

**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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Reported by:

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13 FOR THE NATIONAL MILK PRODUCERS FEDERATION:

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20 FOR INTERNATIONAL DAIRY FOODS ASSOCIATION:

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22 FOR THE DAIRY FARMERS OF AMERICA:

23 Todd Miller

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

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1 TUESDAY, SEPTEMBER 26, 2023 - - MORNING SESSION

2 THE COURT: Let's go on record.

3 We're back on record in the milk hearing. It is
4 approximately 8:01 a.m. Eastern. It's September 26th,
5 2023. It's Tuesday.

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

8 MS. TAYLOR: Good morning, your Honor.

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

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

15 And then Mr. Umhoefer is here.

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

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

23 THE COURT: Excellent. Thank you.

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

28 No objection. You may come forward.



1 DR. SCHIEK: Good morning.

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

5 WILLIAM SCHIEK,
6 Having been previously sworn, was examined
7 and testified as follows:

8 THE COURT: Please again state your name.

9 DR. SCHIEK: William Schiek.

10 THE COURT: Would you spell both names?

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

12 THE COURT: Thank you. You may proceed.

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

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

19 MS. TAYLOR: Exhibit number?

20 DR. SCHIEK: Exhibit Number 249.

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



1 So that was the correction I wanted to make.

2 THE COURT: Would you explain why?

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

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

14 DR. SCHIEK: I don't think so.

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

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

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

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

25 THE COURT: I recommend you strike it. It's
26 for -- even for people who know everything about milk,
27 it's very confusing trying to get a handle on what each
28 witness said when part of it's in the exhibit and it



1 doesn't match the testimony. So I recommend that we
2 strike it.

3 DR. SCHIEK: I concur with the Judge.

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

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

14 DR. SCHIEK: Yes.

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

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

18 THE COURT: Thank you.

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

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



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

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

7 MS. HANCOCK: Okay.

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

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

12 THE COURT: You remain sworn.

13 SARA DORLAND,

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

16 THE COURT: You may proceed, Counsel.

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

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

23 MS. HANCOCK: It's an updated spreadsheet.

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

26 THE COURT: Welcome.

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

28 THE COURT: We were thinking of you yesterday.



1 MR. ROSENBAUM: Thank you so much.

2 I don't think we have a -- your Honor, I don't
3 think we have a copy of this spreadsheet she's -- I don't
4 know how we're supposed to cross-examine if we don't have
5 a copy of the spreadsheet. We don't have it yet.

6 MS. HANCOCK: He's e-mailing it to you.

7 THE COURT: Okay.

8 MR. ROSENBAUM: I don't believe we should start
9 her testimony until we have a copy at least.

10 THE COURT: All right. Then let's start her
11 testimony on -- or where you would have begun today.

12 MS. HANCOCK: Okay. Well, then I'll sit back down
13 and open it up for cross-examination.

14 THE COURT: No, no, no. Oh, because you don't
15 have anything further on that until later.

16 MS. HANCOCK: That's correct.

17 THE COURT: Okay. That works.

18 MS. VULIN: What is the correction? Because if
19 it's a small thing, we can maybe figure it out on the fly.
20 But if it's substantive at all, we haven't had any time to
21 review it, talk with our experts. I have no idea what
22 questions to ask about it.

23 THE COURT: All right. Give me your name before
24 you sit down.

25 MS. VULIN: Ashley Vulin with the Milk Innovation
26 Group. Thank you.

27 MS. HANCOCK: Last week, when this -- this is
28 Nicole Hancock again.



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

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

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

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

13 CROSS-EXAMINATION

14 BY MS. VULIN:

15 Q. Good morning, Ms. Dorland.

16 A. Good morning.

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

20 A. I do.

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

23 A. Page 33 of the PowerPoint? I have only got
24 13 pages.

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

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



1 MS. VULIN: Page 33 of Exhibit 238. It is also
2 found on slide 3 of the PowerPoint, which is Exhibit 241.

3 BY MS. VULIN:

4 Q. So you see this table, or Exhibit Number 9, the
5 month-over-month price change, May 2019 to June 2023?

6 A. It's a chart.

7 Q. Chart? Thank you.

8 The blue line tracks what the Class I price change
9 was month over month; is that right?

10 A. Correct. Adjusted for 3.25% butterfat.

11 Q. And the orange line tracks the retail price?

12 A. As reported by USDA.

13 Q. Okay. And so you'd agree with me that the Class I
14 price is more volatile than the retail price is for whole
15 milk?

16 A. Correct.

17 Q. Okay. And so either processors or retailers are
18 not passing along the price swings to the consumer.

19 A. Somebody wouldn't be passing along those price
20 increases.

21 Q. And it would either be the processor or the
22 retailer, correct?

23 A. That's -- that's likely. Yes.

24 Q. And are you aware of any difference in how HTST
25 products may be priced for retailers versus, for example,
26 an ESL product?

27 A. I have experience with how that's priced, yes.

28 Q. Can you tell me about that, please?



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

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

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

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

25 A. What I can say is as a consumer I can observe
26 similar pricing strategies when I go out and look at
27 websites. You know, I have observed -- I think in my
28 testimony I provided all these, but all -- it's not unique



1 to them. You can see that Instacart I have looked at,
2 some of the various store websites, you can see that
3 there's a distinct pricing pattern with some of those ESL
4 products.

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

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

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

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

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



1 present.

2 Q. Got it.

3 So would it be fair to say, just as a general
4 principle, if you -- whether you are a processor or a
5 retailer or selling a product at a fixed price, you likely
6 would carry more risk if you are having to purchase it
7 based on the Class I formula?

8 A. Not -- more risk than -- than whom? Who am I
9 comparing it to?

10 Q. Than someone who passes through the cost entirely
11 to the consumer.

12 A. Not necessarily. It -- really it depends. And
13 that's where some of our discussion last week, how long
14 does take to establish risk management? It's
15 understanding that.

16 For instance, if I process ESL milk and I hold
17 inventory, that can mitigate risk of fixed pricing without
18 doing anything else. So that in and of itself, inventory
19 management, can be effective risk management in that
20 scenario.

21 If I'm passing through cost -- pricing to
22 customers, it -- it really depends on whether -- again,
23 you would have to look at the particulars of each contract
24 structure to understand each of the categories of risk.
25 If I'm buying raw milk and selling 2%, that has a
26 different risk connotation, because even though I may
27 attempt to hedge Class I milk, if I'm selling Class II, I
28 have at least 1.5% butterfat and skim that goes along with



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

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

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

14 That's true, right?

15 A. It "may have risk."

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

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

22 So, understand, I'm not trying to be difficult,
23 but risk management is extraordinarily nuanced. So just
24 saying that some price changes happened, if I have a fixed
25 price, which some people do today, at \$20 milk, and
26 there's a lot of volatility between 13 and \$15, my risk
27 exposure is very different than if I sold \$20 milk and I
28 have a lot of volatility from 17 to \$25. It's all -- it's



1 all contextual, you have to understand this. That's why
2 risk management isn't cookie-cutter. It's not simple.
3 You have to sit down and break down all of the risks and
4 understand what's happening.

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

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

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

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

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



1 That's where we spend most of our time.

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

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

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

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

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



1 significant differences.

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

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

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

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

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

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

28 A. Where are we?



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

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

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

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

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

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

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

24 A. That's correct.

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

28 A. Correct.



1 Q. Okay. And that would fluctuate over time
2 depending on utilization, depooling?

3 A. Plant exposures.

4 Q. Yep. A number of factors.

5 A. Correct.

6 Q. In the attempt to hedge that, were you hedging the
7 Class III price, the Class IV -- like, walk me through
8 what the attempted hedge was.

9 A. So the attempted hedge was basically saying if I'm
10 going to hedge Class I, under today's formula with the
11 average-of, I would use one Class III contract, you know,
12 assuming that that's what I -- if I did choose not to go
13 to the OTC market, I would use one Class III contract and
14 one Class IV contract, which would say my minimum hedge
15 would be approximately 400,000 pounds of milk.

16 So then it was to say, do the price changes there
17 reflect what you would see in your equalization payment,
18 as a theoretical, and the answer was there was no
19 relationship.

20 Q. And is that specific to the fact of the processor
21 being organic or wouldn't that apply to a conventional
22 processor too?

23 A. I suspect it could apply to a conventional
24 processor too, but they -- they would likely have the
25 underlying Class I, II, III, or IV -- like, they would
26 have the utilization in that market, so they may approach
27 it differently. But if anybody attempted this, it would
28 look a little odd.



1 Q. Okay. So there was nothing about the fact of, for
2 example, conventional milk not being a substitute for
3 organic that played into the complication of the hedge
4 here?

5 A. No.

6 Q. Okay. And in terms of the processor's inability
7 to hedge, did you compare that with the higher-of formula
8 or was this an example just on under the average-of?

9 A. I think this was just under the average-of --
10 (Court Reporter clarification.)

11 THE WITNESS: Sorry. Just one second. I'm just
12 looking at my spreadsheet.

13 This was just under the average-of, basically the
14 current milk pricing.

15 BY MS. VULIN:

16 Q. So you are not making any conclusions as to
17 whether or not this organic processor would have been
18 better off hedging under the higher-of formula versus the
19 average-of. It is just given the average-of formula, I
20 was not able to construct an effective hedge for this
21 Class I processor, organic?

22 A. That's correct.

23 Q. My order of words there was not quite right, but I
24 fit them all in the sentence.

25 THE COURT: Would you go back to what you just
26 said about the minimum amount of milk before considering
27 whether a hedge would be effective?

28 THE WITNESS: So today the formula says I have 50%



1 Class III and 50% Class IV. If I were going to use a
2 futures contract, my minimum contract volume is
3 200,000 pounds of milk in each contract. So if I'm going
4 to construct something, the minimum I could do is one
5 Class III futures contract at 200,000 pounds and one
6 Class IV contract at 200,000 pounds, saying the minimum
7 amount of milk I could hedge is 400,000 pounds of milk.

8 BY MS. VULIN:

9 Q. Okay. And the corrected spreadsheet is a
10 correction to this organic example?

11 A. That's correct.

12 Q. And you said after making -- there were the three
13 errors we identified, right?

14 A. Uh-huh.

15 Q. Did you correct all three in the spreadsheet
16 that's coming up?

17 A. So the first one was not an error. I just forgot
18 that I didn't key punch, I actually copied the data, and
19 so that -- the fourth digit was available on Federal
20 Order 126's website. And then also on the AMS API, I
21 checked both, they both had fourth digit of precision.
22 The report that was provided to me that day, for some
23 reason, only went to three digits. So that was a
24 non-issue.

25 But I did correct the other two aspects of that
26 formula. So instead of .4%, the comparison was 4%.

27 Q. And with those corrections, doesn't make a
28 difference to your conclusion?



1 A. 4% is still really far from 80%. So, no, it did
2 not change my --

3 Q. And you had testified previously that you have
4 helped Class I processors develop effective hedges,
5 correct?

6 A. Correct.

7 Q. Why didn't you do an example of that here?

8 A. I did. I provided the Class II example.

9 Q. The Class II example?

10 A. Should be in the --

11 Q. Or a 2%?

12 A. 2%. Excuse me. 2%, sorry.

13 Q. Let's go to that one.

14 A. And just to confirm, you are looking at page 35
15 and 36?

16 Q. I believe I'm on page 12 now, but that's where the
17 tables are, and we'll -- right, on 35 and 36?

18 A. Sure. Charts.

19 Q. The charts. Thank you.

20 Let's start on page 12, if we can. So explain to
21 me, just at a high level, what this 2% hedge example is --
22 what the hedge is and what it shows.

23 A. So this is a simplified version because it's --
24 actually a 2% Class I hedge is a pretty complicated hedge
25 compared to most dairy products. That's why I keep saying
26 it lends itself to over-the-counter markets where somebody
27 can structure it exactly how folks need it. Because we
28 have rigid requirements, when you use futures and options,



1 you have to use the structured construct size, 200,000.
2 You also have to use the standardized components, which is
3 3.5%.

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

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

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



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

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

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

15 A. Sale price.

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

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

21 Q. What spreadsheet are you looking at?

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

25 THE COURT: Does it look like this?

26 THE WITNESS: Yes, the eye chart.

27 THE COURT: Do we know what number that is?

28 MS. TAYLOR: 240.



1 THE COURT: Say it out loud.

2 MS. VULIN: 240.

3 THE COURT: Thank you.

4 BY MS. VULIN:

5 Q. So while you are looking, just to confirm,
6 Exhibit 240 has all the underlying data and formulas for
7 the 2% hedge example?

8 A. That's correct.

9 Q. Okay.

10 A. And I think what I did here was I established this
11 as a rolling three-month hedge, saying if I'm in the month
12 of January, I'm hedging the month of March, February,
13 April, so on and so forth.

14 Q. And what -- what are you hedging: Class III,
15 Class IV, both?

16 A. Both, because you would look at them
17 independently. You wouldn't actually look at them
18 together for hedge accounting unless -- unless, of course,
19 you have stipulated in your contract that you are buying
20 2% based on 50% Class III and 50% Class IV, that wouldn't
21 be an appropriate review, because it's actually how
22 Class III relates to the 2% and how Class IV relates to
23 that product as well.

24 Q. Okay. And your conclusion -- please let me know
25 if I get this right -- is that this hedge is more or less
26 equally effective under the higher-of versus the
27 average-of?

28 A. At that time, the timeframe that I looked at for



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

5 Q. And how effective was the Class IV hedge?

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

9 Q. The Class IV hedge was 70?

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

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

14 A. Neither were effective.

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

17 A. They are both ineffective.

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

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

23 Q. Yes.

24 A. -- it was.

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

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



1 A. That's correct.

2 Q. And so you didn't run a hedge example, I don't
3 believe, in any of your examples for Proposal 15's version
4 of the average-of?

5 A. No. That would have actually negatively impacted
6 the results, just knowing the basis of the formula. So
7 keep in mind -- so there's two issues with those formulas
8 that I have tried to make clear. First, the only benefit
9 you have got with the current formula is that the \$0.74 is
10 constant, so it really has no impact on that relationship
11 over time.

12 The issue that you have though with these other
13 proposals, I think it's 14, 15 and 16, is that that
14 difference changes over time. So what we do in -- for any
15 regression is you have got to have a lookback. Typically
16 accountants like about 60 periods. We don't want to go
17 too far because then we tend to average out anything
18 that's occurring. But you have to have a substantial
19 dataset, so we typically look at five years.

20 If you take a look at that, under each of those
21 proposals, that number, that difference, will change each
22 period, which will effect the correlations because each
23 time we are replacing that every following year, and as
24 you do that, the relationship will change because what's
25 happening in Class III and IV today is not necessarily
26 what's being transmitted in that number. And because that
27 number is changing, you will reduce your effectiveness.

28 So by the very nature of wanting hedge accounting,



1 the proposals are actually defeating hedging.

2 Q. So, again, I'm struggling because you said that a
3 statement like, a processor who buys Class I milk and
4 sells a branded product with a national pricing program
5 may have risk, it's so complicated, you can't make a
6 blanket statement.

7 But just looking at the Proposal 15 formula, you
8 can tell not going to work for hedging, less effective?

9 A. Yes, because you are changing a substantial
10 portion of the price over time. I mean, I think -- I
11 don't have the exact numbers in front of me, but I want to
12 say IDFA's number this year would have been about a \$1.54.
13 Let me look. I got it.

14 And this one should be under Exhibit 16, I
15 believe. It's another big spreadsheet. I'm looking at
16 the colorful section that's colored in orange.

17 Q. What is it you are looking at, the language of the
18 proposal?

19 A. No, no, no -- oh, sorry, this is my -- this is a
20 sub exhibit of mine. It's one of the numbers. I got my
21 numbers different. Sorry. It's -- it's the National --
22 NMPF-32, and what I referred to as Dorland-13.

23 MS. TAYLOR: 239.

24 MS. VULIN: Exhibit 239 I am told.

25 THE WITNESS: Thank you, yes.

26 BY MS. VULIN:

27 Q. So the -- your conclusion that this hedge is more
28 or less equally effective under the higher-of versus the



1 average-of is contrary to what the industry was saying at
2 the time the average-of was adopted; isn't that right?

3 A. I don't know what the industry was saying, in
4 particular. I have read a few things. But, clearly, if
5 you look at the data at the time, it would have provided
6 you -- I think I have got some histograms in here that
7 would have said that it was not appropriate at the time.

8 Q. Okay. So despite -- you are aware that IDFA and
9 NMPF jointly supported Congress adopting the statute that
10 put the average-of in place, correct?

11 A. With conditions, yes.

12 Q. And at the time, the reason that was done, was
13 to -- you know, NMPF's interest was to be revenue neutral
14 and IDFA's interest was to support hedging for Class I,
15 correct?

16 A. For producers and processors.

17 Q. And the -- your statement is, at that time,
18 everyone, despite thinking this would help hedging, they
19 were all wrong?

20 A. Yes. It's common. The industry does that often,
21 unfortunately.

22 THE COURT: May I interrupt? You were looking for
23 a number. You were looking for 154 or something like
24 that?

25 THE WITNESS: I was. And -- and the -- and if you
26 look on that spreadsheet, I think I'm looking at the IDFA
27 numbers, so when you look at what their 24-month number
28 for 2023 would be based on their calculations, it would be



1 \$1.52. 2024 would be \$0.94. Currently we're using \$0.74.
2 That variation would impact it because we're seeing price
3 changes on one side that you are not necessarily seeing on
4 the other.

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

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

15 BY MS. VULIN:

16 Q. Despite knowing the number in advance?

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

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



1 Q. But under the higher-of, we have no idea every
2 month what any portion of that number is going to be,
3 correct?

4 A. Well, we have a futures curve. And there are
5 people who make markets. I think I walked through that
6 last week when I showed the statement of traders. There's
7 a lot of qualified people that didn't exist ten years ago,
8 20 years ago, but they are there.

9 And I think also, you know, even in that paper
10 that Dr. Bozic gave me that acknowledged that even back
11 prior to 2012, that there were over-the-counter markets in
12 Class I.

13 Q. And you said the underlying data for this 2% hedge
14 was in Exhibit 240, right?

15 A. I think -- I don't have all those numbers handy,
16 so I can't say for certain.

17 Q. And would you --

18 THE COURT: Just a moment. AMS agrees --

19 MS. VULIN: Confirmed.

20 THE COURT: -- agrees with that number, 240.

21 MS. VULIN: 240. Thank you.

22 BY MS. VULIN:

23 Q. So if you could go to, I believe it's slide 11 in
24 Exhibit 241.

25 A. Is that the PowerPoint?

26 Q. The PowerPoint, yes.

27 A. Okay.

28 Q. I believe in your prior testimony you had



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

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

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

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

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



1 your PowerPoint.

2 A. Yes.

3 Q. That goes from May 2019 to July 2023.

4 A. Right. I selected from implementation to current.

5 Q. And it looks like, under your chart, other than
6 2020, MIG's Proposal 15 would generate, you know, roughly
7 equal and sometimes slightly more revenue than NMPF's
8 Proposal 13; is that right?

9 A. That's correct. Because it's picking -- it's
10 incorporating time frames that had higher markets.

11 Q. Okay. So this 2020 where Proposal 13 is much
12 higher, that's kind of carried out a little bit more under
13 Proposals 14 and 15; that's what you are saying?

14 A. Under Proposals 14 and 15, there's a significant
15 lookback that varies between I believe 24 and 36 months.
16 So it's going to incorporate past markets, and it's going
17 to report them in current pricing twice, if not three
18 times.

19 Q. So -- and what portion of that lookback makes up
20 this price, do you know?

21 A. Which year are we looking at?

22 Q. We'll pick 2022. Or let's go 2021. That's \$11.03
23 for Proposal 15. Of that \$11.03, what part makes up the
24 adjuster?

25 A. So for IDFA, that was August 2018 to July 2020.
26 And let's see here. MIG changes monthly, so it just
27 depends -- I happen to have highlighted January 2023 was
28 based off of January 2020 to December 2021. So it just --



1 it's a 12-month gap with, what, 24 months.

2 Q. Understood. And I'm just asking is the majority
3 of that total price -- you know, for '23, it's \$10 -- is
4 the majority of that from the adjuster or from the
5 average-of?

6 A. I'm sorry, in which year?

7 Q. Any year. I'm just trying to understand -- you
8 had made a statement about the lookback, and I would like
9 to know if the majority of the price generated from the
10 average-of calculation or from that adjuster.

11 A. Well, I mean that wouldn't -- I understand your
12 question. It doesn't make a lot of sense. But the
13 majority of it is from the underlying milk price.

14 Q. From the average-of calculation?

15 A. So in that instance, it's -- if it's a combination
16 of the Class III and IV, yes, it's the average-of the
17 Class III and IV price.

18 Q. So I'm still struggling with this chart. And I
19 had asked some witnesses about it yesterday, because if
20 you are talking about producer revenue, why is Proposal 15
21 not attractive?

22 A. Because Proposal 15 stops short of continuing the
23 calculation. And if you can continue the calculation
24 forward, you would see that by 2024 -- let's see, by April
25 of 2024, the number drops back down below a dollar again,
26 and there's no baseline. So if nobody is proposing that
27 the \$0.74 makes sense, because it certainly was
28 disproportionate -- and I think you had mentioned that



1 part of the condition for going forward with it on this
2 was that processors and producers over time would tend to
3 share in that difference. And -- and as no one has said
4 status quo is appropriate, anything where you start to
5 drift towards, and potentially with the MIG proposal below
6 status quo, would automatically seem to me to say it
7 doesn't make sense.

8 Q. But you don't know what the Class III and IV
9 prices are going to be in 2024, right?

10 A. I don't.

11 Q. Okay.

12 A. But what I -- but -- hold on a second. But what I
13 do know is that those prices are going to be based off of
14 something that happened when prices were lower. So if we
15 take a look at it, and, sure, Class III and IV are
16 higher -- let's say -- let's say we go to \$30. If you
17 attach \$0.90 to \$30, \$30 says we are really, really tight
18 milk, and milk's got to move all over the place. Remember
19 that discussion we had last week? We really got to move
20 milk. We have got to entice it into these fluid markets
21 away from manufacturing. That's the purpose of the
22 system.

23 If you are going to tack on to it \$0.90. And
24 let's say Class IV is \$30 and Class III is \$20, okay?
25 That's the part that matters. It's not what -- the part
26 you are missing is it is not the overall, where is
27 Class III and where is Class IV? It is what is the
28 relationship on the skim value of Class III and Class IV.



1 If that is really wide, and let's say it's \$10,
2 \$0.94 is wholly inadequate. If both of them are \$20,
3 okay, \$0.94 maybe fine.

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

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

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

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

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

24 Q. And this --

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



1 issue is, is when that signal is transmitted in 2020 and
2 again in 2022, the dairy producers that got \$0.74, 3,750
3 of them aren't here today.

4 Q. Because of the base Class I skim price?

5 A. That is going to likely be a part of it,
6 especially in parts of the country where we have high
7 Class I utilization, which specifically I'll say from
8 Maine on down to the Florida, yes. It's a big deal when
9 we monkey with that number. Nothing on a dairy or at a
10 dairy plant happens on average. You are trying to say
11 life is average. It's not. And that's where I'm saying
12 it can't.

13 An example for you. If I said, I'm going to pay
14 you, on average, \$250,000. Now, in year one I'm not going
15 to give you anything, but in year two I'm going to give
16 you \$500,000. You still have mortgages. You still
17 have -- you still have braces, you know, tuition,
18 whatever -- you have to pay for things.

19 Averages don't work in real life, and that's why
20 it is important to time these things. It's the timing
21 with which that happens. That's what allows these markets
22 to move. That's what sends the signal properly.

23 Q. And you are saying instead farmers should be
24 reacting month to month to the price swings in their milk
25 production?

26 A. They -- they do. These farmers -- consider --
27 remember, I said -- I believe I said, approximately 80% of
28 the milk in the country is coming from around 20% of our



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

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

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

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

20 Q. And so in December of 2020 when Class III is at
21 \$20 and it drops to ten in January of 2020, you believe
22 that farmers can react with their herds, with their milk
23 productions, and with their milk contracts to respond to
24 that?

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



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

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

11 Q. Month to month?

12 A. Month to month.

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

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

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

20 (Whereupon, a break was taken.)

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

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

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

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

28 CROSS-EXAMINATION



1 BY DR. BOZIC:

2 Q. Good morning, Sara.

3 A. Good morning.

4 Q. Do you recall our conversation from last week
5 regarding the statement on page 13 and 14 of your
6 testimony? I'm going to read the sentence from your
7 testimony: "Fundamental to risk management, changes in
8 the hedged item (milk price) should be offset by the
9 derivative and vice versa."

10 Do you recall us discussing that?

11 A. We talked about a lot of stuff, so I don't know.

12 Q. So I -- we can cover it again.

13 So the -- my question last week was to clarify
14 what changes are we discussing, whether those are
15 month-over-month changes, year-over-year changes, and we
16 agreed that it really should be projected versus actual
17 changes.

18 Do you recall that? It's the bottom of page 13,
19 13 out of 39.

20 A. I think here, what I'm referring to is the changes
21 in the hedged item is really that correlation. So if you
22 are going to use a derivative, let's say like Class III,
23 the change, we want that to be highly correlated with the
24 item that -- that's at risk, the hedged item.

25 Q. Yes.

26 A. And we want those two prices to change at a level
27 that exceeds at least 80%.

28 Q. So changes in the hedged item should that be



1 calculated as a difference between two numbers?

2 A. Changes, yes. I believe so.

3 Q. And what should be those two numbers to -- that
4 are used to calculate a change?

5 A. So what we're looking at here is the change in
6 the -- let's say, the milk price, right --

7 Q. Right.

8 A. -- the Class I milk price, and if you were using a
9 Class III futures contract --

10 Q. Right.

11 A. -- we would want the change in the price level of
12 the Class III contract to mirror what's happening -- or to
13 mirror what's happening on that Class I price.

14 Q. So on the futures side it should be presumably the
15 change between the date when you open the hedge and the
16 date when you close the hedge? Is that the change?

17 A. Yes.

18 Q. So is there -- should there be a change in the
19 other side as well?

20 A. That's correct.

21 Q. What is the change on the other side?

22 A. So what we would expect is when -- if we have an
23 expected price, so if I'm hedging -- let's say I want \$18.

24 Q. Right.

25 A. I would expect that at the end of this, whatever
26 the change was on the cash side, so my settlement,
27 whatever my actual milk price was, that it would have been
28 offset hopefully in its entirety by the change in the



1 derivative. Oftentimes it is less than that.

2 Q. Yep. Yep. Agreed.

3 So -- but that \$18 expected price, you cannot just
4 choose what your expected price is. I cannot just say, I
5 will evaluate my hedging, I'm going to set my expected
6 price at \$43, right? It has to be some reasonable
7 expectation of what your hedged item will be, right?

8 A. You would hope that. I spend a lot of time, you
9 know, setting expectations for folks. But, yes, you would
10 hope that it would be based in some sort of analysis or
11 based on reality.

12 Q. We need to first project what the expected item
13 is, then calculate what the actual value of the hedged
14 item is --

15 A. Correct.

16 Q. -- take the change, projected versus actual,
17 correlate that with the change in the futures, close
18 versus open?

19 A. That's right.

20 Q. Okay. Is that what you do in your organic
21 example?

22 A. The organic example I was just actually plotting
23 the price change of the one product versus the other. So
24 I wasn't actually looking at the projected.

25 And honestly, it was a hypothetical that I don't
26 know that anybody does, and if they do, I would seriously
27 caution them against doing it because it doesn't make any
28 sense. The reason is, is you are trying to control too



1 many variables that no one organization can control.

2 Q. So -- okay. I'm a little bit confused. We just
3 spent five minutes agreeing of arriving at the agreement
4 that the proper way to calculate hedge effectiveness is to
5 correlate the changes in the futures position to the
6 unexpected shocks in the hedge items.

7 A. And that's -- and that's basically -- if you take
8 a look at that example, I believe --

9 Q. Would you please point us to which tab you are
10 referring to?

11 A. So here I was looking at the change in the
12 settlement fund compared to the gain or loss on the
13 futures contract.

14 Q. So I'm sorry, we don't see in this screen what you
15 are pointing to.

16 A. Sorry. So I don't -- let's see. It's -- it's the
17 section that's dark blue, right after the orange section
18 that's called milk cost.

19 Q. Would it be possible to pull it on the screen?
20 I'm a little bit lost.

21 A. Let's see, I had to push a button.

22 Q. Okay. Go ahead.

23 A. So -- so it's just simply plotting the settlement
24 fund, so the change here, what the actual settlement fund
25 would have been for the cash settlement versus the hedged
26 gain loss.

27 Q. I'm sorry, Sara, I lost you. What is the change
28 in the settlement fund?



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

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

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

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

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

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

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



1 of the hedged item?

2 A. Why don't we do this, because this took forever
3 last week. Why don't you just ask me what it is that
4 you -- obviously you have an issue with the methodology.
5 If I could strike this entire spreadsheet from the record,
6 I would, because it's a crazy little hypothetical that I
7 truly don't know if anybody in the industry is actually
8 using.

9 But what is it that you would like to get to?

10 Q. Well, I apologize if my question wasn't clear
11 enough.

12 On the page 13, you state that fundamental risk
13 management changes in the hedged item should be offset by
14 the derivative. We -- and I can perhaps ask the court
15 reporter to read back the transcript.

16 DR. BOZIC: Can I?

17 THE COURT: No.

18 DR. BOZIC: No? Okay.

19 BY DR. BOZIC:

20 Q. That, you know, we agreed that the changes in the
21 hedged item should be calculated as a difference between
22 projected and the actual value of the hedged item.

23 So what I'm looking for is where is the projected
24 value of the hedged item in your spreadsheet?

25 A. I simply was taking the settlement fund and
26 saying, can I mitigate my obligation to the pool by going
27 out and taking on Class III and IV futures?

28 This is not something that I would recommend.



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

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

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

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

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

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



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

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

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

18 Did I hear you correctly?

19 A. Not in consistent and expected ways.

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

24 A. I don't think based on what was relayed to me that
25 they are considering in this exercise projected settlement
26 fund obligations. They are just attempting to say, I
27 would like to make sure that it -- I guess it would be.
28 It would be a projected number that says, I would like to



1 make sure my number sticks close to where my -- where my
2 contracted value is or what I can afford.

3 And what I'm saying is, is if that's what you are
4 attempting to do, if you are sitting down and saying,
5 okay, I don't -- you know, I want a milk price that is
6 \$33, undertaking Class III and IV futures to do that isn't
7 necessarily going to get you there. Sometimes your price
8 is lower, sometimes it's substantially higher. The
9 results are all over the map.

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

18 Could we agree that those are two different
19 methodologies?

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

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

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



1 time -- or actually, it was prior to that.

2 This is a very specific example.

3 Q. So, again, you know, what I'm now -- what I think
4 I hear you say is that sometimes we should evaluate hedge
5 effectiveness as a change in the hedged item, projected
6 versus actual, versus the change in the derivative, and
7 sometimes to show that other people don't know what they
8 are doing, we should not use the changes in projected
9 versus actual, we should just use month-to-month changes?

10 A. No. That's not what I am saying.

11 Q. What I'm trying to understand is if we don't use
12 the changes projected versus actual in the producer
13 settlement fund, how can we be sure that the example
14 actually illustrates what you are trying to show?

15 Like, in the example there, you are -- you have
16 hedging gains, and on the other side there is no mention
17 of unanticipated shocks. Hedging is an activity of
18 mitigating unanticipated shocks. I cannot find
19 unanticipated shocks anywhere in your spreadsheet.

20 And to the best of my ability, I understood your
21 rationalization of that is that you don't think it should
22 be done this way, others have told you that they are doing
23 it this way, and you are showing that they don't know what
24 they are doing.

25 A. Is there a question in there?

26 Q. The question is, like, how does your spreadsheet
27 help us understand whether hedging can mitigate
28 unanticipated shocks to the settlement fund payments?



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

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

6 THE WITNESS: No.

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

9 THE WITNESS: Sure. That one I can answer.

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

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

15 BY DR. BOZIC:

16 Q. Right.

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

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

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



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

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

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

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

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

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

26 THE COURT: Which --

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



1 is.

2 238. The Exhibit 238.

3 BY DR. BOZIC:

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

7 A. Okay.

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

9 A. Yes.

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

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

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

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

21 THE COURT: Say that again.

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



1 BY DR. BOZIC:

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

6 A. It does not reflect the difference.

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

10 A. Correct.

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

12 A. That's correct.

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

18 A. Correct.

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

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

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

26 CROSS-EXAMINATION

27 BY DR. CRYAN:

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



1 A. Nice to see you.

2 Q. We have known each other for a long time.

3 A. Yes.

4 Q. And I'm -- I'm always impressed with your facility
5 with this stuff. The degree to which you introduce dairy
6 risk management to the -- for the co-op, and then all your
7 customers. And you are a very -- a very impressive
8 witness, and I'm reluctant to ask you any questions at
9 all. But let me ask you a couple.

10 You talked about -- you really kind of emphasize
11 the importance, that you said Class I primacy is vital.
12 That was a theme; is that correct?

13 A. That's correct.

14 Q. You also talked today about how three years is a
15 very long time in dairyland, and not just Wisconsin but
16 the whole industry?

17 A. The whole -- yes, the entire dairy world.

18 Q. Yeah. Dairy world, right. Dairy world is in
19 Orlando and Dairyland is in California. Okay.

20 Would you agree also that six weeks is a long time
21 in dairy world?

22 A. It can be. I have complained about six weeks,
23 yes. But I'll take six weeks over three years.

24 Q. Sure. Sure. That makes sense.

25 And I agree with that. I mean, the six -- the six
26 weeks versus the three years is the whole -- it is a
27 different level of --

28 A. Time. Yeah.



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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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



1 pretty important.

2 DR. CRYAN: Thank you. Thank you.

3 THE COURT: Thank you, Dr. Cryan.

4 CROSS-EXAMINATION

5 BY MR. ROSENBAUM:

6 Q. Steve Rosenbaum, International Dairy Foods
7 Association.

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

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

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

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

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

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



1 A. You surely can except that's a sizeable amount of
2 milk that you are hedging.

3 Q. Can't you understand --

4 THE COURT: Slow yourself down.

5 BY MR. ROSENBAUM:

6 Q. Can't you enter into this --

7 THE COURT: Let her finish.

8 MR. ROSENBAUM: I think she finished, your Honor.

9 THE COURT: Okay. Then pause before you
10 rapid-fire another question.

11 MR. ROSENBAUM: I appreciate that, your Honor.

12 BY MR. ROSENBAUM:

13 Q. Can't you enter into swaps at smaller sizes than
14 \$400,000?

15 A. Of course. I have been advocating that up here
16 all day. I mean, that's the -- that's the beauty of it,
17 higher-of, average-of.

18 One of the things that I showed last week was
19 the --

20 Q. I asked a simple question. I'm not asking --

21 MR. ROSENBAUM: Your Honor, she's giving long
22 answers. I asked whether you can do it. It's a yes or no
23 question.

24 THE COURT: I'm not in favor of a yes or no
25 question when a better answer could happen -- be taken
26 from this witness.

27 MR. ROSENBAUM: All right.

28 THE COURT: And you really need to slow yourself



1 down.

2 MR. ROSENBAUM: All right, your Honor.

3 THE COURT: I'm trying to take notes.

4 BY MR. ROSENBAUM:

5 Q. My question is, if I can repeat it, can a Class I
6 handler deal with the cream in excess of the needs of its
7 own finished product by entering into a swap for that
8 cream?

9 A. And my answer is, as I stated last week and showed
10 on slide 7 -- and I apologize, I don't know the exhibit
11 for the presentation -- but on slide 7, I showed a
12 commitment of traders where we have got a lot of buy-side
13 liquidity that's coming from outside money, hedge funds,
14 brokers, swaps. You will see a big gold section in there.
15 And I would say that's actually probably the best place
16 for folks to go get liquidity when you are hedging
17 Class I.

18 But that doesn't say that the average-of is
19 superior than the higher-of. Anybody can go out and --
20 and get those swaps. And I would say that's probably --
21 with folks that I have worked with, that's an area that we
22 spend a lot of time, because there is -- there are other
23 people who are willing to take the other side of that
24 transaction, customize it exactly for my needs, which the
25 futures and options market won't. They will tailor it for
26 2%, 1%, what -- and that's the beauty of the
27 over-the-counter market.

28 Q. And so is the answer, yes, you can, that's how you



1 can deal with your excess cream?

2 A. So if I'm trying to swap cream, I could do cream
3 or I could use a butter contract.

4 So are you asking about Class I milk or are you
5 asking me about cream?

6 Q. I'm saying a Class I handler who has excess cream.

7 A. So let me -- let me help you ask me -- me the
8 question.

9 Are you saying I should, if I'm a Class I handler,
10 use Class III and IV to hedge my milk and swaps to hedge
11 my excess cream?

12 Q. I am trying to focus not on the question of how
13 best to hedge the underlying risk, because that's a
14 separate issue. But I'm trying to deal solely with the
15 question of the fact that you have excess cream, and I'm
16 asking you whether you can deal with that excess cream
17 by -- if you have enough volume to enter into a futures
18 contract for butter, and if you lack that volume, you can
19 do it through swap?

20 A. That's an inferior way of dealing with things
21 because it would be way easier to go and say, could I have
22 a Class -- or a 2% skim -- or 2% milk Class I hedge versus
23 I'm going to go take on Class III and IV and then a swap.
24 You just cut out the middleman and just go straight for
25 the swap.

26 Q. Can I do that or not, what I described?

27 A. Yeah. We have been doing swaps for a long, long
28 time.



1 Q. So you can do that with your excess cream; is that
2 correct?

3 A. You can. I wouldn't do it. It doesn't make any
4 sense.

5 Q. Now, in terms of the -- you do understand -- do
6 you -- is it your understanding that under the IDFA
7 proposal, which is Proposal 14, the Class I skim milk
8 mover would have two components. One would be the
9 average-of the Class III and IV price, correct?

10 A. Correct.

11 Q. And the other would be \$0.74, except that if their
12 lookback indicated that there had been an underpayment
13 based upon what it would have been had it been a
14 higher-of, that additional amount would be higher than
15 \$0.74.

16 Do you understand that to be the proposal?

17 A. What do you mean by underpayment?

18 Q. As compared to what the farmer would have received
19 had it been a higher-of system.

20 A. So you are just saying -- you are comparing the
21 difference of between the higher-of and the average-of.
22 There's actually no fund to accumulate money for
23 restitution.

24 Q. I'm saying, is it your understanding -- let me
25 start the question again.

26 Is it your understanding that under the IDFA
27 proposal, when it comes time to determine what the Class I
28 skim mover is in a given month, it will be the average-of



1 the Class III and IV advanced prices, plus a fixed amount.
2 Just start there. Do you understand that to be the
3 system? I'll get to what the fixed amount is in a minute,
4 but do you understand that to be the proposal?

5 A. It is fixed over a period of time, but it does
6 change each period.

7 Q. Well --

8 A. It is fixed over a horizon. Right? If I look at
9 what Mike Brown put forward, it's fixed over, I believe
10 it's a 12-month period. But that -- so fixed -- fixed
11 means -- for -- to me it means for a long period of time,
12 so it is a 12-month, but it can change.

13 Q. Well, let me be more precise then. Do you
14 understand that in any given year, in any given calendar
15 year, under the IDFA proposal, the Class I skim milk mover
16 is a combination of the average-of the higher -- excuse
17 me -- the average-of the Class III and Class IV advanced
18 price plus a fixed amount, for any given year, that's a
19 fixed amount?

20 A. Yeah, I believe so over a -- over a 12-month
21 horizon, a calendar year.

22 Q. And do you understand that that fixed amount will
23 either be \$0.74, that's a minimum, or it will be a higher
24 amount, if during a 24 lookback period it turns out that
25 the farmers would have been paid more than \$0.74 had the
26 higher-of approach been in effect?

27 A. Yeah. I believe it's -- it's the difference
28 between the higher-of and the average-of. If the number



1 is greater than 74, use that; otherwise it is \$0.74.

2 Q. So that a Class I handler who is engaged in
3 hedging activity will know in advance what the add-on is
4 above the average-of the Class III and Class IV price,
5 correct?

6 A. Yeah, I -- like I said, I was able to calculate
7 it, as did Mike Brown, for next year.

8 Q. So that the only -- so there -- there is --
9 hedging is designed to address risk of unexpected changes
10 in costs, correct?

11 A. No. Hedging is -- so I have explained that I have
12 a very -- so hedging is -- is the accounting definition.
13 And if we take a look at that, that's the correlation that
14 we're looking at. We're -- and it's the price change and
15 all sorts of fun stuff. But you have to have a
16 relationship that's at least 80% related.

17 So hold on a second. Your fixed timeframe only
18 lasts 12 months. In accounting we have to use a price
19 series of 60 months. So in that 60-month price series,
20 I'm going to have, under that proposal, five potential
21 price changes based on markets that happened quite a while
22 ago, and then I have got to compare that to price changes
23 in the current period.

24 Q. You will know what that fixed amount is going to
25 be six months before it comes into effect, correct? Under
26 the IDFA proposal?

27 A. I'll know it six months before it comes in. It
28 doesn't change how the relationship works. I'm relating



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

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

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

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

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

22 A. No.

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

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

26 So when you're hedging -- and this is the
27 difficulty with analyzing any of these proposals, because
28 nobody has explained what risks are they managing. And



1 this was the example I gave you. Ford makes trucks. Are
2 we talking about the construction of the F-150 or the
3 Lightning? Is it the Ranger? What is it?

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

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

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

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

24 So if I have a fixed price commitment on this
25 side, I'm pretty certain there isn't that much raw milk
26 being sold in the U.S., so we're -- we're doing something
27 where the butterfat's been standardized. Once you
28 standardize that butterfat, this isn't just looking at the



1 price change over here. This is considering all of that
2 movement in that product, butterfat included, and how well
3 that Class III or Class IV contract moves with it.

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

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

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

15 A. So as I said --

16 Q. -- for that --

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

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

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

27 Q. Right.

28 A. Okay? If I don't, I could be disqualified. And I



1 can tell you, I have sat with enough -- enough auditors
2 and enough people of public companies that said, look, if
3 I have to go and release earnings and say my earnings were
4 negatively impacted because the milk price went to \$25,
5 I'm fine. If I have to release earnings and say, my
6 earnings were negatively impacted because my hedge was
7 ineffective, that is a no-go.

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

13 A. No, you haven't.

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

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

18 Okay. So you heard me earlier say, if you want to
19 hedge 50/50, 50/50 average-of Class III and IV, futures
20 contracts are structured, they are 200,000 pounds. At
21 3.5% butterfat, that's 14,000 pounds of butterfat. Okay?

22 In a butter contract, that is 80% butterfat,
23 20,000 pounds. That's 16,000 pounds. What do I do with
24 the extra 2,000 pounds?

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

27 So then I have increase the size of my contract,
28 and then I have to increase it. And you can



1 mathematically get there. I actually did that for
2 somebody. You have to be -- as much as I gave the example
3 with dairy producers, 87% of dairy producers are highly
4 unlikely to go out and seek Class I hedging because they
5 don't have enough cows to do it.

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

9 Q. Are you talking about processors or farmers?

10 A. Processors.

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

12 THE COURT: I think this might be a good time for
13 a ten-minute break. Let me see what time it is. It's
14 9:48. Please be back ready to go on record at 9:58.

15 (Whereupon, a break was taken.)

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

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

19 CROSS-EXAMINATION

20 BY MR. MILTNER:

21 Q. Good morning, Ms. Dorland.

22 A. Good morning.

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

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



1 never really given thought to.

2 A. Sure. So all hedging is risk management, but not
3 all risk management is hedging.

4 Hedging is a specific accounting connotation.
5 It's what we do -- so a lot of -- there are a lot of
6 similarities. We're trying to mitigate risk. We're
7 trying to drive predictability and earnings.

8 I think Dr. Bozic mentioned shocks. We're trying
9 to avoid those shocks coming through our earnings, whether
10 processor or producer.

11 But hedging has specific rules, generally
12 accounting -- GAAP stipulates. So we have to do
13 retrospective and prospective testing. We have to look at
14 price changes, all sorts of things. Not everybody
15 qualifies for hedge accounting.

16 Hedge accounting is something that came out of --
17 it started in 1999. It really got cooking after Enron
18 with a lot of off-balance sheet transactions. It is the
19 bane of most CPAs. They -- they -- they don't like it.
20 It's complicated. And so they make you qualify for it.

21 So sometimes you will hear people use it
22 interchangeably. Because my background is accounting and
23 finance, and I spend a lot of time with that group,
24 hedging is specific as to how you record these
25 transactions and what qualifies and where it lands in the
26 financial statements. Risk management is more the
27 economics of the transaction.

28 Q. Okay. So given that distinction, let's talk about



1 risk management.

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

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

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

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

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

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

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

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



1 buying conventional milk.

2 A. Okay.

3 Q. In very broad terms, can that handler construct an
4 effective risk management program for their raw milk costs
5 under the current average-of mover?

6 A. They can construct a program.

7 Q. Can that same handler construct an effective
8 program using the higher-of?

9 A. I believe they can.

10 Q. Would the effectiveness of those programs be
11 similar?

12 A. I think so. Because, in both cases -- it comes
13 down -- it comes down to that relationship between the
14 Class III and Class IV advance skim price. And as I have
15 said before, there's nothing in our system. We control a
16 lot of things, we formulate a lot of things, but the
17 relationship between those two prices we don't. So what
18 affects one will affect the other. Some folks may just
19 say it's easy, we can just use the average-of. But based
20 on the proposals, it's going to get complicated.

21 So my answer is, I think you could do it under
22 both scenarios. Each have complications.

23 Q. Now, I want you to consider a -- the proposal
24 similar to that of IDFA, or the Milk Innovation Group,
25 where we're using an average plus a rolling or a delayed
26 add-on.

27 Can -- can that Class I handler of conventional
28 milk build an effective risk management program under that



1 scenario?

2 A. You can manage risk -- hedging could be more
3 complicated because that average rolling number, that
4 price change is happening based on a past period, and how
5 the Class III and IV price changes are happening today.
6 We have got two different sets of time that may or may not
7 relate to each other. So I think that could impact
8 things.

9 Q. But they could build an effective risk management
10 program?

11 A. Yes. I think if anybody has the understanding of
12 risk management and will go through the diligence to
13 establish a program, whether it's WPC or Class I milk, you
14 should be able to construct a program.

15 Q. Now, this is a question coming from someone who
16 does not construct risk management programs. I do not buy
17 milk, and I do not sell milk. Superficially, it seems to
18 me, that it would be easier or perhaps more effective to
19 build a risk management program if you knew that the price
20 you were hedging off of or building a risk management
21 program off of was half Class III and half Class IV in
22 every single month versus a regulatory program where you
23 don't know until very close in which price is going to
24 drive your decisions.

25 Why -- why can you still build an effective
26 program when you don't know whether Class III or IV is
27 going to be the operative price?

28 A. So what's interesting is one of the other aspects



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

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

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

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

26 Because if I'm a Class I handler, especially if
27 I'm making HTST, my contract, by the very nature of the
28 fact that I can pass it through, I can buy it from a



1 farmer co-op and pass it to a retailer, I'm pretty well --
2 my risk is mitigated. Okay?

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

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

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

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

27 THE COURT: I -- I just need your help, because
28 we -- we can watch you using the left hand and the right



1 hand, and we know that the Class I milk is the left hand,
2 and you referred to it as "this."

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

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

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

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

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

12 THE WITNESS: Source of the milk.

13 THE COURT: All right.

14 THE WITNESS: And the right hand is the --

15 THE COURT: The product.

16 THE WITNESS: -- the product.

17 THE COURT: Now I understand.

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

23 I get why a dairy producer would want to hedge it,
24 but based on the construct, we're going to eliminate
25 87% of the dairy producers based on the size of contract
26 that they would have to entertain.

27 The processor is saying, I want to hedge the raw
28 milk. The only reason you would want to hedge raw milk is



1 the gallon jug or something over here got fixed, and
2 that's why you would want to hedge it.

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

6 THE COURT: With the raw milk.

7 THE WITNESS: With the raw milk.

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

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

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

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

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



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

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

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

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

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

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

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

19 The risk is something on this side causes --

20 THE COURT: On the right hand.

21 THE WITNESS: The right hand.

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

24 MR. MILTNER: Thank you for your answer.

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



1 THE WITNESS: Cow, jug of milk (indicating.)

2 BY MR. MILTNER:

3 Q. So as part of what you do for clients, do you --
4 do you track USDA's data retail prices of milk?

5 A. I do.

6 Q. And have you observed that there isn't a strong
7 correlation between shelf prices of milk and the Class I
8 price?

9 A. Yeah. I think that's one of the charts that I
10 provided.

11 Q. I think it was in there.

12 A. It's on the PowerPoint. I think it's slide 3, I
13 think, if I remember. Slide 3, yes.

14 Q. Correct. Okay.

15 Now, if you are a Class I handler and you do the
16 conventional, you're buying based off the Class I price
17 each month, and you do want to fix or collar your raw milk
18 costs for whatever reason, is that equally achievable
19 under the higher-of and an average-of for the Class I
20 mover?

21 A. I think so. It just depends on which tool you
22 use.

23 Q. Now I want to move to the producer side and their
24 risk management decisions.

25 If a producer -- and let's, for our example right
26 now, let's use a producer that's in a Federal Order, that
27 has about a thousand cows.

28 Can that producer effectively hedge their milk



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

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

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

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

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



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

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

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

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

17 A. Should be careful. Because if you take a look at
18 the requirements -- and this is if they are attempting to
19 do it with futures contracts because that is really what
20 we're talking about. Because when -- before the change in
21 2019, I worked with dairy producers. We managed blend
22 prices, all sorts of things. So there was nothing that
23 precluded us from doing that, you know, under the
24 higher-of.

25 So my assumption was, is based on all the reading
26 and the proposals, it was, we want risk management. A lot
27 of that risk management is -- is tied to futures and
28 options markets and that it works better under that



1 scenario. And that's why I crafted the example for dairy
2 producers under that exact same scenario because it was
3 this idea that it was equally available to everyone. And
4 that's where I was saying, not exactly, because if we
5 construct this, again, to hedge Class I, I wouldn't want
6 to exceed the percentage of Class I that would be in my
7 milk price, and -- and I have -- my minimum contract is
8 one Class III, one Class IV, so that's 400,000 pounds.
9 And when you do that math, it eliminates -- if we follow
10 some of the USDA reporting on size of dairy producer, it
11 eliminates approximately 87% of dairy producers.

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

14 A. Exactly.

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

18 A. We just kind of answered that, yes.

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

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

28 And so if I go back to 2020, you know, we spent a



1 lot of time explaining to dairy producers, manage those
2 margins, manage those margins, not only lock in your feed,
3 you know, lock in that milk price, so you are managing the
4 margin, that's what's important.

5 Because we -- and that message came because around
6 2004 dairy producers just went, mmm, you know, sometimes
7 they would just sell milk. Or in 2007, 2008, when the
8 feed prices took off, there were a lot of dairy producers
9 that sold their milk but didn't lock in their feed. So
10 the messaging changed and said, you should do well if you
11 manage your margins.

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

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

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



1 per hundredweight loss on this side of the equation.

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

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

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

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

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



1 A. I believe it's both when I looked at it.

2 Q. Okay.

3 MR. MILTNER: Thank you that's all I have.

4 THE WITNESS: Okay.

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

7 CROSS-EXAMINATION

8 BY DR. BOZIC:

9 Q. Sara, I was curious, do you know or would you
10 venture a guess what percent of Class I milk in the nation
11 is ESL versus HTST?

12 A. I think I might actually have that.

13 All right. I'm looking it up.

14 Q. Uh-huh.

15 A. Let's see. So if I take a look at -- so this is
16 the AMS Container Survey 2021, I believe. So this would
17 have been page 34 of 39 of my report.

18 Q. I'll be right back.

19 A. Oh.

20 Q. Go ahead, please. Did you say 35?

21 A. 34.

22 Q. 34. Okay. I'm there.

23 A. I believe it is up on the screen as well.

24 So in November of 2021 AMS released a container
25 survey report. This is just a sampling of that period.

26 And so we would get some seasonal variation, things of
27 that nature. But based on that, according to those

28 figures, I believe it's going to be somewhere I'm going to



1 say less than 10%.

2 Q. So, 7, 2 -- would you say that most organic is
3 also processed as extended shelf life?

4 A. USDA separates that number out. So that looks
5 like it is around 5.

6 Q. So if we sum up, 5, 3, and 7, 2 -- let's do that
7 quickly -- that's 12 and 5.

8 And then the total would be the sum of all three
9 columns in row 12, right?

10 A. Yep.

11 Q. So that's 12 and a half plus -- those are
12 percentages or --

13 A. I believe, that is the case, yes. Yes.

14 Q. Okay.

15 A. Because when you come across the top, like let's
16 say up here for whole milk, that's 100 percent. So they
17 are saying, of the whole milk sold in November of 2021,
18 almost 88% was conventional, 5.7 was ESL, and 6.4 was
19 organic.

20 Q. So conventional meaning HTST in this case?

21 A. I believe so. That's -- that was the descriptor.
22 So I'm assuming that that is HTST, not ESL, not organic.

23 Q. What would be your guess for HTST, what percent of
24 that would have a legitimate need to hedge? I'm talking
25 about Class I.

26 What I'm driving at is that typically passing
27 through the price, you know, one side you get the Class I
28 to the pool, and then you will add your markup and then



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

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

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

10 THE COURT: No, but choose one.

11 DR. BOZIC: Risk management.

12 THE COURT: Okay.

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

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

19 BY DR. BOZIC:

20 Q. Uh-huh.

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

22 Q. Uh-huh. Uh-huh.

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



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

5 Q. We're in good company.

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

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

19 Q. Oh, sure, sure.

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

24 A. From what I have seen on the HTST side, it can be
25 a combination. So when we take a look at that branded
26 product, sometimes they attempt to target a price. If I
27 look at the comparisons, I have done some spot comparisons
28 across the country of national retailers, and typically



1 what we see is that branded product is on the shelf
2 slightly higher than the private label product. But,
3 again, that looks like, you know, from -- from what I can
4 see, there's slightly higher pricing that comes through on
5 that branded product that's reflected at the retail shelf.

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

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

18 A. Variable to variable.

19 Q. Variable to variable? Yeah.

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

23 A. Could be.

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

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



1 that makes up the bulk of that conventional category, that
2 seems, you know --

3 Q. A reasonable number?

4 A. Yeah, it's reasonable.

5 Q. In your opinion -- so a friend told me, I don't --
6 I don't have data to -- to confirm the numbers, but a
7 friend told me that since, I believe, he said 2019, that
8 some 29 HTST fluid plants have shut down and 11 ESL plants
9 have opened, do.

10 You find those numbers to be in a ballpark?

11 A. I think I actually have the plants.

12 So what date?

13 Q. Well, since the higher-of was introduced, let's
14 say.

15 A. So in 2019, according to the ERS -- so this is
16 page 39 of 39 -- in 2019, ERS reported 445 bottling
17 plants, fluid milk plants, and in 2021 they reported 466.
18 And I think they just released last year's data, but that
19 was after I completed and submitted the report.

20 Q. So the total number of plants is actually
21 increasing --

22 A. Yes.

23 Q. -- not decreasing.

24 Are -- would it be fair to say that the majority
25 of new plants are ESL driven, in your opinion?

26 A. Possibly by count. I don't know by volume.

27 Q. What explains the rise of ESL?

28 A. I think if we take a look at two plants that have



1 been announced, it has to do -- as I said earlier, it has
2 to do with protein and specific products that folks are --
3 are putting together that consumers desire.

4 Q. Would it be fair to say that most innovation is
5 happening in the products that are processed for extended
6 shelf life?

7 A. How do you describe innovation?

8 Q. A novel product that tries to differentiate itself
9 in the market rather than just compete on price.

10 A. So I don't know if I would agree with that. I
11 think there -- so when we take a look at ESL, there are
12 certainly products that have employed technology that we
13 have had for a long, long time in dairy. It's just being
14 employed to a different set of products.

15 But I think if you ask any cheese manufacturer, we
16 have had ultrafiltration around for a while, but it's
17 being applied to a new product in a creative way, and that
18 is -- that is keying on what consumers want.

19 I think I have admitted that I like the high
20 protein products. I like the flavor and everything.

21 Q. Sure. Sure. Me, too.

22 A. But when we sit down and take a look at it and
23 say, is that the only place that people are innovating, we
24 can see that from an HTST perspective, it used to be shelf
25 life was seven to ten days, and there are some
26 manufacturers that are pushing well into the 20s. So I
27 wouldn't exclude HTST from making investments. The other
28 thing that they can do is retool those older plants to



1 make them more efficient.

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

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

12 A. I don't understand the question.

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

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

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

27 So those are all sorts of things that -- there are
28 people in marketing, in consumer research that could



1 probably better answer that question. So the trajectory
2 of it today, I -- I just -- I don't know.

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

6 DR. BOZIC: Thank you very much.

7 THE WITNESS: Okay.

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

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

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

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

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

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

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

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

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

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

28 REDIRECT EXAMINATION



1 BY MS. HANCOCK:

2 Q. Okay. Good morning, Ms. Dorland.

3 A. Good morning.

4 Q. Let's see. Okay. So previously, last week, we
5 had admitted Exhibit 240, and Dr. Bozic had taken a deep
6 dive into some of your formulas and discovered that one of
7 them was not correct; is that right?

8 A. L17, yes.

9 Q. L17.

10 And did you, in the interim, go back and make the
11 corrections to that cell?

12 A. Pretty much when I got back to my hotel room that
13 evening, yes.

14 Q. Okay. And is that what we have now on the screen
15 in front of us?

16 MS. HANCOCK: And then I'll ask your Honor if we
17 could assign it a new exhibit number.

18 THE COURT: Where are we? 251. Yes. This will
19 be marked as Exhibit 251.

20 (Exhibit Number 251 was marked for
21 identification.)

22 BY MS. HANCOCK:

23 Q. And do you want to hover over L17 again? I guess
24 we should clarify, your cell numbers haven't changed at
25 all, have they?

26 A. Nothing's changed, other than the formula
27 contained within.

28 Q. Okay. And if we hover over that formula, can you



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

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

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

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

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

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

26 A. From the Federal Order 126 website, correct.

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



1 cross-reference that?

2 A. Sorry, I closed the spreadsheet earlier.

3 Okay. So I used the statistical handbook for
4 Southwest Order 126. The website is
5 dallasma.com/order_stats/stats_sum.jsp.

6 Q. Okay. So you confirmed that you did, in fact,
7 have your row N. And if you want to pull your spreadsheet
8 back up, your row N was actually correct with the number
9 of decimal points that you used. And so then you were
10 able to verify that for -- if we go back to the formula in
11 L17 -- you were able to verify that number was accurate.

12 What other changes did you make to the formula in
13 column L?

14 A. So rather than doing the Class III components plus
15 the PPD, I actually did the calculation for the Class I
16 price. So I corrected the formula, so that it reflects
17 the Class III components plus the PPD.

18 Q. Okay. And how did that change the results that
19 are included in the spreadsheet 251 as compared to what
20 they were in Exhibit 240?

21 A. As I said earlier, it didn't really change things
22 much. It was a slight improvement. But when we look at
23 what ends up happening with what a producer settlement
24 fund obligation could be versus the results of using
25 Class III and IV futures, it still remained unrelated.

26 Q. And you have numerous charts and spreadsheets of
27 different ways that you sliced and diced information to
28 look at. The risk management tools in comparing



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

8 A. It is. This is just a hypothetical.

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

13 Do you recall that?

14 A. I do.

15 Q. And you tried to cross-compare it to this
16 spreadsheet in either Exhibit 240 or what is now marked as
17 251.

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

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

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

28 A. Correct.



1 Q. Okay.

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

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

7 There is none. Exhibit 251 is admitted into
8 evidence.

9 (Exhibit Number 251 was received into
10 evidence.)

11 THE COURT: Cross-examination may begin.

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

13 THE COURT: No one has anything more?

14 How beautiful. You are on.

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

16 THE COURT: Identify yourself.

17 MR. WILSON: Todd Wilson, AMS.

18 RECROSS-EXAMINATION

19 BY MR. WILSON:

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

21 A. Good. Thank you.

22 Q. Thank you for coming back.

23 A. Anytime.

24 Q. A weekend or weekend plus days.

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

28 On page -- on page 9 you talked about how Class I



1 risk management is complicated. And I think I could
2 probably speak for most everyone in this room, that I now
3 appreciate way more of that statement than I did when I
4 first read it.

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

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

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

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

26 When we have the average-of, because -- and this
27 is something I kind of repeated a few times -- we have a
28 lot of great formulas, and I think our formulas function



1 in different ways to relay information to the market. But
2 one thing we don't control is the relationship between
3 Class III and Class IV skim, and that's for good reason.

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

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

14 And years ago I wouldn't have necessarily
15 understood kind of -- whoever sat in that room in 1996 and
16 1997 had a really great idea with this higher-of,
17 because -- and credit to them, because when I first
18 started in dairy, I'm like, this is crazy. But it
19 actually it works quite well.

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

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



1 in this market.

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

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

14 And what happens is with that -- that price
15 that -- that we tie to it, as everybody said, oh, it is
16 just this little number that we tie to it. But that's a
17 little number from two or three years ago. What's
18 interesting to me is folks are, like, ah, you know, you're
19 going crazy about what happened in 2020. It was just
20 2020. Well, except for these formulas are going to say
21 2020 is going to show up again at least two or three
22 times, and it's going to keep telling dairy producers do
23 something.

24 And so it's a little bit three bears, and that
25 higher-of kind of gets it right. It is just right.
26 Because if we inject too much money, we're telling dairy
27 producers, bring us more milk, when we may not need it,
28 like the second quarter of this year. But if we don't



1 tell them that we need the milk, then -- then things get
2 kind of messed up and the signals get crossed.

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

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

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

24 Q. When you say "disassociate" --

25 A. Depool.

26 Q. Thank you.

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



1 complexity to have an effective hedge.

2 Could you talk a little bit more about other
3 things -- or that, as well -- about how that depooling or
4 how those other -- you mentioned two or three other things
5 there -- how those create more complexity to -- to this
6 risk management programs that people might want to
7 participate in?

8 A. Yes. So when we look at what the objectives were,
9 so do you want me to answer it from a perspective of the
10 average-of and higher-of? How do you want me to answer
11 that? That would help me.

12 Q. So I think your testimony is talking about how --
13 how one program or how one methodology is different than
14 the other, so I would just let you choose one.

15 A. Okay. In which paragraph -- because I'm just kind
16 of looking -- I'm looking at two, and they look kind of
17 different to me.

18 Q. On the second -- on the second paragraph,
19 "Although the possibility of depooling has existed" --

20 A. Gotcha.

21 Q. -- "the depooling opportunities" --

22 A. Okay. So -- so when we sit down and take a look
23 at that, we know depooling, it can happen, and it's --
24 it's a -- it's one of those side effects of that advanced
25 price. And it's been around since I have been around, and
26 I happened to come in right around Federal Order reform,
27 so -- but -- but the difference is, is that -- that
28 six-week lag that we talked about a little bit earlier,



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

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

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

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

20 So on average, the two look pretty decent. But
21 when they diverge, they diverge for long periods of time.
22 It's that perpetual depooling. We can plan for 30 days,
23 60 days of depooling. We understand what that can do.

24 But for dairy producers, if they are trying to
25 hedge margins, like most everybody's advocated that's the
26 right thing to do, if you are locking in feed costs for a
27 year and you go and try to lock in your milk price for six
28 months, let's say, and depooling happens over that entire



1 time, you get a really unexpected result. And -- and
2 that's why I'm saying, they tend to bear the brunt of
3 that.

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

8 Q. All right. Thank you.

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

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

16 Q. So you want to strike that?

17 A. We can strike that, yes.

18 Q. Okay. Thank you.

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

21 MS. TAYLOR: 238.

22 MR. WILSON: 238.

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

26 AMS REPRESENTATIVE: I can strike it.

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



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

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

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

10 MS. HANCOCK: But not what comes after that?

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

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

15 MR. WILSON: Okay. I see it.

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

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

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



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

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

4 THE COURT: Done. Thank you.

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

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

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

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

15 THE WITNESS: It should be 2.6.3 and 2.6.4.

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

18 THE WITNESS: Which should be 2.6.5.

19 MR. WILSON: Thank you.

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

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

24 THE COURT: And continue to direct.

25 THE WITNESS: Sure. Right before the section that
26 says "Conclusion," there's a few sentences there that
27 reference sections. So where it says, "Further, hedging
28 milk at retail or in food service uses is not remarkably



1 improved by migrating from a higher-of pricing to an
2 average-of methodology - see sections" -- and it should
3 say 2.6.3 and 2.6.4. That replaces the 3.4.3 and 3.4.4.

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

8 THE COURT: It has been done. Thank you.

9 BY MR. WILSON:

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

15 A. Right.

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

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

26 And because organic milk buys milk under contract
27 for one, two, three years, could be five years -- I have
28 seen one, two, and three -- there really would be no -- no



1 reason to do this.

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

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

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

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

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

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

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



1 your testimony, is the data that's represented on that
2 Exhibit 238, is that from this same dataset?

3 A. No. That's the eye chart dataset. I -- I can't
4 remember what the number is. It's the one with the really
5 teeny tiny numbers. It sits in there.

6 This was just data to create that hypothetical for
7 the organic. The other sits in the hypothetical for the
8 2% Class I milk.

9 Q. So the eye chart data, which is also part of the
10 original 240, I'm assuming it's part of 251 as well, that
11 feeds into the -- into the calculations that you used
12 on the --

13 A. Page 35?

14 Q. No, on the -- on the -- Exhibit 251. That data
15 feeds into that, as well as the -- and those are futures
16 prices --

17 A. Futures prices, yes.

18 Q. -- right? Correct?

19 A. Any time I use futures prices, that's --

20 Q. That's the eye chart data?

21 A. Yeah, the eye chart data.

22 Q. That's clarification for the record.

23 So -- and I think you mentioned this to one of the
24 other crosses. So the Y axis for the top graph on
25 page 235 is the previous month's Class III --

26 THE COURT: On page what?

27 MR. WILSON: 35, Exhibit 238.

28 THE WITNESS: Yes, so that's the previous month's



1 Class III announced price, which is effectively the same
2 as our closing futures price.

3 BY MR. WILSON:

4 Q. Is that price in that futures eye chart data?

5 A. Yes.

6 Q. And would be the --

7 A. Oh, excuse me, no. I apologize. The futures are
8 just the daily closing prices. So it -- it -- on the
9 final day it should be reflected there, yes, because that
10 would have been our final closing settlement price. But
11 all of those daily prices are just the futures closing
12 prices.

13 Q. Okay. So you graphed the previous month's
14 announced Class III price --

15 A. Correct.

16 Q. -- that the FMMO announced --

17 A. Yes.

18 Q. -- at 3.5 --

19 A. 3.5, butterfat.

20 Q. Okay. And the X axis of that is the announced
21 Class I price at 2% butterfat.

22 A. Correct.

23 Q. You mentioned something in the cross that I think
24 you were -- I think the question related to this exhibit.
25 You talked about the sale price.

26 Did -- did you mean the retail price or are you
27 talking about the Class I price that's announced on the
28 FMMO class system?



1 A. If you are going for hedge accounting and you want
2 to hedge 2% milk sale, you would actually look at the 2%
3 price, your -- your company's history of the 2% price.

4 It should largely be related to the Class I price
5 adjusted for fat, but it might not be. And that's where,
6 I think I might have mentioned it, we have a saying in
7 accounting, you can't hedge the rubber tire -- or the
8 rubber in a rubber tire. We can't break these things
9 apart unless it is allowed contractually.

10 So what that's saying is, is if your resin price
11 changed, if labor costs changed, you have got to absorb
12 that because you are attempting to hedge that specific
13 price, not just the fluid milk that goes into it.

14 Now, we know the fluid milk makes up the lion's
15 share of that cost, so they should be somewhat related,
16 but you have got to accept it for all of its dings and
17 bumps. That is, you are going after that contracted price
18 because that is where -- remember the cow and the jug?
19 The jug is where you have the risk, you can't just isolate
20 one piece within it unless contractually it stipulates
21 that you can.

22 Q. And I think I remember reading in your testimony
23 that the timeframe of these graphs is 2017?

24 A. I believe that was the case. I can confirm that.

25 Q. And I'm trying to, in my head, reconcile those two
26 graphs on this one page, Class III effectiveness for
27 hedging versus Class IV effectiveness for hedging.

28 In the Class IV graph there's some dots -- that's



1 not the right word for that -- in the very high range, 22,
2 23. Is -- is that the Class IV futures price for a time
3 period?

4 A. So what -- what I'm plotting there -- so let's
5 see, the 22, 23. On the Y axis, the ones that are kind of
6 off --

7 Q. Yes, the Y axis.

8 A. Yes.

9 Q. That be would the Class IV futures --

10 A. That's the Class IV --

11 Q. -- at some point in time --

12 A. -- compared to where it -- where the Class I price
13 ended up at that time. Yes.

14 Q. Some time period in 2017 to 2022?

15 A. Correct.

16 Q. My last question, Ms. Dorland. So there's been
17 lots of testimony and cross on disorderly marketing,
18 depooling. Part of your testimony also addressed this.
19 And you made a statement, I'd just like to get your
20 opinion, clarify if you would like.

21 And I think you stated that disorderly marketing
22 causes depooling.

23 So my question is, is that -- is that accurate, or
24 does depooling -- is depooling a symptom of or a result of
25 disorderly marketing?

26 A. It would be the latter.

27 MR. WILSON: Okay. Thank you.

28 MS. TAYLOR: This is Erin Taylor with AMS.



1 CROSS-EXAMINATION

2 BY MS. TAYLOR:

3 Q. So following up to that, can you give a short
4 description of what, you know -- well, let me back up a
5 bit.6 The Act charges the Federal Order is providing for
7 orderly marketing conditions, and everyone has a different
8 opinion on what that means.9 So what is your opinion on what orderly marketing
10 should look like?11 A. So one thing that is a common refrain of mine is
12 that regulations should set up the -- you should be
13 setting up the rules of the game, the framework for which
14 we operate. But regulating business decisions, to me,
15 seems like that would be outside of outside of the scope.16 So what it is, is in -- in my opinion, what the
17 Federal Order structure is attempting to do is take a
18 complicated set of market information, and it's trying
19 to -- timely, and there are some delays, but it's trying
20 to relay that information to all of the participants such
21 that we can get milk to move to where it needs to go, with
22 the primary sole focus on fluid milk. And that is calling
23 that milk to where it needs to go when we need it, and
24 allowing that milk to move back to manufacturing when that
25 demand -- when that demand sub sides.26 I think sometimes we get that confused with
27 seamless operations because really what this is, is it is
28 a communication of information in market signals. And to

1 me that -- if you can do that well and not have what I
2 would say systematic risk, some kind of inherent flaw in
3 the system that people are put out of business because
4 they did all the right things.

5 And when you start to see what happened after
6 2019, dairy producers that I have sat in meetings with,
7 that aren't there after a while because they did all the
8 right things, but the system didn't work for them, to me,
9 that's where we have created the disorder.

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

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

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

26 So when I look at disorderly markets, it's when
27 the system is actually structured in a way that is
28 miscommunicating information. And that is why, I guess



1 every person who I talk to, I'm sitting here for the
2 second time, because it is so important. Because if we
3 mess this up, we're messing with people's livelihoods and
4 their businesses. And that's where I'm saying, that
5 disorderly marketing is stagnant data coming into the
6 system, all of those things.

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

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

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

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

28 But it is -- again, based on my definition, risk



1 management, there are people who can make markets in just
2 about anything and everything. They are extraordinarily
3 creative individuals.

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

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

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

23 What they don't understand is tweaking that
24 system. You know, as I said, the Swiss watch. Taking a
25 cog out, just here and there, and replacing it with
26 something else, that system doesn't function quite as
27 well, and our reliability and predictability become less.
28 And that's the piece where I'm looking at it saying, it's



1 not that you have to give a nod to risk management. It's
2 the very nature of what USDA does in that consistency, in
3 discipline and rigor, in those formulas, and defining
4 those relationships that allows risk management to do what
5 we do.

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

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

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

25 And this is kind of to the question earlier, where
26 it was, well, you could do Class III and IV hedging of
27 Class I and then do a swap of your cream, and I'm looking
28 at it, like, cut out the middleman and just go for the



1 swap of the Class II. It's the same thing. Yeah, we can
2 go through 52 gyrations, or just acknowledge that the
3 higher-of is what you are trying to get to, and you can't
4 get there without it, so just go to it.

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

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

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

11 RE-CROSS-EXAMINATION

12 BY DR. CRYAN:

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

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

21 Q. Absolutely.

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

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



1 liquidity in the future if there's -- if there's a
2 justification for it financially.

3 DR. CRYAN: Wonderful. Thank you.

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

7 THE COURT: Wonderful. Thank you.

8 THE WITNESS: Thank you.

9 THE COURT: This witness may step down.

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

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

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

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

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

26 THE COURT: Very good. Thank you.

27 But that -- the reason we need to know those
28 things, and the reason I'm glad you alerted us, is



1 everybody in the room has to prepare their
2 cross-examination, so they need to know who is coming.

3 MR. ROSENBAUM: Yes, your Honor.

4 THE COURT: So I thank you.

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

7 (Whereupon, a break was taken.)

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

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

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

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

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

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

18 THE WITNESS: Oh, I'm sorry.

19 RICHARD CHRISTEN KRAFT,

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

22 DIRECT EXAMINATION

23 BY MR. PROWANT:

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

27 A. I did.

28 MR. PROWANT: All right. Your Honor, if we could



1 please identify that as the next exhibit number, which I
2 believe is 252?

3 THE COURT: Yes. We'll mark that as Exhibit 252.
4 (Exhibit Number 252 was marked for
5 identification.)

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

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

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

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

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

15 You may proceed.

16 BY MR. PROWANT:

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

21 A. Yes, sir.

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

27 We are farmer-owners of Dairy Farmers of America.
28 I serve on various boards and committees within DFA,



1 including the DFA Executive Committee of the board. I'm
2 also a Vice President of the Fort Morgan Reservoir and
3 Irrigation Company and president of Jackson Lake
4 Irrigation Company. From 2000 to 2006, I served on the
5 Colorado Water Quality Control Commission. Additionally,
6 I currently serve on the National Milk Producers
7 Federation Board of Directors.

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

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

24 If the number is positive, we use most of that
25 money to upgrade and improve facilities and equipment to
26 make them more efficient, reduce our costs, and pay off
27 loan balances. If it is negative, we have to use our
28 savings or borrow money to pay the bills until the number



1 becomes positive again, which often can go on for months
2 at a time.

3 Our farm's cost of production has exploded in the
4 last few years. I asked our accountant to analyze our
5 costs of production changes going back to 2015 through
6 2022. Cost remains similar 2015 through 2019, and then
7 shot up from 2019 to 2022 by \$4.49 per hundredweight,
8 which is a 28% increase. In Colorado specifically, the
9 cost of water for the cows on the dairy and to grow their
10 feed has gone up rapidly as the population in our state
11 has grown and competition for our limited water supplies
12 has increased.

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

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

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

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



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

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

10 The basis, or transportation cost, to move
11 important nutrients into Colorado from the Midwest has
12 increased considerably in recent years due to elevated
13 supply chain costs. For example, corn basis has increased
14 \$0.25 to \$0.50 per bushel for the corn we buy for our
15 farm.

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

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

25 THE COURT: May I stop you just a moment?

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



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

2 THE COURT: So "given the slim margin."

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

6 THE COURT: Thank you.

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

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

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

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

27 BY MR. PROWANT:

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



1 on a couple statements you had on page 2.

2 You noted you had your accountant pull your costs
3 of production from 2015 to 2022. And I'm wondering if you
4 have 2023 numbers that you could report.

5 A. We just -- we just got our 2023 numbers a few days
6 ago. And, yes, they are even higher than 2022 numbers.

7 Q. Do you have a sense of what they are? You have
8 reported here from 2019 to 2022 that your cost per
9 hundredweight was \$4.49 -- a \$4.49 increase.

10 Do you have any sense of --

11 A. Yes. So it's at least another dollar higher for
12 the first half of '23.

13 Q. And then the following line you talk about the
14 cost of growing feed. And I'm just wondering if you know
15 offhand what percentage of your costs, of all these costs
16 that you listed here, what percentage of your feed is of
17 those total costs?

18 A. I've been milking cows at our present location
19 since '88, 30 years -- excuse me -- and feed costs can
20 vary a lot. And usually we have good years when feed
21 costs are moderate. They can be as low as 40% of all the
22 expenses, and then other times they can get up to 60,
23 65% of all the expenses.

24 And right now we're in that range. You know, they
25 are at high end of the range. So they are 60 -- I would
26 have to do some math -- and I'm confused between '22 and
27 '23 right now, got a lot of numbers up there -- but it's
28 on the very high end.



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

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

11 A. Yes, I would.

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

15 THE COURT: Thank you.

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

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

20 CROSS-EXAMINATION

21 BY MS. TAYLOR:

22 Q. Good morning.

23 A. Good morning.

24 Q. Thanks for coming out here to testify today.

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



1 But the Small Business Administration defines a
2 small business as that, for dairy farms, of making
3 \$3.75 million or less in gross revenue annually.

4 Would your farm meet that definition?

5 A. It would not.

6 Q. We've also had discussion from various dairy
7 farmer witnesses about their risk management profiles.

8 Do you use any type of risk management tools?

9 A. Yes, we do.

10 Q. Could you elaborate, if you are willing?

11 A. Yes. We use DRP a lot, extensively. Risk
12 management is -- I have two other partners, my wife and my
13 son, and we all have a different little thing that we
14 like. So I'm the one that doesn't like the low prices, so
15 DRP is a very big deal for us -- for me.

16 My wife doesn't want to miss the highs, so that
17 works for her, too. Right?

18 And then my son, he wants a sure thing, and so we
19 do futures contracts, or puts spreads, or callers, or --
20 we use all the tools available that we can.

21 Q. Okay. For your -- well, one question. We have
22 had some testimony in this past week about how all the
23 depooling that happened in the past, particularly in 2020,
24 for those farmers who had locked in positions, that
25 depooling that they attribute the negative PPDs that
26 experience impacted their risk management positions.

27 Did that happen to you all, or can you speak to
28 that?



1 A. No. I think Steve Scott was in here testifying,
2 and he would probably be better on that. That was a
3 little bit in the past right now, so I'm a little fuzzy on
4 that. But we did have some DRP positions, and I think we
5 would have been fine on that.

6 Q. Okay. Thank you.

7 And for your farm, does your -- where does your
8 milk go?

9 A. My milk goes to Leprino Foods primarily, if
10 it's -- we have a plant just down the road from us in Fort
11 Morgan, and if it doesn't go there, it could go to DFA
12 Fort Morgan, or it could go into the Denver into one of
13 the fluid plants, if they need it down there.

14 Q. But mostly goes to --

15 A. Mostly Leprino, right.

16 Q. And how far is that haul?

17 A. Four miles.

18 Q. How far to the fluid plants that you mentioned, if
19 it has to go that far?

20 A. That would be more like 85 miles.

21 Q. Okay. I had one question in your testimony on
22 page 3. In the first full paragraph, that's the second
23 half of the page, the sentence reads, "The initial
24 Wisconsin price surface model would reduce the Colorado
25 pay price by \$0.40 per hundredweight."

26 Can you clarify when you say "initial Wisconsin
27 price surface model," what you are talking about there?

28 A. I think it's the proposal that's on the table



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

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

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

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

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

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

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

27 MR. PROWANT: Thank you.

28 (Exhibit Number 252 was received into



1 evidence.)

2 THE COURT: Thank you. You may step down.

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

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

8 THOMAS BELLAVANCE,

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

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

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

16 THE WITNESS: Okay.

17 THE COURT: Good.

18 State and spell your name, please.

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

21 THE COURT: Thank you.

22 And your name?

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

25 DIRECT EXAMINATION

26 BY MR. MILLER:

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



1 A. I did.

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

5 THE COURT: Thank you. It has been so marked.
6 (Exhibit Number 253 was marked for
7 identification.)

8 BY MR. MILLER:

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

11 A. My name is Tom Bellavance, and it is a privilege
12 to sit in front of you today. I'm a dairy farmer from
13 Northwestern Vermont, where my main farm sits five minutes
14 to the east of New York and five minutes south to the
15 Canadian border. I have owned and operated my farm for
16 23 years, and have solely expanded the farm to include
17 over 1700 acres of land, and a milking herd of 1,000
18 mature cows. The herd is 90% Holstein, 10% Jerseys.

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

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

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

27 THE WITNESS: The St. Albans co-op.

28 THE COURT: All right. Thank you.



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

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

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

22 Although these USDA payments are valuable and
23 appreciated, on many farms, these DMC payments don't go
24 nearly far enough to fill the hole. Since December of
25 2022 to June 2023, my milk price has fallen from 26.38 per
26 hundredweight to 19.64 per hundredweight, a drop of --

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



1 THE WITNESS: Yes. Would you like me to continue?

2 THE COURT: Yes. Just start from -- from \$26.38
3 per hundredweight.

4 THE WITNESS: Okay. Thank you.

5 -- have fallen from \$26.38 per hundredweight to
6 \$19.64 per hundredweight, a drop of \$6.74 per
7 hundredweight. This represents a decrease of 26% in just
8 seven months.

9 For this same time period, my farm expenses have
10 increased by an additional 12%. Combining these changes,
11 my net farm income is off 76%. These changes to the
12 expenses come after 2022, which is best described as a
13 very inflationary period on the dairy farm.

14 Below is a small grid to highlight some of these
15 changes. They are presented on a cost per hundredweight
16 basis.

17 For example, in 2021, my feed expense was \$6.80
18 per hundred pounds of milk produced; in 2022 it was \$7.90
19 per hundred pounds, an increase of 16% for that 12-month
20 period. Labor was up another 27%; fuel was up 84%; crop
21 inputs were up 53%; interest was up 28%; other expenses
22 were up 26% for that time period.

23 I did cross -- I did cross-reference my specific
24 numbers against other benchmark information, and I believe
25 these numbers truly represent the current cost structure
26 in the Northeast. The reason I have highlighted these
27 profit margin challenges facing the dairy farmers is that
28 any changes to the milk market orders must take into



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

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

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

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

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

23 I would like to speak to the Class I mover.

24 2019, when the current formula was agreed upon, we
25 were told this would be revenue neutral to our milk
26 prices. This experiment has not been revenue neutral, but
27 according to National Milk, the July to December 2020 milk
28 revenue was reduced by just under \$754 million. While



1 some of this loss was eventually aided by USDA payments,
2 these payments covered less than 50% of the loss for that
3 period.

4 From January '21 through July '23 the average-of
5 plus was less than the higher-of counterpart in 18 of the
6 31 months, resulting in a revenue loss of \$226.5 million.
7 Approximately 222 million of the lost revenue came over
8 the last 12 months. With Class I -- with Class I milk
9 utilization here in the Northeast at 30%, this lowered my
10 blend price by \$0.17 per hundredweight.

11 I would like to touch briefly on the Class I
12 differential in the producer price proposal. The Class I
13 differentials, for the most part, have not changed since
14 2000, and they no longer reflect the increasing costs to
15 deliver raw milk to the fluid processing plants. These
16 increasing costs have mostly fallen back onto the dairy
17 farmers, as we have seen our transportation costs increase
18 dramatically over the past few years. For the first six
19 months of 2023, my hauling fees are up 16% over the same
20 period last year.

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

25 I close by repeating my full support for all of
26 the National Milk proposals. Others from DFA will speak
27 on the value of eliminating the barrel cheese price from
28 the calculation of the Class III protein price, as well as



1 increasing and regularly updating the skim component tests
2 to determine Federal Order skim milk price.

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

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

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

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

17 THE COURT: Thank you.

18 Who would like to begin asking questions of this
19 witness?

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

22 CROSS-EXAMINATION

23 BY MS. TAYLOR:

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

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

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



1 your farm would meet that threshold?

2 A. We would not qualify for the Small Business.

3 Q. And where does your milk go, typically?

4 A. Typically our milk flows out of Northwestern
5 Vermont and fills the fluid markets down around the Boston
6 area and --

7 Q. All right. And -- I'm sorry, go ahead.

8 A. -- and it also goes to a DFA-owned plant in
9 St. Albans, where the cream is separated and sold
10 primarily to Ben & Jerry's.

11 Q. Thanks for the good ice cream.

12 A. You're welcome.

13 Q. And how far is those -- are those hauls typically?

14 A. The hauls down to the Boston plants are about
15 254 miles. And the haul to the St. Albans plant is
16 approximately 15 miles.

17 Q. 15, 1-5?

18 A. 1-5.

19 Q. And you talked a bit in your statement about your
20 hauling costs from the past -- for the first six months of
21 2023 have gone up.

22 Can you talk about your hauling costs in 2021 or
23 2022? You -- I ask that, you have cost data here on your
24 other input costs for those years, so --

25 A. Yeah. I don't have that broken down. I probably
26 have it, but not with me here on the stand.

27 But I have -- I do realize that probably over the
28 last five years my hauling costs have gone from



1 approximately \$0.65 per hundred pounds of milk to \$1.40
2 per hundred pounds of milk. Didn't do the math, but it's
3 a significant increase in hauling costs.

4 Q. Okay. Thank you. Let's see.

5 You did state on page 3, when you were -- you
6 listed your costs you have experienced and said you
7 referenced your numbers against other farm benchmark
8 information.

9 What -- what did you use? What other information
10 did you look at?

11 A. Yes. The Farm Credit system, the Farm Credit East
12 in the Northeast, they put together a very good benchmark
13 analysis, and I used that as a cross-reference. I also
14 got the -- I believe it's the Cornell Pro-Dairy Analysis,
15 I used some of their numbers just to cross-reference. And
16 there's another private firm up there called Dean
17 Associates that does financial, who work for farmers, and
18 I used some of their data.

19 Q. Thanks.

20 And then I wondered if you could talk about
21 whether you use any risk management tools.

22 A. I do. I do use Dairy RP. I do direct forward
23 contracting. Of course, the foundation of my risk
24 management is participation in the Dairy Margin Coverage
25 program.

26 Q. And we have had some testimony in regards to the
27 impact that depooling had and the resulting negative PPDs
28 on farmers' risk management positions.



1 Did you experience any of that in 2022?

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

5 Q. Okay. Thank you.

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

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

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

12 There is none. Exhibit 253 is admitted into
13 evidence.

14 (Exhibit Number 253 was received into
15 evidence.)

16 MR. MILLER: Thank you.

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

19 Ms. Taylor, how would you like to proceed?

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

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

25 MR. ROSENBAUM: Steve Rosenbaum, IDFA.

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

28 THE COURT: I know you would like to get three in



1 if you could.

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

4 THE COURT: Okay. We will come back from lunch at
5 1:15 and go back on record. Right now we go off record at
6 12:16.

7 (Whereupon, the luncheon recess was taken.)

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1 TUESDAY, SEPTEMBER 26, 2023 - - AFTERNOON SESSION

2 THE COURT: All right. We're back on record.

3 It's 1:16 p.m.

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

7 THE WITNESS: Sure. My name is Chris Herlache.

8 That's spelled C-H-R-I-S, H-E-R-L-A-C-H-E.

9 THE COURT: Thank you.

10 Have you previously testified in this proceeding?

11 THE WITNESS: No, I have not.

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

13 CHRIS HERLACHE,

14 being first duly sworn, was examined and

15 testified as follows:

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

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

20 DIRECT EXAMINATION

21 BY MR. ROSENBAUM:

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

25 Is that your written testimony?

26 A. Yes, it is.

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



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

4 (Exhibit Number 254 was marked for
5 identification.)

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

8 Is IDFA Exhibit 48 a document that you prepared?

9 THE WITNESS: Yes, it is.

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

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

15 (Exhibit Number 255 was marked for
16 identification.)

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

19 THE WITNESS: Yes.

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

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

24 (Exhibit Number 256 was marked for
25 identification.)

26 BY MR. ROSENBAUM:

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



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

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

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

19 After graduating, I started at Schreiber Foods in
20 the summer of 2000 in their finance department, and in
21 2003, I took a position in risk management. Since then, I
22 have led the development of our internal risk management
23 capabilities and customer forward contracting services,
24 and have helped to develop risk management programs for
25 some of the world's largest foodservice and retail
26 companies.

27 In addition, I have responsibilities at Schreiber
28 Foods related to dairy market policy and was the chair of



1 the Class III and IV subcommittee of the IDFA economic
2 policy committee. I have been a speaker at numerous
3 conferences on the topics of dairy economics, risk
4 management, and dairy policy, and have assisted in the
5 education and development of dairy futures markets in the
6 U.S. and in Europe.

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

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

22 In my experience over the past 20 years, risk
23 management has developed into a necessary tool for
24 companies with exposure to volatility in dairy markets.
25 However, that has taken time to develop. When dairy
26 markets were still new in the early 2000s, there was a lot
27 of education that my team and I did with our customers to
28 help them understand the benefits of risk management, and



1 it took time for them to fully understand and use these
2 tools on a regular basis.

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

10 In response to our customers' request to manage
11 volatility in their Class I cost, Schreiber Foods has
12 offered Class I forward contracts to our customers since
13 shortly after the change to the formulas were made in
14 2019. We do currently have Class I forward contracts in
15 place with customers, and based on my conversation with
16 customers across our business, I believe the volume of
17 Class I forward contracting will continue to grow.

18 Q. Can I interrupt you just a second?

19 What kind of customers are interested in Class I
20 hedging?

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

23 Q. Okay.

24 A. Going on.

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



1 different tools, including Class III and Class IV futures
2 and swaps and Class I swaps.

3 Q. And just to be clear, are you -- when you are
4 offering these contracts to your customers, are you
5 offering the opportunity to buy Class I products at a
6 fixed price?

7 A. Yes. Yeah. A fixed price. They could also do
8 option strategies, but predominantly right now it's fixed
9 price contracts.

10 Going on.

11 According to the -- according to the USDA's
12 announcement on March 8th, 2019, the reason for the change
13 in the Class I mover was as follows: "Currently, the
14 Class I skim milk price is calculated using the higher-of
15 the monthly advanced pricing factors for Class III or
16 Class IV skim milk, which reflect dairy product survey
17 prices for the two weeks prior to the price announcement,
18 plus the applicable adjusted Class I differential.
19 Because market prices for these survey products fluctuate,
20 the higher-of factor used to determine the Class I skim
21 milk price can change, increasing risk and uncertainty
22 associated with hedging. To address this issue, Congress
23 determined that the formula for the FMMO Class I skim milk
24 price should be the average-of the monthly Class III and
25 Class IV advanced pricing factors, plus \$0.74 per
26 hundredweight, plus the applicable adjusted Class I
27 differential."

28 And that's a -- an excerpt from the website which



1 is below in the footnotes.

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

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

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

23 I think we can all agree that the world changed
24 dramatically in 2020, and no one could have anticipated
25 the changes through government intervention and market
26 responses that would take place. The intention of the
27 2019 change was never for farmers to get a price less than
28 the equivalent to the higher-of, but unfortunately that



1 did happen.

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

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

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

18 A. Yes, that's correct.

19 Q. All right.

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

25 Q. At this point, Mr. Herlache, could you bring up on
26 the screen the document that's been marked as Hearing
27 Exhibit 255. And -- and we're looking at page 3. And
28 please explain to us how -- how hedging -- well, what are



1 you trying to achieve when you are doing hedging? Start
2 with that.

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

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

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

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

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

28 The result of each one of those is a gain or loss,



1 and the goal of hedging is that the gain or loss on one
2 side will be offset by the gain or loss on the other side.
3 And so that the P&L would be -- would be essentially even
4 in the end.

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

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

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

20 So when I look at the gain or loss on each side of
21 the transaction, I have a \$0.30 loss on my physical
22 product because I bought raw materials at \$2, but I sold
23 to the customer at \$1.70. And on the financial side I
24 bought futures at \$1.70, and sold to the customer at --
25 or -- and sold those futures back at \$2, resulting in a
26 \$0.30 gain. When you add those two together, the total
27 P&L is zero.

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



1 the most basic sense.

2 Q. And there's -- there's -- okay. Well, keep going.

3 A. Sure.

4 Q. Tell us what basis is, because that word is used
5 sometimes.

6 A. Sure.

7 And one other small point. I know there was some
8 talk about the cost of risk management. In a perfect
9 world, if that -- the P&L on the hedge is zero, the costs
10 are really just around the transaction fees. Really, they
11 are relatively small. If a contract is \$30, let's say,
12 per contract in transaction fees, that works out to be
13 about 15 points, .0015 per pound. So -- so the cost of
14 risk management is not necessarily large. But I just
15 wanted to make that point.

16 Going on to basis. So basis is really all about
17 this difference between the raw material market in this
18 case, where I'm buying, and where that futures contract
19 settles. In this example, again, a theoretical example, I
20 have these as being equal to each other. But in real
21 life, it's -- they are never really equal. And when we go
22 into any sort of a hedging transaction, we need to -- that
23 is, Schreiber Foods -- we need to make sure that we
24 understand that basis risk and that it is something that's
25 predictable and in control, otherwise it would be an
26 ineffective hedge for us.

27 Q. So let's just be clear. Is basis between the two
28 numbers you have there?



1 A. Yes, between the \$2 and the \$2.

2 Q. And basis risk, just define that for us, please.

3 A. So basis risk would be the risk that those two are
4 not equal to each other.

5 And -- and I would expand on that maybe there
6 could be a difference between those two. If it's a
7 predictable difference, that's fine. It's the
8 unpredictability of that basis that causes problems.

9 Q. All right. Okay.

10 A. Going back to my testimony, then.

11 So once again, basis is the difference between the
12 price of the physical commodity and the underlying
13 derivative price being used to hedge that commodity.

14 Looking at data from 2010 to 2019, using either
15 the Class III or Class IV derivative markets, basis risk
16 was significant in that the range of basis risk was over
17 \$4 from the high to the low, with a standard deviation of
18 between \$0.79 and \$1.04 per hundredweight.

19 Q. And just to be clear, this is under the higher-of
20 approach to pricing?

21 A. That's correct. So basically taking -- looking at
22 the difference between the Class I being the higher-of and
23 the Class III or Class IV derivative market. So, again,
24 the bottom left being the Class I in that example, and the
25 upper right being the Class III or Class IV.

26 Q. Okay.

27 A. Let's see. So --

28 Q. So just -- if you'd please keep going.



1 A. Sure.

2 However, since 2020, if the higher-of method was
3 still in place, basis risk would have increased
4 substantially in the range of over \$7 for Class III and
5 over \$12 for Class IV, with a standard deviation of \$1.63
6 to \$3.02 per hundredweight.

7 In the tables below -- I don't know if you can put
8 that back up on the screen.

9 Q. We're now looking at page 1 of Hearing
10 Exhibit 255.

11 A. It's basically just a larger version of the table
12 that's part of the testimony.

13 These are the -- again, based on the difference
14 between the higher-of method -- the Class I using the
15 higher-of, and either the Class III or Class IV markets
16 where they -- where they would have settled and where they
17 were announced.

18 Q. Can you go through each of these columns and just
19 tell us what each one means, what each one is measuring?

20 A. Sure.

21 So the top section is looking at the time period
22 from 2010 to 2019, and the first line where it says
23 Class III, it looks at the difference between the
24 higher-of and the Class III market. So over that time
25 period, the minimum difference was negative \$0.60, the
26 average difference was \$0.48, the maximum difference was
27 \$3.80, the range is the difference between the maximum and
28 minimum, which is \$4.40, and the standard deviation of



1 that -- those basis numbers over that time period was
2 \$0.79.

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

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

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

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

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

24 Q. That's per what?

25 A. Per hundredweight.

26 Q. Okay.

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



1 show. But the range of that unpredictability is where the
2 higher-of really does cause the problem, in that we don't
3 know if you pick the wrong contract to hedge the higher-of
4 class -- the Class I based on the higher-of, you could be
5 off by \$11.58.

6 Q. And what does -- what does that mean for -- for --

7 A. That would mean a financial loss for the company,
8 because the -- because the hedge position did not offset
9 the change in the Class I market.

10 Q. Okay. And is this a kind of risk that a company
11 like Schreiber would be willing to take?

12 A. No. No. Absolutely not. That's -- that's
13 where -- if there would be a change going back to the
14 higher-of, this is not a risk that we would be able to
15 take or to be able to hedge ourselves. We would have to
16 either find a different way to hedge that or cease
17 offering forward contracts on Class I.

18 Q. Okay. And what are you showing here for the
19 maximum in the range for a situation where you were
20 hedging off of Class III?

21 A. Class III, the maximum was \$5.21.

22 Q. Okay. And what is that -- what does a maximum of
23 that magnitude mean for the viability of the hedging
24 program?

25 A. That's -- it's -- it's bad. It's just what
26 magnitude of bad, right? And so it would -- in both of
27 those scenarios, it would -- it would not be something
28 that we would be able to continue to offer.



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

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

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

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

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

18 From 2010 to 2019, it would have been a minimum of
19 \$0.10 difference, the average was \$0.72, the maximum was
20 \$1.55, the range is \$1.45, which is the difference between
21 \$0.10 and \$1.55, and the standard deviation was \$0.21.

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

28 And I will say that the averages here, I rounded



1 them off to two decimal points, but I think for 2020 to
2 present, if I expanded those decimal points, it equals
3 .7151, which is very close to -- if you take \$0.74 times
4 96.5%, you get .7141. So -- so that's -- if there was --
5 if it was a perfect hedge, that would be the basis that I
6 would expect it to be, .7141. We know that there's some
7 noise in there, as shown in the range in the standard
8 deviation, and that's causing the average to be just one
9 point higher.

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

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

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

22 A. That's correct.

23 Q. And the standard deviation, can you just briefly
24 explain what the significance is of those numbers being
25 1.63 for Class III and 3.02 for Class IV? What is that
26 telling us?

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



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

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

10 A. Correct.

11 Q. And that standard deviation is 0.41, correct?

12 A. Correct.

13 Q. A lot less variability, correct?

14 A. Yes.

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

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

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

25 A. The higher-of --

26 (Court Reporter clarification.)

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



1 MR. ROSENBAUM: I think he was correcting my
2 question, your Honor, which I appreciate.

3 THE COURT: Okay.

4 BY MR. ROSENBAUM:

5 Q. The average-of methodology results in a Class I
6 price that is more hedgeable than cheese or butter; is
7 that what you are saying?

8 A. Yes. Maybe put differently, the basis risk on
9 Class I using the average-of is less than the basis risk
10 that we do already realize when we hedge cheese or butter.

11 Q. Okay. Let's go, then, to page 4 of your
12 PowerPoint, and take us through an actual example of what
13 it would have been like to hedge Class I milk under the
14 higher-of formula in September 2022, had that, in fact,
15 been the formula in effect at that time.

16 A. Sure. And this -- this will walk through one
17 month that -- that goes into the numbers that were in
18 here. So this is -- this would be an actual example if we
19 would have hedged using Class III -- if we would have
20 hedged the higher-of Class I milk price using Class III.

21 So I'll use the \$17 price to start off, meaning if
22 we went out and bought Class III futures at some point in
23 time prior to September for the month of September. If we
24 bought that at 17 -- naturally I would include a certain
25 amount of basis assumption when I give the customer a
26 fixed price. So in this case, the \$1.03 is the average
27 basis that we saw from 2020 to present.

28 Q. Can we just flip back real quickly to page 1 so we



1 can see where the \$1.03 comes from?

2 A. So that's this number right here.

3 Q. Okay. All right. Thank you.

4 THE COURT: I'm sorry, I didn't look fast enough.

5 I'm looking at page 1. Where is it?

6 THE WITNESS: It's under --

7 THE COURT: Oh, I see it.

8 THE WITNESS: -- the average column?

9 THE COURT: Yes. So it's under the average
10 column, and it's the average for a long period of time,
11 what, three years? No, we were talking about September of
12 2022. So --

13 THE WITNESS: Yes.

14 THE COURT: -- it's not a long period of time.
15 It's two years; is that right?

16 THE WITNESS: Two, yeah, two-and-a-half years.

17 THE COURT: So the average for the Class III
18 during that roughly two years was \$1.03 per hundredweight?

19 THE WITNESS: Right.

20 THE COURT: Okay.

21 THE WITNESS: And I used the \$1.03 -- in
22 actuality, if -- I was -- at that point in time in
23 September of '22, I believe it was, I wouldn't have all of
24 the data through present, correct? But I wanted to use a
25 higher number just to show -- if I used a lower number,
26 these results would look even worse in the end, but -- and
27 that's what that is based on.

28 So, again, the financial buy in this case, we're



1 buying Class III sometime prior to September of '22 for
2 the month of September '22. We're buying that at \$17.
3 When I use that to lock in a price to my customer, I am
4 including that basis assumption of \$1.03, so the price
5 that I have committed to the customer in this case was
6 \$18.03.

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

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

14 BY MR. ROSENBAUM:

15 Q. Okay. And is that an acceptable risk?

16 A. No. No.

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

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

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

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

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



1 of \$18.66.

2 Now, when we get to December of 2020, we had to
3 buy that Class I milk. The Class I price, based on the
4 higher-of formula, would have been \$24.88. The Class IV
5 futures, instead of going up, actually went down to
6 \$13.30.

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

11 Q. That's your loss?

12 A. That's our loss.

13 Q. Okay.

14 A. And definitely unacceptable.

15 Q. All right. So let's now move on and compare those
16 same two months, but under a formula that is based upon
17 the average-of the Class III and IV prices.

18 A. Okay. So starting out with the month of September
19 of 2022, and, again --

20 Q. Just to be clear, that's the example that you
21 already covered using the higher-of on page 4, correct?

22 A. Correct. Where we use Class III to hedge the
23 higher-of.

24 Q. Okay.

25 A. So in this case, if we were able to buy Class III
26 and IV futures at an average-of \$17, I would give the
27 customer theoretically a price of \$17.72, and that's based
28 on the average basis over that time period. The Class I,



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

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

8 Q. And is that an acceptable risk?

9 A. It is acceptable.

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

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

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

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

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

27 I'll start off with the same buy price. We bought
28 Class III and IV futures at an average of \$17. I added



1 the \$0.72 basis, the same one that we just used in the
2 previous example to give the customer price of \$17.72.

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

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

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

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

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

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

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



1 would do?

2 A. Sure. And we actually do this today. We have --
3 we have milk products that are lower fat milk than 3.5%,
4 and so what we do is we look at how much Class I milk
5 we're buying and then how much of that cream is being
6 sold. We'll convert that into a butter equivalent volume,
7 and we sell that in the butter futures market. And that
8 creates an effective hedge for us.

9 Q. Okay. Is that difficult?

10 A. No. No. It's not. It's -- we have to get the
11 volumes right, for sure, and the time periods right. So,
12 for example, we're buying the Class III and IV in the
13 month prior to line up with the Class I market, but then
14 we're selling the butter futures in the month of to make
15 sure that's aligned with the sale of cream.

16 Q. That's because Class III and IV are priced after
17 the fact in the real world, correct?

18 A. Right.

19 Q. Whereas Class I is priced off of the Advanced
20 Class III and IV prices?

21 A. Correct.

22 Q. Okay. Now, by engaging in this hedging, are you
23 able to offer your customers a flat price that will apply
24 for some extended period of time?

25 A. Correct. There's -- there's two different ways
26 really that we use this. One is when customers have a
27 price that floats with the market, and they have that
28 market risk to start out with, and they want to either



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

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

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

14 THE WITNESS: Sorry, the same way.

15 THE COURT: Oh, the same way.

16 THE WITNESS: Yes.

17 THE COURT: Understood.

18 BY MR. ROSENBAUM:

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

22 A. Correct.

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

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

26 Q. Okay. Do you have a hard copy?

27 A. Not with me.

28 Q. So tell us what Hearing Exhibit 256 shows.



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

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

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

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

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



1 and really to set up risk management programs. And so it
2 is something that does take time.

3 Q. And what lesson do you draw from that with respect
4 to the ability to hedge Class I, which came into effect in
5 May of 2019?

6 A. Right. So as I said in my testimony, I feel like
7 Class I risk management is still in its infancy. My
8 experience in talking with customers is that there are --
9 there are some customers who have very different people
10 who are managing, let's say, cheese, where risk management
11 is very common to do, and fluid products where it really
12 hasn't been.

13 And so we're in this period of time similar to the
14 very early 2000s, where it does take time to educate the
15 decision-makers to help them to understand the value of
16 risk management and that -- and the need for it.

17 So -- so that's where I wanted to show this
18 because it would be very early to take away that risk
19 management tool, just like it would be very detrimental to
20 the industry if in the early 2000s we would have taken
21 away -- or made a change that would have prevented risk
22 management from being able to happen.

23 Q. Now, are you aware that under Proposal 14 and 15
24 there will be a periodic lookback for purposes setting the
25 Class I skim milk price that will, if you will, look back
26 and make whole farmers if the price they are being paid is
27 lower than the price they would have been paid under the
28 higher-of?



1 A. Yes, that's correct.

2 Q. Does that extra element, which of course does not
3 exist under the current average-of formula, does that
4 extra element prevent the use of the hedging tools that
5 you have been describing to us?

6 A. Not at all. What it does is it may change our
7 basis assumption. So if you remember in the example, that
8 upper left box in the sell price that we give to the
9 customer, it may change what we add on to the futures that
10 we lock into, but we're going to know that in advance.

11 So there's really no risk on that -- that we have
12 with that -- that addition changing, because it's going to
13 be changing far enough out. Or if we wanted to lock in a
14 price beyond where that change was happening, that would
15 be a risk that we would have to -- that we would have to
16 analyze. But for sure in the -- in the months that were
17 typically looking at locking in for customers, that that
18 would -- that would not be changing.

19 Q. Okay. So under the IDFA proposal, people will
20 know as of, I believe it's August of the preceding year,
21 what that fixed adder is going to be the next calendar
22 year; is that your understanding?

23 A. Yes.

24 Q. And so will you be able just to enter that fixed
25 number with respect to all of your hedging analyses that
26 apply in that upcoming calendar year?

27 A. Correct. Correct. And I think that the timing is
28 good in terms of, you know, that being in the fall,



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

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

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

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

12 CROSS-EXAMINATION

13 BY MS. HANCOCK:

14 Q. Good afternoon.

15 A. Good afternoon.

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

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

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

26 How many plants does Schreiber Foods have?

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



1 that information.

2 Q. Do you have an estimate?

3 A. I'd say it's over 15, well over 15 worldwide. So
4 I can get back to you with the actual number, if you want.

5 Q. Do you know how many in are in the United States?

6 A. Not exactly. Sorry.

7 Q. More than five?

8 A. Yes.

9 Q. More than ten?

10 A. Probably, yes.

11 Q. Okay. Somewhere between 10 and 15? Are we in the
12 ballpark?

13 A. I think that's ballpark.

14 Q. Okay. So -- and -- and how many pool distribution
15 plants do you have in the United States?

16 A. I don't know that information.

17 Q. Do you have an estimate?

18 A. No. I'm -- that's outside of my area.

19 Q. Okay. Okay. How much of the products that are
20 produced by Schreiber's, or Schreiber Foods, is the cream
21 cheese, natural cheese, processed cheese, in those
22 categories, as opposed to Class I?

23 A. Those other products are a vast majority of the
24 products that we do. I don't know what percentages, but
25 it's -- yeah, it's a vast majority.

26 Q. More than 95%?

27 A. Within the U.S., yeah, that's fair to say.

28 Q. And so of the -- let's say less than 5% of



1 Schreiber Foods product that -- that might be in the
2 Class I category, do you know how much falls under a
3 Federal Order?

4 A. I do not. No.

5 Q. Do you know what the volume is? Could you
6 quantify it?

7 A. Not accurately, no. Sorry. I'm not as close to
8 the -- to the actual production numbers. Sorry.

9 Q. So do you -- how much do you hedge? What volume
10 do you hedge?

11 A. The volumes that we hedge are the amounts that --
12 well, that we're working with our customers to lock in. I
13 don't have those right in front of me.

14 Q. Can you ballpark it?

15 A. In terms of our hedge volume? I wouldn't want to
16 speak inaccurately.

17 Q. Can you give me a range? Can you just do anything
18 to kind of help put it into context how much you are
19 actually hedging?

20 A. It's -- let's say, it's millions of pounds. I
21 don't know how many millions of pounds.

22 Q. Is that annually?

23 A. Annually.

24 Q. Okay. A very small number, is that fair, as far
25 as the total hedge market?

26 A. Compared to -- yes. Yeah.

27 Q. Okay. And you're not hedging anything other than
28 what you have talked about for your customers; is that



1 fair?

2 A. What do you mean by that?

3 Q. You are not doing anything on the open market, you
4 are just hedging what your customers want you to hedge; is
5 that right?

6 A. Correct. Yeah.

7 Q. And I think you said you offer your customers a
8 fixed price contract; is that right?

9 A. Correct.

10 Q. Do you offer them any other risk management tools
11 other than a fixed price contract?

12 A. We do offer where -- where the tools are
13 available, options like collars or ceilings, things like
14 that. That's more typical in cheese than other
15 commodities, but for Class I, it's primarily a fixed
16 price.

17 Q. Okay. So I want to make sure we're clear on that.
18 For Class I, do you offer your customers anything
19 other than fixed price contracts?

20 A. It's a tool that's available to them to the extent
21 that we can lay that risk off, but the activity that
22 customers have engaged in up to this point has been fixed
23 price.

24 Q. Solely fixed price?

25 A. Correct.

26 Q. Okay. And prior to -- maybe I should clarify
27 this. Is it fair to say that when I look at your
28 promotional materials online, online at least you describe



1 yourselves as a natural cheese, processed cheese, cream
2 cheese, and yogurt company.

3 Is that primarily how Schreiber Foods identifies
4 itself?

5 A. I'd say that we have added beverages to that.

6 Q. Okay. And -- and beverages are a broad category
7 for Schreiber Foods as well. Is that fair?

8 A. It's a -- it's a general term that probably
9 encompasses plenty of products, yeah.

10 Q. A lot of products that aren't -- wouldn't qualify
11 for Class I?

12 A. I can't say that.

13 Q. Because you don't know or because that's not
14 accurate?

15 A. I can say that we do have Class I products. I
16 can't tell you how much of those beverages are Class I.

17 Q. So under the beverage umbrella of Schreiber Foods,
18 that would include things like juice?

19 A. No. Dairy products. Outside of the U.S. there
20 are -- we do some beverage in actually our plant in India,
21 but I think that's probably outside of this context.

22 Q. Okay. And I think it's fair to just -- for my
23 questions at least, we'll just stay in the U.S., unless
24 we're talking about exports.

25 A. Right.

26 Q. Okay.

27 A. I just assume that you might have seen juices on
28 our website, and I think that's what that is reference to.



1 Q. Okay. That's great to help to clarify that.

2 And then you also do some health and protein
3 shakes. Do you that in the U.S.?

4 A. Correct.

5 Q. Okay. And those wouldn't qualify for Class I?

6 A. I don't know that.

7 Q. Okay. And then, at least online you talk about in
8 2021 that Schreiber Foods was an exporter of 2 billion
9 pounds of refrigerated products.

10 Are you familiar with what the refrigerated
11 products are that Schreiber exports?

12 A. All of our products are refrigerated products, so
13 it could have been any -- anything that we produce, yeah.

14 Q. Okay. And so that would go beyond just milk as
15 well?

16 A. Sure.

17 Q. Okay. Did you say sure?

18 A. Sure.

19 Q. Your voice is soft.

20 A. It is very soft, yes.

21 Q. Okay. In addition to the fixed price contracts,
22 you also said that Schreiber Foods makes available to its
23 customers, swaps, as well as some other products.

24 A. Actually, I just want to correct you on that.
25 The -- what we make available to our customers is a
26 forward contract. And we do have to be very careful about
27 that because we don't want to fall under a regulatory
28 umbrella that's different from what -- how we operate.



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

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

11 A. Today, yes.

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

15 A. Correct. Yes. Correct.

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

20 Do you recall her talking about that?

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

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

26 So you are not talking about the variables that
27 happen between the dairy farm and your customer outlet,
28 you are talking about your customer locking in the risk



1 and then you, Schreiber Foods, being able to lay off your
2 risk?

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

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

8 A. Yes.

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

11 A. I don't believe we do.

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

15 A. I believe so, yes.

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

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

21 Q. So --

22 A. A long time.

23 Q. -- a long time.

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

27 A. Not for Class I.

28 Q. Okay. So did Schreiber not offer any risk



1 management tools to its customers at that time?

2 A. For other products, but not any Class I.

3 Q. Okay. And so you started that shortly after --
4 after average-of mover was implemented.

5 A. Correct.

6 Q. Do you know when you started your program for
7 Class I?

8 A. Not exactly. Sorry.

9 Q. Go ahead.

10 A. Okay. Not exactly. It was within, I'd say, a
11 year after the change was implemented in May of 2019. We
12 were certainly talking to customers about it, but it
13 wasn't until maybe a year or so after.

14 Q. Did that cause your customers to buy any
15 additional product from Schreiber Foods because you
16 offered that risk management tool?

17 A. I don't -- I can't say if it did, if it changed
18 our volumes or not.

19 Q. Okay. It's just a value-add service that
20 Schreiber Foods offers its customers?

21 A. Correct.

22 Q. It didn't turn into something that drove
23 additional sales?

24 A. Not that I'm aware of one way or the other.

25 Q. Okay. And I think you said that you served on the
26 IDFA economic policy subcommittee that helped to create
27 IDFA and MIG's mover proposals.

28 A. Yeah. I was on that economic policy committee,



1 correct.

2 Q. How long have you been on that committee?

3 A. Good question. I would say at least since 2020.

4 I can't tell you exactly, but --

5 Q. Okay. How is it that you got to be part of that
6 committee?

7 A. Sure. Well, part of my role at Schreiber is -- is
8 looking at analyzing dairy policy. Part of it, honestly,
9 is -- is -- one of the few people at Schreiber that this
10 is interesting to. So like I said in my testimony --
11 sorry, we're all in -- we're in a friendly crowd here,
12 right?

13 But like I said in my testimony, I was looking at
14 this all the way back into college, and honestly being
15 here and being able to testify is something that is -- for
16 me it's pretty exciting. For a lot of other people, maybe
17 not so much. But, yeah. That's --

18 Q. I count three so far.

19 A. That may be --

20 Q. You, Dr. Bozic, and Ms. Dorland. Okay.

21 So it's fair to say -- I'm sorry, I kind of got a
22 little cheeky there -- but it's fair to say that around
23 2020, when you had the opportunity to join IDFA's economic
24 policy subcommittee, it was something you were interested
25 in doing because it's something that you have had an
26 interest in for a while?

27 A. Correct. And my -- some of my responsibilities at
28 Schreiber even prior to that were around analyzing dairy



1 policy.

2 Q. Okay. And being part of IDFA's economic
3 subcommittee allows you to help further the policies for
4 Schreiber Foods as well?

5 A. Correct.

6 Q. And so you weren't part of the subcommittee or
7 part of the team that had worked on the change from
8 higher-of to average-of, were you?

9 A. No. No, I wasn't.

10 Q. Were you just in the wings of watching it happen
11 at that time?

12 A. I think that's fair to say, yeah. I wasn't part
13 of those negotiations.

14 Q. And I think in your testimony, I don't remember
15 which page it was on, but in your testimony when you
16 describe that the change was designed to be revenue
17 neutral when it was changed from higher-of to average-of,
18 and you were aware of that; is that accurate?

19 A. Yes.

20 Q. Were you aware that it was intended to be revenue
21 neutral change at the time that -- at the time that that
22 change was happening as well?

23 A. To be honest, that's what the assumption of the
24 \$0.74 adder was, was that it was meant to mimic what the
25 higher-of would have been over a period of time. So, yes.

26 Q. It was fairly common knowledge at the time that
27 that change was being made that that was the understanding
28 in the industry?



1 A. I can't speak to others. The intent, again, of
2 the \$0.74 was to look back and say, how do we make this
3 price equivalent over a period of time to what it would
4 have been?

5 Q. And it's fair to say that -- that -- as -- after
6 the average-of was implemented, that, in fact, it didn't
7 turn out to be revenue neutral like it was originally
8 anticipated?

9 A. Correct.

10 Q. And in February of 2021, National Milk approached
11 IDFA and asked to have an adjustment made that would have
12 this adjuster similar to what IDFA and MIG are proposing
13 in its proposals today; is that fair?

14 A. Yeah, I think I was a great idea.

15 Q. And you were on the IDFA economic subcommittee
16 when National Milk came to IDFA at that time; is that
17 right?

18 A. Yes.

19 Q. And IDFA didn't support that change.

20 A. The -- I'd say that it was hard to get consensus
21 on that.

22 Q. And the end result is that IDFA did not support
23 the change that National Milk had asked about?

24 A. Again, it's -- I think it was a matter of being
25 able to find consensus. And at this point now, we have
26 been able to find consensus that some change needs to be
27 made, and -- and just so happens to be the -- essentially
28 the same proposal that National Milk had provided



1 previously.

2 Q. And when you were on the economic subcommittee for
3 IDFA that decided that they didn't want to do it back in
4 2021, do you know what the justification was that -- that
5 drove IDFA to conclude they didn't want to support
6 National Milk at that time?

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

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

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

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

20 A. Correct.

21 Q. And IDFA, at that time, decided that it instead
22 wanted to go back to what National Milk had proposed in
23 2021, which would be to keep the average-of, but to have a
24 true-up provision every two years?

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



1 Q. Well, do you think that IDFA just initiated its
2 current proposals on its own accord without being prompted
3 by National Milk?

4 A. I think there's recognition that something
5 different had to be -- had to be done, that that change
6 had to be made. Because the change that -- that caused
7 the past to not be a good reflection of the future did not
8 look like it was -- it didn't look like we were going
9 back. And so -- so that's -- at that point, yes, there
10 was realization and agreement that a change had to be
11 made.

12 Q. So is it fair to say when you say that realization
13 was made, is it the realization that the average-of is not
14 revenue neutral like it was expected?

15 A. Let's say the average-of with the \$0.74 adder was
16 not going to be -- was not going to be revenue neutral
17 going forward.

18 Q. Okay. So if that's the case, and that there's a
19 kind of realization in the industry that the average-of
20 plus the \$0.74 adder was not going to be revenue neutral,
21 why wasn't that the end of the story? Why didn't at that
22 point IDFA just say, we support going back to the
23 higher-of, because we moved from higher-of to average-of,
24 with the understanding that it would be revenue neutral?

25 A. Because then we would be walking away from the
26 point of the change of going to the average-of, which is
27 the ability to do risk management.

28 Q. But do you think that USDA, or under the



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

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

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

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

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

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

23 A. That's the intent, yes.

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

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



1 the correct price, but the recognition that the higher-of
2 is the benchmark that we are measuring against today, and
3 so trying to make that revenue neutral. I'm not making
4 any judgment as to whether or not the higher-of is the
5 correct way to price Class I products.

6 Q. Okay. And being somebody who has some financial
7 experience and background, and maybe even a passion for it
8 I would say, you can appreciate that there's a significant
9 time value that's associated with dollars today versus
10 dollars later?

11 A. Correct.

12 Q. And, for example, Ms. Dorland gave an example of
13 if you were to be paid the average-of \$500,000, you didn't
14 get any money -- or I'm sorry -- I guess it was an average
15 of \$250,000, you didn't get any money this year, you got
16 \$500,000 next year, that can present some cash flow issues
17 in the first year; is that fair?

18 A. I mean, that's speaking to -- to a side of the
19 business that I'm not directly, you know, involved in with
20 my work at Schreiber Foods, so I don't want to --
21 obviously, the cash flow yes. I can agree that that
22 creates challenges. But, again, from the -- from our
23 position, I want to make sure that I'm not making
24 assumptions or judgments or things like that that are
25 affecting outside of our area of business.

26 Q. Okay. And you don't have any arrangements like
27 that with your customers where you would be willing to get
28 payment next year and skip getting payment this year, do



1 you?

2 A. I certainly cannot talk to anything like that.

3 That would be proprietary if we ever did. I have no idea
4 if we do.

5 Q. Okay. And you provided some examples of how the
6 calculations for your risk management tools would work
7 under the higher-of and under the average-of in
8 Exhibit 255; is that right?

9 A. That is right.

10 Q. And I think you started with talking with
11 Mr. Rosenbaum about the definition of basis risk.

12 Do you recall that?

13 A. Yes.

14 Q. And you're familiar with CME and how they define
15 different terms related to risk management tools?

16 A. I'm familiar with the CME. I can't speak to
17 exactly how they define them, but I'm sure you probably
18 have them.

19 Q. Does basis risk include all those kind of variable
20 expenses, like freight, and handling, and storage, and
21 quality-retention issues?

22 A. Speaking to Schreiber Foods' basis risk, that's
23 not something that we consider. I think the things that
24 affect basis are probably going to be different for
25 different entities, but really this is about the
26 variability in a market, and -- and how does that
27 variability in the physical product compare to the
28 financial tool you are using to hedge that.



1 Q. Okay. And that variability is driven by those
2 different costs that go into basis; is that right?

3 A. What costs would that be?

4 Q. Like hauling.

5 A. So the definition that I used of basis is strictly
6 related to the markets itself. So the difference in the
7 Class I market compared to the difference in the tools
8 that we use to hedge that, there's a lot of variability in
9 business. That could be anything from labor costs,
10 packaging costs, you name it. To the extent that here,
11 I'm talking about the change in a market compared to the
12 change in a different market.

13 Q. Okay. So when you are sitting down to -- to offer
14 your -- your customers a Class I fixed price contract for
15 the sale of the products, that's what you offer them; is
16 that right?

17 A. Correct.

18 Q. And when you're sitting down and you are
19 conducting a financial analysis on behalf of Schreiber
20 Foods to know how much risk you need to lay off on the
21 other side; is that right?

22 A. Correct.

23 Q. So you have your fixed price contract on one side,
24 and then that tells you what risk you have, you're at
25 least exposed to, to know how you can try and lock that in
26 on the other side to make sure that Schreiber doesn't lose
27 money on the transaction?

28 A. Correct. On that -- on that hedge on that



1 commodity.

2 Q. On that hedge that will protect you based on the
3 fixed price that you have offered your customer.

4 A. Correct. And to be precise, it's the fixed price
5 for that commodity. So I'm not talking about a total cost
6 of goods, I'm talking about that component of their -- of
7 their total price.

8 Q. And that change is depending on what product it is
9 that you are laying off the risk for, right?

10 A. Correct.

11 Q. So I think in -- in a Class I example, I think you
12 said that you had to -- well, let's look at page 6 of
13 Exhibit 255. And this is one -- the example that you were
14 giving based on September of 2022 for the average-of
15 mover.

16 A. Was it the average-of?

17 Q. That one you are on on page 6.

18 A. I have that electronically, so --

19 Q. And maybe your counsel has another hard copy.

20 A. Okay.

21 Q. So in this example, what is the commodity that you
22 are hedging?

23 A. So the commodity that we are hedging is going to
24 be the Class I milk price based under the average-of
25 formula.

26 Q. Okay. And in order to do that, you said here that
27 you had to use both a Class III and a Class IV contract;
28 is that right?



1 A. Correct.

2 Q. And what is the minimum volume that you have to
3 lock in on a Class III or IV contract?

4 A. Using futures it would be 200,000 pounds of milk
5 per contract. So if we use futures, it would be
6 400,000 pounds. However --

7 Q. Do you --

8 A. Oh, sorry.

9 Q. No, go ahead, finish.

10 A. I was going to say, however, that's not the only
11 way that we can hedge that risk. Using swaps or
12 over-the-counter instruments allow us to do really just
13 about any quantity that we would need to.

14 Q. Okay. And so you said using swap or counter
15 instruments were alternatives to buying a Class III and
16 Class IV contract?

17 A. Correct.

18 Q. Okay. What are the counter instruments?

19 A. Over-the-counter. So OTC is another name.

20 Different names for the same thing. We can use
21 the term swap.

22 Q. And do you buy Class III and Class IV futures
23 contracts in order to hedge the fixed price contracts that
24 you offer to your customers?

25 A. Yes.

26 Q. Okay. And so when you do that, you said that -- I
27 want to talk about that, and I'm going to go back to the
28 other options, but for now I want to talk about these two



1 contracts.

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

5 A. Uh-huh.

6 Q. Is that a yes?

7 A. Yes, sorry.

8 Q. That's okay.

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

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

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

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

20 Q. Do you have more than five futures contracts?

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

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

24 A. What other tools, sorry?

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

27 Any others?

28 A. Option contracts as well.



1 Q. Okay. Any --

2 A. Sorry.

3 Q. What about inventory management? Do you use that
4 at all as a way to -- to protect or as a risk management
5 tool for Schreiber?

6 A. That would start to get into proprietary
7 strategies that I can't talk to.

8 Q. Okay. Is it a tool that could be used by somebody
9 who wants to implement it as a risk management tool?

10 A. A physical hedge could be accomplished, sure.
11 Depending on the market, obviously. Class I is pretty
12 hard to physically hedge 12 months out. You are going to
13 have some bad product by then.

14 Q. Okay. So that actually brings me to --

15 THE COURT: Could you say that again, because your
16 voice trailed off?

17 THE WITNESS: Sorry. I was saying that physically
18 hedging Class I milk 12 months in advance would be hard to
19 do because you would have some rotten product by then.
20 You can't -- outside of ESL, things like that. But I'm
21 just using it as an example.

22 BY MS. HANCOCK:

23 Q. How far out do your customers forward contract for
24 their Class I products?

25 A. I don't know that I can speak to anything in
26 particular -- well, in terms of the range, it could be as
27 far as I'd say 12 to 18 months out.

28 Q. Okay. And so then you do -- and are these numbers



1 that you have on this page 6, or in your examples, are any
2 of these real numbers based on the pricing that was
3 actually occurring in these months in 2022?

4 A. So, yes. Using the average-of, the Class I was
5 23.62, the actual announced Class III and IV markets
6 averaged 22.46.

7 Q. Okay. Was \$17 ever a price that you could get for
8 Class III or IV?

9 A. Didn't look at that.

10 Q. You were just plugging in a number for an example?

11 A. Right. I could plug in any number that would have
12 traded during that time period, and the number in the end
13 would be the same.

14 Q. Okay. And -- and that's just based on the example
15 that you have set up here?

16 A. Yes. Just to walk through how -- maybe why that
17 would be the same. If I found a trading date where the
18 Class III and IV contracts traded at an average-of \$18,
19 then the bottom right would be 18 instead of 17, the top
20 left would be 18.72 instead of 17.72, and the -- the
21 gain -- or sorry -- the loss would be \$1 less. So under
22 the physical instead of 5.90, it would be 4.90, and under
23 the financial, instead of 5.46, it would be 4.46,
24 resulting in the same \$0.45 loss. So it doesn't really
25 matter what number we pick in terms of -- I just wanted to
26 pick a nice round number.

27 Q. Okay. So this is just for illustrative purposes,
28 not based on an actual hedge that you have done on behalf



1 of Schreiber?

2 A. Correct.

3 Q. Okay. I appreciate it though. Because it's
4 difficult if you are not doing these as a regular -- on a
5 regular basis to -- to get how they all work.

6 A. Sure.

7 Q. And so then if we look at your example for
8 higher-of, and this is going back on the corresponding one
9 to page 6, average-of is -- or higher-of is on page 4; is
10 that right?

11 A. Correct.

12 Q. Okay. And the basis that you have assigned here
13 is \$1.03; is that right?

14 A. Correct.

15 Q. And I think you walked us through that calculation
16 from page 1, and you had taken the average between the
17 minimum and the maximum on a Class III futures contract in
18 order to get that basis; is that right?

19 A. Not quite.

20 Q. Okay.

21 A. The \$1.03 is the average-of all of the monthly
22 basis data points. It's not the midpoint between the
23 minimum and the maximum.

24 Q. Okay. So you took all of the monthly basis for
25 2020 until September of 2022 and averaged it.

26 A. Yes.

27 Q. And you would agree with me that that window of
28 time is a pretty volatile period of time?



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

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

10 Q. Okay. So before we jump ahead, I just want to
11 make sure that I'm clarifying this, though. This average
12 that you have taken between 2020 and September of 2022, it
13 captures that volatility of costs going all over the
14 place, but mostly up, in the middle of the pandemic; is
15 that right?

16 A. The -- well, it captures all of the differences,
17 so up and down. You can see the minimum was \$1.91
18 negative, and the maximum was \$5.21, so --

19 Q. Do you know when that negative minimum happened?

20 A. I don't.

21 Q. Okay. Do you know when the maximum happened?

22 A. No. Sorry.

23 Q. Okay. But if we look at the time period before
24 that, substantially different numbering; is that fair?

25 A. Yes.

26 Q. Okay. And you used that -- that basis, which
27 includes all that volatility and cost in page 4, to
28 estimate a basis that allows you to create your physical



1 sell dollar amount in this example at 18.03?

2 A. Correct. And just to clarify, again, that I
3 picked the \$1.03 as the average just for illustration
4 purposes. It's up to every individual company in terms of
5 what they choose to -- and so I didn't want to use any
6 sort of proprietary information in terms of what our basis
7 assumption would be.

8 Q. And just so I'm clear on what that means, that
9 means when you are sitting at your desk and you are
10 looking to assign a basis number, instead of just taking
11 the average for a period of time, you get to apply real
12 world experiences and what's happening in today's market
13 to -- to add to the amount that you have -- that you have
14 offered at \$17 to set your basis risk?

15 A. Could you maybe put that in a different question?

16 Q. Yeah. You get to use your own experience and
17 knowledge of everything that's happening in the market to
18 set whatever basis risk you want in order to plug this in?
19 You are not just applying a formula?

20 A. There's -- there's no exact number that everybody
21 has to choose. If it was somebody's prerogative to use
22 zero, they could use zero. But that -- but, again,
23 it's -- that -- that's the analysis that every company has
24 to do.

25 Q. And you want to make sure that you are building in
26 as much risk protection as possible, and if you guess
27 wrong, but you have guessed a higher amount, it's just
28 more profit for you?



1 A. Oh, I understand what you are saying. Sorry. I
2 had to process that for a second.

3 Certainly. But it speaks to the -- we're not
4 going to be exactly right in every month, and there's
5 going to be some months where it's higher and some months
6 where it is lower. But I mean, that speaks to the -- what
7 you were saying earlier about there is times where you are
8 losing because it's below average, but then there's times
9 when you make it up because it's above average.

10 Q. Okay. So this -- if you would have used some
11 different numbers in this example, maybe applying some
12 real world experiences, that's going to have a big effect
13 on the P&L that we see on the right-hand side there; is
14 that right?

15 A. For sure. Whatever -- whatever assumptions you
16 choose that's different from \$1.03 will make that final
17 P&L to be different, yes.

18 Q. And if you were operating at a higher-of situation
19 where that's the mover that was applied, you would apply
20 those factors to the consideration that you would use to
21 set the basis number; is that right?

22 A. Well, based on the analysis, we wouldn't even be
23 able to offer it because the basis risk is too large.
24 It's -- it -- the variability in the basis is so large
25 that we wouldn't even be able to offer that as a forward
26 contracting option alternative, let's say, for our
27 customers.

28 Q. Okay. And because offering those contracts to



1 your customers didn't drive any new sales, it probably
2 wouldn't make you lose any new sales either?

3 A. I would certainly hope not.

4 Q. Okay. And then I just want to be clear on this,
5 because this says using the higher-of in this example, and
6 you have just based it on the Class III futures contract
7 there that's in your title; is that right?

8 A. I'm sorry, what?

9 Q. On page 4.

10 A. Page 4.

11 Q. You have hedging Class I milk under higher-of
12 formula using Class III futures.

13 A. Correct.

14 Q. So you haven't taken into account Class IV future
15 contracts?

16 A. Right. What I did -- what I meant to show was a
17 number of different examples, because under the higher-of,
18 the way that I would look at it when I do the analysis is,
19 I need to try and guess which market is going to be the
20 higher-of, either the Class III or the Class IV.

21 So if I would do that analysis, I would look at
22 historically how would the Class III have performed, and
23 historically how would the Class IV have performed, and
24 that's what is in the table in pages 1 and 2 of that. So
25 I want to make sure that I'm looking at all the options to
26 see is it possible to be able to hedge this effectively.
27 And these are just illustrative examples of what can go
28 wrong.



1 MS. TAYLOR: Your Honor? I apologize -- and I'm
2 not sure how many more questions you have, Ms. Hancock --
3 but we have been going an hour and a half. I think we
4 might need to give our court reporter a break.

5 MS. HANCOCK: That's fine.

6 THE COURT: You know, that hour and a half went
7 fast.

8 MS. TAYLOR: It did. Time flies.

9 THE COURT: Well, says I, I'm quite comfortable
10 here.

11 Let's take ten minutes. Please be back and ready
12 to go at 2:58.

13 (Whereupon, a break was taken.)

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

15 We're back on record at 3:00 p.m.

16 Ms. Hancock, you may resume.

17 MS. HANCOCK: Thank you.

18 BY MS. HANCOCK:

19 Q. Welcome back. I'm still in Exhibit 255, and I
20 just want to close out a couple of my questions.

21 You were on page 4, talking about the example that
22 you have there for higher-of using a Class III contract;
23 is that right?

24 A. Correct.

25 Q. And I think I asked you this, but I don't know
26 where we landed on the answer, so I'm sorry if I'm
27 repeating myself. But this example is just you using a
28 Class III futures contract to lay off the risk of



1 providing a customer with a fixed price contract in this
2 example?

3 A. Yes. Under Class I, that's using the higher-of
4 formula.

5 Q. Okay. And you agree, though, that if higher-of
6 were in place at the time that you are doing this, you
7 would also have the subjectivity and knowledge of looking
8 at what the higher-of historically had been between
9 Class III and Class IV, kind of wearing the lens of that
10 mover; is that fair?

11 A. I guess, what exactly do you mean by that?

12 Q. Well, you just -- you would have the knowledge of
13 looking at the higher-of if that was the mover that was in
14 place at the time; is that right?

15 A. I would have the knowledge that the mover is based
16 on the higher-of, but I would not necessarily have the
17 knowledge that Class III was the right contract to use
18 versus Class IV.

19 Q. Yeah. But you could look back over -- over time
20 and see between Class III and Class IV which one had been
21 higher?

22 A. Certainly. Backwards looking, forward looking,
23 who knows.

24 Q. Yeah. Well, you can use some historical knowledge
25 to predict where the market's going to go; is that fair?

26 A. I don't think you could use historical knowledge
27 of the Class -- which was the higher-of, Class III or IV,
28 to make a prediction of what will be the higher-of going



1 forward.

2 Q. Because -- because it can just be the higher-of
3 and it can change; is that what you mean?

4 A. Meaning that the market that drives, that is --
5 that is the higher-of, that's based on fundamentals and
6 what drives price for Class III products versus Class IV
7 products.

8 Q. If you look -- I mean, do you look at those prices
9 now in your role to know which price is higher between
10 Class III and Class IV?

11 A. We don't look at the analysis of Class III versus
12 Class IV, because to hedge Class I risk we use both.

13 Q. Okay.

14 A. The average.

15 Q. But you are at least familiar with Class III and
16 Class IV prices over the last few years?

17 A. Certainly.

18 Q. And is it true that from November of 2021 up until
19 today, that Class -- Class IV had been higher than
20 Class III for 20 of the 22 months?

21 A. That sounds -- that Class IV was higher; is that
22 what you said?

23 Q. Yes.

24 A. Yes. I believe that's correct. I don't know the
25 exact, but I know it's been Class IV would have been the
26 higher-of in recent history.

27 Q. If I do my cheating lawyer math, that's 91% of the
28 time that Class IV is higher. Does that sound about



1 right?

2 A. Over that time period? I take your word for it.

3 Q. I'm sorry?

4 A. I'd take your word for it.

5 Q. Okay. And so that would give you -- at least as
6 you sit here today, those are pretty good odds about what
7 you can predict for tomorrow; is that right?

8 A. I would say no. Because if the fundamentals
9 change, let's say for butter, to cause the butter market
10 to fall, that could change the Class III to be higher in
11 the next two months, three months, next month, who knows,
12 right? And that's where looking at the past does not give
13 me -- past performance is not indicative of future
14 behavior, right?

15 So that's -- just because in recent history
16 Class IV was, does not mean that in the next six to
17 12 months where I'm going to be looking to lock in a
18 forward contract with our customer, that Class IV will be
19 the higher-of if we were under that formula.

20 Q. And we saw butter prices go up today, right?

21 A. Actually, didn't look at it today, but sure.

22 Q. And you would get to lay over the top of your
23 historical statistics, your experience of what's happening
24 today, and what you know to be happening in the market
25 coming forward; is that right?

26 A. For -- for what?

27 Q. In making decisions about how to -- how to utilize
28 the risk management tools available to you at Schreiber?



1 A. Well, the -- our prediction of what -- what's
2 going to happen in commodity markets has nothing to do
3 with how we hedge. Because hedging is simply about laying
4 off the risk. We're not trying to capitalize on market
5 movements. It's -- when we enter into a position that
6 puts risk on us, we lay that risk off in a market. So
7 that -- so that has nothing do with my expectation of
8 where markets are going to go. It's that today I have
9 acquired risk, and today I lay off that risk.

10 Q. Okay. And if it all goes as planned, it's at
11 least net neutral?

12 A. That's the goal with any hedge, is that it's
13 offsetting the market risk that you have in the physical.

14 Q. Okay. So you are not using it as a profit center,
15 you are just trying to make sure that in this service that
16 you are offering to customers, that you are not exposing
17 Schreiber to any greater costs?

18 A. We're -- we're trying to make sure, yes, that
19 we're -- that we're -- that our hedges are effective, that
20 we're laying off the risk in the physical market.

21 Q. Can you tell me the -- you said that you have
22 fixed contracts and -- and -- and futures contracts, but
23 you also use swaps and OTC products as well.

24 Can you tell me what the ratio is of the swaps
25 versus your -- versus your future contract?

26 A. I don't know the ratio. I would say that actually
27 the ratio is fairly high for swaps, but some of those
28 swaps can even be futures look-alike contracts, where they



1 settled to the Class III or IV, but it just gives us the
2 ability to do different quantities than the full contract
3 size.

4 Q. Would it be more than two-third swaps?

5 A. I -- off the top of -- of my head, I can't say for
6 sure.

7 Q. More than half swaps?

8 A. Sure.

9 Q. Okay. And is there any reason that if you were
10 using -- if the mover was changed to a higher-of, that you
11 couldn't use an OTC product in order to offer a fixed
12 price contract to a customer?

13 A. If the change did happen, going back to the
14 higher-of, we would certainly investigate that. My
15 question is, where would the sell-side come for those
16 swaps?

17 With every other commodity, to be able to offer
18 swaps, whoever is offering that swap needs to lay that
19 risk off themselves. I'd say very few just take naked
20 market risk. So they are going to lay that off in some
21 fashion. And to be able to do that, they need to find
22 somebody that is a natural seller.

23 In the other commodities that we -- that are in
24 the Dairy Complex, there are natural sellers of cheese,
25 butter, nonfat, Class III, Class IV. But there doesn't
26 seem to be a natural seller -- the natural seller of
27 Class I would be dairy farmers. But I don't believe
28 there's a lot of Class I hedging necessarily that's going



1 on on the dairy farm side.

2 So missing that -- that sell-side liquidity
3 would -- I would be skeptical of how successful we would
4 be able -- we would be in being able to have or find swaps
5 to hedge Class I under the higher-of.

6 Q. Something you could look into and consider, but as
7 you sit here today, you are not sure if there's going to
8 be a market for it?

9 A. Correct.

10 Q. Okay. And do you offer fixed price barrel
11 contracts to your customers?

12 A. We offer forward contracts on barrel. That's
13 outside of this. You know, I'm just speaking to the
14 Class I here. But --

15 Q. And do --

16 A. -- that extra tidbit, yes, we do.

17 Q. Sorry, I talked over you.

18 And -- and how do you price those fixed price
19 contracts for barrels?

20 A. Well, how we price those, again, like I said
21 earlier, any sort of basis assumption is a proprietary
22 thing. And how we hedge that would be no different than
23 how we would hedge Class I risk. So futures and swaps are
24 tied to some cheese index.

25 Q. Okay. Class III?

26 A. Not anymore. In the way past, before cheese
27 futures were available, we did hedge cheese with
28 Class III.



1 Q. It's fair you don't have a direct correlating
2 product for your barrel fixed price contracts; is that
3 true?

4 A. No. There's -- there's products that -- that are
5 correlated enough. Like I mentioned earlier, this is more
6 effective than the cheese -- cheese and other product
7 hedges that we have. But it's -- it's high enough where
8 it's acceptable for Schreiber Foods.

9 Q. You have been able to figure it out?

10 A. Sure. Yeah. I wouldn't claim the sole
11 proprietary on that, but, yes. Myself, like others, have
12 figured that out.

13 Q. In a way that satisfies your customers' desire for
14 a fixed price contract and in a way that allows you to lay
15 off the risk for Schreiber?

16 A. Correct.

17 Q. Okay. And if we turn to page 2 of Exhibit 255,
18 this one doesn't have a title on it. I'm just wondering
19 if you can remind me what it is that this page is -- is
20 explaining for us.

21 A. Sure. Just to make sure, that's this one, right?

22 Q. Yes.

23 A. Okay.

24 Q. There's a really faint number 2 at the bottom.

25 A. Got it.

26 So this is looking at the basis, again, the
27 difference between the Class I using the average-of
28 formula and the average Class III and IV settlement. So



1 where did the Class III and IV price, where was it
2 announced at, and what is that average compared to the
3 Class I price.

4 Q. Okay. So when I look at that 2020 to present,
5 that timeframe is designed to capture when average-of is
6 actually in place as the mover.

7 A. I actually used that timeframe because I wanted to
8 use the same timeframe as what I did in the previous,
9 doing the analysis for the higher-of.

10 Q. Okay. And you would agree with me that that's a
11 real timeframe there when average-of was in place as the
12 mover?

13 A. Correct.

14 Q. Okay. And you have the average at \$0.72.

15 Do you see that?

16 A. Yep.

17 Q. What is that \$0.72 the average of?

18 A. So that is the average of the basis. Again, the
19 difference between the Class I using the average-of
20 formula and the average-of the announced Class III and IV.
21 So that average-of \$0.72, again, as I -- if I extended
22 decimal places, it would be 71.51, I believe, which is
23 very close to the 71.41, which is the \$0.74 adder for the
24 skim portion times 96.5%.

25 Q. Okay. And this is the basis that you actually use
26 when you are -- when you are contracting now to lay off
27 your risk for the forward price contracts that you have
28 offered to your customers?



1 A. So, again, the -- what we use for the actual basis
2 is proprietary. This -- in the examples I just used the
3 average to pick a number, because certainly some basis
4 needs to be counted for in the price that you give to a
5 customer when you are forward contracting. But I didn't
6 want to choose anything that was, you know, our
7 proprietary numbers that we choose to use.

8 Q. And do you -- why not use the \$0.74?

9 A. Well, the \$0.74 is an adder for the skim portion,
10 not for whole milk. I mean, you could use \$5 if you chose
11 to. It's whatever each company chooses to use for that
12 basis assumption, but the -- but, yeah. The \$0.74 only
13 for the skim, not for the full milk product.

14 Q. Okay. And this doesn't mean that -- that you
15 are -- are you charging the -- your customers now or are
16 you assessing a base risk that's based on the higher-of?

17 A. No. Because the Class I, our actual cost of
18 Class I is using the average-of, so that's -- that's the
19 basis -- that's the analysis that we do to -- when we're
20 setting the -- setting the price and doing -- putting that
21 hedge in place is using the average-of.

22 Q. Okay. And then let's turn quickly to -- well, not
23 quickly, but let's turn to Exhibit 256. And this is your
24 bar chart, and it's titled "CME Group Combined Futures and
25 Options Volume."

26 This is just off the CME website?

27 A. Yeah. It's -- well, it's data essentially from
28 the CME on the volume of contracts that have traded,



1 correct.

2 Q. And so if we look at it -- it's -- over time, it's
3 fair to say from 2000 until today, it's been on a fairly
4 steady increase for the amount of volume that's traded on
5 the CME; is that right?

6 A. Yes.

7 Q. If we look at 2021 and 2022, we're pretty close to
8 what it was back in 2016; is that right?

9 A. Yes.

10 Q. So it doesn't look like really it's netted since
11 2019, when -- when the average-of went into effect, it
12 doesn't really look like it's driven any increase in the
13 amount of volume that's traded on the CME. Is that true?

14 A. On the amount that's traded on the CME over the
15 last few years. Again, my point in showing this was more
16 about the left side of the -- of the chart. But there's a
17 number of reasons why I -- why that volume has fallen off
18 that is not relevant to here. I can talk to you in the
19 hallway about it what my thoughts are.

20 Q. Sounds exciting.

21 A. Yes. Exactly.

22 Q. So if we look at -- you said the point here was
23 kind of the comparison of the right side compared to the
24 left. Is that just to show the volume has increased so
25 significantly as time has gone on?

26 A. It was more so to show if we would have made the
27 decision in 2003 or '04 to change the system so that risk
28 management was no longer capable, we would have missed on



1 the opportunity for all of this volume growth in
2 capability in risk management.

3 So the point was, again, it's so very early on
4 around -- because hearing testimony, there's a lot of
5 comments around nobody's doing Class I risk management
6 and -- well, certainly we are, so we can't say that
7 nobody.

8 And I say -- I would also say that just because
9 there may not be an extraordinary amount of volume
10 happening today, that was the same thing early on in the
11 early 2000s. And it takes time for companies to be
12 comfortable with -- with developing a risk management
13 program and -- and making that decision to -- to move into
14 risk management. And so that -- that just takes time.

15 And that's the same exercise that's happened in
16 dairy a number of times from, you know, the early 2000s
17 when Class III first started trading to, say, 2010 when
18 cheese futures started trading. It takes -- you know, it
19 takes a number of years for that to really be picked up
20 and that volume to take off.

21 Q. Okay. And what we know is that at least since
22 average-of has been implemented, it hasn't gone down?

23 A. Well, I don't think you can make that connection.
24 There is -- the -- I would say that there -- that's a
25 false connection.

26 There's -- it's not that because the average-of
27 caused that -- that drop.

28 Q. And just -- I'm not trying to say that that's what



1 caused the drop.

2 Is it accurate to say that since the average-of
3 was implemented, the total volume traded on the CME has
4 decreased?

5 A. Well, it entered into -- 2019, 2020 was a much
6 higher year, so --

7 Q. Yeah.

8 A. Correlated in terms of the time, but maybe not --
9 certainly no -- I don't draw any causation there.

10 Q. Okay. And what we know is there's been some other
11 government programs and other things that have gone into
12 effect in the meantime; is that fair?

13 A. There's a lot of things I think that go into that.

14 Q. Okay. And Class III in particular has decreased a
15 good amount; is that fair?

16 A. From 2020 to 2021. But I wouldn't say that that's
17 necessarily representative of all of the -- even Class III
18 risk management that is happening in the marketplace,
19 because this does not include any swap volume or
20 over-the-counter volume that's happening outside of the
21 exchange.

22 Q. Okay. And those are -- those are things that more
23 custom tailored to individuals' own risk management tools
24 and needs?

25 A. Sure. Yeah. They are not standardized like
26 futures are.

27 Q. And those are the products that would be available
28 in a higher -- if a higher-of was mover -- was the mover



1 for laying off the risk as well; is that fair?

2 A. Well, I can't say that for certain. As I said
3 earlier, it really depends on would there be any
4 sell-side. Because without the sell-side, again, it's a
5 risk that somebody would have to be willing to take on to
6 be able to offer that.

7 So I would not say that it's by any means a
8 guarantee that those would be offered.

9 Q. Okay.

10 MS. HANCOCK: Thank you so much for your time.

11 MR. SJOSTROM: Your Honor, Lucas Sjostrom, Edge
12 Dairy Farmer Cooperative.

13 CROSS-EXAMINATION

14 BY MR. SJOSTROM:

15 Q. Good afternoon, Mr. Herlache.

16 A. Good afternoon.

17 Q. A few questions.

18 Going back to your example in your testimony --
19 you don't even have to look at it, I promise. On Class I
20 where you showed basis risk, what -- what is driving the
21 basis risk under the average-of in your opinion or --

22 A. Sure. So there is a small amount of timing risk
23 because the average-of is using two weeks of the surveys,
24 and the Class III instruments are using the three or --
25 sorry -- four- or five-week surveys. So it's the full
26 month instead of the advanced.

27 Q. Thank you.

28 So the advanced would be a major cause of that



1 basis risk?

2 A. Yeah. It would be a major cause of that smaller
3 basis risk, yes.

4 Q. Thank you.

5 What is -- would elimination -- well, you answered
6 that, I apologize.

7 Is there any proposal in this hearing that would
8 lower the basis risk?

9 A. Of the average-of?

10 Q. Yes.

11 A. Well, yeah, moving to -- away from the advanced
12 prices would -- would eliminate, probably most, if not
13 all, of that remaining basis risk variability.

14 Q. So Proposals 16 and 17 would do so, the Edge and
15 Farm Bureau --

16 A. I believe so if those are referencing the removing
17 the advanced components.

18 Q. Thank you.

19 Do you know the -- and I know there's probably not
20 an average, but in your experience, what is the OTC, or
21 the over-the-counter cost, on higher-of versus the cost of
22 futures per pound? Could you give -- are they equal? Is
23 one always higher? Is one always lower?

24 A. So to be clear, are you asking what the -- so I
25 know you used cost, but maybe I'll translate that into the
26 price --

27 Q. Yes. Yes.

28 A. -- that we would get.



1 Q. Yes.

2 A. If it -- if we wanted to do a Class I using the --
3 and the higher-of was in place versus the average-of?

4 Q. Yeah, on a per hundredweight or a pound basis,
5 depending, per hundredweight.

6 A. So I don't know how much it would be, because
7 that's -- that's going to be totally dependent on, one, if
8 people would be willing to offer those and what their
9 assumptions around risk would be. But I can guarantee
10 that they would be higher, because, again, the --

11 Q. Sorry to interrupt.

12 The OTC would cost more?

13 A. Yes, sorry. The OTC price, if -- if we were able
14 to step outside of time and look at a world where there's
15 the higher-of and the current world where there's the
16 average-of, the price that I would assume we would be
17 quoted on a Class I OTC product would be higher in the
18 average-of because of just the inability to lay off that
19 risk.

20 Q. Thank you.

21 And so, well -- thank you. I'm done with those
22 questions. Two more.

23 What percent of fluid milk in the country is
24 hedged? Do you have an idea, or no?

25 A. No idea.

26 Q. Guess?

27 A. I couldn't even guess because there's -- the data
28 is just not there to be able to -- to make any guess.



1 Even if we wanted to look at the volume of products
2 traded, if it's hedged with Class III or IV, we don't know
3 if that's -- if that Class III volume is used to hedge
4 Class I milk or Class III milk. So I couldn't guess.

5 Q. Class III -- and I'm forgetting the exhibit
6 number, the chart, 200 something, the IDFA Exhibit 256 --
7 Class III in that chart has much more activity than
8 Class IV.

9 And do you believe that's because the -- well, I
10 guess I should ask. Do you agree to that? I think that's
11 established.

12 A. Yes.

13 Q. Is the execution cost lower in Class III? Is that
14 a reason for that?

15 A. As compared to?

16 Q. Class IV.

17 A. Oh, I don't think it has to do with execution
18 cost. In my experience with looking at futures, the cost
19 of execution is really the same regardless of the
20 commodity. It probably has more to do with, again, who is
21 the sell-side, and there's probably more sell-side coming
22 from Class III than IV.

23 Q. And related, is it easier to hedge with Class III?
24 Could that be a reason why there's more volume?

25 A. So it's more liquid I would say. Because as
26 reflected by the volume, there's a saying that volume
27 begets volume. The more volume you have, the more volume
28 you get, the easier it is, so -- and some of it, too,



1 probably speaks to the amount of Class III milk that's in
2 the market versus Class IV milk.

3 MR. SJOSTROM: Thank you, your Honor. No further
4 questions.

5 CROSS-EXAMINATION

6 BY MR. MILTNER:

7 Q. Good afternoon.

8 A. Good afternoon.

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

11 I wanted to start with a question about the first
12 slide on what I think is Exhibit 257, the summary of your
13 charts there. 255? Okay. It's that one.

14 THE COURT: We're looking at Exhibit 255.

15 MR. MILTNER: Thank you.

16 BY MR. MILTNER:

17 Q. So if I look at the two sections of that, the 2010
18 through 2019, and then 2020 through present, to what do
19 you attribute the increased range and volatility between
20 those two periods?

21 A. Well, certainly the -- the Class III and IV
22 markets have moved much more independently of each other.
23 I think that's probably what's driving the volatility.

24 Q. Do you think that the pandemic had much to do with
25 that?

26 A. It's hard to say. I mean, because butter has been
27 much higher than it -- long -- the long-term historical
28 average has been, I don't know that that's necessarily --



1 if butter was the cure for COVID maybe, that would be
2 great, but I don't think that's the case.

3 Q. I'm curious as to why you chose the end of 2019 as
4 your break point there.

5 A. Just because that's where we saw a change in the
6 pattern of basis risk where it was still large, but within
7 a certain range, and then it seems like after 2020, not
8 any more science than looking at a chart and saying, okay,
9 that looks like there's a change that happened, and
10 picking that date.

11 Q. It was just your best judgment based on looking at
12 the data?

13 A. Yep.

14 Q. Okay. And so if I think about your testimony in
15 total, is your primary takeaway that for your customers
16 and the services that Schreiber provides to those Class I
17 customers, that your ability to manage risk and hedge for
18 them is far superior using the average-of III and IV
19 versus the higher-of?

20 A. Correct.

21 Q. Okay. Now, Ms. Dorland, when she testified, I
22 asked her if -- if her opinion was that a Class I
23 purchaser would be equally able to manage their risk under
24 both higher-of and the average-of, and her opinion was
25 that it could.

26 Do you disagree with her conclusion?

27 A. Yeah, I do.

28 Q. Okay. Can you briefly explain why?



1 A. Sure. It really goes back to under the higher-of,
2 we don't know which contract is the right contract to --
3 to best offset the market risk that we have in Class I.
4 And so if I choose wrong, I showed some examples of how --
5 how impactful that is. And that -- that risk is just too
6 large for us to be able to take on.

7 There is -- you may be able to show a correlation
8 over a long period of time, but over the last 24 months,
9 like -- like was mentioned, Class IV was actually the
10 higher. So even though the long-term correlation may be
11 better for Class III, over the last few years that would
12 have been a bad hedge.

13 Q. Okay. And am I correct in interpreting your
14 analysis to state that it was primarily based on the use
15 of Class III and Class IV futures or options to hedge that
16 risk and to the exclusion of other available instruments?

17 A. Correct. Yeah. It was just looking at Class III
18 or Class IV.

19 Q. Okay. And -- and if I -- I hope I'm not
20 misstating what Ms. Dorland said in response to Q&A, but I
21 think she suggested that there were other potential
22 hedging tools that could be used to craft a -- a bespoke
23 risk management program.

24 Do you believe that that is something that would
25 be available if you were to look beyond Class III and
26 Class IV futures and options?

27 A. Sure. Do you mean under the current method or if
28 we went to the higher-of?



1 Q. How about for both.

2 A. Sure. So under the current average-of, there are
3 Class I swaps that are available, and we do use those
4 alongside Class III and Class IV.

5 In a different world where we move to the
6 higher-of, I can't say for sure if there would be those
7 available and what they would cost. Kind of like I had
8 mentioned earlier, it's -- it would really be a question
9 of would anybody be willing to provide those? Would
10 there -- where would the sell-side come from and how much
11 would you have to pay for it?

12 Q. So possibly available, but we just don't know?

13 A. Right.

14 Q. Ms. Hancock asked you some questions about
15 Schreiber's plants, and I don't want to completely re-plow
16 that ground. But I did look at the website, and for --
17 for Schreiber -- and it does list all the plants in the
18 U.S. and some of the products that they produce.

19 Am I correct if I understand that only the Grand
20 Rapids, Michigan, plant produces beverages right now; is
21 that correct?

22 A. That's correct.

23 Q. Okay. And I was looking at what is Exhibit 33 in
24 this hearing -- and you don't need to pull that up or
25 remember what it is -- but it's USDA's compilation of all
26 the regulated pool distributing plants, and I noticed that
27 that Grand Rapids plant is listed as a regulated
28 distributing plant for the months of 2023 that were



1 contained in that exhibit.

2 Does that sound right to you?

3 A. I'll believe your research if you pulled it from
4 the USDA.

5 Q. Okay.

6 A. Sounds like a good source to me.

7 Q. I don't believe I'm misstating it.

8 In 2022, it looked like that plant, in some
9 months, was a regulated plant and some months was not
10 listed as a regulated plant. My assumption would be that
11 that's because the plant was then partially regulated.

12 Do you know if that is the case, that that plant
13 goes back and forth between regulation and partial
14 regulation?

15 A. I have no idea.

16 Q. Okay. Do you know when Schreiber began operating
17 that plant?

18 A. I don't know the exact date. I believe it was --
19 I believe we acquired it in 2020 or 2021.

20 Q. Okay. That would make sense, because I don't see
21 any registration for the plant before '21, and I -- I --
22 again, I was trying to figure out if it was partially
23 regulated or if it was a new acquisition. So thank you
24 for helping with that.

25 So did Schreiber produce Class I products for any
26 customer before it acquired that plant?

27 A. No. I -- we did not produce any, no.

28 Q. Okay. So then Schreiber would not have had any



1 need to attempt to hedge Class I prices for itself or any
2 other customer under the higher-of; is that correct?

3 A. That's correct.

4 MR. MILTNER: Okay. Thanks. I don't have
5 anything else.

6 CROSS-EXAMINATION

7 BY DR. CRYAN:

8 Q. Good afternoon. I'm Roger Cryan for the American
9 Farm Bureau Federation.

10 Hello, Mr. Herlache.

11 A. Hello, Mr. Cryan.

12 Q. Nice to see you.

13 A. You, too.

14 Q. So you discussed basis risk for using Class III or
15 IV contracts with higher-of or the average. I think
16 Ms. Dorland also talked about that.

17 If you're buying Class III milk at the Class III
18 price, and using Class III futures to forward price that,
19 what's your basis risk?

20 A. It would be pretty much zero.

21 Q. And same thing for Class IV?

22 A. Yes.

23 Q. Okay. If you are -- and those contracts are
24 cash-settled?

25 A. Correct.

26 Q. And those contracts have no stepdown requirements;
27 is that correct?

28 A. Sorry, what was that? I missed --



1 Q. There's no requirement to reduce your position
2 before the final settlement date?

3 A. Correct.

4 Q. So you can allow those to settle on the final
5 date?

6 A. Yes.

7 Q. Okay.

8 THE COURT: You nodded "yes"?

9 THE WITNESS: Sorry. Yes.

10 BY DR. CRYAN:

11 Q. So if there was a Class I futures contract, what
12 would be the basis risk for processors who were buying
13 milk at the Class I price if they were using that
14 contract?

15 A. Their basis risk, I would assume, would be pretty
16 much zero.

17 Q. Okay. Thank you.

18 A. You're welcome.

19 DR. CRYAN: Thank you very much.

20 THE COURT: Let me see if anyone else has
21 questions for this witness before I turn to the
22 Agricultural Marketing Service for its questions.

23 Counsel?

24 MR. ROSENBAUM: Steve Rosenbaum for the
25 International Dairy Foods Association.

26 REDIRECT EXAMINATION

27 BY MR. ROSENBAUM:

28 Q. Looking back at Hearing Exhibit 255 where you show



1 using the higher-of, what the range is of the risk, what
2 the standard deviation is, etcetera. Right?

3 A. Yes.

4 Q. Is that something that a person offering a bespoke
5 Class I product would also be capable of calculating and
6 seeing what risk they would be taking on were they to sell
7 such a Class I futures product?

8 A. Yes. I assume they would do some sort of similar
9 calculation to understand their risk.

10 Q. And you said that the volatility and range and
11 standard deviation were simply too large for Schreiber
12 itself to be willing to take on that kind of risk,
13 correct?

14 A. Correct.

15 Q. And you are a \$7 billion a year company, correct?

16 A. Correct.

17 Q. And do you have any views as to the likelihood
18 that somebody else would be willing to take on a risk of
19 that nature?

20 A. Again, it's -- it's guessing at what will happen,
21 but I think it's a low likelihood or just the cost would
22 be very high. If -- I'm sure that we could find people
23 willing to offer us a Class I using the higher-of if it
24 was -- if we were paying \$10 over or something, you know.
25 There's going to be a price where I'm sure that people
26 could offer, but the question is, is that something that
27 our customers would be willing to pay, and my guess is
28 probably not.



1 Q. What was your last statement?

2 A. My guess is that they would probably not be
3 willing to pay that.

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

5 THE COURT: I will now ask for questions from the
6 Agricultural Marketing Service.

7 CROSS-EXAMINATION

8 BY MS. TAYLOR:

9 Q. Good afternoon.

10 A. Good afternoon.

11 Q. First my deep appreciation for the simple lesson
12 in risk management.

13 A. You're welcome.

14 Q. So I do still have some questions.

15 A. No problem. I would be very impressed, by the
16 way, if you, like, just got it first time, because that
17 never happens, so --

18 Q. But -- okay. I think a lot of my questions did
19 get answered, but let me make sure.

20 I think I gathered from some questioning from
21 Ms. Hancock that you do offer contracts to your current
22 Class I customers, and I know you didn't want to give the
23 number, associated number with that, but more than five is
24 what I gathered?

25 A. Yes.

26 Q. Okay. And are those contracts for ESL products or
27 HTST products?

28 A. They are all going to be for ESL. I failed to



1 mention, they would be ESL or aseptic.

2 Q. Okay.

3 THE COURT: You said ESL or aseptic?

4 THE WITNESS: Aseptic, yes.

5 BY MS. TAYLOR:

6 Q. So your customers for HTST products don't
7 typically look to lock in a price?

8 A. We don't have any -- we don't sell any volume
9 that's HTST.

10 Q. Okay. And then I think you said you look out as
11 far as 12 to 18 months?

12 A. Correct.

13 Q. So I think as I understand the IDFA proposal, the
14 adjuster would be from August to July of -- I might be
15 getting this wrong. But let's just say -- there's so many
16 swirling around in my head, right, to keep it straight.
17 But it ends in July, it would get announced, and
18 implemented the following January?

19 A. Correct.

20 Q. So, like a six-month implementation lag?

21 A. Right.

22 Q. Okay. If you are looking out 12 to 18 months, how
23 does that affect your ability to lock in contracts since
24 those two don't seem to line up?

25 A. I'd say that we look out as far as 12 to
26 18 months, so that doesn't -- depending on the time of the
27 year and even what's available from a liquidity standpoint
28 in the market, we may not be able -- there may be certain



1 times of the year where we can't look out as far as
2 18 months and we have to focus more on the nearby months.

3 Q. Okay. So is it more common to have the nearby
4 months covered?

5 A. Yeah. I'd say that's more common, because that
6 would be a position that's, let's say, built up over time.
7 And so we might start looking, you know, 12 months out,
8 but then we would continue to add to that -- and I say
9 "we," you know, it's forward contracts that we're offering
10 to our customers. Most of the time they are taking
11 percentages at a time just to make sure that today is not
12 the wrong day to lock in a price and averaging that
13 together.

14 Q. Okay. Thank you.

15 On your -- page 2 of your statement, Exhibit 254,
16 in the first chart, and you referenced this when you went
17 over some of your charts in Exhibit 255. You called the
18 \$1.03 and the \$1.66 your basis assumption.

19 Can you define what you mean by that just so it's
20 clear on the record?

21 A. Sure. So looking at history, we can tell that
22 there is some difference where the Class I is higher than
23 either the Class III or the Class IV. So if we're using a
24 Class III market to hedge a Class I price, when we quote
25 that price to the customer, the fixed price, that upper
26 left box, we need to include some -- some amount that's
27 higher than the Class III.

28 So because historically Class I is higher, it's



1 just a question of how much higher and what is that amount
2 that we choose to lock in there, so that would be the
3 basis assumption. And, again, in my example I used the
4 average, but it's up to each company what they actually
5 choose.

6 Q. So I interpret that as the risk that Schreiber
7 takes on to offer this contract?

8 A. Right. Correct.

9 Q. Okay. So on that first chart, as I understand
10 it -- and I want to just make sure I'm clear -- if I look
11 at that first line, it's showing me the difference between
12 the higher-of mover and what the Class III price was over
13 2010 to 2019. And so you give me the min and the average
14 and the max.

15 So is that the correct way to read that?

16 A. So actually it's the difference between the
17 higher -- the Class I price based on the higher-of, and
18 the Class III, the announced Class III price.

19 So it's saying that if I used Class III to hedge
20 Class I under the higher-of, this is what the differences
21 would have been historically.

22 Q. Okay. And then so on the second chart, can you go
23 over again one more time? It's not quite as clear to me
24 what that average III, IV line is looking at.

25 A. Sure. So this is under the average-of mover
26 scenario. So this is saying what is the difference
27 between the Class I using the average-of formula and the
28 announced Class III and Class IV average.



1 So the point is that we would be using the
2 Class III and IV average markets to hedge the Class I, and
3 so it's just where did the Class III and IV price -- where
4 was that announced, the average of those two numbers
5 relative to the Class I mover under the average-of
6 formula.

7 Q. Okay. And I think as you were talking with -- I
8 think one of the representatives from Edge, a lot of that
9 basis risk in here is because of the difference between
10 the advanced price and the announced, the six-week lag.

11 Would that be correct?

12 A. It's not even so much the six-week lag, because I
13 can look at hedging the previous month. I wouldn't use
14 the previous month futures in Class III and IV. It's more
15 about the Class I price is using the two-week average and
16 the futures settled to the four or five-week, you know,
17 month, the full month. So I'm actually getting two or
18 three extra weeks of price data in my -- in my hedge that
19 is not showing up on the milk cost.

20 Q. Okay. So these Class III and IV prices, they are
21 Federal Order announced prices?

22 A. Correct.

23 Q. Okay. And then under that chart, the averages
24 both for those two time periods are \$0.72.

25 Is that just coincidence?

26 A. No. I think it's -- it -- it makes sense because
27 the -- again, the \$0.72, if I extend the decimal places,
28 it's really close to the \$0.74 times 96.5%. So if I take



1 that, because the \$0.74 is added to the skim price, and if
2 I take that times 96.5%, the Class I adder, you could say,
3 is .7141. So this number should kind of bounce around
4 that difference knowing that it's just those extra two or
5 three weeks that are getting picked up in the Class III.
6 So it's really close to the .7141.

7 Q. You give us so much to think about. I'm glad
8 there's a transcript to go back and think about it.

9 So you mentioned swaps were another -- swaps, OTC
10 instruments, and options were other tools.

11 A. Yes. And for simplicity, you can think of OTC and
12 swaps as being synonyms for pretty much the same thing.

13 Q. Okay. So as a novice person on risk management,
14 is this conversation different when we look at how those
15 tools are used?

16 A. I guess, what aspect of that?

17 Q. Well, here we're focusing on futures and the
18 impact of the higher-of versus the average-of on your
19 ability to use futures.

20 So does that -- is it different if you are using
21 swaps or other tools?

22 A. Sure. So the -- it's possible to have a swap
23 settled to the Class III and IV average, say. So instead
24 of going out and buying Class III contract and a Class IV
25 contract, I could enter into a swap arrangement that
26 settles to the average-of the Class III and IV.

27 So it's really more about that execution. I could
28 also enter into a swap that settles to the announced



1 Class I milk price, and -- and so that -- again, that's
2 something that would not be available on the futures, but
3 it's ultimately -- the goal is still the same in terms of
4 offset the physical market risk. It's just a matter of
5 execution.

6 Q. And so if I picked up on a different conversation,
7 then, the difference on the execution point is, you need
8 somebody on that sell-side there, where you don't
9 necessarily have that problem on the futures market?

10 A. That would only be, I'd say, on the -- if we move
11 back to the higher-of. I just question where that
12 sell-side would come from.

13 Q. Yeah. Okay.

14 A. Yep.

15 Q. Okay. So on that bottom conclusion sentence, you
16 say, "In conclusion, Proposals 14 and 15 solves for the
17 farmer income issue."

18 And I would like you to expand on how your
19 discussion previously demonstrates that it solves for the
20 farmer income issue, which has also been discussed at the
21 hearing?

22 A. Sure. It's -- the fact that we are adjusting that
23 adder to account for the historical difference between the
24 higher-of formula and the average-of formula. So its --
25 its intent is to -- like was talked about, to be revenue
26 neutral to the higher-of. It's a way to make sure that
27 the farmers are made whole and maintaining the ability to
28 risk manage the product as well.



1 Q. So did you -- were you able to hear any of the
2 testimony we had from other National Milk witnesses about
3 the asymmetric risk of the -- to farmers as they
4 identified --

5 A. Yep.

6 Q. -- or claim?

7 Okay. So as I understood that discussion, there's
8 a cap for them -- as they explain it to us, you know,
9 there's a cap for them on the upside of what would be
10 twice whatever the adjuster is, in this case, \$0.74. So
11 at \$1.48 they don't get any more benefit on the upside,
12 but they take all the downside.

13 So in this volatile market, if you are -- okay,
14 you are adjusting the cap -- or adjusting the adder. But
15 I guess, are we really making them whole in your -- you
16 know, how is USDA supposed to look at really making them
17 whole when there's this cap still on the upside, whatever
18 it may be?

19 A. So I think the cap comes from the fact that under
20 the current method, that \$0.74 doesn't change. And -- and
21 so -- so, yeah, it's limited to -- to that. In the
22 future, that would -- you know, that \$0.74 would be
23 floored at \$0.74, so it would never be worse than that
24 under the IDFA proposal.

25 It could go up. If the difference historically
26 got to be \$10 between Class III and IV, this would account
27 for that. And I say the intent is to be a higher-of
28 equivalent over a period of time.



1 Q. Okay. I think I had a couple of questions on your
2 Exhibit 255. Make sure I don't miss anything.

3 Can you turn to page 4?

4 And I think you might have discussed this with
5 someone and I missed it, because I know you said this is
6 just an illustrative example, and I appreciate the
7 simplicity.

8 But on the -- for example, the \$25.31 of what you
9 actually have to buy, you know, in September, that is what
10 you had to pay for the raw milk you put in Class I.
11 That's how I understood that to be.

12 A. If -- yes, if the higher-of was in place.

13 Q. Right.

14 Did this number come from September of 2022 or you
15 just picked this number?

16 A. Yeah. So I -- I calculated it based on the
17 Advanced Class III and IV skim prices.

18 So this is -- if the higher-of was in place, that
19 is the number that would have -- that -- that would have
20 been the Class I price in September of '22.

21 Q. Applicable in September? So would have used
22 announced in August?

23 A. Correct.

24 Q. Yeah. And so what -- and is the 20.10 the
25 settlement price of the futures in September of 2022?

26 A. That would be the August. So because that lag --
27 I'm going to back up. The month that I'm hedging to align
28 as best as I can with the lag in the advanced price.



1 Q. Okay.

2 A. So maybe to -- to be more clear on that, the
3 advanced price is based on the first two weeks of August,
4 and the closest I can get to hedging that time period
5 would be using the August futures.

6 Q. Okay. All right.

7 MS. TAYLOR: I think Mr. Wilson has a couple
8 questions.

9 THE WITNESS: All right.

10 CROSS-EXAMINATION

11 BY MR. WILSON:

12 Q. Good afternoon.

13 A. Good afternoon.

14 Q. Todd Wilson, AMS.

15 Again, on Exhibit 255, just to clarify in my head.
16 The Class I announced price that is part of the equation
17 to get to these differences, is that the announced Class I
18 mover price, the skim price?

19 A. It is the -- the Class I mover, so the skim and
20 fat. It's the -- yeah, the Class I mover, the whole milk
21 price.

22 Q. You stumped us.

23 A. Oh, sorry.

24 MS. TAYLOR: We have a lot of numbers up here,
25 too.

26 THE WITNESS: Totally understand.

27 BY MR. WILSON:

28 Q. So it's the Class I skim milk mover that's the --



1 either higher-of or the average-of, based on whichever
2 chart and box you are looking at, plus the butterfat, to
3 equate to a Class I mover at 3.5?

4 A. Correct. Yes.

5 Q. And is that also the same price that you have used
6 in your examples on 255, pages 3, 4, 5, to get to the milk
7 buy price, the physical buy price?

8 A. So the buy price in each one of those on the --
9 are you saying on the financial?

10 Q. On the physical.

11 A. On the physical, yes. It's using both the skim
12 and fat.

13 So fat -- so the skim under that method, either
14 the higher-of or the average-of, and butterfat portion,
15 which is the same under both.

16 MR. WILSON: Okay. All right. Thank you.

17 MS. TAYLOR: That's it.

18 THE COURT: Is there something you could say that
19 would stump them?

20 THE WITNESS: I don't know. We could be here all
21 day.

22 THE COURT: Redirect?

23 REDIRECT EXAMINATION

24 BY MR. ROSENBAUM:

25 Q. Steve Rosenbaum for IDFA.

26 This may clarify. I hope it doesn't confuse.

27 But on Exhibit 255, page 4, that's where you are
28 addressing what the hedging would have been had we been



1 under the higher-of formula using a Class III futures
2 price for September 2022, correct?

3 A. Correct.

4 Q. And so the \$25.31, that is what the announced
5 Class I price would have been for August 2022, including
6 both skim and butterfat, had we been under the higher-of
7 methodology at that point in time; is that correct?

8 A. Correct.

9 Q. And the financial of \$20.10, that is what -- I'm
10 going to ask you to complete that, because I may say it
11 wrong. What is that?

12 A. That is the announced Class III price for the
13 month of August 2022.

14 Q. Skim and butterfat both?

15 A. Skim and butterfat both.

16 Q. Okay. And then just to follow up on a question
17 asked by AMS in terms of this notion of a cap.

18 The cap, correct me if I'm wrong, the cap exists
19 under the current average-of, in which we're now living,
20 in the sense that \$0.74 is the maximum that gets added to
21 the average-of Class III and IV, correct?

22 A. Correct.

23 Q. Okay. And as has been discussed, if the Class III
24 and IV price get sufficiently out of whack with each
25 other, the result is the \$0.74 no longer really acts as a
26 long-term average-of the difference between Class III and
27 Class IV, correct?

28 A. Correct.



1 Q. And the deal, so to speak, back in 2017, between
2 IDFA and National Milk, was in putting the average-of
3 formula in place, the intent was to be revenue neutral,
4 correct?

5 A. Correct.

6 Q. And that -- but we have seen such volatility, at
7 least in the sense of difference between Class III and
8 Class IV prices over the last two or three years, that, in
9 fact, it hasn't turned out to be revenue neutral, correct?

10 A. Yep. That's right.

11 Q. And leaving aside entirely the question whether
12 the higher-of actually ever made sense, which is a whole
13 discussion that we're not engaged in, because we're not
14 challenging that in this sense, IDFA wants to live up to
15 its pledge and wants to put a new average-of, that, in
16 fact, will ensure that once it's in place, it will be
17 revenue neutral going forward, correct?

18 A. Correct.

19 Q. And that will no longer, under the current regime,
20 that revenue neutrality, depending upon Class III and
21 Class IV maintaining its historical relationship such that
22 \$0.74 was a reasonable number to reflect what long-term
23 meant to farmers to get paid under the higher-of, correct?

24 A. Right. That's where the \$0.74 came from.

25 Q. Okay. But under the IDFA proposal, that \$0.74
26 will no longer be a cap, correct?

27 A. Correct.

28 Q. Because there will be a constant calculation of



1 what farmers would have been paid had we been under the
2 higher-of, correct?

3 A. That's right.

4 Q. And so if in August of 2023, last month, we looked
5 back over the two-year preceding period through the end of
6 July, and we said to ourselves, you know, had we been
7 under the higher-of, instead of being paid \$0.74, they
8 would have been paid, \$1.20, let's say. Okay?

9 A. Yep.

10 Q. That difference, which is a \$0.46 I think in my
11 calculation, will then be added on starting January 1st of
12 2024, correct?

13 A. That's correct.

14 Q. And remaining in place for that entire year 2024,
15 correct?

16 A. Yes.

17 Q. And then when it comes to 2025, we're going to do
18 another lookback that's going to look at 2023 and 2024,
19 would they have been paid more under the higher-of? And
20 if the answer is yes, then we're going to add that on for
21 2025, correct?

22 A. That's right.

23 Q. There's no cap, correct?

24 A. Yes, there's no cap.

25 Q. In fact, in some years we'll calculate that had we
26 been under higher-of, they would have gotten more than --
27 start that again.

28 In some years it may well be the case that when we



1 do that lookback in August, we say, you know, under the
2 last two years, had we been under the higher-of, they
3 wouldn't have gotten \$0.74, they would have gotten \$0.65,
4 right?

5 A. That's right.

6 Q. But we already paid them the \$0.74, right?

7 A. Correct.

8 Q. Is the IDFA proposal asking the farmers to pay us
9 back that \$0.09?

10 A. No.

11 Q. \$0.74 is a floor, correct?

12 A. It is.

13 Q. Okay. So farmers always are going to get paid
14 what they would have gotten under the higher-of, correct?

15 A. That's the intent, yes.

16 Q. And sometimes more.

17 A. Correct.

18 MR. ROSENBAUM: Okay. That's all I have.

19 THE COURT: Mr. Rosenbaum, where does the money
20 come from to pay that differential?

21 MR. ROSENBAUM: It comes from my Class I handler
22 clients, your Honor. It's going to be the Class I price.
23 Legal requirement.

24 THE COURT: Ms. Hancock.

25 MS. HANCOCK: Thank you.

26 RE-CROSS-EXAMINATION

27 BY MS. HANCOCK:

28 Q. So -- and Mr. Rosenbaum just walked you through



1 what you understood to be the IDFA proposal; is that fair?

2 A. That's right.

3 Q. And let's say in that example, the adder in 2024
4 were changed. That would be based on a dairy farmer's
5 production for 2024; is that right?

6 A. The -- if it was changed for -- yes, that price
7 would apply to their production in 2024.

8 Q. So for the dairy farmer who produced in 2023, and
9 if average-of in 2023 was lower than what the higher-of
10 was, meaning they didn't get as much, it wasn't revenue
11 neutral for them, and that dairy farmer went out of
12 business, how is that dairy farmer made whole?

13 A. Well, they obviously aren't because they are out
14 of business. I think the intent is to have the policy
15 apply to the whole, and if you could come up with a way to
16 make that farmer whole, that would be great. But I -- I
17 don't know how -- how we do that. It's -- we have to try
18 to make that -- make policy for -- you know, for the
19 whole.

20 Q. That would be National Milk's proposal, right? It
21 would make them whole in the year of that they actually
22 produced?

23 A. It would make them whole, but it would also -- we
24 would lose out on all of the risk management capability
25 that we talked about.

26 Q. Thank you.

27 THE COURT: Are there any further questions for
28 this witness?



1 There are none. Thank you.

2 I am glad this is your passion.

3 THE WITNESS: Thank you.

4 MR. ROSENBAUM: Steve Rosenbaum.

5 Your Honor, at this point we would move Hearing
6 Exhibits 254, 255, and 256 into the record.

7 THE COURT: Is there any objection?

8 There is none. Exhibit 254 is admitted into
9 evidence.

10 (Exhibit Number 254 was received into
11 evidence.)

12 THE COURT: Exhibit 255 is admitted into evidence.
13 (Exhibit Number 255 was received into
14 evidence.)

15 THE COURT: Exhibit 256 is admitted into evidence.
16 (Exhibit Number 256 was received into
17 evidence.)

18 THE COURT: Now, before you tell me about your
19 next witness, we need to take some kind of break. Oh,
20 it's already 4:00. I think we better take ten minutes.
21 So please be back and ready to go at 4:15. We go off
22 record at 4:05.

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

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

25 We're back on record at 4:15.

26 Mr. Rosenbaum.

27 MR. ROSENBAUM: Good afternoon, your Honor. We
28 call as our next witness, Kimberly Greenbaum.



1 THE COURT: Would you please state and spell your
2 name?

3 THE WITNESS: Yes, ma'am.

4 Kimberly Greenbaum, K-I-M-B-E-R-L-Y,
5 G-R-E-E-N-B-A-U-M.

6 THE COURT: Two E's and then Baum, B-A-U-M.

7 Have you testified previously in this proceeding?

8 THE WITNESS: No, ma'am.

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

10 KIMBERLY GREENBAUM,
11 being first duly sworn, was examined and
12 testified as follows:

13 THE COURT: You may proceed.

14 DIRECT EXAMINATION

15 BY MR. ROSENBAUM:

16 Q. Good afternoon, Ms. Greenbaum.

17 A. Good afternoon.

18 Q. I've placed before you a document that's been
19 marked as IDFA Exhibit 38.

20 Is this your written testimony?

21 A. Yes, sir.

22 MR. ROSENBAUM: Your Honor, I would ask that this
23 document be marked as Hearing Exhibit 257.

24 THE COURT: Yes, it will be. Thank you.

25 (Exhibit Number 257 was marked for
26 identification.)

27 BY MR. ROSENBAUM:

28 Q. So, Ms. Greenbaum, I know you have written



1 testimony, but we're going to look at your request, try to
2 do this a bit with questions and answers. We have had
3 this posted for sometime.

4 Tell us first your -- a little bit about your
5 personal background.

6 A. Sure. So I joined Nestle in 2000 as a buyer, a
7 dairy buyer, local. And then I have done national and
8 global roles. Now, as of 2017, I'm a senior specialist in
9 procurement for dairy. So that means I support our
10 businesses in Noosa, Nestle USA, and I also support our
11 global procurement hubs.

12 Q. All for dairy; is that --

13 A. All for dairy. Yes, sir.

14 Q. Okay. And it's -- when I look at your testimony,
15 there's a lot of the word "biggest" there. So let me run
16 through some of the biggest.

17 Is Nestle the biggest food and beverage company in
18 the world?

19 A. As far I know we are, yes, sir.

20 Q. And is your company the largest purchaser of dairy
21 in the world?

22 A. Yes, sir.

23 THE COURT: You are nodding "yes."

24 THE WITNESS: Yes, sir.

25 THE COURT: That could be "yes."

26 THE WITNESS: Yes.

27 BY MR. ROSENBAUM:

28 Q. And is dairy Nestle's largest raw ingredient



1 purchase category worldwide?

2 A. Yes, sir.

3 Q. Okay.

4 A. And in the U.S. as well?

5 Q. And in the U.S. as well. All right. Thank you.

6 Now -- and are you appearing today in support of
7 IDFA Proposal 14, which would replace the current
8 average-of Class I skim milk mover with a Class I skim
9 milk mover that has an average-of Advanced Class III and
10 IV plus \$0.74, plus a lookback that adds on to that \$0.74
11 whatever additional amount, if any, dairy farmers would
12 have received under the two preceding years had we been
13 under the higher-of?

14 A. Correct. Yes, sir.

15 Q. All right. Now, what Class I products does Nestle
16 make?

17 A. It is our Nesquik product that's made in our
18 Anderson, Indiana plant.

19 Q. Okay.

20 THE COURT: At what place in Indiana?

21 THE WITNESS: Anderson, which is 30 minutes up
22 I-69.

23 THE COURT: I want that microphone closer to your
24 mouth.

25 THE WITNESS: I'm sorry.

26 THE COURT: Now, one way you can do it is to move
27 your chair closer to me.

28 THE WITNESS: Yes. Better?



1 THE COURT: Perfect.

2 THE WITNESS: Okay.

3 BY MR. ROSENBAUM:

4 Q. Now -- okay. And what is the shelf life of your
5 Nesquik product?

6 A. Six months.

7 Q. And does -- does Nestle offer customers the
8 opportunity to obtain a flat price for purchasing that
9 product over an extended period of time?

10 A. Yes, sir.

11 Q. What kind of period of time is that available?

12 A. I believe our sales contracts are annual. It's
13 not really my area, but I believe they are annual.

14 Q. And -- and you will have a flat price for that; is
15 that correct?

16 A. Yes, sir.

17 Q. Now, obviously you are -- your plant there is a
18 fully regulated pool distributing plant, correct?

19 A. Yes, sir.

20 Q. Meaning that you have to each month pay a federal
21 minimum price for your milk when you buy it from farmers,
22 correct?

23 A. Correct.

24 Q. And yet you have offered your customers a price
25 that's a flat price for up to an entire year, correct?

26 A. Correct.

27 Q. And is that where hedging comes in?

28 A. Yes, sir.



1 Q. Okay. Now, when Nestle engages in hedging, what
2 is it -- what is its goal?

3 A. Our goal when we're hedging is to limit our risk
4 to the market, to the higher spikes in the market, so that
5 we can then provide our customers, the retail customers,
6 with our best price for our product, because we are in a
7 very competitive market in ready-to-drink. There are
8 hundreds of options.

9 Q. Okay. And is offering a flat price one of the
10 things you feel like as a competitor you have to offer?

11 A. Yes.

12 Q. And do --

13 THE COURT: Just a moment, she's shaking her head
14 yes.

15 THE WITNESS: Sorry. Sorry. Yes.

16 BY MR. ROSENBAUM:

17 Q. Okay. And are you in competition only with other
18 dairy products or other things, too?

19 A. Other things. Juices, power drinks, you name it.
20 We're -- if it's a ready-to-drink product, we're in
21 competition with it.

22 Q. And do those entities offer flat pricing?

23 A. I'm unsure about that.

24 Q. Okay. Do you feel that offering flat pricing is
25 something your customers are looking for?

26 A. Yes.

27 Q. Okay. And do you -- and does your ability to
28 offer that pricing, what effect does that have on sales



1 from your perspective?

2 A. From our perspective over the -- I'd say the past
3 three years, we have actually seen the Nesquik brand grow.

4 Q. Do you attribute that, in part, to the fact that
5 you have been offering such flat pricing?

6 A. Yes, sir.

7 Q. Okay. Now, let's talk a bit about hedging at
8 Nestle, which, as I understand it from what you have told
9 me before, is rather extensive.

10 Tell me how Nestle handles hedging on a -- or how
11 it handles procurement on sort of a worldwide basis?

12 A. We have a separate risk management team at a
13 global level that does risk management in all the markets
14 where it's available across commodities, not just dairy.
15 And I work with that team on dairy policy and our risk
16 management policies.

17 So it's a -- they are the ones that are creating
18 it, and then I'm working through the lens of the business
19 in the U.S. to make sure that that policy aligns.

20 Q. Okay. And is your approval part of the steps that
21 you go through at Nestle?

22 A. I'm a small part.

23 Q. Okay. But nonetheless, a part, correct?

24 A. A part.

25 Q. There are higher-ups that also have to approve, I
26 take it?

27 A. Yes, sir.

28 Q. Okay. And -- okay. Let's go back to the time



1 period before May 2019. So we're going back to the time
2 period when the Class I mover was based on the higher-of
3 Advanced Class III or Advanced Class IV.

4 Did -- did Nestle engage in hedging at that time
5 period?

6 A. Not on Class I.

7 THE COURT: Not on Class I?

8 THE WITNESS: Not on Class I.

9 MR. ROSENBAUM: And why not?

10 THE WITNESS: There was no way for us to provide
11 correlation back, and the risk was too high on not knowing
12 which market was going to be the higher-of. And it -- we
13 have compliance officers in Nestle, that if they feel like
14 the risk is not low, they will not allow us to do those
15 things.

16 BY MR. ROSENBAUM:

17 Q. Okay. And is that what happened prior to --

18 A. Yes, sir.

19 Q. Let me just finish the question.

20 Is that what happened in the period prior to
21 May 2019?

22 A. Yes, sir.

23 Q. So Nestle did no Class I hedging before May of
24 2019, correct?

25 A. Correct.

26 Q. Okay. And since May 2019 when we went to the
27 higher-of, with what regularity has Nestle engaged
28 starting -- I said that wrong.



1 Starting in May 2019 when we went to the
2 average-of for setting the Class I mover, with what
3 regularity has Nestle engaged hedging?

4 A. Once we got all our books in place, we started
5 hedging Class I, and we have hedged it ever since.

6 Q. And what is it about the move to average-of that
7 led to that switch within Nestle?

8 A. The average-of allows us to have a forward-looking
9 view of the market, and it also keeps us in compliance
10 with our regulatory teams there, because they don't feel
11 like the risk is that high.

12 Q. So have all the requisite approvals been obtained
13 since May 2019 to engage in hedging?

14 A. Yes, sir. We do it monthly. We have to go
15 through a monthly approval process.

16 Q. And has it been consistently approved?

17 A. Yes, sir.

18 Q. So just to understand that, Nestle actually
19 reviews every month whether they still feel hedging of a
20 particular commodity is appropriate.

21 Is that what you are saying?

22 A. Yes, sir. We have monthly meetings, and we talk
23 commodity policies, all the way up to the VP of the zone,
24 Zone Americas. In Nestle we have zones, so it goes all
25 the way up to him.

26 THE COURT: So that's the VP of zone?

27 THE WITNESS: America.

28 THE COURT: America. We're a zone now.



1 THE WITNESS: Zone. All of the Americas.

2 THE COURT: All of the Americas?

3 THE WITNESS: Yes, ma'am.

4 BY MR. ROSENBAUM:

5 Q. Okay. We might as well get that on the record.

6 Tell us about -- I think there are three zones.

7 Tell us what the three zones are.

8 A. We have Zone America, which is North America,
9 Central America, South America. We have Zone EM&A, which
10 is Europe and Africa. And then we have Zone Oceana, which
11 is the Asian countries, Australia, and New Zealand.

12 BY MR. ROSENBAUM:

13 Q. Now, if based upon the pre-May 2019 experience, if
14 USDA were to replace the current average-of approach and
15 go back to the higher-of approach, would Nestle be able to
16 continue hedging?

17 A. No, sir, not Class I.

18 Q. And when do you -- when you do hedging, what tools
19 do you actually use to do that hedging?

20 A. We use the futures contracts.

21 Q. You do not use swaps?

22 A. No, sir, not that I'm aware of.

23 THE COURT: Your question was, you do not use
24 swaps?

25 MR. ROSENBAUM: That was my question.

26 THE WITNESS: Not that I'm aware of.

27 BY MR. ROSENBAUM:

28 Q. And from your personal knowledge and discussions



1 in these meetings, etcetera, do you have a sense whether
2 customer expectations increasingly include the desire for
3 a flat price?

4 A. Yes, sir, they do.

5 Q. Is Nesquik an ESL product?

6 A. It's an aseptic product.

7 Q. Aseptic product.

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

10 THE COURT: Wonderful. Do you want the exhibit in
11 evidence? Because she didn't read the whole thing, so
12 perhaps before cross it should become an exhibit that's
13 admitted.

14 MR. ROSENBAUM: Your Honor, that's a -- that's a
15 great suggestion. I would ask that Hearing Exhibit 257 be
16 admitted into evidence.

17 THE COURT: Is there any objection?

18 There is none. Exhibit 257 is admitted into
19 evidence.

20 (Exhibit Number 257 was received into
21 evidence.)

22 CROSS-EXAMINATION

23 BY MR. MILTNER:

24 Q. Good afternoon, Ms. Greenbaum.

25 A. Good afternoon.

26 Q. My name is Ryan Miltner. I represent Select Milk
27 Producers.

28 So the Nesquik ready-to-drink product, that is, as



1 I understand it, a reduced fat milk product, or is that
2 lowfat? Do you know?

3 A. I believe they have a whole fat, and 2%, and then
4 a lowfat.

5 Q. Okay. So it comes in different varieties?

6 A. I believe so, yes. It's been a long time since I
7 had Nesquik in my house, so -- all my kids are grown.

8 Q. You are not supposed to say that when that's on
9 the record.

10 A. I have other Nestle products in my house.

11 Q. Fair enough. I won't admit that my kids drink
12 more Nespresso capsules than they do Nesquik either.
13 Okay?

14 A. Okay.

15 Q. We'll just leave it at that.

16 Do you know if -- when Nestle flat prices those
17 products, if they are -- if they price each of the
18 varieties at the same price or if they change the price
19 based on the amount of butterfat in the milk?

20 A. We do not change the price based on the butterfat.

21 Q. So I did some checking during your testimony, and
22 this is the problem about testifying now versus 15 years
23 ago, is we can now look things up while you are talking.

24 But it looks like Walmart sells a 14-ounce bottle
25 of ready-to-drink Nesquik for about \$1.48.

26 Does that sound about reasonable in your
27 experience?

28 A. Like I said, I haven't bought Nesquik in -- in a



1 long time.

2 Q. So, well, if that's the price, here's what I did.
3 I took that 14 ounces, and I converted it to a
4 hundredweight, and I came to \$154.51 per hundredweight for
5 ready-to-drink Nesquik. And I know that that includes
6 cocoa, and sugar, and carrageenan, and some vitamins,
7 right?

8 But I guess I'm -- I want to know if -- if the
9 Class I price to Nestle is, say \$25, and the end product
10 is sold for six times that, why is it not viable for us,
11 for USDA, to adopt the higher-of for the Class I mover?

12 A. I don't know. I'd honestly have to go back and do
13 the math as well with you, Ryan, to be able to answer that
14 question properly. I mean, I'll be honest, right, to be
15 fair. Because I have never taken that price that we sell
16 to Walmart and backed it into a milk price like that.
17 Because there's a whole lot of other things that go into
18 that price that goes to Walmart. You listed the
19 ingredients, but there's the bottles, the film, the
20 packaging, the hauling, the employees at the Anderson
21 facility, you know, all -- numerous things that I could go
22 on and about what would add to that cost of that
23 particular bottle.

24 Q. That's a very fair answer. Thank you.

25 In your statement, which I know -- I know you
26 didn't -- didn't read through it, you did the
27 question-and-answer with Mr. Rosenbaum, which is -- which
28 is perfectly fine. We had some of my witnesses do



1 something similar when we presented.

2 But you did state that using the higher-of is
3 simply not a viable solution, and I want to quibble with
4 you about your word choice.

5 A. Okay.

6 Q. So Nestle's been making ready-to-drink Nesquik for
7 quite a while, correct?

8 A. Correct.

9 Q. And I think you -- you answered Mr. Rosenbaum that
10 you did not do any hedging before the Class I mover was
11 changed, at least for Class I milk; is that correct?

12 A. That's correct.

13 Q. So was the product viable before the change to the
14 Class I mover?

15 A. I would agree with you the product was viable, but
16 I will say that over the past, since the change to the --
17 let me start over.

18 The change to the average-of allowed us to hedge
19 that Class I price, and we have been able to limit the
20 risk to the beverage business which owns Nesquik, and that
21 has allowed that brand to grow over the past three years,
22 where we were not seeing a growth pattern on that
23 particular brand.

24 Q. So what was the year-over-year growth in
25 ready-to-drink Nesquik before the change?

26 A. It was flat to lower.

27 Q. And what's --

28 A. If my memory serves me right.



1 Q. And what's the year-over-year growth rate now?

2 A. I don't have those particular numbers on the top
3 of my head, I'm sorry.

4 Q. That's okay.

5 In one of your questions you said that you do
6 hedge and provide a -- you do hedge Class I milk to
7 provide your customers with a best price.

8 Is that -- did I hear you correctly when you said
9 that?

10 A. Correct.

11 Q. You didn't say flat price, though; you said best
12 price.

13 So is it about giving your customers the lowest
14 price or about giving them a flat price?

15 A. I'll go back to my earlier statement about it
16 being a highly competitive market that we're in for
17 Nesquik. We're in retailers and C stores. And it's
18 convenience. Nesquik is a nice-to-have; it's not a
19 need-to-have, right? So we have to be as competitive as
20 we can be.

21 So maybe it was a bad choice of word -- bad choice
22 of words on my part, but we do do flat pricing, and we do
23 have to stay competitive.

24 Q. And Walmart drives a hard bargain, don't they?

25 A. Walmart does drive a hard bargain, yes.

26 Q. Thank you.

27 MR. MILTNER: I don't have any other questions.

28 ///



1 CROSS-EXAMINATION

2 BY MS. HANCOCK:

3 Q. Good afternoon. I'm Nicole Hancock with National
4 Milk.

5 A. Good afternoon.

6 Q. Tell me again, so what your role is with Nestle?

7 A. So I'm a senior procurement specialist for the
8 dairy category.9 Q. Okay. What falls under the scope of your
10 responsibilities?11 A. It's easier to tell you what doesn't. But -- so I
12 am the -- the easiest way to explain it is, I am the
13 bridge between the Nestle global hubs and the Nestle
14 U.S.A. market. So of all the divisions in Nestle U.S.A.,
15 our operating companies, I handle that communication
16 between those two entities, and I'm considered the subject
17 matter expert for dairy for the U.S.18 Q. Okay. So I'm trying to mesh your title in
19 procurement with what you have just described, which is,
20 at least to me, sounds more like a communications role.21 A. So I -- I don't do the contracting, but I handle
22 all the vendor relations. I handle the business
23 relations. And then I also work with our global group
24 on -- when they are contracting for the market, so
25 specifically for the U.S.

26 Q. And all with respect to dairy?

27 A. Yes.

28 Q. Okay. And do you know what the total volume of



1 dairy purchases that Nestle makes each year?

2 A. I don't know the total pounds, but I can tell you
3 that we are over a billion dollars in spend just on dairy.

4 Q. Okay. A billion dollars in spend on just raw milk
5 acquisition?

6 A. No. It includes cheese, powders, some of it's
7 fluid milk. We have vats, yogurt. We -- we -- if you can
8 think of it in the dairy category, I help buy it.

9 Q. Okay. Do you know what percentage of raw milk
10 makes up of your 1 billion pounds of -- or \$1 billion
11 worth of procurement spend in dairy?

12 A. Around a little over 2 million -- 200 million.

13 Q. Okay. 200 million of the \$1 billion in spend
14 annually is on raw milk acquisition?

15 A. Yes.

16 Q. And of that 200 million, how much of that is
17 hedged?

18 A. All of it.

19 Q. You hedge all of it?

20 A. Uh-huh.

21 Q. Is that a "yes"?

22 A. Yes.

23 Q. Okay. And when you say you hedge all of it,
24 does -- are you talking about the forward contracts that
25 you enter into with the customers that are buying Nestle's
26 final product?

27 A. No.

28 Q. You are talking about the backside laying off the



1 risk --

2 A. Yes.

3 Q. -- of the forward contracts that you enter into
4 with your customers?

5 A. Yes.

6 Q. And which one comes first, the hedge or the
7 forward contract?

8 A. I don't quite understand your question.

9 Q. Just in the chronology of events, do you first
10 have your forward contracts with your customers in hand
11 before you hedge or lay off that risk?

12 A. No. Because we -- we get the demand from the
13 sales team first. And then once we know the demand that
14 we have to buy for the following year, that's when we
15 start building our strategies around hedging and policy.

16 Q. Okay. And so then do you start hedging for the
17 upcoming year at the time that your sales team gives you
18 their forecast?

19 A. No, we're always on the 18-month rolling calendar.

20 Q. Okay. And how long are you hedging for?

21 A. We typically -- it really depends on the liquidity
22 in the market, to be honest. So it could be as far out as
23 liquidity allows.

24 Q. Okay. So 18 months?

25 A. There's very little liquidity in 18 months. So
26 it's -- I would say six -- six months out maybe? Yeah.

27 Q. Okay. And so you will already have contracts in
28 place -- if you are hedging six months out, and your



1 customer contracts are 12 months out, it's true that you
2 already have your customer contracts in place by the time
3 you are hedging those contracts?

4 A. So you are asking me if the sales contracts for
5 the retailers are in place, and then we're coming along
6 and hedging --

7 Q. Yes.

8 A. -- afterwards?

9 Yes. We're doing that.

10 Q. Okay. So you already have your customer contracts
11 in place at the time that you're -- that you are engaging
12 in your risk management practices?

13 A. Right. Because I can't engage the risk management
14 until I know the demand.

15 Q. Okay. And it's not based on forecasting, it's
16 based on the actual contracts for providing those
17 products?

18 A. Well, there is some forecasting in it, because the
19 sales team are forecasting their sales. And then we're
20 getting the demand from their sales forecast.

21 Q. And what tools are you using to hedge your risk?

22 A. We're using forward contracts.

23 Q. You are using forward contracts with the
24 cooperatives as well?

25 A. No.

26 Q. You are using forward contracts with your
27 customers that you are selling to?

28 A. No, in the futures market. Sorry. I misspoke.



1 We're doing the futures.

2 Q. And do you know what products you are buying? Is
3 it Class III contracts? Class IV?

4 A. We're being both.

5 Q. Okay. And how do you decide which one you are
6 going to buy?

7 A. The risk management team decides that.

8 Q. And are you involved in that process at all?

9 A. I am not.

10 Q. Okay. So you don't know how they make their
11 decision as to which one they are going to buy?

12 A. No, ma'am.

13 Q. And I think you testified with Mr. Rosenbaum that
14 you were not sure whether Nestle used swaps; is that
15 accurate?

16 A. That's correct, because that falls under the risk
17 management team.

18 Q. Okay. And Nestle is a publicly-traded company?

19 A. Yes, ma'am.

20 Q. And so you understand there's financials and
21 corporate disclosures that are made publicly that are
22 required by law?

23 A. Yes.

24 Q. And would it surprise you to learn that the public
25 disclosure documents for Nestle disclose that Nestle has,
26 since prior to 2019, been using swaps?

27 A. Yes, ma'am. Because I wasn't aware of it.

28 Q. Did you look into that before you came to testify?



1 A. No, ma'am.

2 Q. Okay. So it could happen, it's just not something
3 that you explored?

4 A. It could happen, and it's just not in my scope of
5 work.

6 Q. Okay. And does that also mean that swaps of
7 Class I could have been happening before it changed to the
8 average-of and you weren't aware of that as well?

9 A. It could have happened. I wasn't aware of what
10 was going on in Class I, that part of the category, before
11 the change.

12 Q. Okay. And it's just something that you didn't
13 look into before you testified to; is that correct?

14 A. That's correct.

15 Q. And if I understand Nestle's milk procurement,
16 Nestle enters into contracts with dairy cooperatives, and
17 then the cooperatives are responsible for entering into
18 whatever arrangements they have with either their members
19 or non-members to acquire the milk.

20 Is that how it works?

21 A. For the Class I, yes.

22 Q. Okay. And so that means that Nestle never engages
23 directly with the dairy farmers, just through the
24 cooperative?

25 A. For Class I, yes.

26 Q. Okay. Do you know if Nestle ever has any
27 conversations with dairy farmers at all in its acquiring
28 milk?



1 A. Yes, ma'am, we do. For our Class IV.

2 Q. Okay. Nothing with respect to the Class I?

3 A. No, ma'am.

4 Q. And you talked about that after the average-of was
5 put in place, that Nestle experienced considerable growth
6 in its Class I products; is that right?

7 A. Yes, ma'am.

8 Q. And you have listed a number of the products on
9 page 1 of your testimony that Nestle makes in its -- in
10 its beverage portion of its business, and that included
11 the Nesquik ready-to-drink milk, Coffee-mate creamer,
12 Starbucks creamer, Natural Bliss creamer, Boost
13 Nutritional Drink, and Carnation Instant Breakfast; is
14 that fair?

15 A. Yes, ma'am.

16 Q. And do you know which of those products are -- are
17 Class I -- or that Class I milk is used to make?

18 A. Just the Nesquik.

19 Q. Okay. So only the ready-to-drink milk?

20 A. Yes, ma'am.

21 Q. And do you know what percentage of your dairy
22 purchases are used to create the ready-to-drink milk
23 product?

24 A. I would say somewhere between 80 and 90% of what
25 we buy for the Anderson plant is used in Nesquik.

26 Q. The other products just don't --

27 A. The Coffee-mate creamer is a nondairy creamer so
28 it doesn't use any dairy. And then the Starbucks creamer



1 and the Natural Bliss, they use mainly the cream from the
2 Nesquik that we skim off, and then they use a little bit
3 of our skim milk.

4 Q. Okay.

5 A. And then the other products, the Boost and the
6 Carnation Instant Breakfast, the Boost is actually a
7 separate business, and it is -- while it's in the Anderson
8 plant, it is actually separated from the rest of the plant
9 because of allergen concerns, because Boost has soy.

10 Q. Okay. So you just run the ready-to-drink mix on a
11 different line?

12 A. We run it in a completely different part of the
13 plant. There is actually a physical hallway and wall
14 separating those two parts of the plant.

15 Q. Okay. And so when you -- you said that that
16 growth happened, do you know when the growth curve took
17 off in that ready -- ready-to-drink milk?

18 A. In 2020 is when we started to see the growth, and
19 we have seen it year over year grow. I don't remember the
20 percentage, I'm sorry. It's been a couple weeks since I
21 saw the business presentation.

22 Q. Okay. And -- and Nesquik ready-to-drink milk went
23 through a complete rebranding in 2020 as well, didn't it?

24 A. Yes, ma'am. I believe it did.

25 Q. And, in fact, the formula and the mix of the
26 product changed as well, and the sugars were considerably
27 reduced in that product; is that right?

28 A. I believe so. I'm not -- I'm not part of that



1 product development, so --

2 Q. And all the packaging and all of the look and the
3 container design all changed as well; is that right?

4 A. Yes, ma'am. I believe so.

5 Q. And that was all designed to rebrand the product
6 in order to -- to address the change in consumer demand
7 that was happening for that product; is that right?

8 A. I have -- I'll have to take your word for it. I
9 believe so.

10 Q. Well, I'm just asking you because it's your
11 company.

12 A. I don't know. Like I said, I wasn't part of
13 the -- I'm not part of that particular business, and I
14 wasn't part of those changes.

15 Q. And that was due in large part to the competitive
16 nature of those handheld drinkable products that you were
17 talking about; is that fair?

18 A. That's fair.

19 Q. Okay. And it was at that time that the sales
20 started to really increase for that -- for that Nesquik
21 product; is that fair?

22 A. That's fair.

23 Q. Okay. So is it likely that the complete change in
24 formula and the complete change in the rebranding of that
25 product is actually what drove those sales of those
26 products?

27 A. It could have played a part, yes, ma'am.

28 Q. In fact, you kind of hope it plays a part, right,



1 because that's your marketing department's job?

2 A. Yeah.

3 Q. Yeah. Okay. And then you said that you enter
4 into futures contracts with -- with Nestle's customers
5 that buy those products; is that right?

6 A. When the --

7 Q. I'm sorry, that was a bad question.

8 You said that you entered into a fixed price
9 contracts for the sale of the products to Nestle's
10 customers; is that right?

11 A. That's right.

12 Q. And without disclosing who the customers are, can
13 you just tell me kind of the categories or the types of
14 customers that Nestle has?

15 A. All the major retailers, grocery stores, C stores.

16 Q. What's a C store?

17 A. Convenience store, I'm sorry. I fall into the
18 Nestle language way too easily.

19 Q. I thought Costco. I don't know why.

20 A. Costco? Yeah.

21 Q. Costco would be one, though, big box store.

22 A. Big box stores, yes.

23 Q. And those are -- do you know if any of your
24 customers hedge any of their products or hedge any of the
25 risk that they take in buying products?

26 A. I wouldn't know that.

27 Q. Okay. And do you know if Nestle has any kind of
28 self-insurance that it uses to protect the risk that it



1 has in entering into these contracts?

2 A. I wouldn't know that, either.

3 Q. And in your public disclosures that Nestle makes,
4 would it surprise you to learn that Nestle discloses that
5 it manages prices by raising prices to its customers?

6 A. I haven't read that anywhere. But is it on the
7 website or some -- oh, in the disclosure. You said that.

8 Q. Yeah. Is that anything you have ever heard at
9 Nestle?

10 A. No, ma'am.

11 Q. That it's able to pass through its increase in
12 input costs to its customers and absorb that impact there?

13 A. I have never heard that myself, no.

14 Q. And do you know what kind of margins Nestle builds
15 into its forward fixed price contracting with its
16 customers?

17 A. I would not know that.

18 Q. And as the -- as the -- I think you said it was
19 the biggest purchaser of dairy in the world.

20 Is that what you said?

21 A. Globally, yes.

22 Q. That would be the world, right?

23 A. That would be the world.

24 Q. Okay. And would you agree with me that as the
25 biggest purchaser in the world, that Nestle has
26 considerable leverage in order to negotiate its dairy
27 purchase agreements?

28 A. Yes. In some cases, on some materials.



1 Q. And that would also include if -- if Nestle was
2 going to want to hedge a product and create a customizable
3 OTC or swap product as well, Nestle would still have that
4 leverage; is that right?

5 A. I wouldn't know about that. That would fall under
6 the risk management team.

7 MS. HANCOCK: Okay. That's all I have. Thank you
8 so much for your time.

9 THE WITNESS: Thank you.

10 THE COURT: Who else has questions for this
11 witness before I ask Agricultural Marketing Service?

12 CROSS-EXAMINATION

13 BY DR. BOZIC:

14 Q. Marin Bozic for Edge Dairy Farm Cooperative.

15 Ms. Hancock asked you whether you have leverage in
16 procuring your raw input. I was wondering whether you can
17 ever exercise your leverage to an extent that you are able
18 to buy Class I -- you are able to buy milk for fluid
19 utilization below the regulated minimum prices?

20 A. No, sir.

21 DR. BOZIC: Thank you very much. That's all I
22 have.

23 THE COURT: Mr. Rosenbaum.

24 REDIRECT EXAMINATION

25 BY MR. ROSENBAUM:

26 Q. Steve Rosenbaum for the International Dairy Foods
27 Association.

28 Do you know whether Nestle's financial reporting



1 actually says that Nestle uses hedges in connection with
2 its procurement of Class I milk?

3 A. No, sir. I don't know that.

4 Q. Do you know whether it says that they use swaps
5 for that purpose?

6 A. No, sir. I don't know that.

7 Q. Do you know whether the reference to swaps is
8 specific whatsoever in that document as to whether -- as
9 to whether these are currency swaps versus all the other
10 kind of swaps that exist?

11 A. Yeah. I wouldn't know that. It could be
12 anything. Like I said, we -- we have risk management
13 programs for commodities. I think there's some currency.
14 I only know about the dairies.

15 Q. But you do know that for dairy, before May 2019,
16 it was forbidden to use futures contracts, correct?

17 A. Correct.

18 Q. And you are not aware of those same people having
19 signed off on using swaps for that purpose, are you?

20 A. I am not aware, no.

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

22 THE COURT: Other questions before I turn to
23 Agricultural Marketing Service?

24 Mr. English.

25 CROSS-EXAMINATION

26 BY MR. ENGLISH:

27 Q. Good afternoon. Chip English for the Milk
28 Innovation Group.



1 Ma'am, you were asked some questions by
2 Ms. Hancock about the reformulation of the product and
3 repurposing of the marketplace.

4 Is some of the reasons why you need to do that,
5 because dairy products are competing against other
6 products on the grocery store shelf?

7 A. Yes, sir.

8 Q. And in your experience, are those products able to
9 provide long-term fixed price arrangements with the
10 customers?

11 A. Yes, sir, that's my understanding.

12 Q. Is that what Nestle was looking to do to be able
13 to keep the grocery store shelves?

14 A. Yes, sir.

15 Q. And that's not just Nestle, but the dairy farmers
16 who sell to Nestle?

17 A. Yes, sir.

18 THE COURT: I see no other hands. And it's three
19 minutes to 5:00.

20 Agricultural Marketing Service, take your time.

21 MS. TAYLOR: Me and happy hour, I better not take
22 too much time.

23 CROSS-EXAMINATION

24 BY MS. TAYLOR:

25 Q. Good afternoon.

26 A. Good afternoon.

27 Q. Thank you for being here today and your patience
28 for getting up on the stand later in the day. I



1 appreciate it.

2 A. Thank you for inviting me.

3 Q. Just a couple questions that might not have been
4 covered. I'm going to try not to be repetitive.

5 I'm going to turn to the second page of your
6 statement. In the second paragraph you write -- the
7 second sentence, "The proposal will also put more dollars
8 into the pockets of dairy farmers when compared to current
9 conditions and alternative proposals."

10 Did you do any analysis to demonstrate -- to look
11 at that piece?

12 A. I did not.

13 Q. Okay. For the hedging that you do -- so you are
14 doing hedging to offer that fixed price to your customer?

15 A. Yes, ma'am.

16 Q. And then do you also do hedges on the supply side?

17 A. Supply side.

18 Q. Well, for your other ingredients, etcetera, and
19 the products that you -- ingredients that you purchase
20 for --

21 A. Yes, ma'am.

22 Q. Okay.

23 A. So we -- to clarify, we hedge on cheese, whey,
24 nonfat butter, Class I, and Class IV.

25 Q. Okay. For Class I -- I think I took -- you didn't
26 start hedging until after the Class I mover changed?

27 A. That's correct.

28 Q. Okay. And then how far out do you look? I think



1 you might have covered a little bit of this with
2 Ms. Hancock, and I didn't quite catch it all.

3 A. We have an outlook that's an 18-month rolling
4 calendar, so we're always looking out 18 months. But
5 we're not particularly -- we're not always hedging out
6 18 months. We're only hedging as the liquidity allows.

7 Q. And what -- what might that be on average?

8 A. Well, let me add a little bit.

9 Q. Sure.

10 A. As the liquidity allows and as it applies to where
11 our policy levels are set. So the policies that we get
12 approved every month, those are particular strategies for
13 each commodity, and we have to meet those policies.
14 That's what our risk management team does.

15 Q. And do your -- those are internal policies.

16 Am I correct on that?

17 A. That's correct, yes.

18 Q. Okay. On the bottom of page 2, in the
19 paragraph -- first -- in the first full paragraph from the
20 end, beginning "Nestle has extensive experience," the last
21 sentence there says, "Nestle utilizes hedging for two main
22 purposes: First, it provides price visibility, and
23 second, it protects against high price volatility."

24 I understand the volatility piece, but can you
25 talk a little bit more about how it provides price
26 visibility for Nestle?

27 A. It gives price visibility to our businesses. So
28 in particular, like our beverage business, which Nesquik



1 belongs to, because we have the ability to hedge Class I,
2 we can then let the business and the business leadership
3 know what their price volatility is going to be in the
4 future, and we can give them that price visibility so that
5 they can then be able to be competitive in the market.

6 Q. So I understand the benefit to Nestle. I'm
7 curious prior to the change in 2019, how did that system
8 work for Nestle? Because your statement then goes on to
9 talk about kind of what might happen if we reverted back
10 to the higher-of. But you didn't live under that world
11 for a long time, so I kind of want to explore how that
12 worked for you then.

13 A. I wasn't really a part of Class I before -- before
14 the change. I was doing mainly ice cream and Class II.
15 So I can't really speak to the life of Nestle under the
16 pre-average-of.

17 MS. TAYLOR: Okay. Thank you. I appreciate that.

18 MR. WILSON: Good afternoon. This is Todd Wilson,
19 AMS.

20 CROSS-EXAMINATION

21 BY MR. WILSON:

22 Q. Previous testimony we had, they talked about their
23 hedging procedures. He went through a simple exercise box
24 graph, that type of thing, and he talked about how he
25 utilized hedging.

26 From what I understand in your testimony, it's
27 similar maybe, but maybe not the same, so -- and I'll
28 maybe explain what I mean.



1 So that previous testimony talked about using the
2 Class III and IV futures price as the instrument.

3 Did I understand correctly through your testimony
4 that you don't necessarily use III and IV instruments, you
5 use product futures, like powder, cheese, whey?

6 A. So we use III and IV for our Class I hedge. We
7 use the other commodities for the other dairy derivatives
8 that we buy.

9 Q. All right.

10 MR. WILSON: Thank you. Thank you for clarifying
11 that.

12 MS. TAYLOR: Mr. Wilson asked me to ask one last
13 question.

14 CROSS-EXAMINATION

15 BY MS. TAYLOR:

16 Q. On small businesses, I asked everyone else this
17 question, and I did not ask you this question.

18 So -- but I'm going to guess since Nestle has
19 30,000 employees, as stated in your statement, you would
20 not qualify as a small business?

21 A. Well, that's just in the U.S.

22 Q. That's clear for the record now.

23 MS. TAYLOR: That's it from AMS.

24 THE COURT: Is there anything you need to add so
25 that your testimony will be as clear and comprehensive as
26 you want it to be?

27 THE WITNESS: No, ma'am. I have nothing else to
28 add.



1 THE COURT: Wonderful. Thank you. You may step
2 down. And thank you so much.

3 I'd like to get a preview for tomorrow. Let's do
4 that now.

5 MS. TAYLOR: Thank you, Judge.

6 So I'm hoping that Mr. Umhoefer will be here in
7 the morning.

8 THE COURT: He remains.

9 MS. TAYLOR: He's the most patient witness I have
10 had, and I want to extend our gratitude for that.

11 MR. ROSENBAUM: He's hoping he's first up.

12 MS. TAYLOR: He will be first up. I will declare
13 it. So if I'm allowed to do so, he will be our first
14 witness on at 8:00 a.m. tomorrow morning.

15 From there, I do not know if there's anyone coming
16 tomorrow that must go on tomorrow?

17 MS. HANCOCK: Are we off the record?

18 THE COURT: No, we're on, and I want it on.
19 So say who you are.

20 MS. HANCOCK: Nicole Hancock, National Milk. We
21 have Brittany, the dairy farmer tomorrow. I can't
22 remember her last name, so I just call her Brittany.

23 THE COURT: And what time do you anticipate that
24 she would first be available?

25 MS. HANCOCK: Afternoon. It will not conflict
26 with Mr. Umhoefer.

27 MS. TAYLOR: Okay. And then I do know that
28 Dr. Bozic would like to testify. He's on my list.



1 You are on my list.

2 Do you have another person that needs to go on
3 tomorrow?

4 MR. SJOSTROM: Myself. Lucas Sjostrom, for the
5 record.

6 THE COURT: We're going to run out of witnesses.

7 MS. TAYLOR: I highly doubt that. We thought that
8 in past weeks, and that's not been the case.

9 I also know that Sally Keefe is here to testify --
10 well, I'll let Ms. Vulin speak for her.

11 MS. VULIN: Yeah, Sally Keefe could go tomorrow,
12 if -- if the order permits.

13 MS. TAYLOR: Okay.

14 THE COURT: How do you spell the last name?

15 MS. VULIN: K-E-E-F-E.

16 THE COURT: Good.

17 Now, I would like to go off record, but I think
18 that's all I need -- I don't -- I don't want anybody to
19 leave right this minute, but I think I would like to go
20 off the record now.

21 Is there anything -- yes? Let me hear from you.

22 MS. VULIN: We also have Jacob Schuelke with
23 Crystal.

24 MS. TAYLOR: How do you spell that?

25 MS. VULIN: S-C-H-U-E-L-K-E.

26 MS. TAYLOR: And he needs to go on tomorrow?

27 MS. VULIN: He -- hopefully, yes. Hopefully. He
28 will also be here the next day, whatever that day is.



1 MS. TAYLOR: Apparently it is Thursday.

2 MS. VULIN: But he will be ready to go tomorrow,
3 and it would be nice if we could get him on.

4 THE COURT: And what company did you say?

5 MS. VULIN: Crystal Creamery.

6 DR. BOZIC: Marin Bozic for Edge.

7 As far as the order of priority, I think we are
8 going to have a full day tomorrow. I'm happy to go first
9 on Thursday, just so folks know what to prep for tonight.

10 MS. TAYLOR: Thank you.

11 And I am aware of at least one dairy farmer coming
12 on Thursday to testify, I have been told.

13 I'd also like, at some point this week, we have
14 two USDA exhibits still to put on, and I do have the
15 proper person here to put them on, so it would be nice to
16 get that done this week.

17 MS. VULIN: And just for prep purposes, Mike
18 Newell with HP Hood is also going to be available
19 tomorrow, and can testify.

20 MS. TAYLOR: How do you spell his name?

21 MS. VULIN: N-E-W-E-L-L. I just couldn't remember
22 if there were two L's.

23 THE COURT: W-E-L-L.

24 MS. VULIN: Correct. He's with Hood. Again,
25 would be great to get him on tomorrow afternoon. If
26 that's not available, then he could go the next morning.
27 But kind of tomorrow and the following day are the days we
28 have got him.



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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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1 STATE OF CALIFORNIA)
) SS
 2 COUNTY OF FRESNO)

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4 I, MYRA A. PISH, Certified Shorthand Reporter, do
 5 hereby certify that the foregoing pages comprise a full,
 6 true and correct transcript of my shorthand notes, and a
 7 full, true and correct statement of the proceedings held
 8 at the time and place heretofore stated.

9

10 DATED: November 10, 2023

11 FRESNO, CALIFORNIA

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16 MYRA A. PISH, RPR CSR
 17 Certificate No. 11613

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