circle with the left hand might be and how you would write that down.

THE WITNESS: Cow, jug of milk (indicating.)
BY MR. MILTNER:
Q. So as part of what you do for clients, do you -- do you track USDA's data retail prices of milk?
A. I do.
Q. And have you observed that there isn't a strong correlation between shelf prices of milk and the Class I price?
A. Yeah. I think that's one of the charts that I provided.
Q. I think it was in there.
A. It's on the PowerPoint. I think it's slide 3, I think, if I remember. Slide 3, yes.
Q. Correct. Okay.
Now, if you are a Class I handler and you do the conventional, you're buying based off the Class I price each month, and you do want to fix or collar your raw milk costs for whatever reason, is that equally achievable under the higher-of and an average-of for the Class I mover?
A. I think so. It just depends on which tool you use.
Q. Now I want to move to the producer side and their risk management decisions.
If a producer -- and let's, for our example right now, let's use a producer that's in a Federal Order, that has about a thousand cows.
Can that producer effectively hedge their milk

check when the Class I mover is an average-of III and IV plus some add-on?

A. Yes. I mean, they should be able to, I believe -- like the example I provided, it is going to depend on which Federal Order system they are in. If that producer is let's say in Order 6, high likelihood that they could do it. If they are in Order 30, which is the Upper Midwest, that has a very low class utilization, I think it's pretty close that they can. I'd have to go back and look at the cow numbers that I calculated. But it -- it actually -- that answer depends on where they are in the country and what the Class I utilization looks like.

Q. Now, when you are talking about risk management in the producer context, do you include the use of USDA programs, like Dairy Revenue Protection, or Dairy Margin Coverage, or Livestock Gross Management, or are you thinking more narrowly in terms of CME options?

A. So because all of the examples provided were in the context of futures and options, in that example I provided I was looking at it under futures and options. Much like where you hear me saying swaps might work better. For smaller dairy producers, certainly LGM. DRP, kind of, that one's not always my favorite. DMC, I think, is effective. Forward contracting with cooperatives is effective. There's just a lot of different ways that producers can -- can manage that risk.

There are some larger size dairy producers that can themselves transact in the futures and options market.

Q. So can that same producer with a thousand cows effectively manage their risk using the higher-of?

A. My answer's going to be yes, because my experience with the dairies that I have dealt with, oftentimes they are working with their cooperatives, and they go about forward contracting through them.

I would also say that if a dairy producer -- the challenge is that there aren't that many dairy producers that isolate Class I. A lot of them will isolate Class III, maybe Class IV if they are in heavy manufacturing areas. Where we tend to see more Class I utilization, those dairies tend to use things more like the DMC program, forward contracting, things like that.

Q. In your experience do -- well, I think you said something the 80-plus percent of producers do not manage their risk to the Class I market; is that correct?

A. Should be careful. Because if you take a look at the requirements -- and this is if they are attempting to do it with futures contracts because that is really what we're talking about. Because when -- before the change in 2019, I worked with dairy producers. We managed blend prices, all sorts of things. So there was nothing that precluded us from doing that, you know, under the higher-of.

So my assumption was, is based on all the reading and the proposals, it was, we want risk management. A lot of that risk management is -- is tied to futures and options markets and that it works better under that scenario. And that's why I crafted the example for dairy producers under that exact same scenario because it was this idea that it was equally available to everyone. And that's where I was saying, not exactly, because if we construct this, again, to hedge Class I, I wouldn't want to exceed the percentage of Class I that would be in my milk price, and -- and I have -- my minimum contract is one Class III, one Class IV, so that's 400,000 pounds. And when you do that math, it eliminates -- if we follow some of the USDA reporting on size of dairy producer, it eliminates approximately 87% of dairy producers.

Q. And so for that 87%, they would be relying on the other tools that we talked about?

A. Exactly.

Q. Okay. And I was going to go through this line of questioning for a farm with around 200 cows, but I think we kind of just answered that question.

A. We just kind of answered that, yes.

Q. Okay. What's -- what is the risk of depooling to a producer that has hedged or tried to manage their risk?

A. It is pretty significant. And this gets back to the idea that if I have -- if the price change in a -- let's say, a Class III futures contract mirrors what I would expect to see in my milk price, because I have got, let's say, a very high -- or decent amount of Class III in my milk price, we would want to see that the price change in the futures mirrors the milk.

And so if I go back to 2020, you know, we spent a lot of time explaining to dairy producers, manage those margins, manage those margins, not only lock in your feed, you know, lock in that milk price, so you are managing the margin, that's what's important.

Because we -- and that message came because around 2004 dairy producers just went, mmm, you know, sometimes they would just sell milk. Or in 2007, 2008, when the feed prices took off, there were a lot of dairy producers that sold their milk but didn't lock in their feed. So the messaging changed and said, you should do well if you manage your margins.

The issue is, is if you do all the right things, once in a while it doesn't work. And that's where, you know, depooling exists in our system. It has for as long as I have been around.

But under the higher-of, it was somewhat limited until the market caught up, so typically, one to two months. Today it could be perpetual. Well, the issue with that is that encourages depooling, and that actually changes that uniform price calculation.

So what happens is, let's say, I'm in an order, and they use 50% Class III and I hedge 50% of my milk with a Class III futures or options or however I do it. If suddenly milk gets depooled and utilization of Class III drops to 20%, as a dairy producer, I'm exposed. I now have overhedged myself by 30%, which means if I take a loss on my futures contract, because I sold it at let's say $18 and the milk price goes to $22, well, I have a $4 per hundredweight loss on this side of the equation.

But on this side of the equation, the Class III got removed from my milk price, so the part that was supposed to offset it on the cash side didn't happen. So actually you can wind up with a number that's well below your projected price through actually doing the right thing. And that happened in 2020. A little less so, but to some degree, in 2022 again.

Q. And so if we think about the producer who is trying to manage his or her risk, would the program that they build be more or less effective using higher-of for the mover or an average-of the mover?

A. Holistically, beyond Class I, for all dairy producers, the higher-of is going to be better because it limits -- it limits the time that the market will spend in depooling.

That is something that I looked at, and I didn't include the data in the report, but the higher-of does reduce the amount of Class III depooling. None of the prices do a very good job with Class IV depooling, but it does minimize Class III depooling. And that is a significant portion of the milk and, you know, how dairy producers are paid.

Q. To the extent you did look at depooling and its causes, did the -- did -- does using the average-of III and IV increase the magnitude of depooling, or the magnitude of negative PPDs that cause depooling, or the incidence of those negative PPDs, or both?

A. I believe it's both when I looked at it.
Q. Okay.
MR. MILTNER: Thank you that's all I have.
THE WITNESS: Okay.
DR. BOZIC: Marin Bozic for Edge Dairy Farmer Cooperative.

CROSS-EXAMINATION

BY DR. BOZIC:
Q. Sara, I was curious, do you know or would you venture a guess what percent of Class I milk in the nation is ESL versus HTST?
A. I think I might actually have that.
All right. I'm looking it up.
Q. Uh-huh.
A. Let's see. So if I take a look at -- so this is the AMS Container Survey 2021, I believe. So this would have been page 34 of 39 of my report.
Q. I'll be right back.
A. Oh.
Q. Go ahead, please. Did you say 35?
A. 34.
Q. 34. Okay. I'm there.
A. I believe it is up on the screen as well.
So in November of 2021 AMS released a container survey report. This is just a sampling of that period. And so we would get some seasonal variation, things of that nature. But based on that, according to those figures, I believe it's going to be somewhere I'm going to

say less than 10%.
Q. So, 7, 2 -- would you say that most organic is also processed as extended shelf life?
A. USDA separates that number out. So that looks like it is around 5.
Q. So if we sum up, 5, 3, and 7, 2 -- let's do that quickly -- that's 12 and 5.
And then the total would be the sum of all three columns in row 12, right?
A. Yep.
Q. So that's 12 and a half plus -- those are percentages or --
A. I believe, that is the case, yes. Yes.
Q. Okay.
A. Because when you come across the top, like let's say up here for whole milk, that's 100 percent. So they are saying, of the whole milk sold in November of 2021, almost 88% was conventional, 5.7 was ESL, and 6.4 was organic.
Q. So conventional meaning HTST in this case?
A. I believe so. That's -- that was the descriptor. So I'm assuming that that is HTST, not ESL, not organic.
Q. What would be your guess for HTST, what percent of that would have a legitimate need to hedge? I'm talking about Class I.
What I'm driving at is that typically passing through the price, you know, one side you get the Class I to the pool, and then you will add your markup and then

pass it to the retailer. So I'm wondering what -- what -- just your expert opinion on HTST, what percent would find themselves in a business model that it will help them if they were to engage in risk management?

THE COURT: Your first part of your question said hedge, and the second part of your question said risk management. So which do you want her to answer?

DR. BOZIC: I don't believe I'm obliged to follow the nomenclature offered by the witness.

THE COURT: No, but choose one.

DR. BOZIC: Risk management.

THE COURT: Okay.

THE WITNESS: So I don't know if it's in here. I'd have to go through and search.

But based on my experience in some projects I have done recently, I want to say, in the United States, when we look at that conventional figure, about 60 to 70% of that is sold under private label.

BY DR. BOZIC:

Q. Uh-huh.

A. So private label is typically, like, store brand.

Q. Uh-huh. Uh-huh.

A. And based on my experience working with the private label folks and -- and how they go about pricing, a lot of them don't hedge. In fact, we can see, it probably shows up in a marketing budget based on that chart we have gone over a few times. I think it was slide 3 of the presentation. So -- and for good reason.

They want consistent, everyday, low prices. But milk is something that still draws consumers into the store. I believe it's like diapers, toilet paper, dog food, milk are top four.

Q. We're in good company.

A. Yeah. That people will actually leave their homes and go in. But once you are there, you will do all of your other purchasing. And that, I would guess, is why we don't see the volatility in Class I being reflected at that retail price.

So if I were to look at that, I would say, you know, somewhere, even if we said half of that number, probably is -- and I think it's probably higher than that -- but half of that figure is probably not subject to risk management because it's -- if I'm a processor, I'm buying it from the farm under Class I, I'm selling to the retailer under Class I, the retailer's using a marketing budget to promote the product.

Q. Oh, sure, sure.

And then the not private label but branded HTST, what is your understanding of their current practices? Do they tend to offer some sort of fixed price deals to retailers or -- or do they also tend to pass through?

A. From what I have seen on the HTST side, it can be a combination. So when we take a look at that branded product, sometimes they attempt to target a price. If I look at the comparisons, I have done some spot comparisons across the country of national retailers, and typically what we see is that branded product is on the shelf slightly higher than the private label product. But, again, that looks like, you know, from -- from what I can see, there's slightly higher pricing that comes through on that branded product that's reflected at the retail shelf.

I don't know that they're necessarily fixing those prices. It is not like -- I think the example I gave, and it just happens to be the product I looked at, was Fairlife. That is a national -- you know, typically a national price. When I looked at it, I think I looked at Idaho -- Twin Falls, Idaho, Chicago, Illinois, and, Pittsburgh, Pennsylvania, the price was the same across the country.

Q. So just to help me summarize across those aspects of conventional that are private label and some of the others, the direct passthrough, I believe you called it basis to basis in your paper? I apologize --

A. Variable to variable.

Q. Variable to variable? Yeah.

So the variable to variable, in other words, stable margins because you are passing through, that would be, what, 65% of the total Class I?

A. Could be.

Q. Is that a fair number? Would you say it's higher or lower?

A. I -- I don't know the exact number, but just knowing my -- my past experience and applying that, and having an idea of how much of that is private label, and

that makes up the bulk of that conventional category, that seems, you know --
Q. A reasonable number?
A. Yeah, it's reasonable.
Q. In your opinion -- so a friend told me, I don't -- I don't have data to -- to confirm the numbers, but a friend told me that since, I believe, he said 2019, that some 29 HTST fluid plants have shut down and 11 ESL plants have opened, do.
You find those numbers to be in a ballpark?
A. I think I actually have the plants.
So what date?
Q. Well, since the higher-of was introduced, let's say.
A. So in 2019, according to the ERS -- so this is page 39 of 39 -- in 2019, ERS reported 445 bottling plants, fluid milk plants, and in 2021 they reported 466. And I think they just released last year's data, but that was after I completed and submitted the report.
Q. So the total number of plants is actually increasing --
A. Yes.
Q. -- not decreasing.
Are -- would it be fair to say that the majority of new plants are ESL driven, in your opinion?
A. Possibly by count. I don't know by volume.
Q. What explains the rise of ESL?
A. I think if we take a look at two plants that have

been announced, it has to do -- as I said earlier, it has to do with protein and specific products that folks are -- are putting together that consumers desire.
Q. Would it be fair to say that most innovation is happening in the products that are processed for extended shelf life?
A. How do you describe innovation?
Q. A novel product that tries to differentiate itself in the market rather than just compete on price.
A. So I don't know if I would agree with that. I think there -- so when we take a look at ESL, there are certainly products that have employed technology that we have had for a long, long time in dairy. It's just being employed to a different set of products.
But I think if you ask any cheese manufacturer, we have had ultrafiltration around for a while, but it's being applied to a new product in a creative way, and that is -- that is keying on what consumers want.
I think I have admitted that I like the high protein products. I like the flavor and everything.
Q. Sure. Sure. Me, too.
A. But when we sit down and take a look at it and say, is that the only place that people are innovating, we can see that from an HTST perspective, it used to be shelf life was seven to ten days, and there are some manufacturers that are pushing well into the 20s. So I wouldn't exclude HTST from making investments. The other thing that they can do is retool those older plants to

make them more efficient.

So that's why I'm asking where your innovation is? You seem to be looking at product attributes in packaging, but I'd also say that there's processing that can be done as well, that -- that -- that they are innovating and incorporating new information into those plants so that older plants can function, you know, a little bit more efficiently.

Q. So all things considered, would you expect the share of the Class I that is HTST to stay stable, increase, or decline in the coming years?

A. I don't understand the question.

Q. Like, let's say that the HTST today is, what did we find, 87.5%. Like, would you expect that three years from now to be higher than 87.5 or lower than 87.5%? Is it going in a particular direction?

A. Boy, that really depends. I mean, that's certainly outside of my scope, and you would have to talk to folks, I would recommend, like, dieticians, folks who are paying really close attention to consumer trend. And I would say it really depends.

You know, we have got Gen Zs who are motivated by, you know, sustainability practices, what are you doing to the environment, and they may view one practice over another as more beneficial. Single-use plastics is something that comes up.

So those are all sorts of things that -- there are people in marketing, in consumer research that could probably better answer that question. So the trajectory of it today, I -- I just -- I don't know.

Q. I will accept your answer that it's outside of your field of expertise. I was just curious if you had an opinion.

DR. BOZIC: Thank you very much.

THE WITNESS: Okay.

THE COURT: Are there additional cross-examination questions for Ms. Dorland? I see none.

I would ask for Agricultural Marketing Service to let me know whether you would like to ask questions now or whether you would like us to go into the examination with regard to the changes made in the exhibit first?

MS. TAYLOR: We'll do the corrections first.

THE COURT: We'll do the corrections first. Yes.

Now, can that -- can the corrected one go on our screen? Would that be useful to anyone? Or would it even fit? It's quite large. If it would fit, could we see it?

MS. HANCOCK: I think it's like a Bingo card, "L17."

THE WITNESS: Just give me one second to pull it up here.

MS. HANCOCK: There's no "L" in Bingo, huh?

THE COURT: Does anyone need a copy of the revised one e-mailed?

I see no one indicating they need that at this point. So it's good we waited, I believe.

REDIRECT EXAMINATION

BY MS. HANCOCK:
Q. Okay. Good morning, Ms. Dorland.
A. Good morning.
Q. Let's see. Okay. So previously, last week, we had admitted Exhibit 240, and Dr. Bozic had taken a deep dive into some of your formulas and discovered that one of them was not correct; is that right?
A. L17, yes.
Q. L17.
And did you, in the interim, go back and make the corrections to that cell?
A. Pretty much when I got back to my hotel room that evening, yes.
Q. Okay. And is that what we have now on the screen in front of us?
MS. HANCOCK: And then I'll ask your Honor if we could assign it a new exhibit number.
THE COURT: Where are we? 251. Yes. This will be marked as Exhibit 251.
(Exhibit Number 251 was marked for identification.)
BY MS. HANCOCK:
Q. And do you want to hover over L17 again? I guess we should clarify, your cell numbers haven't changed at all, have they?
A. Nothing's changed, other than the formula contained within.
Q. Okay. And if we hover over that formula, can you

show us or tell us which corrections you made to that cell formula?

A. Sure. I think we addressed three things that day.

So I think the first question had to do with the precision of the butterfat value that I was using, because it had four digits. And I believe the report, the December 2022 computation of producer price differential for Federal Order 126, and when we looked at page 2, I believe -- yes -- page 2, the percentage on the butterfat test had three digits after the decimal place, and I had four. And so that was something that came up -- actually, it's right -- this cell right here, N17. I had a fourth decimal place.

And I -- to correct the record, I said that I had key-punched those, and actually I did not. As I answered just a little while ago, I selected Order 126 because they provide their data in Excel format, and I didn't want to make key-punch errors, so I copied everything. And in that spreadsheet, and I confirmed that with the AMS API, it goes out -- the butterfat goes out to four decimal places.

Q. Okay. So right now you have hovered over -- on Exhibit 251, you are hovering over row N -- or column N.

And that is the column that you copied from the AMS API website for Federal Order 126?

A. From the Federal Order 126 website, correct.

Q. And do you have the website that you used for that that we can read into the record to make sure that we

cross-reference that?
A. Sorry, I closed the spreadsheet earlier.
Okay. So I used the statistical handbook for Southwest Order 126. The website is dallasma.com/order_stats/stats_sum.jsp.
Q. Okay. So you confirmed that you did, in fact, have your row N. And if you want to pull your spreadsheet back up, your row N was actually correct with the number of decimal points that you used. And so then you were able to verify that for -- if we go back to the formula in L17 -- you were able to verify that number was accurate.
What other changes did you make to the formula in column L?
A. So rather than doing the Class III components plus the PPD, I actually did the calculation for the Class I price. So I corrected the formula, so that it reflects the Class III components plus the PPD.
Q. Okay. And how did that change the results that are included in the spreadsheet 251 as compared to what they were in Exhibit 240?
A. As I said earlier, it didn't really change things much. It was a slight improvement. But when we look at what ends up happening with what a producer settlement fund obligation could be versus the results of using Class III and IV futures, it still remained unrelated.
Q. And you have numerous charts and spreadsheets of different ways that you sliced and diced information to look at. The risk management tools in comparing

average-of to higher-of in your various exhibit starting at your testimony in 238, presentation 239, and the spreadsheet in 240, that's now been updated in Exhibit 251, is this spreadsheet in Exhibit 251 just one of the ways in which you have sliced and diced the information to look at the various considerations that people have discussed in making that change?

A. It is. This is just a hypothetical.

Q. Okay. And then Dr. Bozic had asked you a lot of questions about a statement that you have on page 13 of Exhibit 238 related to the correlations for evaluating the effectiveness of a hedge.

Do you recall that?

A. I do.

Q. And you tried to cross-compare it to this spreadsheet in either Exhibit 240 or what is now marked as 251.

Is Exhibit 251 the updated version of 240? Is that a tool that you were trying to use to compare the correlations for an effectiveness of a hedge under average-of or higher-of?

A. No. This is just a hypothetical. Somebody had said it's possible organic processors are trying to hedge their producer settlement fund, so I tried to craft an example that would reflect what that might look like.

Q. And that was just a working tool for you to decide if it actually was effective or not?

A. Correct.

Q. Okay.

MS. HANCOCK: Your Honor, at this point we would move the admission of Exhibit 251 to allow the continued cross-examination with this correction.

THE COURT: Is there any objection to my admitting into evidence Exhibit 251?

There is none. Exhibit 251 is admitted into evidence.

(Exhibit Number 251 was received into evidence.)

THE COURT: Cross-examination may begin.

MR. WILSON: All right. I guess I'm on.

THE COURT: No one has anything more?

How beautiful. You are on.

MR. WILSON: That wasn't to me, was it?

THE COURT: Identify yourself.

MR. WILSON: Todd Wilson, AMS.

RECROSS-EXAMINATION

BY MR. WILSON:

Q. Hi, Ms. Dorland. How are you?

A. Good. Thank you.

Q. Thank you for coming back.

A. Anytime.

Q. A weekend or weekend plus days.

I've got a couple of questions from the testimony that I would like to ask, as well as some of the data points on the revised exhibit and things.

On page -- on page 9 you talked about how Class I risk management is complicated. And I think I could probably speak for most everyone in this room, that I now appreciate way more of that statement than I did when I first read it.

You made a statement in there, I think, that -- and I think it's in that paragraph -- about how the pooling attracts -- how Class I price attracts milk to the pool, and how a single uniform price supports orderly marketing.

And I was wondering if you might elaborate on those two statements as to why, why that is, in your opinion?

A. Sure. Under the backdrop that this is adhering to all of the existing rules as it relates to diversions and qualifications. So this isn't an idea of -- because I think I got a question about that last week, about asking unregulated milk to come into the system. This is just the systemwide milk.

So the system works efficiently when we have a single price, right? Because you have heard me talk about it is a network, and sometimes we cross through Federal Orders to move milk from one place to the other. But all of the dairy producers in that system have helped support that order to ensure that that milk gets to the fluid market as designed.

When we have the average-of, because -- and this is something I kind of repeated a few times -- we have a lot of great formulas, and I think our formulas function in different ways to relay information to the market. But one thing we don't control is the relationship between Class III and Class IV skim, and that's for good reason.

Class III is based on cheese whey, and skim is based on nonfat. And we need that reflection because nonfat is typically an export product, so it gives us a flavor of what's happening internationally. And because we're moving approximately 18% of our milk solids overseas each year, we need that price discovery in our numbers.

Cheese whey, whey is an international product, but our cheese is still predominantly a domestic product, so it gives us an idea of what's happening domestically in manufacturing.

And years ago I wouldn't have necessarily understood kind of -- whoever sat in that room in 1996 and 1997 had a really great idea with this higher-of, because -- and credit to them, because when I first started in dairy, I'm like, this is crazy. But it actually it works quite well.

Because there are times, when the international market, if we go back to 2007, 2008, '13 and '14, even parts of last year, the international market says, hey, we need your milk. And so suddenly that price moves up quickly. It's typically reflected in our Class IV price.

The same thing can happen with cheese. Cheese is a demand that's -- you know, we -- we have got good per capita consumption growth. We're starting to move more of that internationally, and that tells us what's happening in this market.

And the combination of those two, and which one is saying, hey, hey, hey, I'm the one that's drawing -- you know, I'm the one that's calling on that milk, by reflecting that in the Class I price, we're allowing dairy producers to react to that information in realtime.

And so when we average those numbers -- I can't remember if I said this or I was thinking it on my drive this morning -- but if I were to average the speed of a plane and a car, right? The slower car doesn't make the plane slower, and the faster plane doesn't make the car faster. And that's effectively what we're doing when we put the average-of together.

And what happens is with that -- that price that -- that we tie to it, as everybody said, oh, it is just this little number that we tie to it. But that's a little number from two or three years ago. What's interesting to me is folks are, like, ah, you know, you're going crazy about what happened in 2020. It was just 2020. Well, except for these formulas are going to say 2020 is going to show up again at least two or three times, and it's going to keep telling dairy producers do something.

And so it's a little bit three bears, and that higher-of kind of gets it right. It is just right. Because if we inject too much money, we're telling dairy producers, bring us more milk, when we may not need it, like the second quarter of this year. But if we don't tell them that we need the milk, then -- then things get kind of messed up and the signals get crossed.

So that whole theory of primacy, that Class I holding that whole system together and saying, you know, for those people who are participating in the market, it allows the system to function properly, because we tend to have one price. When we have more than one price, not only is it impacting -- you know, we're talking about a small potential fraction of milk that may want to hedge Class I. But what changes in Class I affects the entire system, meaning when we have perpetual depooling, it creates two prices where people can choose what system they are going to be in and what system they are not going to be in and at what time. And, unfortunately, it's dairy products that typically feel the brunt of that activity.

Q. And so those two prices that you are talking about, one would be the regulated price and the other is the non-regulated price?

A. Right. It is basically the classified price versus that uniform price. When I forecast that my classified price is going to be higher than the uniform price, and I'm a II, III, or IV manufacturer, I can choose to disassociate from the system.

Q. When you say "disassociate" --

A. Depool.

Q. Thank you.

So to follow up with that -- that thought, on page 14, you talk about depooling and how it creates

complexity to have an effective hedge.
Could you talk a little bit more about other things -- or that, as well -- about how that depooling or how those other -- you mentioned two or three other things there -- how those create more complexity to -- to this risk management programs that people might want to participate in?
A. Yes. So when we look at what the objectives were, so do you want me to answer it from a perspective of the average-of and higher-of? How do you want me to answer that? That would help me.
Q. So I think your testimony is talking about how -- how one program or how one methodology is different than the other, so I would just let you choose one.
A. Okay. In which paragraph -- because I'm just kind of looking -- I'm looking at two, and they look kind of different to me.
Q. On the second -- on the second paragraph, "Although the possibility of depooling has existed" --
A. Gotcha.
Q. -- "the depooling opportunities" --
A. Okay. So -- so when we sit down and take a look at that, we know depooling, it can happen, and it's -- it's a -- it's one of those side effects of that advanced price. And it's been around since I have been around, and I happened to come in right around Federal Order reform, so -- but -- but the difference is, is that -- that six-week lag that we talked about a little bit earlier,

all that is, is the market is attempting to catch up. So we know that when we announce a price in advance, there's benefits to the system for doing that, and we have to catch up.

So if we are on a climb, prices tend to climb, and then that milk price will eventually catch up on the Class I side to the announced Class III and IV prices, and then the depooling subsides.

With the average-of, there's no guarantee that the price will ever catch up. And the reason is, is it really just depends on where is Class III skim going and where is Class IV skim going? And they can, for long periods of time, diverge.

I want to say -- and my memory may be a little faulty -- but since November 2021, most of the time the Class IV skim price has been the highest price, and the Class III skim price has been less than that. That's the opposite of some of the timeframes that we have been looking at.

So on average, the two look pretty decent. But when they diverge, they diverge for long periods of time. It's that perpetual depooling. We can plan for 30 days, 60 days of depooling. We understand what that can do.

But for dairy producers, if they are trying to hedge margins, like most everybody's advocated that's the right thing to do, if you are locking in feed costs for a year and you go and try to lock in your milk price for six months, let's say, and depooling happens over that entire time, you get a really unexpected result. And -- and that's why I'm saying, they tend to bear the brunt of that.

Companies can -- we can't always see it coming, but once we see it happening, we have got other ways to deal with it. It's the dairy producer that bears the brunt of depooling.

Q. All right. Thank you.

Continuing on page 17 -- these are just kind of some clear-up clarification questions here. The second paragraph you reference Table 2. I, for the life of me, can't find Table 2.

A. There was a lot of editing that happened, and I believe Table 2 might have been in version, like, seven. I apologize for that. We can remove "see Table 2."

Q. So you want to strike that?

A. We can strike that, yes.

Q. Okay. Thank you.

THE COURT: Let us take a moment so that we can strike some language from page 17, of what exhibit number?

MS. TAYLOR: 238.

MR. WILSON: 238.

THE COURT: So you are going to hand that to an AMS person to strike it, or you are going to strike it on your end of the table?

AMS REPRESENTATIVE: I can strike it.

THE COURT: Okay. So please direct her where to strike.

THE WITNESS: Sure. It's page 17 that says "3.5, Proposal 16, Class III Plus." It's the second paragraph that begins "FMMO 30." And it should read: "FMMO 30 had the highest Class III utilization at 91% in 2022," and then everything after that to the comma should be removed.

THE COURT: Okay. What will be removed? What will she strike through?

THE WITNESS: The parenthetical notation of "see Table 2."

MS. HANCOCK: But not what comes after that?

MR. WILSON: So what comes after that is the percentage 53.94. Is that the percentage of Class III in the whole FMMO dataset?

THE WITNESS: Yes. That's the weighted average.

MR. WILSON: Okay. I see it.

So it was just noted, the last paragraph as well, your Honor, the third and fourth lines carries over through the -- through the fourth line is another parenthetical, "See Table 2."

THE COURT: So I'm going to have the witness speak that into existence so that it can be done just like we did the other language.

THE WITNESS: Sure. It's the final paragraph of page 17 that starts, "The Class III Plus solution," it is three lines down. It should read: "The proposal assumes all FMMO order utilization mimics that of FMMO 30," which they do not. And everything -- the parenthetical note after that, "see Table 2," should be removed -- stricken.

THE COURT: So the words she is to strike are?

THE WITNESS: In the parenthetical note, "see Table 2."

THE COURT: Done. Thank you.

MR. WILSON: On page 19, middle paragraph references, "see Section 3.4.3 and 3.4.4," I can't find those, either.

I think they are just another -- maybe a two or something. I don't know, I just...

THE WITNESS: Yeah. It's supposed to start with 2. I think those are supposed to be 2.6.1 and 2.6.2.

THE COURT: I'd like you to take your time and make sure before we actually have anybody mark the exhibit.

THE WITNESS: It should be 2.6.3 and 2.6.4.

MR. WILSON: While you are there, there's also a reference to 3.4.5.

THE WITNESS: Which should be 2.6.5.

MR. WILSON: Thank you.

THE COURT: All right. So direct the person who will be marking the exhibit as to what page number to go to.

THE WITNESS: Okay. We're going to go to page 19.

THE COURT: And continue to direct.

THE WITNESS: Sure. Right before the section that says "Conclusion," there's a few sentences there that reference sections. So where it says, "Further, hedging milk at retail or in food service uses is not remarkably improved by migrating from a higher-of pricing to an average-of methodology - see sections" -- and it should say 2.6.3 and 2.6.4. That replaces the 3.4.3 and 3.4.4.

And then it continues on: "Finally, while there are statements implying dairy producers have ready access to Class I hedging, the analysis in section" -- it should read 2.6.5, replacing 3.4.5.

THE COURT: It has been done. Thank you.

BY MR. WILSON:

Q. In the revised Exhibit 251, I would like to understand a little bit more about what this -- I know what it's trying to say, and you have articulated that very well, but it doesn't represent an effective -- a thing that you would -- that you would recommend.

A. Right.

Q. What in here -- what would it look like to be something that you would recommend? Are the dots closer together? Is the line -- is the trend line flat? I don't know what it is that would look good.

A. You just wouldn't do it. So -- and here's why. If we take a look -- I was trying to kind of back into, based on some of the exhibits that we looked at earlier, how much organic milk is regulated by the Federal Order system, and it's a pretty small amount. But there is some.

And because organic milk buys milk under contract for one, two, three years, could be five years -- I have seen one, two, and three -- there really would be no -- no reason to do this.

So you have heard some folks saying, oh, but this number, this difference between higher-of and average-of is so small.

Typically in risk management we look at things that are -- are pretty good size. And -- and in organic milk, it's going to be that raw milk value.

Well, when they determine that price, then they can theoretically turn around and price that product at retail. And, yes, they may have some of that milk that is subject to the producer settlement fund for being able to market into that -- into that area.

But the -- again, how much milk they are going to market in there and their ability to control all of the other actors, who are significantly larger in that market, is so very small. You are assuming an inordinate amount of risk -- you are actually, I call it, you are creating risk in your system rather than mitigating it.

And so that's why -- that's what that example was to say is, you really just wouldn't want to entertain this, even though folks may say they do, it's just -- you are creating risk in your system, and unpredictability, which is contrary to what you would want to achieve.

Q. In that same exhibit there's a page 2 that has a lot of the data points from the left to right.

And I think you mentioned this earlier in one of the crosses, did -- is the data that is in page 35 of Exhibit 238, that is referenced as Exhibit 11 and 12 of

your testimony, is the data that's represented on that Exhibit 238, is that from this same dataset?
A. No. That's the eye chart dataset. I -- I can't remember what the number is. It's the one with the really teeny tiny numbers. It sits in there.
This was just data to create that hypothetical for the organic. The other sits in the hypothetical for the 2% Class I milk.
Q. So the eye chart data, which is also part of the original 240, I'm assuming it's part of 251 as well, that feeds into the -- into the calculations that you used on the --
A. Page 35?
Q. No, on the -- on the -- Exhibit 251. That data feeds into that, as well as the -- and those are futures prices --
A. Futures prices, yes.
Q. -- right? Correct?
A. Any time I use futures prices, that's --
Q. That's the eye chart data?
A. Yeah, the eye chart data.
Q. That's clarification for the record.
So -- and I think you mentioned this to one of the other crosses. So the Y axis for the top graph on page 235 is the previous month's Class III --
THE COURT: On page what?
MR. WILSON: 35, Exhibit 238.
THE WITNESS: Yes, so that's the previous month's

Class III announced price, which is effectively the same as our closing futures price.
BY MR. WILSON:
Q. Is that price in that futures eye chart data?
A. Yes.
Q. And would be the --
A. Oh, excuse me, no. I apologize. The futures are just the daily closing prices. So it -- it -- on the final day it should be reflected there, yes, because that would have been our final closing settlement price. But all of those daily prices are just the futures closing prices.
Q. Okay. So you graphed the previous month's announced Class III price --
A. Correct.
Q. -- that the FMMO announced --
A. Yes.
Q. -- at 3.5 --
A. 3.5, butterfat.
Q. Okay. And the X axis of that is the announced Class I price at 2% butterfat.
A. Correct.
Q. You mentioned something in the cross that I think you were -- I think the question related to this exhibit. You talked about the sale price.
Did -- did you mean the retail price or are you talking about the Class I price that's announced on the FMMO class system?

A. If you are going for hedge accounting and you want to hedge 2% milk sale, you would actually look at the 2% price, your -- your company's history of the 2% price.
It should largely be related to the Class I price adjusted for fat, but it might not be. And that's where, I think I might have mentioned it, we have a saying in accounting, you can't hedge the rubber tire -- or the rubber in a rubber tire. We can't break these things apart unless it is allowed contractually.
So what that's saying is, is if your resin price changed, if labor costs changed, you have got to absorb that because you are attempting to hedge that specific price, not just the fluid milk that goes into it.
Now, we know the fluid milk makes up the lion's share of that cost, so they should be somewhat related, but you have got to accept it for all of its dings and bumps. That is, you are going after that contracted price because that is where -- remember the cow and the jug? The jug is where you have the risk, you can't just isolate one piece within it unless contractually it stipulates that you can.
Q. And I think I remember reading in your testimony that the timeframe of these graphs is 2017?
A. I believe that was the case. I can confirm that.
Q. And I'm trying to, in my head, reconcile those two graphs on this one page, Class III effectiveness for hedging versus Class IV effectiveness for hedging.
In the Class IV graph there's some dots -- that's

not the right word for that -- in the very high range, 22, 23. Is -- is that the Class IV futures price for a time period?
A. So what -- what I'm plotting there -- so let's see, the 22, 23. On the Y axis, the ones that are kind of off --
Q. Yes, the Y axis.
A. Yes.
Q. That be would the Class IV futures --
A. That's the Class IV --
Q. -- at some point in time --
A. -- compared to where it -- where the Class I price ended up at that time. Yes.
Q. Some time period in 2017 to 2022?
A. Correct.
Q. My last question, Ms. Dorland. So there's been lots of testimony and cross on disorderly marketing, depooling. Part of your testimony also addressed this. And you made a statement, I'd just like to get your opinion, clarify if you would like.
And I think you stated that disorderly marketing causes depooling.
So my question is, is that -- is that accurate, or does depooling -- is depooling a symptom of or a result of disorderly marketing?
A. It would be the latter.
MR. WILSON: Okay. Thank you.
MS. TAYLOR: This is Erin Taylor with AMS.

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. So following up to that, can you give a short description of what, you know -- well, let me back up a bit.

The Act charges the Federal Order is providing for orderly marketing conditions, and everyone has a different opinion on what that means.

So what is your opinion on what orderly marketing should look like?

A. So one thing that is a common refrain of mine is that regulations should set up the -- you should be setting up the rules of the game, the framework for which we operate. But regulating business decisions, to me, seems like that would be outside of outside of the scope.

So what it is, is in -- in my opinion, what the Federal Order structure is attempting to do is take a complicated set of market information, and it's trying to -- timely, and there are some delays, but it's trying to relay that information to all of the participants such that we can get milk to move to where it needs to go, with the primary sole focus on fluid milk. And that is calling that milk to where it needs to go when we need it, and allowing that milk to move back to manufacturing when that demand -- when that demand sub sides.

I think sometimes we get that confused with seamless operations because really what this is, is it is a communication of information in market signals. And to me that -- if you can do that well and not have what I would say systematic risk, some kind of inherent flaw in the system that people are put out of business because they did all the right things.

And when you start to see what happened after 2019, dairy producers that I have sat in meetings with, that aren't there after a while because they did all the right things, but the system didn't work for them, to me, that's where we have created the disorder.

You know, we'll hear about milk being dumped. That's oftentimes business decisions. It's weather. It's other things, things that the system can't necessarily control. Although it can provide some relief in the different levers that USDA has.

But it's that clear and crisp communication, as clear and crisp as we can make it, that says things have to move and we need more milk. And sometimes, dairymen have different decision-making, you know, things. But it's the framework. It's that -- it's that system that guides everything.

That is the envy of the world. I have travelled the different places. People really like our system because we're transparent. We communicate our information. We would like perfect information; it's not going to be possible.

So when I look at disorderly markets, it's when the system is actually structured in a way that is miscommunicating information. And that is why, I guess every person who I talk to, I'm sitting here for the second time, because it is so important. Because if we mess this up, we're messing with people's livelihoods and their businesses. And that's where I'm saying, that disorderly marketing is stagnant data coming into the system, all of those things.

So when I look at what USDA is charged with, it is really that structure, formulation that communicates information, that allows that the entire network to move in the way that we would expect it to.

Q. So given that, your definition, a question for you then is, should Federal Orders prioritize or how should they prioritize facilitating risk management versus the other things that they provide?

A. Data is of the utmost importance for risk management. And I think, you know, with few exceptions -- and that's actually not USDA, it is the rest of us who may or may not communicate the information well -- that data is important because information is necessary. Because what that does is it levels the playing field. We know we can't have perfect information, and we know there's, as we call it, friction. Some people have better information.

But what USDA does with that data, it allows for the smallest of dairies and the largest of the -- of companies to see that transparency and see a glimpse into that market. That is ultimately extraordinarily important.

But it is -- again, based on my definition, risk management, there are people who can make markets in just about anything and everything. They are extraordinarily creative individuals.

Dairy is not that complicated when it comes to derivatives. There are people who do things that are wild and crazy in other markets, but there's somebody there who is willing to do it. And I would say because of our consistency, because of our transparency, that chart that I keep showing, with the -- with the colorful -- here it is, on page 26, that statement of traders, that buy-side, we have encouraged other people to come to our markets that provides us liquidity.

Some of the complaints that you hear about Class I is so expensive, and this, that, and the other, that was a reflection of limited liquidity in some cases, and it is harder for people to get these transactions done.

But I would say through the work of the industry, through -- through the diligence of this process, through the data that we have, that is really what's allowed risk management to do its thing. It's the -- it's that system -- and that's why I'm here -- that system is so very important. That's what lets people manage risk.

What they don't understand is tweaking that system. You know, as I said, the Swiss watch. Taking a cog out, just here and there, and replacing it with something else, that system doesn't function quite as well, and our reliability and predictability become less. And that's the piece where I'm looking at it saying, it's not that you have to give a nod to risk management. It's the very nature of what USDA does in that consistency, in discipline and rigor, in those formulas, and defining those relationships that allows risk management to do what we do.

Q. So a follow-up. And I think I have heard throughout your cross-examination, in your statement, in your opinion, the change that was to the current mover that we have facilitated more depooling, and so the trade-off between what we have now versus the depooling impact to producers is not one that you would recommend?

A. I would not recommend the -- sticking with the average-of. I just -- look, if it was superior in every way, you wouldn't link it to the higher-of. There's a reason it's linked to the higher-of. In fact, I went back and did just a smidge of reading, because I vaguely remember the BFP. But when it was moved from that to the classified pricing system, there wasn't, well, we're going to tire anchor ourselves to the way we used to do it. It was a clean break. It moved.

There is -- there has to be a recognition that the higher-of has served some function in the system. Otherwise, why has every formula linked itself to the higher-of?

And this is kind of to the question earlier, where it was, well, you could do Class III and IV hedging of Class I and then do a swap of your cream, and I'm looking at it, like, cut out the middleman and just go for the swap of the Class II. It's the same thing. Yeah, we can go through 52 gyrations, or just acknowledge that the higher-of is what you are trying to get to, and you can't get there without it, so just go to it.

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

THE COURT: Are there any further questions for this witness before she's excused?

DR. CRYAN: So Roger Cryan for American Farm Bureau Federation.

RECROSS-EXAMINATION

BY DR. CRYAN:

Q. Based on a question Ms. Taylor just asked and your answer to that, would you say it would be very helpful to -- however this turns out -- it would be very helpful to the industry and to risk management in the industry to have a Class I futures and options complex?

A. Yeah. I think that's -- so that's -- to me, that's business. That is going in and approaching the CME and talking to them about a new derivative.

Q. Absolutely.

A. And I have done that over the years, and they will bounce things off of me saying, hey, what do you think?

If there is that much clamor for it, if there are that many people making a market, the CME is not going to turn a blind eye to that, nor are any of the people who make that over-the-counter market. We have used them in the past. They would be more than happy to provide that liquidity in the future if there's -- if there's a justification for it financially.

DR. CRYAN: Wonderful. Thank you.

MS. HANCOCK: Your Honor, seeing no further movement in the room, I have no further questions for Ms. Dorland. We can let her go at this time.

THE COURT: Wonderful. Thank you.

THE WITNESS: Thank you.

THE COURT: This witness may step down.

And let me find out what we should do next. It's 11:28. Do we want a ten-minute break, or no? Yes, we do.

MS. TAYLOR: I will say what I would like to do next is bring up our two farmers who have been patiently waiting for us, and maybe we have a chance of getting them on before we break for lunch, and then after lunch start with Mr. Umhoefer.

THE COURT: Good plan. All right. Please, it's almost 11:30, so please be back and -- oh, let me hear from someone else.

MR. ROSENBAUM: Given how -- we have three witnesses, two of whom really need to testify today, Mr. Herlache and Ms. Greenbaum. And so John has agreed he would wait and go third. Hopefully we will do all three today, but that's the current plan.

MS. TAYLOR: That's between you all, then.

THE COURT: Very good. Thank you.

But that -- the reason we need to know those things, and the reason I'm glad you alerted us, is everybody in the room has to prepare their cross-examination, so they need to know who is coming.

MR. ROSENBAUM: Yes, your Honor.

THE COURT: So I thank you.

All right. Good. Please be back and ready to go at 11:40. We go off record at 11:29.

(Whereupon, a break was taken.)

THE COURT: Let's go back on record.

All right. We're back on record at 11:41.

Would the witness please identify himself and spell all of his name?

THE WITNESS: My name is Richard Christen Kraft, R-I-C-H-A-R-D, C-H-R-I-S-T-E-N, K-R-A-F-T. But everyone calls me Chris, so...

I am a dairy farmer from Fort Morgan, Colorado, where my --

THE COURT: Oh, wait. I'm going to swear you in.

THE WITNESS: Oh, I'm sorry.

RICHARD CHRISTEN KRAFT,

Being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. PROWANT:

Q. Mr. Kraft, before you start, in preparation for today, did you prepare a testimony which has been labeled NMPF Exhibit 87?

A. I did.

MR. PROWANT: All right. Your Honor, if we could please identify that as the next exhibit number, which I believe is 252?

THE COURT: Yes. We'll mark that as Exhibit 252.

(Exhibit Number 252 was marked for identification.)

THE COURT: And I need your name for the record as well.

MR. PROWANT: Apologies, Your Honor. Bradley Prowant on behalf of National Milk.

THE COURT: And for my benefit, spell your last name.

MR. PROWANT: P-R-O-W-A-N-T.

THE COURT: All right. Now, I do not have a copy of that, if we have extras.

You may proceed.

BY MR. PROWANT:

Q. All right. Mr. Kraft, if you could please proceed with reading your statement. And I'll just remind you that we have a court reporter over here, so try to go at a moderate pace so that she can keep up.

A. Yes, sir.

I am a dairy farmer from Fort Morgan, Colorado, where my wife, my son, and I have a dairy farming operation that we started in 1988. We milk 6,000 cows and farm 1,300 acres of corn and alfalfa, which is feed for our cows.

We are farmer-owners of Dairy Farmers of America. I serve on various boards and committees within DFA, including the DFA Executive Committee of the board. I'm also a Vice President of the Fort Morgan Reservoir and Irrigation Company and president of Jackson Lake Irrigation Company. From 2000 to 2006, I served on the Colorado Water Quality Control Commission. Additionally, I currently serve on the National Milk Producers Federation Board of Directors.

I am here today to represent DFA in support of the proposals submitted by National Milk Producers Federation. I also want to specifically address the Class I price surface proposal with respect to Colorado.

The outcome of this hearing will have huge consequences for our dairy industry, and especially on the farm. Dairy farmers live on the margin, which is the difference between the price we are paid for our milk, (income) and what it costs for us to produce the milk (expenses), which include the costs for feed, labor, interest, milk hauling, promotion, supplies, bedding, manure management and environmental costs, repairs and maintenance, utilities, taxes and licenses, insurance, fuel and oil, professional and consulting fees, employee benefits, veterinary testing and trimming, miscellaneous, and the cost of raising heifers.

If the number is positive, we use most of that money to upgrade and improve facilities and equipment to make them more efficient, reduce our costs, and pay off loan balances. If it is negative, we have to use our savings or borrow money to pay the bills until the number becomes positive again, which often can go on for months at a time.

Our farm's cost of production has exploded in the last few years. I asked our accountant to analyze our costs of production changes going back to 2015 through 2022. Cost remains similar 2015 through 2019, and then shot up from 2019 to 2022 by $4.49 per hundredweight, which is a 28% increase. In Colorado specifically, the cost of water for the cows on the dairy and to grow their feed has gone up rapidly as the population in our state has grown and competition for our limited water supplies has increased.

Unfortunately, the Wisconsin price surface model does not recognize the unique circumstances involved in supplying a large Class III cheese plant in Colorado.

Usually large manufacturing plants are built in places where there's plentiful milk supply. In the case of Colorado, this was not true. Leprino wanted to build a cheese plant. This new demand opportunity allowed the dairy farmers in Colorado to grow and to contribute to Colorado's rural economic development.

Colorado is a milk island and the factors affecting us are not fully recognized in the Wisconsin model.

Colorado's milk supply and cow numbers have increased considerably since 2005, but this growth occurred to supply a large cheese plant, which we have contract -- to which we have supply contract obligations.

With a growing urban population in close proximity to the bulk of Colorado's dairies, there have been cost of production increases due to water and irrigated farmland pricing competition.

Colorado dairies have also faced increased labor costs due to the state's growing urban population on the front range, drawing agricultural workers to town, in addition to stringent new state agriculture labor laws and minimum wage rules.

The basis, or transportation cost, to move important nutrients into Colorado from the Midwest has increased considerably in recent years due to elevated supply chain costs. For example, corn basis has increased $0.25 to $0.50 per bushel for the corn we buy for our farm.

We have a water district in our county from which we buy water for the cows to drink and cleaning the barn, which is costing our farm about $40,000 per month. Our water costs have increased considerably over the last 20 years.

Our dairy farm operation is a tremendous capital investment with low returns on investment. Given the slim margins in which dairy farmers operate, often a small decline in milk price greatly impacts our bottom line.

THE COURT: May I stop you just a moment?

What -- what you read had one different word in it. I just want to make sure that you say what you want on that sentence.

THE WITNESS: Where do you want me to start again?

THE COURT: So "given the slim margin."

THE WITNESS: Given the slim margins in which dairy farmers operate, even a small decline in milk price greatly impacts our bottom line.

THE COURT: Thank you.

THE WITNESS: Even the moderate Make Allowance adjustments being proposed will likely reduce our pay price by a hefty $0.50 per hundredweight. The initial Wisconsin price surface model would reduce the Colorado pay price another $0.40 per hundredweight.

Given those thin margins, if the factors influencing how much we are paid for our milk reduce our pay price by more than $0.50 per hundredweight, it will have serious negative consequences on Colorado's milk supply. This would make it almost impossible for new, young dairy farmers to get started to replace those that leave the industry.

In conclusion, I'm here today asking that you please recognize the shortcomings of the price surface model with respect to its treatment of the uniqueness of the Colorado dairy industry. Please give us this consideration so we can contribute -- continue to produce milk in an economically sustainable manner.

As a proud Colorado dairy farmer, I thank you for the opportunity to testify today.

BY MR. PROWANT:

Q. Thank you, Mr. Kraft. I just wanted to follow up

on a couple statements you had on page 2.
You noted you had your accountant pull your costs of production from 2015 to 2022. And I'm wondering if you have 2023 numbers that you could report.
A. We just -- we just got our 2023 numbers a few days ago. And, yes, they are even higher than 2022 numbers.
Q. Do you have a sense of what they are? You have reported here from 2019 to 2022 that your cost per hundredweight was $4.49 -- a $4.49 increase.
Do you have any sense of --
A. Yes. So it's at least another dollar higher for the first half of '23.
Q. And then the following line you talk about the cost of growing feed. And I'm just wondering if you know offhand what percentage of your costs, of all these costs that you listed here, what percentage of your feed is of those total costs?
A. I've been milking cows at our present location since '88, 30 years -- excuse me -- and feed costs can vary a lot. And usually we have good years when feed costs are moderate. They can be as low as 40% of all the expenses, and then other times they can get up to 60, 65% of all the expenses.
And right now we're in that range. You know, they are at high end of the range. So they are 60 -- I would have to do some math -- and I'm confused between '22 and '23 right now, got a lot of numbers up there -- but it's on the very high end.

And so for an example, before the pandemic, which wasn't great for my corn farming neighbors, you know, corn was about $3.20 a bushel, plus you add the basis on, which is to move it to our place and get it processed, so -- and at the height of last year corn got up to $8, then you would add the basis on. I don't know what the math on that is, but it's a 50% increase, you know.

Q. So would you say the last time that your feed was down, you know, below 60% was before the pandemic or was --

A. Yes, I would.

MR. PROWANT: Thank you, your Honor. That's all the questions we have right now. And Mr. Kraft is available for cross-examination.

THE COURT: Thank you.

Who would like to begin cross-examination of Mr. Kraft?

All right. I will invite the Agricultural Marketing Service to ask questions of Mr. Kraft.

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. Good morning.

A. Good morning.

Q. Thanks for coming out here to testify today.

Just a few questions, and I -- my first ones I ask of all farmers. And I don't know if you've tuned in, you probably have better things to do for the past six weeks than tune in at any point.

But the Small Business Administration defines a small business as that, for dairy farms, of making $3.75 million or less in gross revenue annually.
Would your farm meet that definition?
A. It would not.
Q. We've also had discussion from various dairy farmer witnesses about their risk management profiles.
Do you use any type of risk management tools?
A. Yes, we do.
Q. Could you elaborate, if you are willing?
A. Yes. We use DRP a lot, extensively. Risk management is -- I have two other partners, my wife and my son, and we all have a different little thing that we like. So I'm the one that doesn't like the low prices, so DRP is a very big deal for us -- for me.
My wife doesn't want to miss the highs, so that works for her, too. Right?
And then my son, he wants a sure thing, and so we do futures contracts, or puts spreads, or callers, or -- we use all the tools available that we can.
Q. Okay. For your -- well, one question. We have had some testimony in this past week about how all the depooling that happened in the past, particularly in 2020, for those farmers who had locked in positions, that depooling that they attribute the negative PPDs that experience impacted their risk management positions.
Did that happen to you all, or can you speak to that?

A. No. I think Steve Scott was in here testifying, and he would probably be better on that. That was a little bit in the past right now, so I'm a little fuzzy on that. But we did have some DRP positions, and I think we would have been fine on that.
Q. Okay. Thank you.
And for your farm, does your -- where does your milk go?
A. My milk goes to Leprino Foods primarily, if it's -- we have a plant just down the road from us in Fort Morgan, and if it doesn't go there, it could go to DFA Fort Morgan, or it could go into the Denver into one of the fluid plants, if they need it down there.
Q. But mostly goes to --
A. Mostly Leprino, right.
Q. And how far is that haul?
A. Four miles.
Q. How far to the fluid plants that you mentioned, if it has to go that far?
A. That would be more like 85 miles.
Q. Okay. I had one question in your testimony on page 3. In the first full paragraph, that's the second half of the page, the sentence reads, "The initial Wisconsin price surface model would reduce the Colorado pay price by $0.40 per hundredweight."
Can you clarify when you say "initial Wisconsin price surface model," what you are talking about there?
A. I think it's the proposal that's on the table

right now for the price surface. And it doesn't -- the -- the way it ends up, we're going to lose -- we're going to lose dollars if it's -- if that price surface model is used. And so that's what I'm asking for us to have a look at, because I don't think it recognizes -- I think it assumes that we got plenty of milk for our Class I market there. But it doesn't recognize that we have the -- we built that supply for -- for a Class III plant, and we have to meet some -- we have some contractual obligations to that plant. So it doesn't mean that all that milk's available for Class I.

Q. Okay. Okay. And so I just want to make sure I'm clear. When you say the initial Wisconsin price surface model, is that the same as the National Milk current proposal, or is it the model that kind of initially came out?

A. I think it's the first one that came out.

MS. TAYLOR: Okay. That's all the questions from AMS. Thank you so much.

MR. PROWANT: Your Honor, no further questions. We would just move for admission of Exhibit 252 into the record.

THE COURT: Is there any objection to the admission into evidence of Exhibit 252?

There is none. Exhibit 252 is hereby admitted into evidence.

MR. PROWANT: Thank you.

(Exhibit Number 252 was received into

evidence.)

THE COURT: Thank you. You may step down.

So before you take the witness stand, the equipment that's left on the table has to do with plugging into a laptop; is that correct? Okay. Good. All right.

The next witness may take the witness stand. You may be seated, and I'll swear you in in a seated position.

THOMAS BELLAVANCE,

Being first duly sworn, was examined and testified as follows:

THE COURT: Please get that microphone positioned so that it will stay close to your mouth and you're comfortable and still can read your document.

You may have to pull your chair toward me so that your mouth is closer to that microphone.

THE WITNESS: Okay.

THE COURT: Good.

State and spell your name, please.

THE WITNESS: My full name is Thomas Bellavance, T-H-O-M-A-S, B-E-L-L-A-V-A-N-C-E.

THE COURT: Thank you.

And your name?

MR. MILLER: I'm Todd Miller, representing Dairy Farmers of America.

DIRECT EXAMINATION

BY MR. MILLER:

Q. Mr. Bellavance, did you prepare a statement for use today at today's hearing?

A. I did.

MR. MILLER: Your Honor, I'd ask that DFA Exhibit Number 8 be marked as USDA Exhibit 253 on a preliminary basis.

THE COURT: Thank you. It has been so marked.

(Exhibit Number 253 was marked for identification.)

BY MR. MILLER:

Q. Mr. Bellavance, I'd ask that you please read your statement.

A. My name is Tom Bellavance, and it is a privilege to sit in front of you today. I'm a dairy farmer from Northwestern Vermont, where my main farm sits five minutes to the east of New York and five minutes south to the Canadian border. I have owned and operated my farm for 23 years, and have solely expanded the farm to include over 1700 acres of land, and a milking herd of 1,000 mature cows. The herd is 90% Holstein, 10% Jerseys.

I'm a farmer-owner of Dairy Farmers of America, and I currently sit on the DFA Board of Directors, having served for just under a year. I have also served on the DFA Northeast Council since 2019.

Prior to the St. Albans Cooperative Creamery merging with DFA, I was a director there.

THE COURT: And what you were a director of was the co-op?

THE WITNESS: The St. Albans co-op.

THE COURT: All right. Thank you.

THE WITNESS: I have also had the privilege to have worked for over 40 years as an agricultural lender and consultant, serving many Northeast dairy farms. In this role I have worked with many three-generation dairy farms helping with farm transfers. Coupled with being a dairy farm, this capacity as a lender exposes me to the many challenges facing our dairy farm families.

I appear in front of you today as a dairy farmer to support National Milk Producers Federation proposals to update the milk market orders. These proposals are as follows: Limit the Make Allowance increase to their proposed levels; return the Class I mover to the higher-of; eliminate the barrel cheese price from the calculation of the Class III protein price; increase and regularly update skim component tests to determine the Federal Order skim milk price; implement their national Class I differential and price surface proposal.

I am sure that after many days of testimony you are aware that 2023 has been a very difficult year for dairy profit margins. The high DMC payments that have recently been paid also show proof of these tight margins.

Although these USDA payments are valuable and appreciated, on many farms, these DMC payments don't go nearly far enough to fill the hole. Since December of 2022 to June 2023, my milk price has fallen from 26.38 per hundredweight to 19.64 per hundredweight, a drop of --

THE COURT: Just so the record is clear, you are talking about dollars there. Could you read it that way?

THE WITNESS: Yes. Would you like me to continue?
THE COURT: Yes. Just start from -- from $26.38 per hundredweight.
THE WITNESS: Okay. Thank you.
-- have fallen from $26.38 per hundredweight to $19.64 per hundredweight, a drop of $6.74 per hundredweight. This represents a decrease of 26% in just seven months.
For this same time period, my farm expenses have increased by an additional 12%. Combining these changes, my net farm income is off 76%. These changes to the expenses come after 2022, which is best described as a very inflationary period on the dairy farm.
Below is a small grid to highlight some of these changes. They are presented on a cost per hundredweight basis.
For example, in 2021, my feed expense was $6.80 per hundred pounds of milk produced; in 2022 it was $7.90 per hundred pounds, an increase of 16% for that 12-month period. Labor was up another 27%; fuel was up 84%; crop inputs were up 53%; interest was up 28%; other expenses were up 26% for that time period.
I did cross -- I did cross-reference my specific numbers against other benchmark information, and I believe these numbers truly represent the current cost structure in the Northeast. The reason I have highlighted these profit margin challenges facing the dairy farmers is that any changes to the milk market orders must take into

account the effect these changes will have on the profits of dairy farmers.

For reasons noted above, I do not like any change to the Make Allowance that will lower the milk price paid to dairy farmers.

Having said that, I do understand that the Make Allowance are -- Make Allowances are an important aspect in determining Federal Order class prices and they need to be adjusted from time to time.

Because of that, I do support the more modest changes proposed by National Milk. They have indicated these modest changes will decrease my milk price by $0.50. While this proposal may -- this proposal will decrease my projected net income by 25%, the more significant changes proposed by International Dairy Foods Association and other groups would cut my margin by well over 50%.

Looking back over a three-, five-, and ten-year period, a $0.50 per hundredweight change would lower my net profit per cow on an annual basis by 17% for three years, 23% for a five-year period, and 27% for a ten-year period. A decrease over $0.50 per hundredweight puts my farm and many others in an unsustainable position.

I would like to speak to the Class I mover.

2019, when the current formula was agreed upon, we were told this would be revenue neutral to our milk prices. This experiment has not been revenue neutral, but according to National Milk, the July to December 2020 milk revenue was reduced by just under $754 million. While some of this loss was eventually aided by USDA payments, these payments covered less than 50% of the loss for that period.

From January '21 through July '23 the average-of plus was less than the higher-of counterpart in 18 of the 31 months, resulting in a revenue loss of $226.5 million. Approximately 222 million of the lost revenue came over the last 12 months. With Class I -- with Class I milk utilization here in the Northeast at 30%, this lowered my blend price by $0.17 per hundredweight.

I would like to touch briefly on the Class I differential in the producer price proposal. The Class I differentials, for the most part, have not changed since 2000, and they no longer reflect the increasing costs to deliver raw milk to the fluid processing plants. These increasing costs have mostly fallen back onto the dairy farmers, as we have seen our transportation costs increase dramatically over the past few years. For the first six months of 2023, my hauling fees are up 16% over the same period last year.

In my area, National Milk recommends a Class I differential of $4.64, an increase of $1.76. This will have an impact of about $0.53 per hundredweight on my blend milk price.

I close by repeating my full support for all of the National Milk proposals. Others from DFA will speak on the value of eliminating the barrel cheese price from the calculation of the Class III protein price, as well as increasing and regularly updating the skim component tests to determine Federal Order skim milk price.

I want to thank you for allowing me to testify today on these important issues. I believe the above-proposed changes will make the dairy industry stronger and more viable for the dairy farm families across this country.

In closing, I want to share something that former U.S. Senator Patrick Leahy told me back in 2007, "The hardest part of dairy policy is that we can't get you dairy farmers on the same page."

With the above National Milk proposals, I believe we have consensus from the dairy producing community. Thank you.

MR. MILLER: Your Honor, Mr. Bellavance is available for cross-examination.

THE COURT: Thank you.

Who would like to begin asking questions of this witness?

I would invite representatives of the Agricultural Marketing Service to ask questions.

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. Good, well, it's afternoon now.

Good afternoon. Thanks for coming to testify today and for your patience to get up on the stand.

I don't know if you heard my questions of Mr. Kraft on the Small Business definition. Wondering if

your farm would meet that threshold?
A. We would not qualify for the Small Business.
Q. And where does your milk go, typically?
A. Typically our milk flows out of Northwestern Vermont and fills the fluid markets down around the Boston area and --
Q. All right. And -- I'm sorry, go ahead.
A. -- and it also goes to a DFA-owned plant in St. Albans, where the cream is separated and sold primarily to Ben & Jerry's.
Q. Thanks for the good ice cream.
A. You're welcome.
Q. And how far is those -- are those hauls typically?
A. The hauls down to the Boston plants are about 254 miles. And the haul to the St. Albans plant is approximately 15 miles.
Q. 15, 1-5?
A. 1-5.
Q. And you talked a bit in your statement about your hauling costs from the past -- for the first six months of 2023 have gone up.
Can you talk about your hauling costs in 2021 or 2022? You -- I ask that, you have cost data here on your other input costs for those years, so --
A. Yeah. I don't have that broken down. I probably have it, but not with me here on the stand.
But I have -- I do realize that probably over the last five years my hauling costs have gone from

approximately $0.65 per hundred pounds of milk to $1.40 per hundred pounds of milk. Didn't do the math, but it's a significant increase in hauling costs.
Q. Okay. Thank you. Let's see.
You did state on page 3, when you were -- you listed your costs you have experienced and said you referenced your numbers against other farm benchmark information.
What -- what did you use? What other information did you look at?
A. Yes. The Farm Credit system, the Farm Credit East in the Northeast, they put together a very good benchmark analysis, and I used that as a cross-reference. I also got the -- I believe it's the Cornell Pro-Dairy Analysis, I used some of their numbers just to cross-reference. And there's another private firm up there called Dean Associates that does financial, who work for farmers, and I used some of their data.
Q. Thanks.
And then I wondered if you could talk about whether you use any risk management tools.
A. I do. I do use Dairy RP. I do direct forward contracting. Of course, the foundation of my risk management is participation in the Dairy Margin Coverage program.
Q. And we have had some testimony in regards to the impact that depooling had and the resulting negative PPDs on farmers' risk management positions.

Did you experience any of that in 2022?

A. I personally did not. I had -- I did a forward contract on Class IV milk, and so it did not affect the outcome at my specific farm.

Q. Okay. Thank you.

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

MR. MILLER: Your Honor, I ask that preliminary Exhibit 253 be entered into the hearing record.

THE COURT: Yes. Is there any objection to the admission into evidence of Exhibit 253?

There is none. Exhibit 253 is admitted into evidence.

(Exhibit Number 253 was received into evidence.)

MR. MILLER: Thank you.

THE COURT: Thank you very much. You may step down.

Ms. Taylor, how would you like to proceed?

MS. TAYLOR: I guess I'd advocate for lunch, and then maybe we start again around 1:15 with whomever IDFA would like to call first.

THE COURT: Yes. Would you come to the microphone and let us know who we will hear from?

MR. ROSENBAUM: Steve Rosenbaum, IDFA.

Mr. Herlache will be the first witness, Ms. Greenbaum will be the second witness. And -- sorry.

THE COURT: I know you would like to get three in if you could.

MR. ROSENBAUM: And if we get to the third, it will be John Umhoefer.

THE COURT: Okay. We will come back from lunch at 1:15 and go back on record. Right now we go off record at 12:16.

(Whereupon, the luncheon recess was taken.)

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TUESDAY, SEPTEMBER 26, 2023 - - AFTERNOON SESSION

THE COURT: All right. We're back on record. It's 1:16 p.m.

And I would like first for us to have the witness who is seated in the witness chair to state and spell his name.

THE WITNESS: Sure. My name is Chris Herlache. That's spelled C-H-R-I-S, H-E-R-L-A-C-H-E.

THE COURT: Thank you.

Have you previously testified in this proceeding?

THE WITNESS: No, I have not.

THE COURT: I'd like to swear you in.

CHRIS HERLACHE,

being first duly sworn, was examined and testified as follows:

THE COURT: Counsel, would you state your name again?

MR. ROSENBAUM: Yes. Steven Rosenbaum for the International Dairy Foods Association.

DIRECT EXAMINATION

BY MR. ROSENBAUM:

Q. Mr. Herlache, we have placed before you three documents that have been distributed to the other people in the room. The first is IDFA Exhibit 39.

Is that your written testimony?

A. Yes, it is.

MR. ROSENBAUM: Your Honor, I'd ask that this be marked with the next Hearing Exhibit number.

THE COURT: All right. This is 254. So Exhibit 254 has, up at the top right-hand, IDFA Exhibit 39.

(Exhibit Number 254 was marked for identification.)

MR. ROSENBAUM: And I would ask that the document -- well, let me just ask the question.

Is IDFA Exhibit 48 a document that you prepared?

THE WITNESS: Yes, it is.

MR. ROSENBAUM: Your Honor, I would ask that this document be marked as Hearing Exhibit 255.

THE COURT: I am doing so. So this is IDFA Exhibit 48, it looks like this, and I am marking it as Exhibit 255.

(Exhibit Number 255 was marked for identification.)

MR. ROSENBAUM: And is IDFA Exhibit 47 also a document that you prepared?

THE WITNESS: Yes.

MR. ROSENBAUM: Your Honor, I would ask that IDFA Exhibit 47 be marked as Hearing Exhibit 256.

THE COURT: IDFA Exhibit 47 looks like this, and we are marking it as Exhibit 256.

(Exhibit Number 256 was marked for identification.)

BY MR. ROSENBAUM:

Q. And, Mr. Herlache, could you please begin by reading your testimony?

A. My name is Chris Herlache, and I'm here to represent Schreiber Foods, where I currently hold the title of commodity risk strategies manager.

Schreiber Foods is a customer-brand leader in the production of sale -- the production and sales of cream cheese, natural cheese, processed cheese, beverages, and yogurt. Our more than 10,000 employees in presence on five continents enable us to be an essential ingredient in our customers' success. With annual sales of more than 7 billion, we partner with the best retailers, restaurants, distributors, and food manufacturers around the globe.

My background in dairy started with the dairy farm I grew up on in Northeast Wisconsin. From there, I attended the University of Wisconsin, where I got my undergraduate degree in agriculture and applied economics, where I had several projects and papers related to Federal Order Reform, which was happening at that time.

After graduating, I started at Schreiber Foods in the summer of 2000 in their finance department, and in 2003, I took a position in risk management. Since then, I have led the development of our internal risk management capabilities and customer forward contracting services, and have helped to develop risk management programs for some of the world's largest foodservice and retail companies.

In addition, I have responsibilities at Schreiber Foods related to dairy market policy and was the chair of the Class III and IV subcommittee of the IDFA economic policy committee. I have been a speaker at numerous conferences on the topics of dairy economics, risk management, and dairy policy, and have assisted in the education and development of dairy futures markets in the U.S. and in Europe.

This testimony is in support of Proposals 14 or 15 to amend the base Class I skim milk price to be equal to the average-of the Advanced Class III and Class IV skim milk price, plus a rolling adjustment. In addition, this testimony is in opposition of Proposal 13, Proposal 17, and Proposal 18, that seek to reinstate the higher-of the Advanced Class III or Class IV skim milk prices in setting the Class I skim milk price.

There have already been several references in this hearing to the importance of risk management to the industry. Today I want to provide additional testimony to the importance of risk management for Class I milk and how the concerns of both farmers and processors can be met, which unfortunately, feels like a rare but ideal outcome when it comes to milk pricing policy.

In my experience over the past 20 years, risk management has developed into a necessary tool for companies with exposure to volatility in dairy markets. However, that has taken time to develop. When dairy markets were still new in the early 2000s, there was a lot of education that my team and I did with our customers to help them understand the benefits of risk management, and it took time for them to fully understand and use these tools on a regular basis.

For buyers of Class I, they really have not had a viable way to manage that risk at a large scale until just recently with the change that was made to the Class I mover in 2019. Since this ability to manage Class I risk is still a very new option for most in the industry, I believe the adoption of risk management in Class I is still in its infancy.

In response to our customers' request to manage volatility in their Class I cost, Schreiber Foods has offered Class I forward contracts to our customers since shortly after the change to the formulas were made in 2019. We do currently have Class I forward contracts in place with customers, and based on my conversation with customers across our business, I believe the volume of Class I forward contracting will continue to grow.

Q. Can I interrupt you just a second?

What kind of customers are interested in Class I hedging?

A. Yeah. So I would say it's a combination of both foodservice customers and retail customers.

Q. Okay.

A. Going on.

To hedge this exposure in Class I -- and, again, taking a step back -- when offering a Class I forward contract to our customers, that gives us market risk in Class I. And so to hedge this exposure, we use several

different tools, including Class III and Class IV futures and swaps and Class I swaps.
Q. And just to be clear, are you -- when you are offering these contracts to your customers, are you offering the opportunity to buy Class I products at a fixed price?
A. Yes. Yeah. A fixed price. They could also do option strategies, but predominantly right now it's fixed price contracts.
Going on.
According to the -- according to the USDA's announcement on March 8th, 2019, the reason for the change in the Class I mover was as follows: "Currently, the Class I skim milk price is calculated using the higher-of the monthly advanced pricing factors for Class III or Class IV skim milk, which reflect dairy product survey prices for the two weeks prior to the price announcement, plus the applicable adjusted Class I differential. Because market prices for these survey products fluctuate, the higher-of factor used to determine the Class I skim milk price can change, increasing risk and uncertainty associated with hedging. To address this issue, Congress determined that the formula for the FMMO Class I skim milk price should be the average-of the monthly Class III and Class IV advanced pricing factors, plus $0.74 per hundredweight, plus the applicable adjusted Class I differential."
And that's a -- an excerpt from the website which

is below in the footnotes.

The conditions underlying the need for this change remain and, in fact, are even more significant than when the change was first made. At the foundation of any effective hedging program is the ability to effectively offset risk in one market with a position in another highly-correlated market.

Prior to the change in the Class I formula, creating an effective hedge for Class I milk was very challenging, because the higher-of formula meant that when a hedge position was initially put on, it would not be clear whether that should be done with a Class III or Class IV derivative.

After the change was made in 2019, it became clear that an acceptable hedge for Class I milk could be achieved by using a combination of both Class III and Class IV derivatives. The increased ability to hedge Class I milk exposure should be viewed as a favorable thing for end users, processors, and farmers, because it gives everyone in supply chain the ability to control their market risk in a way that was not previously possible.

I think we can all agree that the world changed dramatically in 2020, and no one could have anticipated the changes through government intervention and market responses that would take place. The intention of the 2019 change was never for farmers to get a price less than the equivalent to the higher-of, but unfortunately that did happen.

However, just because unforeseen market conditions caused one part of the market to end up with something different than expected, that doesn't mean that the pendulum should swing to the other side and take something away that was agreed upon, that is, the ability for the industry to effectively and efficiently hedge Class I and, thus, manage the risk.

There is a way for farmers to be made whole as compared to the higher-of formula, and for everyone -- farmers, processors, and end users -- to get the ability to better manage risk, and that is by maintaining the average-of formula and having the formula adjust to the historical difference between the higher-of and the current average-of formula.

Q. And just to interrupt you, is that what Proposals 14 and 15 do?

A. Yes, that's correct.

Q. All right.

A. Reverting to the higher-of would not be just undoing a change, but it would be undoing that change with full visibility that the conditions have changed that would put hedgers of Class I milk in a worse situation than what they were prior to 2020.

Q. At this point, Mr. Herlache, could you bring up on the screen the document that's been marked as Hearing Exhibit 255. And -- and we're looking at page 3. And please explain to us how -- how hedging -- well, what are you trying to achieve when you are doing hedging? Start with that.

A. Sure. Well, like I said in my testimony, hedging is meant to -- you are taking a position in a market that is meant to offset the risk of a movement in the underlying physical market.

And what's shown here is a tool that I use to teach the basics of risk management to both people within my company and to customers. And the intent is to start off in a -- in a very basic way. Because we have heard a lot of the complexities around risk management today, and so I want to take that back and go through kind of the concept, and then we can build from there.

So I'm going to use a theoretical example for cheese hedging. We do hedge a lot of cheese for contract risk that we have today with our customers. So that's something that happens today, and it is very common, and I'll use that as an example.

With any hedging transaction, there's two sides to the transaction. On the left side you can see there's the physical buy and sell. So that's -- we go out and buy raw materials, and we turn them into a finished product, and we sell that at a price. So -- so that covers the physical side.

On the right side is the financial part of the hedge transaction, and we both buy and sell in -- on that financial side.

The result of each one of those is a gain or loss, and the goal of hedging is that the gain or loss on one side will be offset by the gain or loss on the other side. And so that the P&L would be -- would be essentially even in the end.

So I'll go through an example. If we would go to the market and buy cheese futures, let's say at $1.70, and use that to give our customer a fixed price at $1.70, that's our initial transaction that takes place. And that could be for six to 12 months, for some period in the future. When that time period actually comes, the market could obviously be either higher or lower than $1.70.

So if I look at an example where the market goes up, if the market went to $2, we would have to go and buy our raw materials to make that physical product at $2, even though we promised the customer $1.70 price.

The flip side of that is the financial tool, in this case the cheese futures contract, would also go up. And the -- and in the theoretical example I have it going up to $2 as well.

So when I look at the gain or loss on each side of the transaction, I have a $0.30 loss on my physical product because I bought raw materials at $2, but I sold to the customer at $1.70. And on the financial side I bought futures at $1.70, and sold to the customer at -- or -- and sold those futures back at $2, resulting in a $0.30 gain. When you add those two together, the total P&L is zero.

And so that's the intent of a hedge transaction in

the most basic sense.
Q. And there's -- there's -- okay. Well, keep going.
A. Sure.
Q. Tell us what basis is, because that word is used sometimes.
A. Sure.
And one other small point. I know there was some talk about the cost of risk management. In a perfect world, if that -- the P&L on the hedge is zero, the costs are really just around the transaction fees. Really, they are relatively small. If a contract is $30, let's say, per contract in transaction fees, that works out to be about 15 points, .0015 per pound. So -- so the cost of risk management is not necessarily large. But I just wanted to make that point.
Going on to basis. So basis is really all about this difference between the raw material market in this case, where I'm buying, and where that futures contract settles. In this example, again, a theoretical example, I have these as being equal to each other. But in real life, it's -- they are never really equal. And when we go into any sort of a hedging transaction, we need to -- that is, Schreiber Foods -- we need to make sure that we understand that basis risk and that it is something that's predictable and in control, otherwise it would be an ineffective hedge for us.
Q. So let's just be clear. Is basis between the two numbers you have there?

A. Yes, between the $2 and the $2.
Q. And basis risk, just define that for us, please.
A. So basis risk would be the risk that those two are not equal to each other.
And -- and I would expand on that maybe there could be a difference between those two. If it's a predictable difference, that's fine. It's the unpredictability of that basis that causes problems.
Q. All right. Okay.
A. Going back to my testimony, then.
So once again, basis is the difference between the price of the physical commodity and the underlying derivative price being used to hedge that commodity.
Looking at data from 2010 to 2019, using either the Class III or Class IV derivative markets, basis risk was significant in that the range of basis risk was over $4 from the high to the low, with a standard deviation of between $0.79 and $1.04 per hundredweight.
Q. And just to be clear, this is under the higher-of approach to pricing?
A. That's correct. So basically taking -- looking at the difference between the Class I being the higher-of and the Class III or Class IV derivative market. So, again, the bottom left being the Class I in that example, and the upper right being the Class III or Class IV.
Q. Okay.
A. Let's see. So --
Q. So just -- if you'd please keep going.

A. Sure.
However, since 2020, if the higher-of method was still in place, basis risk would have increased substantially in the range of over $7 for Class III and over $12 for Class IV, with a standard deviation of $1.63 to $3.02 per hundredweight.
In the tables below -- I don't know if you can put that back up on the screen.
Q. We're now looking at page 1 of Hearing Exhibit 255.
A. It's basically just a larger version of the table that's part of the testimony.
These are the -- again, based on the difference between the higher-of method -- the Class I using the higher-of, and either the Class III or Class IV markets where they -- where they would have settled and where they were announced.
Q. Can you go through each of these columns and just tell us what each one means, what each one is measuring?
A. Sure.
So the top section is looking at the time period from 2010 to 2019, and the first line where it says Class III, it looks at the difference between the higher-of and the Class III market. So over that time period, the minimum difference was negative $0.60, the average difference was $0.48, the maximum difference was $3.80, the range is the difference between the maximum and minimum, which is $4.40, and the standard deviation of

that -- those basis numbers over that time period was $0.79.

If we use the Class IV, the minimum is $0.53, the average is $0.85, and the maximum is $4.32, causing the range between the minimum and maximum to be $4.85, and standard deviation of $1.04.

The next section below that is looking at the time period from 2020 to present. And the first line below that has the Class III showing a minimum difference between the higher-of Class I formula and the Class III of the minimum is negative $1.91, the average is $1.03, the maximum is $5.21, causing the range to be $7.12, and the standard deviation of $1.63.

Looking at Class IV over the same time period, the minimum was negative $0.94, the average was $1.66, the maximum was $11.58, resulting in a range of $12.52, and a standard deviation of $3.02.

Q. Okay. And what kind of basis risk is being presented when you look at numbers like this?

A. So this is showing some very, very wide and unpredictable basis risk. For example, in -- from 2020 to present, using Class IV to hedge the higher-of Class I, I could be off by $11.58 was the worst case scenario.

Q. That's per what?

A. Per hundredweight.

Q. Okay.

A. Certainly there are times where it could go in your favor, and that's what the negative numbers here

show. But the range of that unpredictability is where the higher-of really does cause the problem, in that we don't know if you pick the wrong contract to hedge the higher-of class -- the Class I based on the higher-of, you could be off by $11.58.
Q. And what does -- what does that mean for -- for --
A. That would mean a financial loss for the company, because the -- because the hedge position did not offset the change in the Class I market.
Q. Okay. And is this a kind of risk that a company like Schreiber would be willing to take?
A. No. No. Absolutely not. That's -- that's where -- if there would be a change going back to the higher-of, this is not a risk that we would be able to take or to be able to hedge ourselves. We would have to either find a different way to hedge that or cease offering forward contracts on Class I.
Q. Okay. And what are you showing here for the maximum in the range for a situation where you were hedging off of Class III?
A. Class III, the maximum was $5.21.
Q. Okay. And what is that -- what does a maximum of that magnitude mean for the viability of the hedging program?
A. That's -- it's -- it's bad. It's just what magnitude of bad, right? And so it would -- in both of those scenarios, it would -- it would not be something that we would be able to continue to offer.

Q. Okay. All right. So continue on with your testimony, if you would, please.

A. Sure. As shown in the following table, and that's the second -- the next page.

Q. Okay. So now we're looking at page 2 of Hearing Exhibit 255.

A. As shown in the following table, basis risk is significantly reduced by maintaining the Class III and IV average. While we understand there will be changes to the amount added to the Class III and IV average over time, this additional factor can be incorporated into pricing because it will be known ahead of time and does not affect basis.

So here I show a similar analysis where I looked at the -- the difference between the Class I based on the average-of formula, and compared it to the average Class III and Class IV settlements.

From 2010 to 2019, it would have been a minimum of $0.10 difference, the average was $0.72, the maximum was $1.55, the range is $1.45, which is the difference between $0.10 and $1.55, and the standard deviation was $0.21.

I looked at the same time period breakout as previously, starting from 2020 to present, and during that time period, the minimum basis was $0.42 negative, the average was $0.72 positive, the maximum was $2.29 positive, resulting in a range of $2.71, with the standard deviation of $0.41.

And I will say that the averages here, I rounded them off to two decimal points, but I think for 2020 to present, if I expanded those decimal points, it equals .7151, which is very close to -- if you take $0.74 times 96.5%, you get .7141. So -- so that's -- if there was -- if it was a perfect hedge, that would be the basis that I would expect it to be, .7141. We know that there's some noise in there, as shown in the range in the standard deviation, and that's causing the average to be just one point higher.

Q. All right. So just to -- if we compare -- and I'm doing this physically with the two pages, the first two pages of Hearing Exhibit 255 -- if we had been under the higher-of methodology from 2020 to present, we would have faced a range of $7.12 between the minimum and maximum difference between the Class III price and the Class I price; is that right?

A. That's correct. Yeah. The difference between the Class I using higher-of and the Class III had a range in the basis of $7.12.

Q. And that would be $12.52 if you had used a Class IV to hedge, correct?

A. That's correct.

Q. And the standard deviation, can you just briefly explain what the significance is of those numbers being 1.63 for Class III and 3.02 for Class IV? What is that telling us?

A. Sure. It's really a measure of how much variability there is in those basis numbers.

So if it was -- for example, for Class III, if it was $1.03, but it was always $1.03, then the standard deviation would be basically zero because there would be no variation. But that standard deviation is a measure of how much variability there is. So when we look at basis risk, we want that to be as low as possible.

Q. Okay. And then we compare that to standard deviation, looking at page 2, under the average-of -- which of course that's the current mover, correct?

A. Correct.

Q. And that standard deviation is 0.41, correct?

A. Correct.

Q. A lot less variability, correct?

A. Yes.

Q. And what impact does that have on the hedgeability?

A. Well, that is variability in the basis that we -- that is acceptable to us. And, in fact, that's significantly better than the basis risk that we have in cheese and butter and other products that we -- that we do hedge today.

Q. Okay. So just to be clear, the higher-of Class I mover creates better hedgeability than exists for cheese, butter, and other --

A. The higher-of --

(Court Reporter clarification.)

THE COURT: Yeah, both of you are talking. Ask the question again, and don't answer him right away.

MR. ROSENBAUM: I think he was correcting my question, your Honor, which I appreciate.
THE COURT: Okay.
BY MR. ROSENBAUM:
Q. The average-of methodology results in a Class I price that is more hedgeable than cheese or butter; is that what you are saying?
A. Yes. Maybe put differently, the basis risk on Class I using the average-of is less than the basis risk that we do already realize when we hedge cheese or butter.
Q. Okay. Let's go, then, to page 4 of your PowerPoint, and take us through an actual example of what it would have been like to hedge Class I milk under the higher-of formula in September 2022, had that, in fact, been the formula in effect at that time.
A. Sure. And this -- this will walk through one month that -- that goes into the numbers that were in here. So this is -- this would be an actual example if we would have hedged using Class III -- if we would have hedged the higher-of Class I milk price using Class III.
So I'll use the $17 price to start off, meaning if we went out and bought Class III futures at some point in time prior to September for the month of September. If we bought that at 17 -- naturally I would include a certain amount of basis assumption when I give the customer a fixed price. So in this case, the $1.03 is the average basis that we saw from 2020 to present.
Q. Can we just flip back real quickly to page 1 so we

can see where the $1.03 comes from?
A. So that's this number right here.
Q. Okay. All right. Thank you.
THE COURT: I'm sorry, I didn't look fast enough. I'm looking at page 1. Where is it?
THE WITNESS: It's under --
THE COURT: Oh, I see it.
THE WITNESS: -- the average column?
THE COURT: Yes. So it's under the average column, and it's the average for a long period of time, what, three years? No, we were talking about September of 2022. So --
THE WITNESS: Yes.
THE COURT: -- it's not a long period of time. It's two years; is that right?
THE WITNESS: Two, yeah, two-and-a-half years.
THE COURT: So the average for the Class III during that roughly two years was $1.03 per hundredweight?
THE WITNESS: Right.
THE COURT: Okay.
THE WITNESS: And I used the $1.03 -- in actuality, if -- I was -- at that point in time in September of '22, I believe it was, I wouldn't have all of the data through present, correct? But I wanted to use a higher number just to show -- if I used a lower number, these results would look even worse in the end, but -- and that's what that is based on.
So, again, the financial buy in this case, we're

buying Class III sometime prior to September of '22 for the month of September '22. We're buying that at $17. When I use that to lock in a price to my customer, I am including that basis assumption of $1.03, so the price that I have committed to the customer in this case was $18.03.

The actual Class I milk price based on the higher-of formula would have been 25.31, however, the Class III market for September of 2022 settled at $20.10.

When I look at the gains and losses on each side of the transaction, the physical side of the transaction lost $7.28, and the financial side only made $3.10, so in total we would have lost $4.18 on this hedge in this case.

BY MR. ROSENBAUM:

Q. Okay. And is that an acceptable risk?

A. No. No.

Q. Okay. Can you go on to the next example, then?

A. Another example of where -- if I would have used Class IV futures to hedge the higher-of, I'm looking at the month of December of 2020.

In this case, I'm using the same starting place of buying Class IV futures at $17. The basis assumption I'm using here is $1.66, which is, again, referencing back to the average Class IV basis from 2020 to present.

Q. And that -- once again, that appears on page 1 of Exhibit 255?

A. So that $1.66 is added to the $17 Class IV futures price that we locked in to give our customer a fixed price of $18.66.

Now, when we get to December of 2020, we had to buy that Class I milk. The Class I price, based on the higher-of formula, would have been $24.88. The Class IV futures, instead of going up, actually went down to $13.30.

So when I look at the P&L for each side of the transaction, the physical side lost $6.22, and the financial side also lost $3.70, resulting in a total P&L of $9.92 per hundredweight.

Q. That's your loss?
A. That's our loss.
Q. Okay.
A. And definitely unacceptable.
Q. All right. So let's now move on and compare those same two months, but under a formula that is based upon the average-of the Class III and IV prices.
A. Okay. So starting out with the month of September of 2022, and, again --
Q. Just to be clear, that's the example that you already covered using the higher-of on page 4, correct?
A. Correct. Where we use Class III to hedge the higher-of.
Q. Okay.
A. So in this case, if we were able to buy Class III and IV futures at an average-of $17, I would give the customer theoretically a price of $17.72, and that's based on the average basis over that time period. The Class I,

based on the average-of formula for September, would have been $23.62, and the average Class III and IV markets -- the Class III and IV markets averaged $22.46.

So when I look at the gains and losses on each side, the physical side of the transaction lost $5.90, the financial side of the transaction made $5.46, resulting in a total P&L of negative $0.45.

Q. And is that an acceptable risk?

A. It is acceptable.

And what I would say also is, I used $0.72 because it's using the same methodology as we talked about earlier. The reality is that we would probably charge something a little more to cover that basis risk, but keeping the same methodology, I just used the average.

Q. Okay. And then so we've now covered, if you will, the two approaches for September 1, 2022.

Now let's go to the other month you did on page 5, which is December of 2020. You previously showed us that you would have lost $9.92 per hundredweight that month if you would hedged under higher-of formula using Class IV.

So now explain what would happen that same month if instead you were under a regime where the price was using the average-of Class III and IV?

A. Yep. So, again, we're hedging the average-of formula for Class I using the both Class III and IV futures.

I'll start off with the same buy price. We bought Class III and IV futures at an average of $17. I added the $0.72 basis, the same one that we just used in the previous example to give the customer price of $17.72.

For December of 2020, using the average-of formula, the Class I price was $19.87. The average-of the Class III and IV markets settled at $18.32. So in this case, the physical side of the transaction lost $2.15, the financial side of the transaction made $1.32, and the total P&L in this case was negative $0.83.

But, again, like the previous example, in real life we would probably add more basis to our customer price to be able to cover this sort of market risk, but the actual amount is something that's proprietary that we wouldn't show.

Q. Okay. Now, if we have obviously been shown here examples of specific months.

But is this sort of -- is this a recurring problem if one is under the higher-of as opposed to the average-of?

A. Yeah. Using the higher-of formula, the unpredictability, again, of basis is a problem, and it makes it -- in our company's estimation, it's unhedgeable for us to be able to do using Class III or IV markets.

Q. By the way, in my earlier question of National Milk's witness, I talked about the fact that if you were making a Class I product that only had 2% fat in it, could you -- you know, how would you deal with the excess fat, if you will.

Can you explain to us how, what, in fact, you

would do?
A. Sure. And we actually do this today. We have -- we have milk products that are lower fat milk than 3.5%, and so what we do is we look at how much Class I milk we're buying and then how much of that cream is being sold. We'll convert that into a butter equivalent volume, and we sell that in the butter futures market. And that creates an effective hedge for us.
Q. Okay. Is that difficult?
A. No. No. It's not. It's -- we have to get the volumes right, for sure, and the time periods right. So, for example, we're buying the Class III and IV in the month prior to line up with the Class I market, but then we're selling the butter futures in the month of to make sure that's aligned with the sale of cream.
Q. That's because Class III and IV are priced after the fact in the real world, correct?
A. Right.
Q. Whereas Class I is priced off of the Advanced Class III and IV prices?
A. Correct.
Q. Okay. Now, by engaging in this hedging, are you able to offer your customers a flat price that will apply for some extended period of time?
A. Correct. There's -- there's two different ways really that we use this. One is when customers have a price that floats with the market, and they have that market risk to start out with, and they want to either

reduce the variability of that or lock it in precisely. And so we offer those forward contracts to our customers in those situations. That puts the market risk on us which then we use futures and swaps to lay that off.

There are other situations where we may have to be -- we participate in a bid that has to have a fixed price for fluid products over a period of time. And in that case, we -- we don't know right away if we won the bid. Once we do find out that we won that bid, then we have market risk that we lay off in the market -- in the futures and swap market in the same way.

THE COURT: Could you explain that sentence, how you lay that off the same day? What do you do?

THE WITNESS: Sorry, the same way.

THE COURT: Oh, the same way.

THE WITNESS: Yes.

THE COURT: Understood.

BY MR. ROSENBAUM:

Q. I mean, you engage in buying Class III and Class IV futures in the way that you described in the circumstance?

A. Correct.

Q. So let's look at your other exhibit, Hearing Exhibit 256 if we could, please.

A. Yep. I don't have that one on here.

Q. Okay. Do you have a hard copy?

A. Not with me.

Q. So tell us what Hearing Exhibit 256 shows.

A. So this shows a chart of the volume that's traded on the CME Group of dairy futures for various commodities. This includes both futures and options volume. And the intent of this -- of this visualization is to show, one, how much it has grown over time, but how long it takes for that volume to grow.

The first time that futures were offered were -- I'm not sure if it was late '90s or 2000. Obviously, Class III was -- was something that was only first available in 2000 with Federal Order Reform. And as you can see, it took some time for volume traded on the Class III to really pick up, and that makes sense because risk management in dairy was a very new thing.

In the 1980s, early 1990s, the government support program was effectively a risk management program for everybody, because the variability in markets was limited because the government was a willing buyer at a floor. So that took out the market volatility.

As the government support price fell, then the market started to move in response to supply and demand fundamentals, and we saw volatility in markets that necessitated the need for risk management to start.

But it was brand new. It's not like the corn market or other commodity markets where futures have been around for over a hundred years. This is something for the industry that was brand new. So it did take time for the education and the understanding from both farms all the way through to end users on how to use these contracts

and really to set up risk management programs. And so it is something that does take time.
Q. And what lesson do you draw from that with respect to the ability to hedge Class I, which came into effect in May of 2019?
A. Right. So as I said in my testimony, I feel like Class I risk management is still in its infancy. My experience in talking with customers is that there are -- there are some customers who have very different people who are managing, let's say, cheese, where risk management is very common to do, and fluid products where it really hasn't been.
And so we're in this period of time similar to the very early 2000s, where it does take time to educate the decision-makers to help them to understand the value of risk management and that -- and the need for it.
So -- so that's where I wanted to show this because it would be very early to take away that risk management tool, just like it would be very detrimental to the industry if in the early 2000s we would have taken away -- or made a change that would have prevented risk management from being able to happen.
Q. Now, are you aware that under Proposal 14 and 15 there will be a periodic lookback for purposes setting the Class I skim milk price that will, if you will, look back and make whole farmers if the price they are being paid is lower than the price they would have been paid under the higher-of?

A. Yes, that's correct.
Q. Does that extra element, which of course does not exist under the current average-of formula, does that extra element prevent the use of the hedging tools that you have been describing to us?
A. Not at all. What it does is it may change our basis assumption. So if you remember in the example, that upper left box in the sell price that we give to the customer, it may change what we add on to the futures that we lock into, but we're going to know that in advance.
So there's really no risk on that -- that we have with that -- that addition changing, because it's going to be changing far enough out. Or if we wanted to lock in a price beyond where that change was happening, that would be a risk that we would have to -- that we would have to analyze. But for sure in the -- in the months that were typically looking at locking in for customers, that that would -- that would not be changing.
Q. Okay. So under the IDFA proposal, people will know as of, I believe it's August of the preceding year, what that fixed adder is going to be the next calendar year; is that your understanding?
A. Yes.
Q. And so will you be able just to enter that fixed number with respect to all of your hedging analyses that apply in that upcoming calendar year?
A. Correct. Correct. And I think that the timing is good in terms of, you know, that being in the fall,

because a lot of our customers are doing budgets and things like that for the upcoming year, and so it is a good time to be able to have that so that we would have the ability to offer a fixed price through the next year.

Q. You could offer that during the discussions in the fall of the preceding year?

A. Right. When they are working on budgets, a lot of times that's where risk management activity really picks up with our customers.

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

CROSS-EXAMINATION

BY MS. HANCOCK:

Q. Good afternoon.

A. Good afternoon.

Q. I'm Nicole Hancock with -- here to represent National Milk. Thanks for being here today.

Just wanted to ask you some questions, make sure I understand your testimony.

I'm hoping you can start with maybe helping me understand a little bit more about Schreiber Foods. I think in the very beginning of Exhibit 254 it says that Schreiber is a leader in the production of sales of cream cheese, natural cheese, processed cheese, beverages, and yogurt. Maybe we start here.

How many plants does Schreiber Foods have?

A. I couldn't tell you that exactly, because it feels like it changes so often. I could get back to you with

that information.
Q. Do you have an estimate?
A. I'd say it's over 15, well over 15 worldwide. So I can get back to you with the actual number, if you want.
Q. Do you know how many in are in the United States?
A. Not exactly. Sorry.
Q. More than five?
A. Yes.
Q. More than ten?
A. Probably, yes.
Q. Okay. Somewhere between 10 and 15? Are we in the ballpark?
A. I think that's ballpark.
Q. Okay. So -- and -- and how many pool distribution plants do you have in the United States?
A. I don't know that information.
Q. Do you have an estimate?
A. No. I'm -- that's outside of my area.
Q. Okay. Okay. How much of the products that are produced by Schreiber's, or Schreiber Foods, is the cream cheese, natural cheese, processed cheese, in those categories, as opposed to Class I?
A. Those other products are a vast majority of the products that we do. I don't know what percentages, but it's -- yeah, it's a vast majority.
Q. More than 95%?
A. Within the U.S., yeah, that's fair to say.
Q. And so of the -- let's say less than 5% of

Schreiber Foods product that -- that might be in the Class I category, do you know how much falls under a Federal Order?
A. I do not. No.
Q. Do you know what the volume is? Could you quantify it?
A. Not accurately, no. Sorry. I'm not as close to the -- to the actual production numbers. Sorry.
Q. So do you -- how much do you hedge? What volume do you hedge?
A. The volumes that we hedge are the amounts that -- well, that we're working with our customers to lock in. I don't have those right in front of me.
Q. Can you ballpark it?
A. In terms of our hedge volume? I wouldn't want to speak inaccurately.
Q. Can you give me a range? Can you just do anything to kind of help put it into context how much you are actually hedging?
A. It's -- let's say, it's millions of pounds. I don't know how many millions of pounds.
Q. Is that annually?
A. Annually.
Q. Okay. A very small number, is that fair, as far as the total hedge market?
A. Compared to -- yes. Yeah.
Q. Okay. And you're not hedging anything other than what you have talked about for your customers; is that

fair?
A. What do you mean by that?
Q. You are not doing anything on the open market, you are just hedging what your customers want you to hedge; is that right?
A. Correct. Yeah.
Q. And I think you said you offer your customers a fixed price contract; is that right?
A. Correct.
Q. Do you offer them any other risk management tools other than a fixed price contract?
A. We do offer where -- where the tools are available, options like collars or ceilings, things like that. That's more typical in cheese than other commodities, but for Class I, it's primarily a fixed price.
Q. Okay. So I want to make sure we're clear on that.
For Class I, do you offer your customers anything other than fixed price contracts?
A. It's a tool that's available to them to the extent that we can lay that risk off, but the activity that customers have engaged in up to this point has been fixed price.
Q. Solely fixed price?
A. Correct.
Q. Okay. And prior to -- maybe I should clarify this. Is it fair to say that when I look at your promotional materials online, online at least you describe

yourselves as a natural cheese, processed cheese, cream cheese, and yogurt company.
Is that primarily how Schreiber Foods identifies itself?
A. I'd say that we have added beverages to that.
Q. Okay. And -- and beverages are a broad category for Schreiber Foods as well. Is that fair?
A. It's a -- it's a general term that probably encompasses plenty of products, yeah.
Q. A lot of products that aren't -- wouldn't qualify for Class I?
A. I can't say that.
Q. Because you don't know or because that's not accurate?
A. I can say that we do have Class I products. I can't tell you how much of those beverages are Class I.
Q. So under the beverage umbrella of Schreiber Foods, that would include things like juice?
A. No. Dairy products. Outside of the U.S. there are -- we do some beverage in actually our plant in India, but I think that's probably outside of this context.
Q. Okay. And I think it's fair to just -- for my questions at least, we'll just stay in the U.S., unless we're talking about exports.
A. Right.
Q. Okay.
A. I just assume that you might have seen juices on our website, and I think that's what that is reference to.

Q. Okay. That's great to help to clarify that.
And then you also do some health and protein shakes. Do you that in the U.S.?
A. Correct.
Q. Okay. And those wouldn't qualify for Class I?
A. I don't know that.
Q. Okay. And then, at least online you talk about in 2021 that Schreiber Foods was an exporter of 2 billion pounds of refrigerated products.
Are you familiar with what the refrigerated products are that Schreiber exports?
A. All of our products are refrigerated products, so it could have been any -- anything that we produce, yeah.
Q. Okay. And so that would go beyond just milk as well?
A. Sure.
Q. Okay. Did you say sure?
A. Sure.
Q. Your voice is soft.
A. It is very soft, yes.
Q. Okay. In addition to the fixed price contracts, you also said that Schreiber Foods makes available to its customers, swaps, as well as some other products.
A. Actually, I just want to correct you on that. The -- what we make available to our customers is a forward contract. And we do have to be very careful about that because we don't want to fall under a regulatory umbrella that's different from what -- how we operate.

So we offer customers forward contracts, meaning we will lock in the variable portion of their price, and what that does is that puts market risk on to us that then we go out to the either futures or swap market to hedge that risk. So the customer has no ownership in any of the derivative positions that we take, because we're just giving them a forward contract, that risk is put on us, and we lay that off on the market.

Q. Okay. And you were here during Ms. Dorland's testimony?

A. Today, yes.

Q. Okay. And just so the record is clear, you are distinguishing that from when her testimony started last week.

A. Correct. Yes. Correct.

Q. Okay. And you heard her talk about how on the one side there is the dairy producer side, and on the other side there's the sale side, the retail side, whatever the outlet is for the handler.

Do you recall her talking about that?

A. I recall. I don't -- can't speak to all the details, but, yes, I do recall that.

Q. That's okay. This is going really basic. So I just want to make sure that I understand what you are talking about.

So you are not talking about the variables that happen between the dairy farm and your customer outlet, you are talking about your customer locking in the risk and then you, Schreiber Foods, being able to lay off your risk?

A. Correct. That's -- that's our -- that's what we consider risk management, and that's the hedge that we put on to lay off our risk, correct.

Q. And then so does Schreiber Foods have any ESL products?

A. Yes.

Q. What about non-ESL Class I products, do you have any of those?

A. I don't believe we do.

Q. Okay. So of all the Class I products that you have which makes up less than 5% of your products, that would all fall in that ESL category?

A. I believe so, yes.

Q. Okay. Prior -- and I'm sorry, when did you say you joined Schreiber? You said you have been there over ten years?

A. Yeah. I started in 2000, and I started in -- I moved into risk management in 2003.

Q. So --

A. A long time.

Q. -- a long time.

Before the average-of went in place when the mover was based on the higher-of, were you engaged in risk management at that time?

A. Not for Class I.

Q. Okay. So did Schreiber not offer any risk

management tools to its customers at that time?
A. For other products, but not any Class I.
Q. Okay. And so you started that shortly after -- after average-of mover was implemented.
A. Correct.
Q. Do you know when you started your program for Class I?
A. Not exactly. Sorry.
Q. Go ahead.
A. Okay. Not exactly. It was within, I'd say, a year after the change was implemented in May of 2019. We were certainly talking to customers about it, but it wasn't until maybe a year or so after.
Q. Did that cause your customers to buy any additional product from Schreiber Foods because you offered that risk management tool?
A. I don't -- I can't say if it did, if it changed our volumes or not.
Q. Okay. It's just a value-add service that Schreiber Foods offers its customers?
A. Correct.
Q. It didn't turn into something that drove additional sales?
A. Not that I'm aware of one way or the other.
Q. Okay. And I think you said that you served on the IDFA economic policy subcommittee that helped to create IDFA and MIG's mover proposals.
A. Yeah. I was on that economic policy committee,

correct.
Q. How long have you been on that committee?
A. Good question. I would say at least since 2020. I can't tell you exactly, but --
Q. Okay. How is it that you got to be part of that committee?
A. Sure. Well, part of my role at Schreiber is -- is looking at analyzing dairy policy. Part of it, honestly, is -- is -- one of the few people at Schreiber that this is interesting to. So like I said in my testimony -- sorry, we're all in -- we're in a friendly crowd here, right?
But like I said in my testimony, I was looking at this all the way back into college, and honestly being here and being able to testify is something that is -- for me it's pretty exciting. For a lot of other people, maybe not so much. But, yeah. That's --
Q. I count three so far.
A. That may be --
Q. You, Dr. Bozic, and Ms. Dorland. Okay.
So it's fair to say -- I'm sorry, I kind of got a little cheeky there -- but it's fair to say that around 2020, when you had the opportunity to join IDFA's economic policy subcommittee, it was something you were interested in doing because it's something that you have had an interest in for a while?
A. Correct. And my -- some of my responsibilities at Schreiber even prior to that were around analyzing dairy

policy.
Q. Okay. And being part of IDFA's economic subcommittee allows you to help further the policies for Schreiber Foods as well?
A. Correct.
Q. And so you weren't part of the subcommittee or part of the team that had worked on the change from higher-of to average-of, were you?
A. No. No, I wasn't.
Q. Were you just in the wings of watching it happen at that time?
A. I think that's fair to say, yeah. I wasn't part of those negotiations.
Q. And I think in your testimony, I don't remember which page it was on, but in your testimony when you describe that the change was designed to be revenue neutral when it was changed from higher-of to average-of, and you were aware of that; is that accurate?
A. Yes.
Q. Were you aware that it was intended to be revenue neutral change at the time that -- at the time that that change was happening as well?
A. To be honest, that's what the assumption of the $0.74 adder was, was that it was meant to mimic what the higher-of would have been over a period of time. So, yes.
Q. It was fairly common knowledge at the time that that change was being made that that was the understanding in the industry?

A. I can't speak to others. The intent, again, of the $0.74 was to look back and say, how do we make this price equivalent over a period of time to what it would have been?
Q. And it's fair to say that -- that -- as -- after the average-of was implemented, that, in fact, it didn't turn out to be revenue neutral like it was originally anticipated?
A. Correct.
Q. And in February of 2021, National Milk approached IDFA and asked to have an adjustment made that would have this adjuster similar to what IDFA and MIG are proposing in its proposals today; is that fair?
A. Yeah, I think I was a great idea.
Q. And you were on the IDFA economic subcommittee when National Milk came to IDFA at that time; is that right?
A. Yes.
Q. And IDFA didn't support that change.
A. The -- I'd say that it was hard to get consensus on that.
Q. And the end result is that IDFA did not support the change that National Milk had asked about?
A. Again, it's -- I think it was a matter of being able to find consensus. And at this point now, we have been able to find consensus that some change needs to be made, and -- and just so happens to be the -- essentially the same proposal that National Milk had provided

previously.

Q. And when you were on the economic subcommittee for IDFA that decided that they didn't want to do it back in 2021, do you know what the justification was that -- that drove IDFA to conclude they didn't want to support National Milk at that time?

A. I don't remember the details. Again, it's not like it was one person's opinion. It was, you know, there's a lot of members of IDFA, and so different opinions at the time, we were not able to reach consensus on that.

Q. Okay. And without that consensus, you weren't able to get to a point where, in 2021, it could support -- IDFA could support National Milk's proposal; is that fair?

A. That's -- that's fair.

Q. Okay. And then at some point you understood that National Milk was going to be seeking the proposal that we're here to discuss today, which is a change to the higher-of for the mover?

A. Correct.

Q. And IDFA, at that time, decided that it instead wanted to go back to what National Milk had proposed in 2021, which would be to keep the average-of, but to have a true-up provision every two years?

A. I don't know what order of events that -- that that happened. I can't say that it was National Milk proposing the higher-of and then IDFA. I can't speak to that order of events.

Q. Well, do you think that IDFA just initiated its current proposals on its own accord without being prompted by National Milk?
A. I think there's recognition that something different had to be -- had to be done, that that change had to be made. Because the change that -- that caused the past to not be a good reflection of the future did not look like it was -- it didn't look like we were going back. And so -- so that's -- at that point, yes, there was realization and agreement that a change had to be made.
Q. So is it fair to say when you say that realization was made, is it the realization that the average-of is not revenue neutral like it was expected?
A. Let's say the average-of with the $0.74 adder was not going to be -- was not going to be revenue neutral going forward.
Q. Okay. So if that's the case, and that there's a kind of realization in the industry that the average-of plus the $0.74 adder was not going to be revenue neutral, why wasn't that the end of the story? Why didn't at that point IDFA just say, we support going back to the higher-of, because we moved from higher-of to average-of, with the understanding that it would be revenue neutral?
A. Because then we would be walking away from the point of the change of going to the average-of, which is the ability to do risk management.
Q. But do you think that USDA, or under the

Agricultural Marketing Agreement, that it's designed to be able to create a program that allows handlers to hedge?

A. I -- I don't have a position one way or the other. I can't -- speaking for Schreiber Foods, I don't have any position on that.

Q. Okay. And -- and you understand that the only reason that the change was made originally was because the change -- if it could effectuate the same mover and then a -- the same mover calculation to result in a revenue neutral Class I price for handlers, but also accomplish some extra goals for handlers, that National Milk was willing to support it; is that right?

A. I'd say for handlers and -- and farmers. I think this creates the ability for farmers to also manage their Class I risk in a way that they couldn't in the past. I think that's something that hasn't really been highlighted very much.

This isn't just a benefit to processors, it's a benefit for the whole supply chain.

Q. And the Proposals 14 and 15 that are offered by IDFA and MIG, they have the effect of getting to the higher-of eventually; is that fair?

A. That's the intent, yes.

Q. Okay. So is it fair to say then that you recognize that higher-of is a better measurement for dairy farmers and to achieve that -- that revenue neutrality for the Class I pricing?

A. I can't speak to whether or not the higher-of is

the correct price, but the recognition that the higher-of is the benchmark that we are measuring against today, and so trying to make that revenue neutral. I'm not making any judgment as to whether or not the higher-of is the correct way to price Class I products.
Q. Okay. And being somebody who has some financial experience and background, and maybe even a passion for it I would say, you can appreciate that there's a significant time value that's associated with dollars today versus dollars later?
A. Correct.
Q. And, for example, Ms. Dorland gave an example of if you were to be paid the average-of $500,000, you didn't get any money -- or I'm sorry -- I guess it was an average of $250,000, you didn't get any money this year, you got $500,000 next year, that can present some cash flow issues in the first year; is that fair?
A. I mean, that's speaking to -- to a side of the business that I'm not directly, you know, involved in with my work at Schreiber Foods, so I don't want to -- obviously, the cash flow yes. I can agree that that creates challenges. But, again, from the -- from our position, I want to make sure that I'm not making assumptions or judgments or things like that that are affecting outside of our area of business.
Q. Okay. And you don't have any arrangements like that with your customers where you would be willing to get payment next year and skip getting payment this year, do

you?
A. I certainly cannot talk to anything like that. That would be proprietary if we ever did. I have no idea if we do.
Q. Okay. And you provided some examples of how the calculations for your risk management tools would work under the higher-of and under the average-of in Exhibit 255; is that right?
A. That is right.
Q. And I think you started with talking with Mr. Rosenbaum about the definition of basis risk.
Do you recall that?
A. Yes.
Q. And you're familiar with CME and how they define different terms related to risk management tools?
A. I'm familiar with the CME. I can't speak to exactly how they define them, but I'm sure you probably have them.
Q. Does basis risk include all those kind of variable expenses, like freight, and handling, and storage, and quality-retention issues?
A. Speaking to Schreiber Foods' basis risk, that's not something that we consider. I think the things that affect basis are probably going to be different for different entities, but really this is about the variability in a market, and -- and how does that variability in the physical product compare to the financial tool you are using to hedge that.

Q. Okay. And that variability is driven by those different costs that go into basis; is that right?
A. What costs would that be?
Q. Like hauling.
A. So the definition that I used of basis is strictly related to the markets itself. So the difference in the Class I market compared to the difference in the tools that we use to hedge that, there's a lot of variability in business. That could be anything from labor costs, packaging costs, you name it. To the extent that here, I'm talking about the change in a market compared to the change in a different market.
Q. Okay. So when you are sitting down to -- to offer your -- your customers a Class I fixed price contract for the sale of the products, that's what you offer them; is that right?
A. Correct.
Q. And when you're sitting down and you are conducting a financial analysis on behalf of Schreiber Foods to know how much risk you need to lay off on the other side; is that right?
A. Correct.
Q. So you have your fixed price contract on one side, and then that tells you what risk you have, you're at least exposed to, to know how you can try and lock that in on the other side to make sure that Schreiber doesn't lose money on the transaction?
A. Correct. On that -- on that hedge on that

commodity.
Q. On that hedge that will protect you based on the fixed price that you have offered your customer.
A. Correct. And to be precise, it's the fixed price for that commodity. So I'm not talking about a total cost of goods, I'm talking about that component of their -- of their total price.
Q. And that change is depending on what product it is that you are laying off the risk for, right?
A. Correct.
Q. So I think in -- in a Class I example, I think you said that you had to -- well, let's look at page 6 of Exhibit 255. And this is one -- the example that you were giving based on September of 2022 for the average-of mover.
A. Was it the average-of?
Q. That one you are on on page 6.
A. I have that electronically, so --
Q. And maybe your counsel has another hard copy.
A. Okay.
Q. So in this example, what is the commodity that you are hedging?
A. So the commodity that we are hedging is going to be the Class I milk price based under the average-of formula.
Q. Okay. And in order to do that, you said here that you had to use both a Class III and a Class IV contract; is that right?

A. Correct.
Q. And what is the minimum volume that you have to lock in on a Class III or IV contract?
A. Using futures it would be 200,000 pounds of milk per contract. So if we use futures, it would be 400,000 pounds. However --
Q. Do you --
A. Oh, sorry.
Q. No, go ahead, finish.
A. I was going to say, however, that's not the only way that we can hedge that risk. Using swaps or over-the-counter instruments allow us to do really just about any quantity that we would need to.
Q. Okay. And so you said using swap or counter instruments were alternatives to buying a Class III and Class IV contract?
A. Correct.
Q. Okay. What are the counter instruments?
A. Over-the-counter. So OTC is another name.
Different names for the same thing. We can use the term swap.
Q. And do you buy Class III and Class IV futures contracts in order to hedge the fixed price contracts that you offer to your customers?
A. Yes.
Q. Okay. And so when you do that, you said that -- I want to talk about that, and I'm going to go back to the other options, but for now I want to talk about these two

contracts.

So in this example, in order to hedge the Class I milk price, you have to enter into a contract both Class III and Class IV?

A. Uh-huh.

Q. Is that a yes?

A. Yes, sorry.

Q. That's okay.

And -- and so if you only enter into one contract for each, that's 400,000 pounds of milk that you have to -- that you have to secure by -- in the futures contracts?

A. Yes. If we use futures, that's correct.

Q. Okay. And how many total contracts in one year would Schreiber Foods use in order to secure its fixed price contracts with its customers?

A. So that would be proprietary that I can't share. I will say that it is -- we use a mix of futures and swap contracts to hedge our risk.

Q. Do you have more than five futures contracts?

A. Yes. Yes, we do have more than five.

Q. Okay. What other tools, other than those contracts, do you also utilize?

A. What other tools, sorry?

Q. Yeah. So you said swaps and OTC, or over-the-counter instruments.

Any others?

A. Option contracts as well.

Q. Okay. Any --
A. Sorry.
Q. What about inventory management? Do you use that at all as a way to -- to protect or as a risk management tool for Schreiber?
A. That would start to get into proprietary strategies that I can't talk to.
Q. Okay. Is it a tool that could be used by somebody who wants to implement it as a risk management tool?
A. A physical hedge could be accomplished, sure. Depending on the market, obviously. Class I is pretty hard to physically hedge 12 months out. You are going to have some bad product by then.
Q. Okay. So that actually brings me to --
THE COURT: Could you say that again, because your voice trailed off?
THE WITNESS: Sorry. I was saying that physically hedging Class I milk 12 months in advance would be hard to do because you would have some rotten product by then. You can't -- outside of ESL, things like that. But I'm just using it as an example.
BY MS. HANCOCK:
Q. How far out do your customers forward contract for their Class I products?
A. I don't know that I can speak to anything in particular -- well, in terms of the range, it could be as far as I'd say 12 to 18 months out.
Q. Okay. And so then you do -- and are these numbers

that you have on this page 6, or in your examples, are any of these real numbers based on the pricing that was actually occurring in these months in 2022?
A. So, yes. Using the average-of, the Class I was 23.62, the actual announced Class III and IV markets averaged 22.46.
Q. Okay. Was $17 ever a price that you could get for Class III or IV?
A. Didn't look at that.
Q. You were just plugging in a number for an example?
A. Right. I could plug in any number that would have traded during that time period, and the number in the end would be the same.
Q. Okay. And -- and that's just based on the example that you have set up here?
A. Yes. Just to walk through how -- maybe why that would be the same. If I found a trading date where the Class III and IV contracts traded at an average-of $18, then the bottom right would be 18 instead of 17, the top left would be 18.72 instead of 17.72, and the -- the gain -- or sorry -- the loss would be $1 less. So under the physical instead of 5.90, it would be 4.90, and under the financial, instead of 5.46, it would be 4.46, resulting in the same $0.45 loss. So it doesn't really matter what number we pick in terms of -- I just wanted to pick a nice round number.
Q. Okay. So this is just for illustrative purposes, not based on an actual hedge that you have done on behalf

of Schreiber?
A. Correct.
Q. Okay. I appreciate it though. Because it's difficult if you are not doing these as a regular -- on a regular basis to -- to get how they all work.
A. Sure.
Q. And so then if we look at your example for higher-of, and this is going back on the corresponding one to page 6, average-of is -- or higher-of is on page 4; is that right?
A. Correct.
Q. Okay. And the basis that you have assigned here is $1.03; is that right?
A. Correct.
Q. And I think you walked us through that calculation from page 1, and you had taken the average between the minimum and the maximum on a Class III futures contract in order to get that basis; is that right?
A. Not quite.
Q. Okay.
A. The $1.03 is the average-of all of the monthly basis data points. It's not the midpoint between the minimum and the maximum.
Q. Okay. So you took all of the monthly basis for 2020 until September of 2022 and averaged it.
A. Yes.
Q. And you would agree with me that that window of time is a pretty volatile period of time?

A. Correct. And is that the new normal -- I hate saying that word, by the way, everybody uses it -- but that is the new normal.

But I wanted to reflect the change that has happened. Because if we use the long-term, like, if I went back to 2010 and used that whole time period, the assumptions that I would use for basis would be insufficient, and would be even worse financial result than what we show here.

Q. Okay. So before we jump ahead, I just want to make sure that I'm clarifying this, though. This average that you have taken between 2020 and September of 2022, it captures that volatility of costs going all over the place, but mostly up, in the middle of the pandemic; is that right?

A. The -- well, it captures all of the differences, so up and down. You can see the minimum was $1.91 negative, and the maximum was $5.21, so --

Q. Do you know when that negative minimum happened?

A. I don't.

Q. Okay. Do you know when the maximum happened?

A. No. Sorry.

Q. Okay. But if we look at the time period before that, substantially different numbering; is that fair?

A. Yes.

Q. Okay. And you used that -- that basis, which includes all that volatility and cost in page 4, to estimate a basis that allows you to create your physical

sell dollar amount in this example at 18.03?
A. Correct. And just to clarify, again, that I picked the $1.03 as the average just for illustration purposes. It's up to every individual company in terms of what they choose to -- and so I didn't want to use any sort of proprietary information in terms of what our basis assumption would be.
Q. And just so I'm clear on what that means, that means when you are sitting at your desk and you are looking to assign a basis number, instead of just taking the average for a period of time, you get to apply real world experiences and what's happening in today's market to -- to add to the amount that you have -- that you have offered at $17 to set your basis risk?
A. Could you maybe put that in a different question?
Q. Yeah. You get to use your own experience and knowledge of everything that's happening in the market to set whatever basis risk you want in order to plug this in? You are not just applying a formula?
A. There's -- there's no exact number that everybody has to choose. If it was somebody's prerogative to use zero, they could use zero. But that -- but, again, it's -- that -- that's the analysis that every company has to do.
Q. And you want to make sure that you are building in as much risk protection as possible, and if you guess wrong, but you have guessed a higher amount, it's just more profit for you?

A. Oh, I understand what you are saying. Sorry. I had to process that for a second.
Certainly. But it speaks to the -- we're not going to be exactly right in every month, and there's going to be some months where it's higher and some months where it is lower. But I mean, that speaks to the -- what you were saying earlier about there is times where you are losing because it's below average, but then there's times when you make it up because it's above average.
Q. Okay. So this -- if you would have used some different numbers in this example, maybe applying some real world experiences, that's going to have a big effect on the P&L that we see on the right-hand side there; is that right?
A. For sure. Whatever -- whatever assumptions you choose that's different from $1.03 will make that final P&L to be different, yes.
Q. And if you were operating at a higher-of situation where that's the mover that was applied, you would apply those factors to the consideration that you would use to set the basis number; is that right?
A. Well, based on the analysis, we wouldn't even be able to offer it because the basis risk is too large. It's -- it -- the variability in the basis is so large that we wouldn't even be able to offer that as a forward contracting option alternative, let's say, for our customers.
Q. Okay. And because offering those contracts to

your customers didn't drive any new sales, it probably wouldn't make you lose any new sales either?
A. I would certainly hope not.
Q. Okay. And then I just want to be clear on this, because this says using the higher-of in this example, and you have just based it on the Class III futures contract there that's in your title; is that right?
A. I'm sorry, what?
Q. On page 4.
A. Page 4.
Q. You have hedging Class I milk under higher-of formula using Class III futures.
A. Correct.
Q. So you haven't taken into account Class IV future contracts?
A. Right. What I did -- what I meant to show was a number of different examples, because under the higher-of, the way that I would look at it when I do the analysis is, I need to try and guess which market is going to be the higher-of, either the Class III or the Class IV.
So if I would do that analysis, I would look at historically how would the Class III have performed, and historically how would the Class IV have performed, and that's what is in the table in pages 1 and 2 of that. So I want to make sure that I'm looking at all the options to see is it possible to be able to hedge this effectively. And these are just illustrative examples of what can go wrong.

MS. TAYLOR: Your Honor? I apologize -- and I'm not sure how many more questions you have, Ms. Hancock -- but we have been going an hour and a half. I think we might need to give our court reporter a break.

MS. HANCOCK: That's fine.

THE COURT: You know, that hour and a half went fast.

MS. TAYLOR: It did. Time flies.

THE COURT: Well, says I, I'm quite comfortable here.

Let's take ten minutes. Please be back and ready to go at 2:58.

(Whereupon, a break was taken.)

THE COURT: Let's go back on record.

We're back on record at 3:00 p.m.

Ms. Hancock, you may resume.

MS. HANCOCK: Thank you.

BY MS. HANCOCK:

Q. Welcome back. I'm still in Exhibit 255, and I just want to close out a couple of my questions.

You were on page 4, talking about the example that you have there for higher-of using a Class III contract; is that right?

A. Correct.

Q. And I think I asked you this, but I don't know where we landed on the answer, so I'm sorry if I'm repeating myself. But this example is just you using a Class III futures contract to lay off the risk of

providing a customer with a fixed price contract in this example?
A. Yes. Under Class I, that's using the higher-of formula.
Q. Okay. And you agree, though, that if higher-of were in place at the time that you are doing this, you would also have the subjectivity and knowledge of looking at what the higher-of historically had been between Class III and Class IV, kind of wearing the lens of that mover; is that fair?
A. I guess, what exactly do you mean by that?
Q. Well, you just -- you would have the knowledge of looking at the higher-of if that was the mover that was in place at the time; is that right?
A. I would have the knowledge that the mover is based on the higher-of, but I would not necessarily have the knowledge that Class III was the right contract to use versus Class IV.
Q. Yeah. But you could look back over -- over time and see between Class III and Class IV which one had been higher?
A. Certainly. Backwards looking, forward looking, who knows.
Q. Yeah. Well, you can use some historical knowledge to predict where the market's going to go; is that fair?
A. I don't think you could use historical knowledge of the Class -- which was the higher-of, Class III or IV, to make a prediction of what will be the higher-of going

forward.
Q. Because -- because it can just be the higher-of and it can change; is that what you mean?
A. Meaning that the market that drives, that is -- that is the higher-of, that's based on fundamentals and what drives price for Class III products versus Class IV products.
Q. If you look -- I mean, do you look at those prices now in your role to know which price is higher between Class III and Class IV?
A. We don't look at the analysis of Class III versus Class IV, because to hedge Class I risk we use both.
Q. Okay.
A. The average.
Q. But you are at least familiar with Class III and Class IV prices over the last few years?
A. Certainly.
Q. And is it true that from November of 2021 up until today, that Class -- Class IV had been higher than Class III for 20 of the 22 months?
A. That sounds -- that Class IV was higher; is that what you said?
Q. Yes.
A. Yes. I believe that's correct. I don't know the exact, but I know it's been Class IV would have been the higher-of in recent history.
Q. If I do my cheating lawyer math, that's 91% of the time that Class IV is higher. Does that sound about

right?
A. Over that time period? I take your word for it.
Q. I'm sorry?
A. I'd take your word for it.
Q. Okay. And so that would give you -- at least as you sit here today, those are pretty good odds about what you can predict for tomorrow; is that right?
A. I would say no. Because if the fundamentals change, let's say for butter, to cause the butter market to fall, that could change the Class III to be higher in the next two months, three months, next month, who knows, right? And that's where looking at the past does not give me -- past performance is not indicative of future behavior, right?
So that's -- just because in recent history Class IV was, does not mean that in the next six to 12 months where I'm going to be looking to lock in a forward contract with our customer, that Class IV will be the higher-of if we were under that formula.
Q. And we saw butter prices go up today, right?
A. Actually, didn't look at it today, but sure.
Q. And you would get to lay over the top of your historical statistics, your experience of what's happening today, and what you know to be happening in the market coming forward; is that right?
A. For -- for what?
Q. In making decisions about how to -- how to utilize the risk management tools available to you at Schreiber?

A. Well, the -- our prediction of what -- what's going to happen in commodity markets has nothing to do with how we hedge. Because hedging is simply about laying off the risk. We're not trying to capitalize on market movements. It's -- when we enter into a position that puts risk on us, we lay that risk off in a market. So that -- so that has nothing do with my expectation of where markets are going to go. It's that today I have acquired risk, and today I lay off that risk.
Q. Okay. And if it all goes as planned, it's at least net neutral?
A. That's the goal with any hedge, is that it's offsetting the market risk that you have in the physical.
Q. Okay. So you are not using it as a profit center, you are just trying to make sure that in this service that you are offering to customers, that you are not exposing Schreiber to any greater costs?
A. We're -- we're trying to make sure, yes, that we're -- that we're -- that our hedges are effective, that we're laying off the risk in the physical market.
Q. Can you tell me the -- you said that you have fixed contracts and -- and -- and futures contracts, but you also use swaps and OTC products as well.
Can you tell me what the ratio is of the swaps versus your -- versus your future contract?
A. I don't know the ratio. I would say that actually the ratio is fairly high for swaps, but some of those swaps can even be futures look-alike contracts, where they

settled to the Class III or IV, but it just gives us the ability to do different quantities than the full contract size.

Q. Would it be more than two-third swaps?

A. I -- off the top of -- of my head, I can't say for sure.

Q. More than half swaps?

A. Sure.

Q. Okay. And is there any reason that if you were using -- if the mover was changed to a higher-of, that you couldn't use an OTC product in order to offer a fixed price contract to a customer?

A. If the change did happen, going back to the higher-of, we would certainly investigate that. My question is, where would the sell-side come for those swaps?

With every other commodity, to be able to offer swaps, whoever is offering that swap needs to lay that risk off themself. I'd say very few just take naked market risk. So they are going to lay that off in some fashion. And to be able to do that, they need to find somebody that is a natural seller.

In the other commodities that we -- that are in the Dairy Complex, there are natural sellers of cheese, butter, nonfat, Class III, Class IV. But there doesn't seem to be a natural seller -- the natural seller of Class I would be dairy farmers. But I don't believe there's a lot of Class I hedging necessarily that's going

on on the dairy farm side.
So missing that -- that sell-side liquidity would -- I would be skeptical of how successful we would be able -- we would be in being able to have or find swaps to hedge Class I under the higher-of.
Q. Something you could look into and consider, but as you sit here today, you are not sure if there's going to be a market for it?
A. Correct.
Q. Okay. And do you offer fixed price barrel contracts to your customers?
A. We offer forward contracts on barrel. That's outside of this. You know, I'm just speaking to the Class I here. But --
Q. And do --
A. -- that extra tidbit, yes, we do.
Q. Sorry, I talked over you.
And -- and how do you price those fixed price contracts for barrels?
A. Well, how we price those, again, like I said earlier, any sort of basis assumption is a proprietary thing. And how we hedge that would be no different than how we would hedge Class I risk. So futures and swaps are tied to some cheese index.
Q. Okay. Class III?
A. Not anymore. In the way past, before cheese futures were available, we did hedge cheese with Class III.

Q. It's fair you don't have a direct correlating product for your barrel fixed price contracts; is that true?
A. No. There's -- there's products that -- that are correlated enough. Like I mentioned earlier, this is more effective than the cheese -- cheese and other product hedges that we have. But it's -- it's high enough where it's acceptable for Schreiber Foods.
Q. You have been able to figure it out?
A. Sure. Yeah. I wouldn't claim the sole proprietary on that, but, yes. Myself, like others, have figured that out.
Q. In a way that satisfies your customers' desire for a fixed price contract and in a way that allows you to lay off the risk for Schreiber?
A. Correct.
Q. Okay. And if we turn to page 2 of Exhibit 255, this one doesn't have a title on it. I'm just wondering if you can remind me what it is that this page is -- is explaining for us.
A. Sure. Just to make sure, that's this one, right?
Q. Yes.
A. Okay.
Q. There's a really faint number 2 at the bottom.
A. Got it.
So this is looking at the basis, again, the difference between the Class I using the average-of formula and the average Class III and IV settlement. So

where did the Class III and IV price, where was it announced at, and what is that average compared to the Class I price.
Q. Okay. So when I look at that 2020 to present, that timeframe is designed to capture when average-of is actually in place as the mover.
A. I actually used that timeframe because I wanted to use the same timeframe as what I did in the previous, doing the analysis for the higher-of.
Q. Okay. And you would agree with me that that's a real timeframe there when average-of was in place as the mover?
A. Correct.
Q. Okay. And you have the average at $0.72.
Do you see that?
A. Yep.
Q. What is that $0.72 the average of?
A. So that is the average of the basis. Again, the difference between the Class I using the average-of formula and the average-of the announced Class III and IV. So that average-of $0.72, again, as I -- if I extended decimal places, it would be 71.51, I believe, which is very close to the 71.41, which is the $0.74 adder for the skim portion times 96.5%.
Q. Okay. And this is the basis that you actually use when you are -- when you are contracting now to lay off your risk for the forward price contracts that you have offered to your customers?

A. So, again, the -- what we use for the actual basis is proprietary. This -- in the examples I just used the average to pick a number, because certainly some basis needs to be counted for in the price that you give to a customer when you are forward contracting. But I didn't want to choose anything that was, you know, our proprietary numbers that we choose to use.
Q. And do you -- why not use the $0.74?
A. Well, the $0.74 is an adder for the skim portion, not for whole milk. I mean, you could use $5 if you chose to. It's whatever each company chooses to use for that basis assumption, but the -- but, yeah. The $0.74 only for the skim, not for the full milk product.
Q. Okay. And this doesn't mean that -- that you are -- are you charging the -- your customers now or are you assessing a base risk that's based on the higher-of?
A. No. Because the Class I, our actual cost of Class I is using the average-of, so that's -- that's the basis -- that's the analysis that we do to -- when we're setting the -- setting the price and doing -- putting that hedge in place is using the average-of.
Q. Okay. And then let's turn quickly to -- well, not quickly, but let's turn to Exhibit 256. And this is your bar chart, and it's titled "CME Group Combined Futures and Options Volume."
This is just off the CME website?
A. Yeah. It's -- well, it's data essentially from the CME on the volume of contracts that have traded,

correct.
Q. And so if we look at it -- it's -- over time, it's fair to say from 2000 until today, it's been on a fairly steady increase for the amount of volume that's traded on the CME; is that right?
A. Yes.
Q. If we look at 2021 and 2022, we're pretty close to what it was back in 2016; is that right?
A. Yes.
Q. So it doesn't look like really it's netted since 2019, when -- when the average-of went into effect, it doesn't really look like it's driven any increase in the amount of volume that's traded on the CME. Is that true?
A. On the amount that's traded on the CME over the last few years. Again, my point in showing this was more about the left side of the -- of the chart. But there's a number of reasons why I -- why that volume has fallen off that is not relevant to here. I can talk to you in the hallway about it what my thoughts are.
Q. Sounds exciting.
A. Yes. Exactly.
Q. So if we look at -- you said the point here was kind of the comparison of the right side compared to the left. Is that just to show the volume has increased so significantly as time has gone on?
A. It was more so to show if we would have made the decision in 2003 or '04 to change the system so that risk management was no longer capable, we would have missed on

the opportunity for all of this volume growth in capability in risk management.

So the point was, again, it's so very early on around -- because hearing testimony, there's a lot of comments around nobody's doing Class I risk management and -- well, certainly we are, so we can't say that nobody.

And I say -- I would also say that just because there may not be an extraordinary amount of volume happening today, that was the same thing early on in the early 2000s. And it takes time for companies to be comfortable with -- with developing a risk management program and -- and making that decision to -- to move into risk management. And so that -- that just takes time.

And that's the same exercise that's happened in dairy a number of times from, you know, the early 2000s when Class III first started trading to, say, 2010 when cheese futures started trading. It takes -- you know, it takes a number of years for that to really be picked up and that volume to take off.

Q. Okay. And what we know is that at least since average-of has been implemented, it hasn't gone down?

A. Well, I don't think you can make that connection. There is -- the -- I would say that there -- that's a false connection.

There's -- it's not that because the average-of caused that -- that drop.

Q. And just -- I'm not trying to say that that's what

caused the drop.
Is it accurate to say that since the average-of was implemented, the total volume traded on the CME has decreased?
A. Well, it entered into -- 2019, 2020 was a much higher year, so --
Q. Yeah.
A. Correlated in terms of the time, but maybe not -- certainly no -- I don't draw any causation there.
Q. Okay. And what we know is there's been some other government programs and other things that have gone into effect in the meantime; is that fair?
A. There's a lot of things I think that go into that.
Q. Okay. And Class III in particular has decreased a good amount; is that fair?
A. From 2020 to 2021. But I wouldn't say that that's necessarily representative of all of the -- even Class III risk management that is happening in the marketplace, because this does not include any swap volume or over-the-counter volume that's happening outside of the exchange.
Q. Okay. And those are -- those are things that more custom tailored to individuals' own risk management tools and needs?
A. Sure. Yeah. They are not standardized like futures are.
Q. And those are the products that would be available in a higher -- if a higher-of was mover -- was the mover

for laying off the risk as well; is that fair?
A. Well, I can't say that for certain. As I said earlier, it really depends on would there be any sell-side. Because without the sell-side, again, it's a risk that somebody would have to be willing to take on to be able to offer that.
So I would not say that it's by any means a guarantee that those would be offered.
Q. Okay.
MS. HANCOCK: Thank you so much for your time.
MR. SJOSTROM: Your Honor, Lucas Sjostrom, Edge Dairy Farmer Cooperative.
CROSS-EXAMINATION
BY MR. SJOSTROM:
Q. Good afternoon, Mr. Herlache.
A. Good afternoon.
Q. A few questions.
Going back to your example in your testimony -- you don't even have to look at it, I promise. On Class I where you showed basis risk, what -- what is driving the basis risk under the average-of in your opinion or --
A. Sure. So there is a small amount of timing risk because the average-of is using two weeks of the surveys, and the Class III instruments are using the three or -- sorry -- four- or five-week surveys. So it's the full month instead of the advanced.
Q. Thank you.
So the advanced would be a major cause of that

basis risk?
A. Yeah. It would be a major cause of that smaller basis risk, yes.
Q. Thank you.
What is -- would elimination -- well, you answered that, I apologize.
Is there any proposal in this hearing that would lower the basis risk?
A. Of the average-of?
Q. Yes.
A. Well, yeah, moving to -- away from the advanced prices would -- would eliminate, probably most, if not all, of that remaining basis risk variability.
Q. So Proposals 16 and 17 would do so, the Edge and Farm Bureau --
A. I believe so if those are referencing the removing the advanced components.
Q. Thank you.
Do you know the -- and I know there's probably not an average, but in your experience, what is the OTC, or the over-the-counter cost, on higher-of versus the cost of futures per pound? Could you give -- are they equal? Is one always higher? Is one always lower?
A. So to be clear, are you asking what the -- so I know you used cost, but maybe I'll translate that into the price --
Q. Yes. Yes.
A. -- that we would get.

Q. Yes.
A. If it -- if we wanted to do a Class I using the -- and the higher-of was in place versus the average-of?
Q. Yeah, on a per hundredweight or a pound basis, depending, per hundredweight.
A. So I don't know how much it would be, because that's -- that's going to be totally dependent on, one, if people would be willing to offer those and what their assumptions around risk would be. But I can guarantee that they would be higher, because, again, the --
Q. Sorry to interrupt.
The OTC would cost more?
A. Yes, sorry. The OTC price, if -- if we were able to step outside of time and look at a world where there's the higher-of and the current world where there's the average-of, the price that I would assume we would be quoted on a Class I OTC product would be higher in the average-of because of just the inability to lay off that risk.
Q. Thank you.
And so, well -- thank you. I'm done with those questions. Two more.
What percent of fluid milk in the country is hedged? Do you have an idea, or no?
A. No idea.
Q. Guess?
A. I couldn't even guess because there's -- the data is just not there to be able to -- to make any guess.

Even if we wanted to look at the volume of products traded, if it's hedged with Class III or IV, we don't know if that's -- if that Class III volume is used to hedge Class I milk or Class III milk. So I couldn't guess.

Q. Class III -- and I'm forgetting the exhibit number, the chart, 200 something, the IDFA Exhibit 256 -- Class III in that chart has much more activity than Class IV.

And do you believe that's because the -- well, I guess I should ask. Do you agree to that? I think that's established.

A. Yes.

Q. Is the execution cost lower in Class III? Is that a reason for that?

A. As compared to?

Q. Class IV.

A. Oh, I don't think it has to do with execution cost. In my experience with looking at futures, the cost of execution is really the same regardless of the commodity. It probably has more to do with, again, who is the sell-side, and there's probably more sell-side coming from Class III than IV.

Q. And related, is it easier to hedge with Class III? Could that be a reason why there's more volume?

A. So it's more liquid I would say. Because as reflected by the volume, there's a saying that volume begets volume. The more volume you have, the more volume you get, the easier it is, so -- and some of it, too, probably speaks to the amount of Class III milk that's in the market versus Class IV milk.

MR. SJOSTROM: Thank you, your Honor. No further questions.

CROSS-EXAMINATION

BY MR. MILTNER:

Q. Good afternoon.

A. Good afternoon.

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

I wanted to start with a question about the first slide on what I think is Exhibit 257, the summary of your charts there. 255? Okay. It's that one.

THE COURT: We're looking at Exhibit 255.

MR. MILTNER: Thank you.

BY MR. MILTNER:

Q. So if I look at the two sections of that, the 2010 through 2019, and then 2020 through present, to what do you attribute the increased range and volatility between those two periods?

A. Well, certainly the -- the Class III and IV markets have moved much more independently of each other. I think that's probably what's driving the volatility.

Q. Do you think that the pandemic had much to do with that?

A. It's hard to say. I mean, because butter has been much higher than it -- long -- the long-term historical average has been, I don't know that that's necessarily --

if butter was the cure for COVID maybe, that would be great, but I don't think that's the case.
Q. I'm curious as to why you chose the end of 2019 as your break point there.
A. Just because that's where we saw a change in the pattern of basis risk where it was still large, but within a certain range, and then it seems like after 2020, not any more science than looking at a chart and saying, okay, that looks like there's a change that happened, and picking that date.
Q. It was just your best judgment based on looking at the data?
A. Yep.
Q. Okay. And so if I think about your testimony in total, is your primary takeaway that for your customers and the services that Schreiber provides to those Class I customers, that your ability to manage risk and hedge for them is far superior using the average-of III and IV versus the higher-of?
A. Correct.
Q. Okay. Now, Ms. Dorland, when she testified, I asked her if -- if her opinion was that a Class I purchaser would be equally able to manage their risk under both higher-of and the average-of, and her opinion was that it could.
Do you disagree with her conclusion?
A. Yeah, I do.
Q. Okay. Can you briefly explain why?

A. Sure. It really goes back to under the higher-of, we don't know which contract is the right contract to -- to best offset the market risk that we have in Class I. And so if I choose wrong, I showed some examples of how -- how impactful that is. And that -- that risk is just too large for us to be able to take on.

There is -- you may be able to show a correlation over a long period of time, but over the last 24 months, like -- like was mentioned, Class IV was actually the higher. So even though the long-term correlation may be better for Class III, over the last few years that would have been a bad hedge.

Q. Okay. And am I correct in interpreting your analysis to state that it was primarily based on the use of Class III and Class IV futures or options to hedge that risk and to the exclusion of other available instruments?

A. Correct. Yeah. It was just looking at Class III or Class IV.

Q. Okay. And -- and if I -- I hope I'm not misstating what Ms. Dorland said in response to Q&A, but I think she suggested that there were other potential hedging tools that could be used to craft a -- a bespoke risk management program.

Do you believe that that is something that would be available if you were to look beyond Class III and Class IV futures and options?

A. Sure. Do you mean under the current method or if we went to the higher-of?

Q. How about for both.
A. Sure. So under the current average-of, there are Class I swaps that are available, and we do use those alongside Class III and Class IV.
In a different world where we move to the higher-of, I can't say for sure if there would be those available and what they would cost. Kind of like I had mentioned earlier, it's -- it would really be a question of would anybody be willing to provide those? Would there -- where would the sell-side come from and how much would you have to pay for it?
Q. So possibly available, but we just don't know?
A. Right.
Q. Ms. Hancock asked you some questions about Schreiber's plants, and I don't want to completely re-plow that ground. But I did look at the website, and for -- for Schreiber -- and it does list all the plants in the U.S. and some of the products that they produce.
Am I correct if I understand that only the Grand Rapids, Michigan, plant produces beverages right now; is that correct?
A. That's correct.
Q. Okay. And I was looking at what is Exhibit 33 in this hearing -- and you don't need to pull that up or remember what it is -- but it's USDA's compilation of all the regulated pool distributing plants, and I noticed that that Grand Rapids plant is listed as a regulated distributing plant for the months of 2023 that were

contained in that exhibit.
Does that sound right to you?
A. I'll believe your research if you pulled it from the USDA.
Q. Okay.
A. Sounds like a good source to me.
Q. I don't believe I'm misstating it.
In 2022, it looked like that plant, in some months, was a regulated plant and some months was not listed as a regulated plant. My assumption would be that that's because the plant was then partially regulated.
Do you know if that is the case, that that plant goes back and forth between regulation and partial regulation?
A. I have no idea.
Q. Okay. Do you know when Schreiber began operating that plant?
A. I don't know the exact date. I believe it was -- I believe we acquired it in 2020 or 2021.
Q. Okay. That would make sense, because I don't see any registration for the plant before '21, and I -- I -- again, I was trying to figure out if it was partially regulated or if it was a new acquisition. So thank you for helping with that.
So did Schreiber produce Class I products for any customer before it acquired that plant?
A. No. I -- we did not produce any, no.
Q. Okay. So then Schreiber would not have had any

need to attempt to hedge Class I prices for itself or any other customer under the higher-of; is that correct?
A. That's correct.
MR. MILTNER: Okay. Thanks. I don't have anything else.

CROSS-EXAMINATION

BY DR. CRYAN:
Q. Good afternoon. I'm Roger Cryan for the American Farm Bureau Federation.
Hello, Mr. Herlache.
A. Hello, Mr. Cryan.
Q. Nice to see you.
A. You, too.
Q. So you discussed basis risk for using Class III or IV contracts with higher-of or the average. I think Ms. Dorland also talked about that.
If you're buying Class III milk at the Class III price, and using Class III futures to forward price that, what's your basis risk?
A. It would be pretty much zero.
Q. And same thing for Class IV?
A. Yes.
Q. Okay. If you are -- and those contracts are cash-settled?
A. Correct.
Q. And those contracts have no stepdown requirements; is that correct?
A. Sorry, what was that? I missed --

Q. There's no requirement to reduce your position before the final settlement date?
A. Correct.
Q. So you can allow those to settle on the final date?
A. Yes.
Q. Okay.
THE COURT: You nodded "yes"?
THE WITNESS: Sorry. Yes.
BY DR. CRYAN:
Q. So if there was a Class I futures contract, what would be the basis risk for processors who were buying milk at the Class I price if they were using that contract?
A. Their basis risk, I would assume, would be pretty much zero.
Q. Okay. Thank you.
A. You're welcome.
DR. CRYAN: Thank you very much.
THE COURT: Let me see if anyone else has questions for this witness before I turn to the Agricultural Marketing Service for its questions.
Counsel?
MR. ROSENBAUM: Steve Rosenbaum for the International Dairy Foods Association.

REDIRECT EXAMINATION

BY MR. ROSENBAUM:
Q. Looking back at Hearing Exhibit 255 where you show

using the higher-of, what the range is of the risk, what the standard deviation is, etcetera. Right?
A. Yes.
Q. Is that something that a person offering a bespoke Class I product would also be capable of calculating and seeing what risk they would be taking on were they to sell such a Class I futures product?
A. Yes. I assume they would do some sort of similar calculation to understand their risk.
Q. And you said that the volatility and range and standard deviation were simply too large for Schreiber itself to be willing to take on that kind of risk, correct?
A. Correct.
Q. And you are a $7 billion a year company, correct?
A. Correct.
Q. And do you have any views as to the likelihood that somebody else would be willing to take on a risk of that nature?
A. Again, it's -- it's guessing at what will happen, but I think it's a low likelihood or just the cost would be very high. If -- I'm sure that we could find people willing to offer us a Class I using the higher-of if it was -- if we were paying $10 over or something, you know. There's going to be a price where I'm sure that people could offer, but the question is, is that something that our customers would be willing to pay, and my guess is probably not.

Q. What was your last statement?
A. My guess is that they would probably not be willing to pay that.
MR. ROSENBAUM: That's all I have. Thank you.
THE COURT: I will now ask for questions from the Agricultural Marketing Service.

CROSS-EXAMINATION

BY MS. TAYLOR:
Q. Good afternoon.
A. Good afternoon.
Q. First my deep appreciation for the simple lesson in risk management.
A. You're welcome.
Q. So I do still have some questions.
A. No problem. I would be very impressed, by the way, if you, like, just got it first time, because that never happens, so --
Q. But -- okay. I think a lot of my questions did get answered, but let me make sure.
I think I gathered from some questioning from Ms. Hancock that you do offer contracts to your current Class I customers, and I know you didn't want to give the number, associated number with that, but more than five is what I gathered?
A. Yes.
Q. Okay. And are those contracts for ESL products or HTST products?
A. They are all going to be for ESL. I failed to

mention, they would be ESL or aseptic.
Q. Okay.
THE COURT: You said ESL or aseptic?
THE WITNESS: Aseptic, yes.
BY MS. TAYLOR:
Q. So your customers for HTST products don't typically look to lock in a price?
A. We don't have any -- we don't sell any volume that's HTST.
Q. Okay. And then I think you said you look out as far as 12 to 18 months?
A. Correct.
Q. So I think as I understand the IDFA proposal, the adjuster would be from August to July of -- I might be getting this wrong. But let's just say -- there's so many swirling around in my head, right, to keep it straight. But it ends in July, it would get announced, and implemented the following January?
A. Correct.
Q. So, like a six-month implementation lag?
A. Right.
Q. Okay. If you are looking out 12 to 18 months, how does that affect your ability to lock in contracts since those two don't seem to line up?
A. I'd say that we look out as far as 12 to 18 months, so that doesn't -- depending on the time of the year and even what's available from a liquidity standpoint in the market, we may not be able -- there may be certain

times of the year where we can't look out as far as 18 months and we have to focus more on the nearby months.
Q. Okay. So is it more common to have the nearby months covered?
A. Yeah. I'd say that's more common, because that would be a position that's, let's say, built up over time. And so we might start looking, you know, 12 months out, but then we would continue to add to that -- and I say "we," you know, it's forward contracts that we're offering to our customers. Most of the time they are taking percentages at a time just to make sure that today is not the wrong day to lock in a price and averaging that together.
Q. Okay. Thank you.
On your -- page 2 of your statement, Exhibit 254, in the first chart, and you referenced this when you went over some of your charts in Exhibit 255. You called the $1.03 and the $1.66 your basis assumption.
Can you define what you mean by that just so it's clear on the record?
A. Sure. So looking at history, we can tell that there is some difference where the Class I is higher than either the Class III or the Class IV. So if we're using a Class III market to hedge a Class I price, when we quote that price to the customer, the fixed price, that upper left box, we need to include some -- some amount that's higher than the Class III.
So because historically Class I is higher, it's

just a question of how much higher and what is that amount that we choose to lock in there, so that would be the basis assumption. And, again, in my example I used the average, but it's up to each company what they actually choose.

Q. So I interpret that as the risk that Schreiber takes on to offer this contract?

A. Right. Correct.

Q. Okay. So on that first chart, as I understand it -- and I want to just make sure I'm clear -- if I look at that first line, it's showing me the difference between the higher-of mover and what the Class III price was over 2010 to 2019. And so you give me the min and the average and the max.

So is that the correct way to read that?

A. So actually it's the difference between the higher -- the Class I price based on the higher-of, and the Class III, the announced Class III price.

So it's saying that if I used Class III to hedge Class I under the higher-of, this is what the differences would have been historically.

Q. Okay. And then so on the second chart, can you go over again one more time? It's not quite as clear to me what that average III, IV line is looking at.

A. Sure. So this is under the average-of mover scenario. So this is saying what is the difference between the Class I using the average-of formula and the announced Class III and Class IV average.

So the point is that we would be using the Class III and IV average markets to hedge the Class I, and so it's just where did the Class III and IV price -- where was that announced, the average of those two numbers relative to the Class I mover under the average-of formula.
Q. Okay. And I think as you were talking with -- I think one of the representatives from Edge, a lot of that basis risk in here is because of the difference between the advanced price and the announced, the six-week lag.
Would that be correct?
A. It's not even so much the six-week lag, because I can look at hedging the previous month. I wouldn't use the previous month futures in Class III and IV. It's more about the Class I price is using the two-week average and the futures settled to the four or five-week, you know, month, the full month. So I'm actually getting two or three extra weeks of price data in my -- in my hedge that is not showing up on the milk cost.
Q. Okay. So these Class III and IV prices, they are Federal Order announced prices?
A. Correct.
Q. Okay. And then under that chart, the averages both for those two time periods are $0.72.
Is that just coincidence?
A. No. I think it's -- it -- it makes sense because the -- again, the $0.72, if I extend the decimal places, it's really close to the $0.74 times 96.5%. So if I take

that, because the $0.74 is added to the skim price, and if I take that times 96.5%, the Class I adder, you could say, is .7141. So this number should kind of bounce around that difference knowing that it's just those extra two or three weeks that are getting picked up in the Class III. So it's really close to the .7141.

Q. You give us so much to think about. I'm glad there's a transcript to go back and think about it.

So you mentioned swaps were another -- swaps, OTC instruments, and options were other tools.

A. Yes. And for simplicity, you can think of OTC and swaps as being synonyms for pretty much the same thing.

Q. Okay. So as a novice person on risk management, is this conversation different when we look at how those tools are used?

A. I guess, what aspect of that?

Q. Well, here we're focusing on futures and the impact of the higher-of versus the average-of on your ability to use futures.

So does that -- is it different if you are using swaps or other tools?

A. Sure. So the -- it's possible to have a swap settled to the Class III and IV average, say. So instead of going out and buying Class III contract and a Class IV contract, I could enter into a swap arrangement that settles to the average-of the Class III and IV.

So it's really more about that execution. I could also enter into a swap that settles to the announced

Class I milk price, and -- and so that -- again, that's something that would not be available on the futures, but it's ultimately -- the goal is still the same in terms of offset the physical market risk. It's just a matter of execution.
Q. And so if I picked up on a different conversation, then, the difference on the execution point is, you need somebody on that sell-side there, where you don't necessarily have that problem on the futures market?
A. That would only be, I'd say, on the -- if we move back to the higher-of. I just question where that sell-side would come from.
Q. Yeah. Okay.
A. Yep.
Q. Okay. So on that bottom conclusion sentence, you say, "In conclusion, Proposals 14 and 15 solves for the farmer income issue."
And I would like you to expand on how your discussion previously demonstrates that it solves for the farmer income issue, which has also been discussed at the hearing?
A. Sure. It's -- the fact that we are adjusting that adder to account for the historical difference between the higher-of formula and the average-of formula. So its -- its intent is to -- like was talked about, to be revenue neutral to the higher-of. It's a way to make sure that the farmers are made whole and maintaining the ability to risk manage the product as well.

Q. So did you -- were you able to hear any of the testimony we had from other National Milk witnesses about the asymmetric risk of the -- to farmers as they identified --
A. Yep.
Q. -- or claim?
Okay. So as I understood that discussion, there's a cap for them -- as they explain it to us, you know, there's a cap for them on the upside of what would be twice whatever the adjuster is, in this case, $0.74. So at $1.48 they don't get any more benefit on the upside, but they take all the downside.
So in this volatile market, if you are -- okay, you are adjusting the cap -- or adjusting the adder. But I guess, are we really making them whole in your -- you know, how is USDA supposed to look at really making them whole when there's this cap still on the upside, whatever it may be?
A. So I think the cap comes from the fact that under the current method, that $0.74 doesn't change. And -- and so -- so, yeah, it's limited to -- to that. In the future, that would -- you know, that $0.74 would be floored at $0.74, so it would never be worse than that under the IDFA proposal.
It could go up. If the difference historically got to be $10 between Class III and IV, this would account for that. And I say the intent is to be a higher-of equivalent over a period of time.

Q. Okay. I think I had a couple of questions on your Exhibit 255. Make sure I don't miss anything.

Can you turn to page 4?

And I think you might have discussed this with someone and I missed it, because I know you said this is just an illustrative example, and I appreciate the simplicity.

But on the -- for example, the $25.31 of what you actually have to buy, you know, in September, that is what you had to pay for the raw milk you put in Class I. That's how I understood that to be.

A. If -- yes, if the higher-of was in place.

Q. Right.

Did this number come from September of 2022 or you just picked this number?

A. Yeah. So I -- I calculated it based on the Advanced Class III and IV skim prices.

So this is -- if the higher-of was in place, that is the number that would have -- that -- that would have been the Class I price in September of '22.

Q. Applicable in September? So would have used announced in August?

A. Correct.

Q. Yeah. And so what -- and is the 20.10 the settlement price of the futures in September of 2022?

A. That would be the August. So because that lag -- I'm going to back up. The month that I'm hedging to align as best as I can with the lag in the advanced price.

Q. Okay.
A. So maybe to -- to be more clear on that, the advanced price is based on the first two weeks of August, and the closest I can get to hedging that time period would be using the August futures.
Q. Okay. All right.
MS. TAYLOR: I think Mr. Wilson has a couple questions.
THE WITNESS: All right.

CROSS-EXAMINATION

BY MR. WILSON:
Q. Good afternoon.
A. Good afternoon.
Q. Todd Wilson, AMS.
Again, on Exhibit 255, just to clarify in my head. The Class I announced price that is part of the equation to get to these differences, is that the announced Class I mover price, the skim price?
A. It is the -- the Class I mover, so the skim and fat. It's the -- yeah, the Class I mover, the whole milk price.
Q. You stumped us.
A. Oh, sorry.
MS. TAYLOR: We have a lot of numbers up here, too.
THE WITNESS: Totally understand.
BY MR. WILSON:
Q. So it's the Class I skim milk mover that's the --

either higher-of or the average-of, based on whichever chart and box you are looking at, plus the butterfat, to equate to a Class I mover at 3.5?

A. Correct. Yes.

Q. And is that also the same price that you have used in your examples on 255, pages 3, 4, 5, to get to the milk buy price, the physical buy price?

A. So the buy price in each one of those on the -- are you saying on the financial?

Q. On the physical.

A. On the physical, yes. It's using both the skim and fat.

So fat -- so the skim under that method, either the higher-of or the average-of, and butterfat portion, which is the same under both.

MR. WILSON: Okay. All right. Thank you.

MS. TAYLOR: That's it.

THE COURT: Is there something you could say that would stump them?

THE WITNESS: I don't know. We could be here all day.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. ROSENBAUM:

Q. Steve Rosenbaum for IDFA.

This may clarify. I hope it doesn't confuse.

But on Exhibit 255, page 4, that's where you are addressing what the hedging would have been had we been

under the higher-of formula using a Class III futures price for September 2022, correct?
A. Correct.
Q. And so the $25.31, that is what the announced Class I price would have been for August 2022, including both skim and butterfat, had we been under the higher-of methodology at that point in time; is that correct?
A. Correct.
Q. And the financial of $20.10, that is what -- I'm going to ask you to complete that, because I may say it wrong. What is that?
A. That is the announced Class III price for the month of August 2022.
Q. Skim and butterfat both?
A. Skim and butterfat both.
Q. Okay. And then just to follow up on a question asked by AMS in terms of this notion of a cap.
The cap, correct me if I'm wrong, the cap exists under the current average-of, in which we're now living, in the sense that $0.74 is the maximum that gets added to the average-of Class III and IV, correct?
A. Correct.
Q. Okay. And as has been discussed, if the Class III and IV price get sufficiently out of whack with each other, the result is the $0.74 no longer really acts as a long-term average-of the difference between Class III and Class IV, correct?
A. Correct.

Q. And the deal, so to speak, back in 2017, between IDFA and National Milk, was in putting the average-of formula in place, the intent was to be revenue neutral, correct?
A. Correct.
Q. And that -- but we have seen such volatility, at least in the sense of difference between Class III and Class IV prices over the last two or three years, that, in fact, it hasn't turned out to be revenue neutral, correct?
A. Yep. That's right.
Q. And leaving aside entirely the question whether the higher-of actually ever made sense, which is a whole discussion that we're not engaged in, because we're not challenging that in this sense, IDFA wants to live up to its pledge and wants to put a new average-of, that, in fact, will ensure that once it's in place, it will be revenue neutral going forward, correct?
A. Correct.
Q. And that will no longer, under the current regime, that revenue neutrality, depending upon Class III and Class IV maintaining its historical relationship such that $0.74 was a reasonable number to reflect what long-term meant to farmers to get paid under the higher-of, correct?
A. Right. That's where the $0.74 came from.
Q. Okay. But under the IDFA proposal, that $0.74 will no longer be a cap, correct?
A. Correct.
Q. Because there will be a constant calculation of

what farmers would have been paid had we been under the higher-of, correct?
A. That's right.
Q. And so if in August of 2023, last month, we looked back over the two-year preceding period through the end of July, and we said to ourselves, you know, had we been under the higher-of, instead of being paid $0.74, they would have been paid, $1.20, let's say. Okay?
A. Yep.
Q. That difference, which is a $0.46 I think in my calculation, will then be added on starting January 1st of 2024, correct?
A. That's correct.
Q. And remaining in place for that entire year 2024, correct?
A. Yes.
Q. And then when it comes to 2025, we're going to do another lookback that's going to look at 2023 and 2024, would they have been paid more under the higher-of? And if the answer is yes, then we're going to add that on for 2025, correct?
A. That's right.
Q. There's no cap, correct?
A. Yes, there's no cap.
Q. In fact, in some years we'll calculate that had we been under higher-of, they would have gotten more than -- start that again.
In some years it may well be the case that when we

do that lookback in August, we say, you know, under the last two years, had we been under the higher-of, they wouldn't have gotten $0.74, they would have gotten $0.65, right?

A. That's right.

Q. But we already paid them the $0.74, right?

A. Correct.

Q. Is the IDFA proposal asking the farmers to pay us back that $0.09?

A. No.

Q. $0.74 is a floor, correct?

A. It is.

Q. Okay. So farmers always are going to get paid what they would have gotten under the higher-of, correct?

A. That's the intent, yes.

Q. And sometimes more.

A. Correct.

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

THE COURT: Mr. Rosenbaum, where does the money come from to pay that differential?

MR. ROSENBAUM: It comes from my Class I handler clients, your Honor. It's going to be the Class I price. Legal requirement.

THE COURT: Ms. Hancock.

MS. HANCOCK: Thank you.

RECROSS-EXAMINATION

BY MS. HANCOCK:

Q. So -- and Mr. Rosenbaum just walked you through

what you understood to be the IDFA proposal; is that fair?
A. That's right.
Q. And let's say in that example, the adder in 2024 were changed. That would be based on a dairy farmer's production for 2024; is that right?
A. The -- if it was changed for -- yes, that price would apply to their production in 2024.
Q. So for the dairy farmer who produced in 2023, and if average-of in 2023 was lower than what the higher-of was, meaning they didn't get as much, it wasn't revenue neutral for them, and that dairy farmer went out of business, how is that dairy farmer made whole?
A. Well, they obviously aren't because they are out of business. I think the intent is to have the policy apply to the whole, and if you could come up with a way to make that farmer whole, that would be great. But I -- I don't know how -- how we do that. It's -- we have to try to make that -- make policy for -- you know, for the whole.
Q. That would be National Milk's proposal, right? It would make them whole in the year of that they actually produced?
A. It would make them whole, but it would also -- we would lose out on all of the risk management capability that we talked about.
Q. Thank you.
THE COURT: Are there any further questions for this witness?

There are none. Thank you.
I am glad this is your passion.
THE WITNESS: Thank you.
MR. ROSENBAUM: Steve Rosenbaum.
Your Honor, at this point we would move Hearing Exhibits 254, 255, and 256 into the record.
THE COURT: Is there any objection?
There is none. Exhibit 254 is admitted into evidence.
(Exhibit Number 254 was received into evidence.)
THE COURT: Exhibit 255 is admitted into evidence.
(Exhibit Number 255 was received into evidence.)
THE COURT: Exhibit 256 is admitted into evidence.
(Exhibit Number 256 was received into evidence.)
THE COURT: Now, before you tell me about your next witness, we need to take some kind of break. Oh, it's already 4:00. I think we better take ten minutes. So please be back and ready to go at 4:15. We go off record at 4:05.
(An off-the-record discussion took place.)
THE COURT: Let's go back on record.
We're back on record at 4:15.
Mr. Rosenbaum.
MR. ROSENBAUM: Good afternoon, your Honor. We call as our next witness, Kimberly Greenbaum.

THE COURT: Would you please state and spell your name?
THE WITNESS: Yes, ma'am.
Kimberly Greenbaum, K-I-M-B-E-R-L-Y, G-R-E-E-N-B-A-U-M.
THE COURT: Two E's and then Baum, B-A-U-M.
Have you testified previously in this proceeding?
THE WITNESS: No, ma'am.
THE COURT: I'd like to swear you in.

KIMBERLY GREENBAUM,
being first duly sworn, was examined and testified as follows:

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MR. ROSENBAUM:
Q. Good afternoon, Ms. Greenbaum.
A. Good afternoon.
Q. I've placed before you a document that's been marked as IDFA Exhibit 38.
Is this your written testimony?
A. Yes, sir.
MR. ROSENBAUM: Your Honor, I would ask that this document be marked as Hearing Exhibit 257.
THE COURT: Yes, it will be. Thank you.
(Exhibit Number 257 was marked for identification.)
BY MR. ROSENBAUM:
Q. So, Ms. Greenbaum, I know you have written

testimony, but we're going to look at your request, try to do this a bit with questions and answers. We have had this posted for sometime.

Tell us first your -- a little bit about your personal background.

A. Sure. So I joined Nestle in 2000 as a buyer, a dairy buyer, local. And then I have done national and global roles. Now, as of 2017, I'm a senior specialist in procurement for dairy. So that means I support our businesses in Noosa, Nestle USA, and I also support our global procurement hubs.

Q. All for dairy; is that --

A. All for dairy. Yes, sir.

Q. Okay. And it's -- when I look at your testimony, there's a lot of the word "biggest" there. So let me run through some of the biggest.

Is Nestle the biggest food and beverage company in the world?

A. As far I know we are, yes, sir.

Q. And is your company the largest purchaser of dairy in the world?

A. Yes, sir.

THE COURT: You are nodding "yes."

THE WITNESS: Yes, sir.

THE COURT: That could be "yes."

THE WITNESS: Yes.

BY MR. ROSENBAUM:

Q. And is dairy Nestle's largest raw ingredient

purchase category worldwide?
A. Yes, sir.
Q. Okay.
A. And in the U.S. as well?
Q. And in the U.S. as well. All right. Thank you.
Now -- and are you appearing today in support of IDFA Proposal 14, which would replace the current average-of Class I skim milk mover with a Class I skim milk mover that has an average-of Advanced Class III and IV plus $0.74, plus a lookback that adds on to that $0.74 whatever additional amount, if any, dairy farmers would have received under the two preceding years had we been under the higher-of?
A. Correct. Yes, sir.
Q. All right. Now, what Class I products does Nestle make?
A. It is our Nesquik product that's made in our Anderson, Indiana plant.
Q. Okay.
THE COURT: At what place in Indiana?
THE WITNESS: Anderson, which is 30 minutes up I-69.
THE COURT: I want that microphone closer to your mouth.
THE WITNESS: I'm sorry.
THE COURT: Now, one way you can do it is to move your chair closer to me.
THE WITNESS: Yes. Better?

THE COURT: Perfect.
THE WITNESS: Okay.
BY MR. ROSENBAUM:
Q. Now -- okay. And what is the shelf life of your Nesquik product?
A. Six months.
Q. And does -- does Nestle offer customers the opportunity to obtain a flat price for purchasing that product over an extended period of time?
A. Yes, sir.
Q. What kind of period of time is that available?
A. I believe our sales contracts are annual. It's not really my area, but I believe they are annual.
Q. And -- and you will have a flat price for that; is that correct?
A. Yes, sir.
Q. Now, obviously you are -- your plant there is a fully regulated pool distributing plant, correct?
A. Yes, sir.
Q. Meaning that you have to each month pay a federal minimum price for your milk when you buy it from farmers, correct?
A. Correct.
Q. And yet you have offered your customers a price that's a flat price for up to an entire year, correct?
A. Correct.
Q. And is that where hedging comes in?
A. Yes, sir.

Q. Okay. Now, when Nestle engages in hedging, what is it -- what is its goal?
A. Our goal when we're hedging is to limit our risk to the market, to the higher spikes in the market, so that we can then provide our customers, the retail customers, with our best price for our product, because we are in a very competitive market in ready-to-drink. There are hundreds of options.
Q. Okay. And is offering a flat price one of the things you feel like as a competitor you have to offer?
A. Yes.
Q. And do --
THE COURT: Just a moment, she's shaking her head yes.
THE WITNESS: Sorry. Sorry. Yes.
BY MR. ROSENBAUM:
Q. Okay. And are you in competition only with other dairy products or other things, too?
A. Other things. Juices, power drinks, you name it. We're -- if it's a ready-to-drink product, we're in competition with it.
Q. And do those entities offer flat pricing?
A. I'm unsure about that.
Q. Okay. Do you feel that offering flat pricing is something your customers are looking for?
A. Yes.
Q. Okay. And do you -- and does your ability to offer that pricing, what effect does that have on sales

from your perspective?
A. From our perspective over the -- I'd say the past three years, we have actually seen the Nesquik brand grow.
Q. Do you attribute that, in part, to the fact that you have been offering such flat pricing?
A. Yes, sir.
Q. Okay. Now, let's talk a bit about hedging at Nestle, which, as I understand it from what you have told me before, is rather extensive.
Tell me how Nestle handles hedging on a -- or how it handles procurement on sort of a worldwide basis?
A. We have a separate risk management team at a global level that does risk management in all the markets where it's available across commodities, not just dairy. And I work with that team on dairy policy and our risk management policies.
So it's a -- they are the ones that are creating it, and then I'm working through the lens of the business in the U.S. to make sure that that policy aligns.
Q. Okay. And is your approval part of the steps that you go through at Nestle?
A. I'm a small part.
Q. Okay. But nonetheless, a part, correct?
A. A part.
Q. There are higher-ups that also have to approve, I take it?
A. Yes, sir.
Q. Okay. And -- okay. Let's go back to the time

period before May 2019. So we're going back to the time period when the Class I mover was based on the higher-of Advanced Class III or Advanced Class IV.
Did -- did Nestle engage in hedging at that time period?
A. Not on Class I.
THE COURT: Not on Class I?
THE WITNESS: Not on Class I.
MR. ROSENBAUM: And why not?
THE WITNESS: There was no way for us to provide correlation back, and the risk was too high on not knowing which market was going to be the higher-of. And it -- we have compliance officers in Nestle, that if they feel like the risk is not low, they will not allow us to do those things.
BY MR. ROSENBAUM:
Q. Okay. And is that what happened prior to --
A. Yes, sir.
Q. Let me just finish the question.
Is that what happened in the period prior to May 2019?
A. Yes, sir.
Q. So Nestle did no Class I hedging before May of 2019, correct?
A. Correct.
Q. Okay. And since May 2019 when we went to the higher-of, with what regularity has Nestle engaged starting -- I said that wrong.

Starting in May 2019 when we went to the average-of for setting the Class I mover, with what regularity has Nestle engaged hedging?

A. Once we got all our books in place, we started hedging Class I, and we have hedged it ever since.

Q. And what is it about the move to average-of that led to that switch within Nestle?

A. The average-of allows us to have a forward-looking view of the market, and it also keeps us in compliance with our regulatory teams there, because they don't feel like the risk is that high.

Q. So have all the requisite approvals been obtained since May 2019 to engage in hedging?

A. Yes, sir. We do it monthly. We have to go through a monthly approval process.

Q. And has it been consistently approved?

A. Yes, sir.

Q. So just to understand that, Nestle actually reviews every month whether they still feel hedging of a particular commodity is appropriate.

Is that what you are saying?

A. Yes, sir. We have monthly meetings, and we talk commodity policies, all the way up to the VP of the zone, Zone Americas. In Nestle we have zones, so it goes all the way up to him.

THE COURT: So that's the VP of zone?

THE WITNESS: America.

THE COURT: America. We're a zone now.

THE WITNESS: Zone. All of the Americas.
THE COURT: All of the Americas?
THE WITNESS: Yes, ma'am.
BY MR. ROSENBAUM:
Q. Okay. We might as well get that on the record.
Tell us about -- I think there are three zones. Tell us what the three zones are.
A. We have Zone America, which is North America, Central America, South America. We have Zone EM&A, which is Europe and Africa. And then we have Zone Oceana, which is the Asian countries, Australia, and New Zealand.
BY MR. ROSENBAUM:
Q. Now, if based upon the pre-May 2019 experience, if USDA were to replace the current average-of approach and go back to the higher-of approach, would Nestle be able to continue hedging?
A. No, sir, not Class I.
Q. And when do you -- when you do hedging, what tools do you actually use to do that hedging?
A. We use the futures contracts.
Q. You do not use swaps?
A. No, sir, not that I'm aware of.
THE COURT: Your question was, you do not use swaps?
MR. ROSENBAUM: That was my question.
THE WITNESS: Not that I'm aware of.
BY MR. ROSENBAUM:
Q. And from your personal knowledge and discussions

in these meetings, etcetera, do you have a sense whether customer expectations increasingly include the desire for a flat price?
A. Yes, sir, they do.
Q. Is Nesquik an ESL product?
A. It's an aseptic product.
Q. Aseptic product.
MR. ROSENBAUM: Your Honor, the witness is available for cross-examination.
THE COURT: Wonderful. Do you want the exhibit in evidence? Because she didn't read the whole thing, so perhaps before cross it should become an exhibit that's admitted.
MR. ROSENBAUM: Your Honor, that's a -- that's a great suggestion. I would ask that Hearing Exhibit 257 be admitted into evidence.
THE COURT: Is there any objection?
There is none. Exhibit 257 is admitted into evidence.
(Exhibit Number 257 was received into evidence.)

CROSS-EXAMINATION

BY MR. MILTNER:
Q. Good afternoon, Ms. Greenbaum.
A. Good afternoon.
Q. My name is Ryan Miltner. I represent Select Milk Producers.
So the Nesquik ready-to-drink product, that is, as

I understand it, a reduced fat milk product, or is that lowfat? Do you know?
A. I believe they have a whole fat, and 2%, and then a lowfat.
Q. Okay. So it comes in different varieties?
A. I believe so, yes. It's been a long time since I had Nesquik in my house, so -- all my kids are grown.
Q. You are not supposed to say that when that's on the record.
A. I have other Nestle products in my house.
Q. Fair enough. I won't admit that my kids drink more Nespresso capsules than they do Nesquik either. Okay?
A. Okay.
Q. We'll just leave it at that.
Do you know if -- when Nestle flat prices those products, if they are -- if they price each of the varieties at the same price or if they change the price based on the amount of butterfat in the milk?
A. We do not change the price based on the butterfat.
Q. So I did some checking during your testimony, and this is the problem about testifying now versus 15 years ago, is we can now look things up while you are talking.
But it looks like Walmart sells a 14-ounce bottle of ready-to-drink Nesquik for about $1.48.
Does that sound about reasonable in your experience?
A. Like I said, I haven't bought Nesquik in -- in a

long time.
Q. So, well, if that's the price, here's what I did. I took that 14 ounces, and I converted it to a hundredweight, and I came to $154.51 per hundredweight for ready-to-drink Nesquik. And I know that that includes cocoa, and sugar, and carrageenan, and some vitamins, right?
But I guess I'm -- I want to know if -- if the Class I price to Nestle is, say $25, and the end product is sold for six times that, why is it not viable for us, for USDA, to adopt the higher-of for the Class I mover?
A. I don't know. I'd honestly have to go back and do the math as well with you, Ryan, to be able to answer that question properly. I mean, I'll be honest, right, to be fair. Because I have never taken that price that we sell to Walmart and backed it into a milk price like that. Because there's a whole lot of other things that go into that price that goes to Walmart. You listed the ingredients, but there's the bottles, the film, the packaging, the hauling, the employees at the Anderson facility, you know, all -- numerous things that I could go on and about what would add to that cost of that particular bottle.
Q. That's a very fair answer. Thank you.
In your statement, which I know -- I know you didn't -- didn't read through it, you did the question-and-answer with Mr. Rosenbaum, which is -- which is perfectly fine. We had some of my witnesses do

something similar when we presented.

But you did state that using the higher-of is simply not a viable solution, and I want to quibble with you about your word choice.

A. Okay.

Q. So Nestle's been making ready-to-drink Nesquik for quite a while, correct?

A. Correct.

Q. And I think you -- you answered Mr. Rosenbaum that you did not do any hedging before the Class I mover was changed, at least for Class I milk; is that correct?

A. That's correct.

Q. So was the product viable before the change to the Class I mover?

A. I would agree with you the product was viable, but I will say that over the past, since the change to the -- let me start over.

The change to the average-of allowed us to hedge that Class I price, and we have been able to limit the risk to the beverage business which owns Nesquik, and that has allowed that brand to grow over the past three years, where we were not seeing a growth pattern on that particular brand.

Q. So what was the year-over-year growth in ready-to-drink Nesquik before the change?

A. It was flat to lower.

Q. And what's --

A. If my memory serves me right.

Q. And what's the year-over-year growth rate now?
A. I don't have those particular numbers on the top of my head, I'm sorry.
Q. That's okay.
In one of your questions you said that you do hedge and provide a -- you do hedge Class I milk to provide your customers with a best price.
Is that -- did I hear you correctly when you said that?
A. Correct.
Q. You didn't say flat price, though; you said best price.
So is it about giving your customers the lowest price or about giving them a flat price?
A. I'll go back to my earlier statement about it being a highly competitive market that we're in for Nesquik. We're in retailers and C stores. And it's convenience. Nesquik is a nice-to-have; it's not a need-to-have, right? So we have to be as competitive as we can be.
So maybe it was a bad choice of word -- bad choice of words on my part, but we do do flat pricing, and we do have to stay competitive.
Q. And Walmart drives a hard bargain, don't they?
A. Walmart does drive a hard bargain, yes.
Q. Thank you.
MR. MILTNER: I don't have any other questions.
///

CROSS-EXAMINATION
BY MS. HANCOCK:
Q. Good afternoon. I'm Nicole Hancock with National Milk.
A. Good afternoon.
Q. Tell me again, so what your role is with Nestle?
A. So I'm a senior procurement specialist for the dairy category.
Q. Okay. What falls under the scope of your responsibilities?
A. It's easier to tell you what doesn't. But -- so I am the -- the easiest way to explain it is, I am the bridge between the Nestle global hubs and the Nestle U.S.A. market. So of all the divisions in Nestle U.S.A., our operating companies, I handle that communication between those two entities, and I'm considered the subject matter expert for dairy for the U.S.
Q. Okay. So I'm trying to mesh your title in procurement with what you have just described, which is, at least to me, sounds more like a communications role.
A. So I -- I don't do the contracting, but I handle all the vendor relations. I handle the business relations. And then I also work with our global group on -- when they are contracting for the market, so specifically for the U.S.
Q. And all with respect to dairy?
A. Yes.
Q. Okay. And do you know what the total volume of

dairy purchases that Nestle makes each year?
A. I don't know the total pounds, but I can tell you that we are over a billion dollars in spend just on dairy.
Q. Okay. A billion dollars in spend on just raw milk acquisition?
A. No. It includes cheese, powders, some of it's fluid milk. We have vats, yogurt. We -- we -- if you can think of it in the dairy category, I help buy it.
Q. Okay. Do you know what percentage of raw milk makes up of your 1 billion pounds of -- or $1 billion worth of procurement spend in dairy?
A. Around a little over 2 million -- 200 million.
Q. Okay. 200 million of the $1 billion in spend annually is on raw milk acquisition?
A. Yes.
Q. And of that 200 million, how much of that is hedged?
A. All of it.
Q. You hedge all of it?
A. Uh-huh.
Q. Is that a "yes"?
A. Yes.
Q. Okay. And when you say you hedge all of it, does -- are you talking about the forward contracts that you enter into with the customers that are buying Nestle's final product?
A. No.
Q. You are talking about the backside laying off the

risk --
A. Yes.
Q. -- of the forward contracts that you enter into with your customers?
A. Yes.
Q. And which one comes first, the hedge or the forward contract?
A. I don't quite understand your question.
Q. Just in the chronology of events, do you first have your forward contracts with your customers in hand before you hedge or lay off that risk?
A. No. Because we -- we get the demand from the sales team first. And then once we know the demand that we have to buy for the following year, that's when we start building our strategies around hedging and policy.
Q. Okay. And so then do you start hedging for the upcoming year at the time that your sales team gives you their forecast?
A. No, we're always on the 18-month rolling calendar.
Q. Okay. And how long are you hedging for?
A. We typically -- it really depends on the liquidity in the market, to be honest. So it could be as far out as liquidity allows.
Q. Okay. So 18 months?
A. There's very little liquidity in 18 months. So it's -- I would say six -- six months out maybe? Yeah.
Q. Okay. And so you will already have contracts in place -- if you are hedging six months out, and your

customer contracts are 12 months out, it's true that you already have your customer contracts in place by the time you are hedging those contracts?
A. So you are asking me if the sales contracts for the retailers are in place, and then we're coming along and hedging --
Q. Yes.
A. -- afterwards?
Yes. We're doing that.
Q. Okay. So you already have your customer contracts in place at the time that you're -- that you are engaging in your risk management practices?
A. Right. Because I can't engage the risk management until I know the demand.
Q. Okay. And it's not based on forecasting, it's based on the actual contracts for providing those products?
A. Well, there is some forecasting in it, because the sales team are forecasting their sales. And then we're getting the demand from their sales forecast.
Q. And what tools are you using to hedge your risk?
A. We're using forward contracts.
Q. You are using forward contracts with the cooperatives as well?
A. No.
Q. You are using forward contracts with your customers that you are selling to?
A. No, in the futures market. Sorry. I misspoke.

We're doing the futures.
Q. And do you know what products you are buying? Is it Class III contracts? Class IV?
A. We're being both.
Q. Okay. And how do you decide which one you are going to buy?
A. The risk management team decides that.
Q. And are you involved in that process at all?
A. I am not.
Q. Okay. So you don't know how they make their decision as to which one they are going to buy?
A. No, ma'am.
Q. And I think you testified with Mr. Rosenbaum that you were not sure whether Nestle used swaps; is that accurate?
A. That's correct, because that falls under the risk management team.
Q. Okay. And Nestle is a publicly-traded company?
A. Yes, ma'am.
Q. And so you understand there's financials and corporate disclosures that are made publicly that are required by law?
A. Yes.
Q. And would it surprise you to learn that the public disclosure documents for Nestle disclose that Nestle has, since prior to 2019, been using swaps?
A. Yes, ma'am. Because I wasn't aware of it.
Q. Did you look into that before you came to testify?

A. No, ma'am.
Q. Okay. So it could happen, it's just not something that you explored?
A. It could happen, and it's just not in my scope of work.
Q. Okay. And does that also mean that swaps of Class I could have been happening before it changed to the average-of and you weren't aware of that as well?
A. It could have happened. I wasn't aware of what was going on in Class I, that part of the category, before the change.
Q. Okay. And it's just something that you didn't look into before you testified to; is that correct?
A. That's correct.
Q. And if I understand Nestle's milk procurement, Nestle enters into contracts with dairy cooperatives, and then the cooperatives are responsible for entering into whatever arrangements they have with either their members or non-members to acquire the milk.
Is that how it works?
A. For the Class I, yes.
Q. Okay. And so that means that Nestle never engages directly with the dairy farmers, just through the cooperative?
A. For Class I, yes.
Q. Okay. Do you know if Nestle ever has any conversations with dairy farmers at all in its acquiring milk?

A. Yes, ma'am, we do. For our Class IV.
Q. Okay. Nothing with respect to the Class I?
A. No, ma'am.
Q. And you talked about that after the average-of was put in place, that Nestle experienced considerable growth in its Class I products; is that right?
A. Yes, ma'am.
Q. And you have listed a number of the products on page 1 of your testimony that Nestle makes in its -- in its beverage portion of its business, and that included the Nesquik ready-to-drink milk, Coffee-mate creamer, Starbucks creamer, Natural Bliss creamer, Boost Nutritional Drink, and Carnation Instant Breakfast; is that fair?
A. Yes, ma'am.
Q. And do you know which of those products are -- are Class I -- or that Class I milk is used to make?
A. Just the Nesquik.
Q. Okay. So only the ready-to-drink milk?
A. Yes, ma'am.
Q. And do you know what percentage of your dairy purchases are used to create the ready-to-drink milk product?
A. I would say somewhere between 80 and 90% of what we buy for the Anderson plant is used in Nesquik.
Q. The other products just don't --
A. The Coffee-mate creamer is a nondairy creamer so it doesn't use any dairy. And then the Starbucks creamer

and the Natural Bliss, they use mainly the cream from the Nesquik that we skim off, and then they use a little bit of our skim milk.
Q. Okay.
A. And then the other products, the Boost and the Carnation Instant Breakfast, the Boost is actually a separate business, and it is -- while it's in the Anderson plant, it is actually separated from the rest of the plant because of allergen concerns, because Boost has soy.
Q. Okay. So you just run the ready-to-drink mix on a different line?
A. We run it in a completely different part of the plant. There is actually a physical hallway and wall separating those two parts of the plant.
Q. Okay. And so when you -- you said that that growth happened, do you know when the growth curve took off in that ready -- ready-to-drink milk?
A. In 2020 is when we started to see the growth, and we have seen it year over year grow. I don't remember the percentage, I'm sorry. It's been a couple weeks since I saw the business presentation.
Q. Okay. And -- and Nesquik ready-to-drink milk went through a complete rebranding in 2020 as well, didn't it?
A. Yes, ma'am. I believe it did.
Q. And, in fact, the formula and the mix of the product changed as well, and the sugars were considerably reduced in that product; is that right?
A. I believe so. I'm not -- I'm not part of that

product development, so --
Q. And all the packaging and all of the look and the container design all changed as well; is that right?
A. Yes, ma'am. I believe so.
Q. And that was all designed to rebrand the product in order to -- to address the change in consumer demand that was happening for that product; is that right?
A. I have -- I'll have to take your word for it. I believe so.
Q. Well, I'm just asking you because it's your company.
A. I don't know. Like I said, I wasn't part of the -- I'm not part of that particular business, and I wasn't part of those changes.
Q. And that was due in large part to the competitive nature of those handheld drinkable products that you were talking about; is that fair?
A. That's fair.
Q. Okay. And it was at that time that the sales started to really increase for that -- for that Nesquik product; is that fair?
A. That's fair.
Q. Okay. So is it likely that the complete change in formula and the complete change in the rebranding of that product is actually what drove those sales of those products?
A. It could have played a part, yes, ma'am.
Q. In fact, you kind of hope it plays a part, right,

because that's your marketing department's job?
A. Yeah.
Q. Yeah. Okay. And then you said that you enter into futures contracts with -- with Nestle's customers that buy those products; is that right?
A. When the --
Q. I'm sorry, that was a bad question.
You said that you entered into a fixed price contracts for the sale of the products to Nestle's customers; is that right?
A. That's right.
Q. And without disclosing who the customers are, can you just tell me kind of the categories or the types of customers that Nestle has?
A. All the major retailers, grocery stores, C stores.
Q. What's a C store?
A. Convenience store, I'm sorry. I fall into the Nestle language way too easily.
Q. I thought Costco. I don't know why.
A. Costco? Yeah.
Q. Costco would be one, though, big box store.
A. Big box stores, yes.
Q. And those are -- do you know if any of your customers hedge any of their products or hedge any of the risk that they take in buying products?
A. I wouldn't know that.
Q. Okay. And do you know if Nestle has any kind of self-insurance that it uses to protect the risk that it

has in entering into these contracts?
A. I wouldn't know that, either.
Q. And in your public disclosures that Nestle makes, would it surprise you to learn that Nestle discloses that it manages prices by raising prices to its customers?
A. I haven't read that anywhere. But is it on the website or some -- oh, in the disclosure. You said that.
Q. Yeah. Is that anything you have ever heard at Nestle?
A. No, ma'am.
Q. That it's able to pass through its increase in input costs to its customers and absorb that impact there?
A. I have never heard that myself, no.
Q. And do you know what kind of margins Nestle builds into its forward fixed price contracting with its customers?
A. I would not know that.
Q. And as the -- as the -- I think you said it was the biggest purchaser of dairy in the world.
Is that what you said?
A. Globally, yes.
Q. That would be the world, right?
A. That would be the world.
Q. Okay. And would you agree with me that as the biggest purchaser in the world, that Nestle has considerable leverage in order to negotiate its dairy purchase agreements?
A. Yes. In some cases, on some materials.

Q. And that would also include if -- if Nestle was going to want to hedge a product and create a customizable OTC or swap product as well, Nestle would still have that leverage; is that right?

A. I wouldn't know about that. That would fall under the risk management team.

MS. HANCOCK: Okay. That's all I have. Thank you so much for your time.

THE WITNESS: Thank you.

THE COURT: Who else has questions for this witness before I ask Agricultural Marketing Service?

CROSS-EXAMINATION

BY DR. BOZIC:

Q. Marin Bozic for Edge Dairy Farm Cooperative.

Ms. Hancock asked you whether you have leverage in procuring your raw input. I was wondering whether you can ever exercise your leverage to an extent that you are able to buy Class I -- you are able to buy milk for fluid utilization below the regulated minimum prices?

A. No, sir.

DR. BOZIC: Thank you very much. That's all I have.

THE COURT: Mr. Rosenbaum.

REDIRECT EXAMINATION

BY MR. ROSENBAUM:

Q. Steve Rosenbaum for the International Dairy Foods Association.

Do you know whether Nestle's financial reporting

actually says that Nestle uses hedges in connection with its procurement of Class I milk?
A. No, sir. I don't know that.
Q. Do you know whether it says that they use swaps for that purpose?
A. No, sir. I don't know that.
Q. Do you know whether the reference to swaps is specific whatsoever in that document as to whether -- as to whether these are currency swaps versus all the other kind of swaps that exist?
A. Yeah. I wouldn't know that. It could be anything. Like I said, we -- we have risk management programs for commodities. I think there's some currency. I only know about the dairies.
Q. But you do know that for dairy, before May 2019, it was forbidden to use futures contracts, correct?
A. Correct.
Q. And you are not aware of those same people having signed off on using swaps for that purpose, are you?
A. I am not aware, no.
MR. ROSENBAUM: That's all I have.
THE COURT: Other questions before I turn to Agricultural Marketing Service?
Mr. English.

CROSS-EXAMINATION

BY MR. ENGLISH:
Q. Good afternoon. Chip English for the Milk Innovation Group.

Ma'am, you were asked some questions by Ms. Hancock about the reformulation of the product and repurposing of the marketplace.

Is some of the reasons why you need to do that, because dairy products are competing against other products on the grocery store shelf?

A. Yes, sir.

Q. And in your experience, are those products able to provide long-term fixed price arrangements with the customers?

A. Yes, sir, that's my understanding.

Q. Is that what Nestle was looking to do to be able to keep the grocery store shelves?

A. Yes, sir.

Q. And that's not just Nestle, but the dairy farmers who sell to Nestle?

A. Yes, sir.

THE COURT: I see no other hands. And it's three minutes to 5:00.

Agricultural Marketing Service, take your time.

MS. TAYLOR: Me and happy hour, I better not take too much time.

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. Good afternoon.

A. Good afternoon.

Q. Thank you for being here today and your patience for getting up on the stand later in the day. I

appreciate it.
A. Thank you for inviting me.
Q. Just a couple questions that might not have been covered. I'm going to try not to be repetitive.
I'm going to turn to the second page of your statement. In the second paragraph you write -- the second sentence, "The proposal will also put more dollars into the pockets of dairy farmers when compared to current conditions and alternative proposals."
Did you do any analysis to demonstrate -- to look at that piece?
A. I did not.
Q. Okay. For the hedging that you do -- so you are doing hedging to offer that fixed price to your customer?
A. Yes, ma'am.
Q. And then do you also do hedges on the supply side?
A. Supply side.
Q. Well, for your other ingredients, etcetera, and the products that you -- ingredients that you purchase for --
A. Yes, ma'am.
Q. Okay.
A. So we -- to clarify, we hedge on cheese, whey, nonfat butter, Class I, and Class IV.
Q. Okay. For Class I -- I think I took -- you didn't start hedging until after the Class I mover changed?
A. That's correct.
Q. Okay. And then how far out do you look? I think

you might have covered a little bit of this with Ms. Hancock, and I didn't quite catch it all.

A. We have an outlook that's an 18-month rolling calendar, so we're always looking out 18 months. But we're not particularly -- we're not always hedging out 18 months. We're only hedging as the liquidity allows.

Q. And what -- what might that be on average?

A. Well, let me add a little bit.

Q. Sure.

A. As the liquidity allows and as it applies to where our policy levels are set. So the policies that we get approved every month, those are particular strategies for each commodity, and we have to meet those policies. That's what our risk management team does.

Q. And do your -- those are internal policies.

Am I correct on that?

A. That's correct, yes.

Q. Okay. On the bottom of page 2, in the paragraph -- first -- in the first full paragraph from the end, beginning "Nestle has extensive experience," the last sentence there says, "Nestle utilizes hedging for two main purposes: First, it provides price visibility, and second, it protects against high price volatility."

I understand the volatility piece, but can you talk a little bit more about how it provides price visibility for Nestle?

A. It gives price visibility to our businesses. So in particular, like our beverage business, which Nesquik belongs to, because we have the ability to hedge Class I, we can then let the business and the business leadership know what their price volatility is going to be in the future, and we can give them that price visibility so that they can then be able to be competitive in the market.

Q. So I understand the benefit to Nestle. I'm curious prior to the change in 2019, how did that system work for Nestle? Because your statement then goes on to talk about kind of what might happen if we reverted back to the higher-of. But you didn't live under that world for a long time, so I kind of want to explore how that worked for you then.

A. I wasn't really a part of Class I before -- before the change. I was doing mainly ice cream and Class II. So I can't really speak to the life of Nestle under the pre-average-of.

MS. TAYLOR: Okay. Thank you. I appreciate that.

MR. WILSON: Good afternoon. This is Todd Wilson, AMS.

CROSS-EXAMINATION

BY MR. WILSON:

Q. Previous testimony we had, they talked about their hedging procedures. He went through a simple exercise box graph, that type of thing, and he talked about how he utilized hedging.

From what I understand in your testimony, it's similar maybe, but maybe not the same, so -- and I'll maybe explain what I mean.

So that previous testimony talked about using the Class III and IV futures price as the instrument.

Did I understand correctly through your testimony that you don't necessarily use III and IV instruments, you use product futures, like powder, cheese, whey?

A. So we use III and IV for our Class I hedge. We use the other commodities for the other dairy derivatives that we buy.

Q. All right.

MR. WILSON: Thank you. Thank you for clarifying that.

MS. TAYLOR: Mr. Wilson asked me to ask one last question.

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. On small businesses, I asked everyone else this question, and I did not ask you this question.

So -- but I'm going to guess since Nestle has 30,000 employees, as stated in your statement, you would not qualify as a small business?

A. Well, that's just in the U.S.

Q. That's clear for the record now.

MS. TAYLOR: That's it from AMS.

THE COURT: Is there anything you need to add so that your testimony will be as clear and comprehensive as you want it to be?

THE WITNESS: No, ma'am. I have nothing else to add.

THE COURT: Wonderful. Thank you. You may step down. And thank you so much.

I'd like to get a preview for tomorrow. Let's do that now.

MS. TAYLOR: Thank you, Judge.

So I'm hoping that Mr. Umhoefer will be here in the morning.

THE COURT: He remains.

MS. TAYLOR: He's the most patient witness I have had, and I want to extend our gratitude for that.

MR. ROSENBAUM: He's hoping he's first up.

MS. TAYLOR: He will be first up. I will declare it. So if I'm allowed to do so, he will be our first witness on at 8:00 a.m. tomorrow morning.

From there, I do not know if there's anyone coming tomorrow that must go on tomorrow?

MS. HANCOCK: Are we off the record?

THE COURT: No, we're on, and I want it on.

So say who you are.

MS. HANCOCK: Nicole Hancock, National Milk. We have Brittany, the dairy farmer tomorrow. I can't remember her last name, so I just call her Brittany.

THE COURT: And what time do you anticipate that she would first be available?

MS. HANCOCK: Afternoon. It will not conflict with Mr. Umhoefer.

MS. TAYLOR: Okay. And then I do know that Dr. Bozic would like to testify. He's on my list.

You are on my list.

Do you have another person that needs to go on tomorrow?

MR. SJOSTROM: Myself. Lucas Sjostrom, for the record.

THE COURT: We're going to run out of witnesses.

MS. TAYLOR: I highly doubt that. We thought that in past weeks, and that's not been the case.

I also know that Sally Keefe is here to testify -- well, I'll let Ms. Vulin speak for her.

MS. VULIN: Yeah, Sally Keefe could go tomorrow, if -- if the order permits.

MS. TAYLOR: Okay.

THE COURT: How do you spell the last name?

MS. VULIN: K-E-E-F-E.

THE COURT: Good.

Now, I would like to go off record, but I think that's all I need -- I don't -- I don't want anybody to leave right this minute, but I think I would like to go off the record now.

Is there anything -- yes? Let me hear from you.

MS. VULIN: We also have Jacob Schuelke with Crystal.

MS. TAYLOR: How do you spell that?

MS. VULIN: S-C-H-U-E-L-K-E.

MS. TAYLOR: And he needs to go on tomorrow?

MS. VULIN: He -- hopefully, yes. Hopefully. He will also be here the next day, whatever that day is.

MS. TAYLOR: Apparently it is Thursday.

MS. VULIN: But he will be ready to go tomorrow, and it would be nice if we could get him on.

THE COURT: And what company did you say?

MS. VULIN: Crystal Creamery.

DR. BOZIC: Marin Bozic for Edge.

As far as the order of priority, I think we are going to have a full day tomorrow. I'm happy to go first on Thursday, just so folks know what to prep for tonight.

MS. TAYLOR: Thank you.

And I am aware of at least one dairy farmer coming on Thursday to testify, I have been told.

I'd also like, at some point this week, we have two USDA exhibits still to put on, and I do have the proper person here to put them on, so it would be nice to get that done this week.

MS. VULIN: And just for prep purposes, Mike Newell with HP Hood is also going to be available tomorrow, and can testify.

MS. TAYLOR: How do you spell his name?

MS. VULIN: N-E-W-E-L-L. I just couldn't remember if there were two L's.

THE COURT: W-E-L-L.

MS. VULIN: Correct. He's with Hood. Again, would be great to get him on tomorrow afternoon. If that's not available, then he could go the next morning. But kind of tomorrow and the following day are the days we have got him.

THE COURT: Thank you, all. I'll see you at 8:00 in the morning. We go off record at 5:09 p.m.

(Whereupon, the proceedings concluded.)

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STATE OF CALIFORNIA)
) ss
COUNTY OF FRESNO)

I, MYRA A. PISH, Certified Shorthand Reporter, do hereby certify that the foregoing pages comprise a full, true and correct transcript of my shorthand notes, and a full, true and correct statement of the proceedings held at the time and place heretofore stated.

DATED: November 10, 2023
FRESNO, CALIFORNIA

MYRA A. PISH, RPR CSR
Certificate No. 11613

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