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 28, 2023

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

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M A S T E R I N D E X

SESSIONS

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M A S T E R I N D E X

WITNESSES IN CHRONOLOGICAL ORDER

M A S T E R I N D E X

INDEX OF EXHIBITS

IN CHRONOLOGICAL ORDER:

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THURSDAY, SEPTEMBER 28, 2023 - - MORNING SESSION

THE COURT: Let's go back on record.

We're back on the record on September 28, 2023. It is Thursday. It's approximately 8:00 in the morning, and we are resuming the testimony that we just barely began yesterday.

So I will ask the witness in the chair to again state and spell his name.

THE WITNESS: Jacob Schuelke, S-C-H-U-E-L-K-E.

THE COURT: Thank you. You remain sworn.

You may proceed.

JACOB SCHUELKE,

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

MS. VULIN: Thank you, your Honor.

And, Mr. Schuelke, do you still have a copy of your testimony in front of you?

THE WITNESS: I don't, but we can pretend I do.

MS. VULIN: Well, can we go off the record for just a hot moment?

THE COURT: Absolutely. Yes.

MS. VULIN: Let me grab a copy. Sorry about that.

THE COURT: Let's go back on record.

We're back on record at 8:01.

Counsel, for those who might just be turning in, which exhibit numbers have you given him?

MS. VULIN: I gave him Exhibit 267, which is a copy of his testimony.

THE COURT: All right. And the other document that we identified and began to testify about yesterday, was Exhibit 268. So I have them both in front of me.
MS. VULIN: Great. Thank you.
And this is Ashley Vulin with the Milk Innovation Group.
(CONTINUED) DIRECT EXAMINATION
BY MS. VULIN:
Q. So, Mr. Schuelke, yesterday we learned a little bit about your background and the products that Crystal sells.
What kinds of Class I products does Crystal sell?
A. We make milks and creams of all kinds.
THE COURT: Make sure that mic is closer to you.
THE WITNESS: Okay.
THE COURT: You might want to straighten it so that it is taller or something.
MS. VULIN: And if you scoot your chair, that can help a little bit, too.
THE WITNESS: All right. We're on it.
BY MS. VULIN:
Q. What kinds of Class I products does Crystal process?
A. Milks and creams.
Q. Are -- are they ESL or HTST, your milk?
A. We are an HTST plant.
Q. Exclusively?
A. Yes.

Q. And we heard yesterday also about some of the higher protein products that you sold.
How does Crystal ensure the higher protein content of its products?
A. The milk does not come in that way. In California we have a fortification standard, so we need to buy additional solids. We add them to our fluid milks in the form of condensed milk, others use nonfat dry milk. And we pay for them and pool for them appropriately.
Q. And do you think that the protein in milk has value or appeal to consumers?
A. I do.
Q. But are you able to sell those products for a higher price because of their protein content?
A. No. We have never had a customer in Oregon or Arizona say, hey, you know that milk with 20% more protein, we want to pay you 20% more for it.
I know Fairlife and others have found value doing that, but we haven't found that on a mass level anywheres.
Q. And yesterday we had talked about some of your significant experience in risk management.
Have you ever hedged any dairy products that a company you work for sells?
A. Yeah. Well, certainly I started in the extension service doing research from a USDA risk management service grant, and with that, we really helped grow the futures market as dairy farmers first started buying Class III contracts. It was really a nothing at first.

And the same thing could be said -- so that would be my experience at the extension service. We did a lot of risk management education, and over time it grew.
The same would be said for the larger manufacturers that I came to work with, first being Hilmar Cheese when I went there. They really didn't offer fixed price sales, things like that. And over time, they did. And over time, the CME said, "Hey, because this is growing, let's not just sell a Class III contract, let's sell a cheese contract, a whey contract, a butter, a nonfat dry milk." It took time, but we grew.
Q. Uh-huh.
And you talked about your experience at the extension service. What year was that?
A. It would have started in 2003.
Q. And that's when you think hedging in the cheese market was really in its infancy?
A. Yeah. It started before then, but when you look at the significant volumes, that's really around where I feel it started to pick up.
Q. And then after that, have you ever done any butter hedging?
A. Certainly. Obviously I worked for California Dairies and did their risk management. They make a little bit of butter. And I do that in my job today as well. We -- we manufacture butter. We are also a large ice cream manufacturer, and we use butter futures to offer fixed price contracts to our customers.

Q. And so historically, hedging has been a big part of how you manage risk for the companies that you work for?
A. Yes.
Q. And it's grown over time?
A. Uh-huh.
Q. Have you ever done any --
THE COURT: I'm sorry, what was that answer?
THE WITNESS: Yes.
MS. VULIN: Thank you, your Honor.
BY MS. VULIN:
Q. Have you ever done any hedging on a Class I product?
A. No, I have not.
Q. Why not?
A. Well, up until a few years ago it really wasn't possible. And at the moment, I don't have a lot of customers knocking down the door asking for it. That, you know, we have trained them very well in this room to accept the price fluctuations.
That said, I feel I have a lot of customers who buy HTST milk and would find a lot of value in it, namely school lunch programs, USDA feeding programs. These are programs where people are allocated a fixed budget amount for the entire year, and when the Class I price starts going all over the place, they really struggle to supply that milk and meet their budget constraints. So if I could offer them a level set price for their entire budget

year, I think they would find a lot of value in that.

Q. And in order to do that, you are thinking you need -- what would you need in order to do that? Or what kind of changes or education would need to happen for you to approach those customers with the fixed price offer?

A. The same as in when we started milk futures for dairy farms, and we started cheese futures, and butter futures. It just takes time to unlearn the roller coaster and do that.

Q. But you think there would be a lot of value in, at least certain sectors, to be able to do that?

A. Foodservice, restaurants, government. There's a lot of people who are unable to pass the price along.

Q. And how long, in your experience in Class I -- or excuse me -- and also in risk management, how long do you think Class I, both processors, customers, would need to develop a more category-wide approach to stable prices and hedging?

A. In my experience in the other markets, it probably took ten years before people were really dipping their toe in the water, then dipping it again, and getting into it.

Q. Thank you.

So now if you have your PowerPoint available.

MS. VULIN: For those with a printed copy, we're headed to page 6 of 11, the slide entitled "Class I Utilization in California."

BY MS. VULIN:

Q. Mr. Schuelke, could you pull that up for us,

please.
A. I'm doing that.
And then I also thought maybe as a matter we should introduce the California pool report that I'm talking about into the record. If -- or if not. But it's there.
Q. If you have checked it and that's where the source of your testimony came from, we can cover that in your exam.
A. Good enough.
There's a picture on your screen of it. I didn't make these numbers up.
What I did here --
Q. Oh, just one moment.
A. Oh, no, it's not there. Anyways, this is the box at the top of the California pool report.
Q. Just one moment, Mr. Schuelke. Let's give -- so if we can go to the next slide. There we go.
So can you tell us what -- can you tell us about what Class I utilization is in California, at least in July of 2023.
A. Yeah. So if you look at the pool report, it would have said 17% of the milk pooled went to Class I, 6% Class II; 73, III.
Doing a rough estimation, which I'll get to later, the milk produced and sold in California probably was more like the numbers above, which was 10 in Class I, 3 in II, 44 in III, and 42 in IV.

Q. And how did you --
THE COURT: Now, for those of us who are looking at this, we understood that. For someone who is just reading the transcript, you can't leave out "Class I, 10%," you have to say the whole thing.
So go back through, if you would.
BY MS. VULIN:
Q. Why don't we start at the top and you can read from the top down of the data you have presented here.
A. My best guess of how milk was really sold in California in the month of July 2023 was 10% went into the Class I market; 2% went into the Class III market --
Q. Sorry, I think you inverted those. Go back to --
A. Oh, 3% went into the Class II market --
Q. There you go.
A. -- 44% went into the Class III market; and 42% went into the Class IV market.
Q. And how did you estimate these numbers?
A. I took the July pool report, and then I plugged in 1.4 billion pounds of milk into Class IV, which is an approximate value of what you would normally expect to see there. And it also made the total at the bottom tie to the USDA estimate of milk production for the state.
Q. Okay. And how did you know that there were about 1.4 billion pounds of Class IV?
A. When it is pooled, that's the kind of number you see there.
Q. Okay. Thank you.

Now, that was just the milk within the order and the utilization of that milk.
Now can you tell us for that same month, July 2023, what the California pool utilization was.
A. Yes. So here what I'm going to walk through is, I wanted to show the room what is depooling. So here is what got pooled in the order for that month: 17% of the milk was in Class I; 6% was in Class II; 73% was in Class III; and 4% was in Class IV.
Q. And given the amount of utilization in Class IV, what does that -- compared to the amount in the total order, what does that tell you about what the prices were in July of 2023?
A. This tells you that the Class IV price was above the blend price.
Q. Thank you.
A. Yep.
Q. And so because the Class IV price was above the blend price, what was Class IV doing with their milk?
A. They were not pooling it.
Q. Thank you.
So let's go to the next slide, if we can, please.
A. Okay. And on this slide, to walk it through --
Q. And let's start just with the pounds and the prices in green, please.
A. Yes. Do you want me to say the pounds or --
THE COURT: You have to pretend like people can't see this.

THE WITNESS: Okay. So those same percentages that I talked about before, you will find these pounds -- these are the pounds that reported as pooled on the California Statistical Uniform Report.
BY MS. VULIN:
Q. And the green highlighted data, was this the actual price of those classes for July of 2023?
A. Yes. This is the price as taken from the top box of the pool report. In the real world, we have location differentials and things, but let's keep it simple and only look at the top of the report for now. We can add the other stuff later.
Q. And I see at the bottom, the weighted average, that row has the total pounds and then a $15.24.
Do you see that?
A. Yes.
Q. What is that number, the $15.24?
A. So what I did here was I did a simple weighted average of the pounds reported per class, and the price reported per class from the top of the pool report. This number here will vary slightly from the statistical uniform price in the city of L.A., as you would see at the bottom of the report, but let's keep it simple.
Q. Okay. And here, as you described earlier, because the Class IV price was higher than the uniform price, that Class IV milk was depooled, or not pooled that month, correct?
A. You will actually see a large number of Class IV

pounds in there. And that would be that building with the red dome you saw earlier in my presentation, that's me because I cannot depool.

So what happened here was I paid $18.26 into the pool, but the dairy farmer who sold milk to me only got $15.24.

Q. And that's for your Class IV products?

A. For my Class IV and my Class II products.

Q. Okay. And this 19.42, $19.42 at the top, what price is that?

A. Those would be the price roughly paid in for my Class I products.

Q. And I understand, then, once we go to the right of the green numbers, you did an estimation of what different Class I prices and the impact they would have on pooling decisions.

Can you walk us through that?

A. Yes. So the main thing I want to point out here is if you look at the difference between the blend price and the class price, for instance, on the Class IV volume, that means the difference between the blend and the Class IV price is $3.02. So for every hundredweight of milk Class IV paid in, they sustained that loss, essentially.

So if you look at that number times the volume of milk I ran in my pool plant for Class IV and Class II, that's how much more money this month, you know -- this isn't all mine, utilization, but a lot of it is -- that's how much money I paid into the pool, and the difference would be how much less my farmers received.

So what I wanted to point out is, if you had milk to sell me and you wanted a really good deal, you could say, well, if it goes into my plant, some of it's going to go into Class I, and I'm going to pay 19.42; some of it's going to go into Class II and I'm going to pay 19.12; some of it is going to go into Class IV, and I'm going to pay 18.26.

But if you want a really good deal on a spot load of milk, you know what you should do? Sell it to a Class IV plant at Class IV minus 2, because if you sell that load of milk to me, I'm going to pay in all this money, but you are only going to get $15.24.

If you depooled and sold it to a Class IV plant at Class IV minus 2, you would now get $18.26, or $16.26. That's a much better deal.

Q. Okay. Thank you.

And then I want to look at this experiment you ran with the Class I price.

So the example that you have given here shows that the actual numbers incentivized Class IV to depool in July of 2023, correct?

A. Yes.

Q. And I see at the top row you have raised the Class I price by $5 intervals over time.

And my understanding is that you're trying to see, as you raise the Class I price, how high must it be in

order to incentivize Class IV to stay in the pool; is that right?
A. Yes. That is correct.
Q. So can you walk us through how you raised the Class I price and how high it had to be in order to impact Class IV pooling decisions?
A. Yes. And the other way of looking at it would be, how high do I need to raise the Class I price in order to pull milk out of a Class IV plant?
So in California, we have a very low Class I utilization. So if I raise the Class I price by $5 to $25, multiply it by those pounds, and spread the money over the pool, I only raised the blend up to 16.20. I'm still $2 below Class IV.
THE COURT: And you have raised the blend from what dollar amount to what dollar amount?
THE WITNESS: 15.24 to 16.20.
THE COURT: So $15.24. And after you added about $5 to what you were paying for the Class I milk --
THE WITNESS: Yes.
THE COURT: So describe it that way, if you will.
THE WITNESS: Okay. And then if we go up, so now let's say I were to increase the Class I price to $30, does that raise the blend enough to attract milk? The answer is no.
Now, my blend price --
MS. VULIN: I'm sorry, go ahead.
THE WITNESS: My blend price only went up to

17.07. In order to --

THE COURT: Would that be $17.07?

THE WITNESS: $17.07.

THE COURT: Thanks.

THE WITNESS: In order to raise the blend price up to the Class IV level, I would need to raise the Class I price to $37, and now I can pull milk out of a Class IV plant.

BY MS. VULIN:

Q. And what total amount would Class I collectively have had to pay into the pool that month alone in order to reach the $37?

A. On the volume of 349 million pounds and a price difference of $19.42 and $37, that's $61 million, or roughly $1.57 per gallon of milk was the necessary price increase to do that.

Q. So in your opinion, is using the Class I -- or raising the Class I price alone an effective way to address depooling in an order with California's utilization?

A. No. In orders with very high manufacturing utilization, the Class I price does not move the blend very well.

Q. Thank you.

And anything else you want to share with us from this example?

A. I do. Another thing I would like to point out is, in the way that pooling works, the difference between the

Class IV price and the Class III price in this month is roughly $4.50 per hundredweight.

I would also highlight, this month of July, if you look at spot markets today, you're probably going to see something a lot like this in October, so this is how we're going to be marketing our milk on Monday. The butter market is very high right now, and someone is selling cheese and the cheese market is lowering, so this will be -- this is typical of what you expect to see.

What I wanted to point out here is that the spread between Class III and Class IV is $4.50 per hundredweight. I don't want to bring up the Make Allowance discussion again, but let's pretend that the Class III Make Allowance is $2, because I like round numbers.

So the way this works for the Class III processor, they are able to run their plant on $2, and then provide $13.77 to their dairy farmer.

Another way, though, would be what if they did nothing? What if I just paid the Class III guy $2 for his employees to not show up to work that day, or to go to work and sit on their hands? Now, if I did that, I could still pay my Class III farmers $13.77, and then I could pay my Class III plant $2 to do nothing, that is only $15.77. The Class IV price is $18.26. There's a spread there. That means there's a market.

If we could move milk from Class III to Class IV, we could make money. We could serve the market.

And that's what I did when I worked for a powder plant in the year 2000 when cheese was high and powder was low. I went to every cheese plant that I knew in the state and I said, guess what? You are going to run full this month. You know why? Because you're going to pull milk out of my plant and I'm going to sell it to you for Class III minus.

So as much as I pick on depooling, I was a big depooler. I moved milk from Class IV to Class III because I made a lot of money doing it. And most importantly, I serviced the market. The market said: I need cheese, I don't need powder. So I shut my powder plant down, and I sold the milk to a cheese plant.

What I want to highlight from this example is, because of pooling, the Class III farmer, the Class III price was 13.77, but the blend price was 15.24. So now the Class III farmer only paid 13.77, but because of pooling, they were able to pay their farmer 15.24. The spread between the blend and Class IV is now much smaller. There is a much lower incentive for me to shut down that cheese plant now and move milk to Class IV.

And as we increase the Class I price, that market signal to move milk from cheese to powder becomes even more and more muted.

Q. In other words, as we try and incentivize more pooling when the market is not calling for it, it can distort what the market is actually wanting to do in the manufacturing classes?

A. Yes.

Q. Thank you.
If you could go to the next slide, please.
A. And on this slide here, I just said -- I added that 1.4 billion pounds of milk to Class IV, as we talked about earlier, and said, okay, we went to $37, I pulled the Class IV guys in, now I got to get the Class II guys. I want it all.
Now how much did I need to raise the price? And the real problem is here, in the last example the Class I market was 17% of the pool, now I'm only 10% of the pool, and it's really, really hard for me to move the blend. So I had to get to $47 in order to incentivize Class II to want to pool now.
Q. Thank you.
A. Yep.
Q. And so what we saw is that the Class I price was not -- not an effective mechanism to compel either III or IV to both pool; if we expand that to all classes, it becomes even more difficult?
A. Yes.
Q. And now if you could go to the next slide -- oh, you beat me there.
So can you tell me, who are Crystal's suppliers?
THE COURT: For those who may not have what we're looking at, we're now on page 9 of this exhibit, which is -- I'm sorry?
MS. VULIN: 268.
THE COURT: Thanks. 268.

BY MS. VULIN:
Q. So who -- who are -- tell me about Crystal's suppliers again.
A. Crystal is -- we started as our own dairy farm, and then in the late '80s took on a number of direct shippers. And more recently as we have entered the Federal Order, we have added a very diversified network of cooperatives and manufacturing plants to that, looking for pooling access.
Q. And you say here, "The higher-of offers no relief to direct shippers."
Can you explain to us why that is?
A. Yeah. So this is another hypothetical example. Let's keep it simple for now. We're not going to talk about advance and actual, all that. Let's pretend it's all the same for simple math.
So what I have here is a typical cheese depool month, which we could call year 2020, and a powder depool, which would be 2023, and an average. Let me walk you through what's going on here in my simple pool model.
So let's start with the cheese depool month under the current formula. Let's say the Class III price is $20, and the Class IV price is $15. This is in a 1.70 Class I zone, so now the Class I price is the average of Class III and Class IV, which is $17.50, plus $0.74, plus $1.70 for my location. That means the Class I price this month is $19.94.
We know what's going to happen. The cheese plant

is going to depool. So what does that mean the blend price is? If 90% of the people in the pool pay $15, and 10% of the people in the pool pay $19.94, the blend price is going to be $15.49. And then as we go down to the bottom, the person who shipped to the cheese plant got $20. The person who shipped to the powder plant got $15.49. And the person who shipped to the fluid plant got $15.49.

On the next column we talk about the higher-of. If the higher-of were in place this month, the Class I price would have been $21.70. On those utilizations, that increases my blend price to $15.67, and the pay prices translate down below.

Q. And so the point here being, if you are a cooperative, you may not have to pay this final announced Class I price, correct?

A. Well, that, but mainly what I want to highlight here is, when people talk about depooling, the cheese people got a good deal this month. The powder people, bad deal. The fluid people, bad deal.

Now let's jump forward to year 2023, and powder is the market to depool. Now, in this month, the powder people are getting a good deal. The cheese people and the Class I people are not getting a good deal.

When you look at the long-term average, though, the direct-ship farmer to a Class I plant -- and I'm going to also extend this to organic farms who primarily sell high Class I utilizations -- they never win. They always

get the lowest price.
Q. And is that why MIG put forth alternative proposals like the assembly credit?
A. Yes. That would be -- not for today, but when we talk about how can we innovate and do fun things, that's what gets me excited. That's how we can fix depooling with the tools that we have available to us today.
Q. And in your experience, is there enough milk on the market to meet fluid needs?
A. I live in the Central Valley of California. From Modesto to Tulare is the largest and most dense milk shed on the entire planet. There is plenty of milk to go around.
Q. And so this example is not about generating enough milk to meet fluid need, it's about how you would want to take better care of your direct shippers?
A. Yes. When you look at the pay prices that I pay into the pool, and the pay prices that my farmers are getting paid versus what their neighbors are getting paid shipping to manufacturing plants who can depool, I don't think we're achieving an equal outcome.
Q. And do you think we need to adjust the base Class I skim price back to the higher-of in order to either address that outcome or ensure a sufficient supply of fluid milk?
A. No. As I have highlighted in this example, the idea that, you know, we're going to fix this by raising the price, and then giving 90% of the money to the

manufacturing class, and 10% of the money to the fluid shipper, is not going to fix the problem.
Q. Anything else that you wanted to share? I think we have one more slide after that.
A. No, that would be it on these examples.
Q. Okay. Is -- and then just your summary?
A. Yeah. The summary is that in California, at least, and in these large manufacturing orders, the Class I market is just too small to carry the burden. I can't subsidize every single truck of cheese going into a cheese plant in California to the tune of $5 a hundredweight. I just can't do it. There isn't enough money on the planet -- well, there is, but the U.S. consumer doesn't want to pay it.
Moving to the higher-of is not going to fix the problem. It's just more of the same. We need to think about the tools we have. I'm already paying a lot of money into the pool. We just need no find a way to direct that more to the people who are supplying the fluid plants. We don't need more money.
There's plenty of milk out there, especially in California. For me, I'm just talking about the California order. I'm not talking about anywheres else.
And, again, I'm paying a lot of money; my farmers aren't seeing it. We need to think about the money that I'm already paying and think about ways to give it to those people more, to get a more equitable outcome.
MS. VULIN: Thank you, Mr. Schuelke.

THE WITNESS: Yep.
MS. VULIN: Nothing further.

CROSS-EXAMINATION

BY DR. BOZIC:
Q. Marin Bozic for Edge Dairy Farmer Cooperative.
Good morning, Jacob.
A. Good morning.
Q. So to summarize your statement about average-of versus higher-of, and the incentive it provides for moving milk between manufacturer classes.
Did I understand correctly that your example demonstrates that average-of provides stronger incentives to move milk from a lower price manufacturing class to the higher price manufacturing class?
A. Only in that example. In other markets it could be opposite because the average-of could pay more. You know, in a -- the average-of is a -- we're talking about a two-year average. So depending on -- as National Milk brought up, when we first introduced this, it kind of paid a little better, you know, so I don't want to write a blanket statement. But I would say in these markets where things swing wildly, and we do need to move milk from III to IV, or IV to III, the average-of would help the facilitate that a little better.
Q. Wouldn't it be the case that average-of would tend to be higher than higher-of when there's little need to move milk between manufacturing classes?
A. Yes.

Q. So then it would most likely actually be the case that average-of helps move the milk between manufacturing classes?

A. Yes. As a one or the other, it's a better tool for that.

Q. And so -- so the part that I'm still struggling to understand, is that true only in the fixed $0.74 world, or does that remain true once we introduce revenue neutralizing ups and downs in the adjuster?

A. You have introduced a lot of moving pieces. But I -- in general, if we're talking about a market where the spread is $5 between the class prices, any sort of long-term average is going to be a little better to help facilitate move.

Q. So -- and this is really not a prefabricated "gotcha" question. I'm trying to understand, you know, going through this with you.

So if to the extent that large spreads tend to be short-lived and that we have a two-year lookback, perhaps even gently moving the adjuster up and down would not substantially reduce the ability of average-of to move milk between manufacturing classes as needed?

A. Yes.

Q. Just thinking on the fly.

A. Okay. Yeah.

Q. Yeah. But, no, this was a novel argument. Really appreciate you bringing it up.

A. Okay.

DR. BOZIC: Thank you very much.

CROSS-EXAMINATION

BY MR. MILTNER:

Q. Every time Dr. Bozic gets up here I have to move the mic.

Good morning, Mr. Schuelke.

A. Good morning.

Q. My name is Ryan Miltner. I represent Select Milk Producers.

I believe you answered a question from Ms. Vulin, and you indicated that your customers have not approached you about hedging, at least your Class I customers.

Did I understand that correctly?

A. That's kind of a blanket statement. I guess I would say our customers have been trained to live with the system that we are in today.

Q. So have any Class I customers asked you to help hedge their milk costs?

A. No. But I also don't think the school districts and people who would really benefit from it necessarily know it's available to them. The education has not taken place.

Q. Have you approached those customers about the possibility of hedging their milk?

A. No, but I would like to. I -- I think it's a value-added service that we need to offer. When you look at -- it's been brought up that the markets -- you know, the conventional milk on a -- the conventional pricing

system has got a 40-year history of negative sales growth, and when we look at the organic and the Fairlife and these other products that are more stably priced, they have positive sales growth. I think there's something there.
Q. Do you currently serve school -- school accounts?
A. Yes.
Q. Are those bid out competitively?
A. Yes.
Q. How many competitors do you have?
A. Oh, two to three in most districts.
Q. Are those contracts for a set price for the entire year?
A. No, they are not. And when we have to raise prices, we get pushback about how that's not in the budget.
Q. Do your competitors offer a fixed price on their milk for the school year?
A. No, they do not.
Q. Being on a school board in Ohio, I'll say that's not my experience personally, but California is different.
So we have been operating under this -- this new mover for four-plus years, but nobody's approached you about it, correct?
A. I wouldn't say that.
Q. Okay. So they have approached you about it?
A. Mildly. And I would say most of those people have gone to other processors, mainly the ESL, and gotten that pricing formula.

Q. And you are talking about a fixed price, right?
A. Yes.
Q. Okay. Okay. Thank you.
A. And, again, I would guess I would just -- you know, from my experience building this with dairy farmers, building it with the manufacturers, it takes time.
Q. Is depooling of milk a problem for Crystal Creamery?
A. I highlighted that I pay a lot of money into the pool, and I'm not able to pay that money to my farmers. If I could depool my Class II and IV plants and pay that money to my farmers, I think they would get a more equitable outcome.
Q. Do you depool your Class II and IV plants?
A. No, I do not.
Q. Do you not have the ability to do that?
A. It's one site. I can't cut it in half.
Q. You said "plants," as if it was plural, but it's one plant, correct?
A. Yes.
Q. Okay. So would Crystal Creamery like to not see any depooling?
A. No. I don't like what's going on right now with butter at an all-time high. I don't want people to go into the grocery store on Thanksgiving and see butter at $7 a pound, and see a pint of heavy cream at $5 because we couldn't move milk from Class III to Class IV, and we made a bunch of barrels because the pool subsidized it.

Q. Explain that a little more, please. Why would that occur?
A. If we can go back to my slide where I talk about the July California pool.
Q. I think there were three of those. Which one were you talking about: 6, 7, or 8?
A. It would be page 7.
Q. Thank you.
A. So in this month, and in the month of October, the market is screaming for butter, it is not asking for cheese. I believe yesterday on the Exchange, cheese was sold, and the market went down. Butter went to an all-time high. I don't think that's an efficient thing to be doing with our milk. I think we should shut down cheese plants and move that milk into powder plants.
And this time of year, especially in California, those powder plants are only running at 70 to 80% capacity. We need to move milk into them. That's what the market wants, that's what the consumer wants, that's what's going to make value for the dairymen.
Q. So because the market -- the prices for cheese and butter are market-set prices, correct?
A. Uh-huh.
THE COURT: That was a "yes"?
THE WITNESS: Yes, I'm sorry.
BY MR. MILTNER:
Q. And you believe right now that milk cannot move to butter powder plants efficiently; is that your testimony?

A. Because of the blend price, cheese plants are getting a subsidy that hinders it. I still think there's a slope there for it to be done, but I believe that if we could find a -- if pooling didn't exist, the slope between III and IV would be greater, and it would happen on a higher level. And long-term, I want people to put whipped cream on their pumpkin pie. I don't want them to say, jeez, that's pricey, I'll go without.
Q. How would eliminating depooling change the Class III and IV prices to change the slope between those prices?
A. What do you mean eliminating depooling?
Q. I think what -- I guess I'm having trouble tracking your answer --
A. Okay.
Q. -- and it's probably me.
You said that you wanted to increase the slope between -- was it between III and IV?
A. Yes.
Q. Okay. And I think you said that you tied that to the ability or inability of plants to depool, correct?
A. No.
Q. No.
A. So I can't depool, and I also make fluid milk. So I took money on the fluid milk side from consumers. I could have -- if this didn't exist, and we didn't have Class I pricing in the state of California, I would be able to procure milk for much less than the Class I price

on average every month, I would be able to pay my dairy farmers a higher price for that milk, and when I sold my fluid products in the stores, they would be at a lower price and more stable.
Q. So what you really want is no minimum pricing for Class I?
A. Well, I didn't -- I'm saying, in California, it's not necessary would be my point there. But that's not what we're talking about. We don't live in that world.
We live in a world where the government has given us the power of the police state to levy a tax on the consumer and then take that money. As an industry, I might not think that's necessary in California, but I respect it.
And if we're going to have that authority, I would ask three things: One would be that we are gracious and humble to the consumer who is paying for it; two, I would ask that we levy that tax in a way that is appropriate and markets are milked the best way; and three, I would ask once we have that money, we spend it wisely.
Q. Do you pay a minimum wage to your employees?
A. We pay well above that.
Q. Okay. Do you view the minimum wage as a tax imposed by government?
A. It's a minimum price.
Q. Is that a tax imposed by government?
A. It's not necessarily a tax, but it's a regulation.
Q. So turning to your analysis on your slides.

How did you determine the 1.4 billion pounds of milk to shove into Class IV when you adjusted the analysis?
A. I looked at previous months and pulled the number out of the air, and then I tried to tie the total to what the USDA said milk production was for the state that month.
Q. So when you -- when you added that 1.4 billion pounds, you end up with a pooled milk volume of 3.3 billion pounds for July?
A. And that would be a number very close to what the USDA said was produced in California that month.
Q. Produced in California by all farms, pooled or not; is that correct?
A. Yes.
Q. So I'm looking at the pool reports.
Did you look at all the pool reports, or a number of pool reports, to come up with that 1.4 billion pounds and determine whether it's pooled or not?
A. I didn't put a lot of thought into it, to be honest. But we can plug it any number you want. I don't think you are going to get a different result.
Q. Well, I think we ought to plug in numbers that are somewhat, you know, in line with what's actually happening in California. And when I looked at the pool reports, I didn't look at them all, mind you, but I looked at several, and I really didn't see milk pooled in that -- in a volume like that.

Did you find, in the pool reports, a month where 3.3 billion pounds of milk was pooled?
A. No. Again, I was -- we were doing examples but -- I don't know where you are going.
Q. Okay. We'll get there.
The month you selected, you noted that there is a $4.50 gap between IV and III. Those prices are inverted to the tune of over $4, correct?
A. Yes.
Q. Did you look at what the utilization in the California order is in a month where prices are more rationally aligned?
A. We could look at the first few months of the year.
Q. Did you look at those in preparing your analysis?
A. I pool milk in California regularly. I lived it.
Q. So I think that's a no; is that right?
THE COURT: That sounded to me like a yes. Go ahead and ask him another question to clarify.
MR. MILTNER: Thank you.
BY MR. MILTNER:
Q. Did you look at the January pool reports when you prepared the analysis on slides 7 and 8?
A. I don't believe I opened it up when I was plugging 1.4 perfectly into that cell, no.
Q. So if that January pool report shows that there was 2-point -- a little less than 2.4 billion pounds of milk pooled, would that sound right to you?
A. I don't have the pool report in front of me.

Q. If that pool report said that the Class I utilization was not 10% but 18%, would that sound correct to you?
A. The Class I utilization in the example I used is 17%, so I'll take your word for it.
Q. Am I correct that when you added 1.4 billion pounds to the pool, you said -- or that determined a Class I utilization for the state of 10%?
A. Yes. I believe I stated that was my estimate of where all the milk was sold, not pooled.
Q. Okay. And when you added that 1.4 billion pounds of milk, you added it all to Class IV, correct?
A. Yes.
Q. Do you believe that 42%, or thereabout, is the volume of California milk that is processed at Class IV plants?
A. It's -- you know, it's very seasonal. But, yeah, I guess I put the number in the cell.
Q. Now, you worked with Gallo Cheese for a time, correct?
A. Yes.
Q. Were you familiar with their participation in the former California pool?
A. Yes.
Q. Was that plant pooled under the California system?
A. The plant -- there were several non-pool plants in the California system. And I don't know where you are going, but I used to depool Grade A milk in California.

And no one said you could do it, but you could. But I have no idea why that is relevant to today.

Q. Okay. Did the Gallo plant depool its milk?

A. Not necessarily. The plant -- if we want to open up a history book, there were other people in the state who thought you could only depool if you went Grade B. There was a little thing on the 800 report, and what you could do is you could opt out and still remain Grade A. And the rules of that were once you opted out you had to stay out for 12 months, and then you could get back in again. Why?

Q. I'm very familiar with the ability to depool for a year in California under the old system, but thank you for putting that in the record.

Do you know if the Gallo Cheese plant today is a pool plant or not?

A. I do not.

Q. Do you know if the Hilmar plant in California is a pool plant or not?

A. I do not.

Q. So if there's 1.4 billion pounds of milk produced in California that you think is all in Class IV, and there are cheese plants that are not depooled, would your analysis be a little off?

A. I -- can you state that again?

Q. Sure.

You assume that the 1.4 billion pounds of milk produced in California and not pooled in July was all

Class IV, correct?
A. I roughly plugged a number in there.
THE COURT: That's not responsive to his question. Ask it again, please.
BY MR. MILTNER:
Q. In your analysis, did you assume that the 1.4 billion pounds not pooled was all Class IV milk?
A. Yes. It was a play example to illustrate a point.
If you would like, I would give you the Excel file and you can plug any number in that cell you want. It's not going to materially change the answer.
Q. I don't want your Excel file.
If you plugged -- if you put that milk in Class III, would it change your analysis, sir?
A. If I put --
Q. Any portion of that 1.4 billion pounds into Class III instead of Class IV, would it change your analysis?
A. If we put more milk into Class III, now the blend price is going to be lower because I have even more milk paying at the lowest price.
MR. MILTNER: I don't have any other questions. Thank you.
THE COURT: Let me have you look at page 6.
THE WITNESS: Yes.
THE COURT: So the bottom part of that indicates percentages of milk by class in the California pooled utilization.

THE WITNESS: Yes.
THE COURT: That is not a play number, those are actually --
THE WITNESS: Those are real, and those -- that's when I said, maybe we can enter the July California pool report into the record.
THE COURT: And the reason that is relevant, is that when you look at the next page, page 7, using those pool statistics which are real, you illustrate your point?
THE WITNESS: Yeah. On page 7 I'm using real numbers in the pool from the very top of the pool report.
THE COURT: Understood. Thank you.
Who's next?

CROSS-EXAMINATION

BY MS. HANCOCK:
Q. Good morning, Mr. Schuelke.
A. Good morning.
Q. I just want to --
THE COURT: Ms. Hancock?
MS. HANCOCK: This is Nicole Hancock with National Milk.
BY MS. HANCOCK:
Q. If we can turn to page 2 of Exhibit 267, that is your testimony?
A. Uh-huh.
Q. Yeah?
A. Yep.
Q. Okay. Under Section B, on the Company Background,

you have a statement there that says, "We supply our plants through a diversified network of direct-ship dairies, Class III, IV manufacturers, supplying milk for pooling access.
I'm just wondering if you could help me understand what that means. What's the pooling access that you supply your customers?
A. So I run a cheese or a powder plant, and I want pool revenue. So in order to do that, you might say I run ten trucks a day of milk into my plant, but I want to pool. So instead of doing that, I'm going to supply nine trucks to my plant and one truck to a fluid plant.
Q. Okay. And so you are -- you are allowing additional access into your pool in order to take advantage of those market conditions?
A. I'm filling my plant up with milk, and they're getting a ticket to the pool.
Q. When you say, "They are getting a ticket to the pool," who are you referring to?
A. The manufacturer. If they don't supply a Class I plant, they can't play.
Q. Okay. So you're allowing another manufacturer to have access to your pool, which then allows them to participate in the total pool price?
A. Yes. You have got a 10% delivery requirement on the pool in California.
Q. Okay. And then the milk that they pay into the pool is at that -- is at their Class I price?

A. No. They -- all milk sold to me, regardless if you are a direct-ship farmer, a co-op, whatever, you get the blend price.
Q. Okay. So even -- even though they would otherwise be supplying to Class I, they would get the blend price in that situation, but it would allow them to participate in the pool.
A. Yes. So in the example on the other page, they would get -- let's not go there. Yes.
Q. Okay. Are you referring to your PowerPoint?
A. Yeah. It's just, the load of milk that they sold me, they get the blend on. Regardless of what I did with it, they get the blend on that load of milk.
Q. And then do you charge them a fee for that service of allowing them access to the pool?
A. Over-order premiums.
Q. Okay. And can you give me a range about what the percentage is that you charge on those over-order premiums to grant them that access?
A. Absolutely not. Never. That is proprietary information.
Q. Okay. I didn't know if there's just a -- a common price point that people can pay for access to the pool.
A. I am not going to disclose that.
Q. Okay. That would be something that you negotiate with that manufacturer --
A. Yes. And very privately.
Q. Okay. And do you -- is that under an annual

contract or is it just on a per-load basis?
A. Most contracts are annual.
Q. Okay. So this is something that you have built in to your business practice to do on an annual basis?
A. Yes.
Q. Okay. How many manufacturing plants do you provide that kind of pool access to?
A. I don't think that's something I want to say either, but I do.
Q. Okay. Multiple, though.
A. Yeah. I don't think my customers or suppliers of milk necessarily want to be named here, or should be named here.
Q. And I don't want any names. I was just trying to get a sense of how prevalent this is.
A. It -- yeah. It happens.
Q. Okay. Something that you have done consistently over the years since you have been at Crystal?
A. At Crystal, under the California order things were a little different. So as we transitioned to the California order, a lot of these relationships have really been established over the last few years.
Q. Okay. And does the net -- excuse me -- does the net effect of allowing that access tend to have a diluting effect on the total amount of the blend price in the pool?
A. When they are pooling milk at the lowest class, yes. Well, the milk that they sold me doesn't necessarily do that. It's -- they sold me one load, and now they can

pool nine loads of the lowest class milk onto the pool. That's what really pulls the money out.
Q. And then because those other nine loads at the lower class are brought into the pool, that's what has the net effect of pooling the blend price of the pool down?
A. Yes.
Q. And that does not have any benefit to you in order for you to get any milk, because I think as you described earlier, you already can get all the milk that you need; is that right?
A. Can you restate that?
Q. Yeah. You don't enter into these agreements because it's what allows you to get the milk you need, because you can otherwise get it anytime you want; is that right?
A. That's how I get my milk.
Q. But if you didn't enter into those pool access agreements with those other manufacturers, you wouldn't have a problem getting your milk otherwise, would you?
A. As I mentioned before, the pool price isn't necessarily an attractive price, but there's plenty of farms around. So if I can't attract milk to my plant because all the money is going to manufacturers and depooling, I'm going to have to pay a lot of money in over-order premiums in order to fill my plant up. But the dairies are there.
Q. Okay. Have you ever had any trouble getting milk to your plants when you need it?

A. In California? No. I'm a -- I have a very -- I lock my milk supply up on contracts all year round. I don't need milk, and that's why I have my powder plant as a balancer. If I didn't -- if it's the summer and it's hot and the cows don't want to make milk that day, I just don't make as much powder.

Q. Okay. And you use that to balance your milk supply?

A. Yes.

Q. Let's turn to page 3 of your testimony. In the paragraph right above the $1.70 differential example there --

A. Uh-huh.

Q. -- you have -- I'm in the third sentence in that paragraph, and it says, "As an example, increasing the Class I price by an average-of $1.76 a hundredweight to the higher-of only results in $1.76 hundredweight higher pay price to the Class I shipper, but $1.584 hundredweight to the pool for the manufacturing shippers."

I'm wondering if you could help me understand how you got to those numbers.

A. They are below. So what we are looking at here is we have got an amplified example of a pool, and the only two participants in it -- pick your class -- is one participant paying in at $15 who is 90% of the pool, and the other participant paying into the pool at either 19.94 or 21.70, and they are 10% of the pool. We all get paid the uniform blend.

Q. Okay. So you -- you are just saying that even though the higher-of would create a higher Class I price, by the time the farmers paid out of the pool, they are going to get the amount that's diluted by the other classed that have paid into the pool?
A. Yes.
Q. Okay. And that's magnified by things like selling pool access; is that right?
A. I -- I don't know what you mean by pool access or magnified by selling. This is a very simple example. Just trying to show the room what we talk about with pooling and depooling and who gets paid what.
If you want to talk about real world stuff, we can do that as well. But I don't think -- well, this might get us there. It might be a good starting place but...
Q. Okay. And when you are -- just so the record is clear, you are referencing the chart here in this example as being the one that's not the real world example?
A. It is an immensely simplified example that I hope helps the room show what's going on. They always laugh and say, you know, put ten dairy economists in a room, ask them how milk pooling works, and you will get ten different answers. It's true. So I'm trying to keep it simple here.
Q. Okay. And it's true also that when you do add in real world examples, like seasonal supplies and demand, weather events, school going into session, whatever else that happens in the real world, pandemics, wars, things

like that, all of that has a lot of effect on what this example would be in real life?
A. Yes.
Q. Okay. If we turn to the last page of your testimony. You have a statement up here that says, "So if USDA were to raise the base Class I skim price, USDA would make it harder to attract milk for fluid use."
And are you basing that on what we just looked at in that example on the prior page?
A. Let's see where -- where is the sentence you are going for here?
Q. Oh, I'm at the top of page 4, the very top sentence.
A. Yeah. Adding more milk to the pool or the concept of, let me help you out, let's raise the price a dollar, I'll keep $0.90, give you $0.10, it doesn't help me.
Q. So adding more milk to the pool doesn't help it; is that what you are saying?
A. No, I said adding a dollar to the pool and then paying $0.90 of it to somebody else doesn't help the direct shipper so much.
Q. Okay. Can you tell me how MIG's proposal would make it easier to attract that milk, that milk for fluid use?
A. How would it make it easier?
Q. Yeah.
A. I don't necessarily -- well, I mean you are going to pay lower into the pool, so I'm going to have less

people, less money incentivizing the manufacturing depooling.

If we could get money directed to my farmers, you might end up in a world where, you know, those Class I guys, they can't depool. But you know what? The pool pays them a $0.60 credit directly every month, and that's their little consolation prize, and that's why they want to stay in the pool.

If the pool generates millions of dollars every month because we raise the Class I price to $40, and then we paid it out to all these other people, it doesn't help my direct shippers.

Q. Isn't that what the pool is designed to do, to equalize the payments to all the producers?

A. Yes.

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

THE WITNESS: Thank you.

MS. HANCOCK: -- for your time.

CROSS-EXAMINATION

BY MR. LAMERS:

Q. Good morning, Mr. Schuelke. Mark Lamers, Lamers Dairy.

Are you familiar with the Agricultural Marketing Agreement Act of 1937? Are you familiar with the language within that?

A. I am sure not as well as you are.

Q. I'm a dairyman just like you, so --

A. Okay.

Q. -- bear with me if I stumble a little bit here.

If the Agricultural Marketing Agreement Act of 1937, the purpose of the order was to make sure that all farmers receive a minimum blend price and a fair -- based on the use of the milk in the market; is that correct?

A. I really --

Q. Okay. Let's --

A. I'll take your word for it. I really -- no. I don't read that for fun.

Q. The markets back in 1937, when the Act was originated, is it fair to say that the majority of the milk produced at that time went into fluid use?

A. Yes.

Q. Okay. And over time, those conditions have greatly changed, so now it's no longer -- in some parts of the country, is not the same; is that correct?

A. Class I consumption is down, and dairy production is up. So there -- Class I is both down and it's smaller as a percentage of the milk that's being produced.

Q. Okay. And in the Act it specifically states that milk be priced at its highest use. Not value, highest use.

So under that scenario, would it not be appropriate, or should there be regulations, that all milk should be pooled on the order based on these language of the Act, to the highest use?

A. I -- that's -- I can't comment on that. I don't -- that's -- that's a lawyer/judge thing. I just --

I just buy and sell milk.
Q. Right. So if we are here today trying to fix the system, you might want to say, and you want to make sure that all producers are receiving a fair and accurate price for their milk that they produce, should it not be taken into consideration that when Class III and IV prices exceed the Class I price, that those producers should share in that value?
A. I -- again -- I -- I can't --
Q. Okay. Let me move on.
The other part -- language in there is that, any changes made to the order has to be in the best interest of the consumer?
A. Yes. I agree with you there.
Q. Okay. So I think you're illustration on page 7 of your exhibit where you look out to what the Class I price would have to be in order to get at more equalized value -- and I know we haven't gotten to this subject yet. I know National Milk has proposals also to increase that Class I differential.
Basically you are illustrating what that would really look like before we even get there?
A. Yes. And in an order like California, it's a tall order to ask 10% of the milk to carry the lower manufacturing class every month.
Q. Okay. So by artificially raising that Class I price, is that in the best interest of the consumer?
A. No. I believe that's a lot of money to pay out.

You know, that's, again, a lawyer/judge/politician judgment. But I think raising the Class I price by $1.50 a hundredweight is a little much.

Q. Okay. And just one more question, and I'm sure I know what your answer is going to be.

A. Okay.

Q. Under terms common to all orders within the Act, one of the first things that's listed there is the prohibition of unfair trade practices. Okay?

Allowing milk to be depooled when it's carrying a higher value than the Class I market, couldn't that be considered an unfair trade practice?

A. I'm not a lawyer, yeah. I -- I don't go there.

Q. Thank you. I knew that would be your answer.

A. All right. I'm sorry.

Q. Thank you.

MR. LAMERS: No further questions.

THE COURT: There are a lot of lawyers in this room that don't know answer to that one.

All right. I think we need a ten-minute break. You are still on the stand.

THE WITNESS: All right.

THE COURT: Let's be back ready to go at 9:28. We go off record at 9:18.

(Whereupon, a break was taken.)

THE COURT: Let's go back on record.

We are back on record at 9:29.

Who would next like to ask this witness questions?

THE WITNESS: All right.
MR. SLEPER: Good morning, Judge. My name is Jim Sleper, S-L-E-P-E-R. Jim, J-I-M. Sleper Consulting.

CROSS-EXAMINATION

BY MR. SLEPER:
Q. Good morning, Jacob.
A. Good morning.
Q. Appreciate your concern to ensure dairy farmers who service the Class I market get those particular monies and so forth.
At the end of the day, aren't you really advocating for individual handler pooling?
A. I have said, you know, in this process, I feel there's any number of ways we could address this concern. Everyone talks about depooling. You know, I haven't even said it's necessarily a bad thing. There's any number of tools we could use to solve that problem.
Q. Are you aware of any Federal Order that currently has individual handler pooling provisions?
A. No.
Q. Do you know the reasons why there aren't any individual handler pools today?
A. No.
Q. Do you understand some of the -- or could you provide me some of the benefits, some of the disadvantages of individual handler pools?
A. In all honesty, I don't know what you are talking about.

Q. Okay. Well, I assumed your earlier response you knew what I was talking about.
Individual handler pool is basically where dairy farmers receive the actual utilization of an individual plant. So if I was shipping to Crystal Farms --
A. Okay.
Q. -- and if you are 80% Class I and 20% other, I would get 80% of the Class I price, and the rest would be -- so I'd get a much higher blend price than if it was market-wide pool, where Federal Order 51 is market-wide pooling where all of the pounds are included, and so I only get a share of, I think your statistics show 10% or 17% of the Class I market.
So I -- I know I'm lecturing here, and I apologize, but basically I get your individual handler Class I utilization.
A. I get the concept. I guess it hasn't really been brought forward by USDA, and didn't think it was on the list of things to talk about.
Q. Okay. You're correct. I'm just simply stating the fact that it appears, when I read your testimony, I hear your cross-examination, you're really advocating for individual handler pooling, but I'll move on. Okay.
One last one. Crystal Farms, I kind of view as a campus in terms of your processing. You have lots of Class I. You have got Class IV with your dryer, etcetera, etcetera.
Hypothetically, if a plant such as that would have

an individual receiving bay, say, for their dryer, would that be -- that milk be priced differently and would you be able to have the ability to depool then?
A. You don't know, Don is over there, he's really mean. He audits me bad. Like, bad, bad. I can only imagine the day when I send a load of Class IV milk to the Class I side, and, you know, the mess it would be.
I understand the concept, but I don't -- I don't want the liability of, you did something to the pool, now you owe everyone in the state of California because the milk receiver did something weird.
I understand the concept, and I have kind of looked at it, but I don't want the liability. I got -- I pay millions of dollars into the pool every month just because I want to be on the up and up.
Q. Okay.
MR. SLEPER: Thank you, Jacob.
THE COURT: Before I ask Agricultural Marketing Service what questions they have, is there anyone else who has questions for this witness?
I now ask Agricultural Marketing Service to ask any questions they have of this witness.
CROSS-EXAMINATION
BY MS. TAYLOR:
Q. Good morning.
A. Good morning.
Q. I do try to make this pretty painless --
A. Okay.

Q. -- if you didn't want me to ask you questions. Thank you for coming to testify yesterday and staying over for today.

I did have a question on your just makeup of Crystal Creamery.

You have direct shippers and co-op supplied milk, correct?

A. And also independent manufacturers.

Q. Okay. So can you give us a rough breakdown of, percentage-wise, how much milk comes from those three categories?

A. I'd say a third-ish maybe is direct ship. And then how you want to do the rest, is it really an independent, through a paper co-op, whatever, it's --

Q. But you payroll for a third of your milk basically?

A. Yeah. Yeah. I don't have the pool report in front of me, but we could bring it up.

Q. Yeah. Roughly.

So how many direct shippers do you have, if I may ask?

A. I don't -- no, I don't know that number off the top of my head. I would say it wrong. But it's -- in California, it -- it might be 20 trucks a day, but it's probably a number of 10 or something like that. And then I have a number of organics and things that are much smaller farms.

Q. So your direct ships are both conventional and

organic?
A. Uh-huh.
THE COURT: That was a "yes"?
THE WITNESS: Yes.
MS. TAYLOR: Thank you, Judge Clifton.
BY MS. TAYLOR:
Q. So I wanted to turn to your statement, page 3. That's Exhibit 267. And in the bottom of your first paragraph -- I'll read the sentence because I want to ask -- need to expand on it a little bit.
"Other adjusters that maintain higher-of are simply unhedgeable with existing tools available and formulas that update the fixed adjuster on an annual date are convenient to talk about in a hearing setting but needlessly cumbersome when trying to actually place hedge orders six months out."
I just would like you to expand on that.
A. I would first like to say, so what I'm talking about is the higher-of, and we talked about risk management and how I'd love to -- USDA has a bid for a food program, give them a delivered price for, you know, October 1 to September 30, don't worry about it. I feel that helps me there.
The other ones, the MIG group came to -- it gets kind of clunky. So now let's say, it's a wonderful world, the government says I'm going to fund the government tomorrow, and the WIC program got all this money, and we want to buy milk on a fixed price contract because we

don't like the volatility.
When I do my hedge, I'm going to have -- depending on when I start it and when it sets and the information available at the time -- it -- it gets a little clunky. When that December reset happens, if I try to enter my hedge in April or something, I don't have all the information so now I have got to do some things.
That said, that's not a hill to die on. If -- if we want to go with the IDFA proposal, that's wonderful, too. Just if I had to pick one, that's it.
But if IDFA, I'm happy with that as well.
Q. You just find the base part, so either the -- some form of the average-of is more hedgeable, in your opinion, than the higher-of?
A. Yes.
Q. And whether it's a fixed adjuster updated at some interval or a rolling one as proposed by MIG, that's not a make or break it for you?
A. No. No, not at all.
Q. And you are talking -- when you are talking your hedges, it seems to be particularly focused on government contracts or school lunches --
A. Those are the customers who complain the most because they can't pass the price on. They have a budget. You know, they -- they can't do it.
Q. Okay. So I just want to make sure we're clear. That's -- that's -- so that is more on that side, less on the retail consumer, retail customer side.

A. Absolutely. Yeah. We -- we have trained our -- our grocery stores well. Whether or not it's the best way to sell the milk is a side topic, but they -- it's -- yes.
Q. Okay. And then I -- I'm not sure if I caught the answer to the question then.
Do you currently hedge your -- any for your -- let me say a sentence.
Do you currently hedge at all, provide that service for any of your customers?
A. We do a lot of fixed price ice cream contracts, so we can level set your ice cream contract. And, again, that's something we have grown over time. We're very comfortable. We do a lot. We don't do anything in the Class I space today, but I'd like to do more.
Q. Okay. And I think I heard you say you were able to do ice cream because you used, like, butter futures?
A. Yes.
Q. Okay. In your example you provided, you have -- this is at the bottom of 3 and then some of that's on your slide deck as well. I'm just curious why you didn't include Class II. I just want to make it clear --
A. Just --
Q. -- for the record why it's not in there.
A. -- keeping it simple. This is -- you know, when we -- we introduce Class II, and then all of a sudden I introduce -- you know, Class I really isn't priced on III, IV, it's priced on the advanced mover. And now we start introducing 30 moving pieces, and it's hard to kind of

isolate a concept. And that's what I was just trying to do here.
Q. I can appreciate that sentiment.
And you talked about, through your examples, and I'll focus on the one on page 3, you know, you said, well, when the Class III price is high, those plants will depool because it's higher than the blend, and then they can pay their producers a Class III price, and everybody else who is pooled gets the blend price?
A. Uh-huh.
Q. And I guess, who guarantees that those producers get that Class III price?
A. No one. And I believe we have had a lot of testimony to that.
Q. Okay. So they can depool, but there's no guarantee that the producers get the money?
A. No, there is not a guarantee that the producers get the money.
Q. Can we -- can we look at the bottom of page 3? If we go to the right side of your chart under the average, so your first section deals with when the cheese example when cheese depools.
A. Uh-huh.
Q. The second sentence deals with the example of when the powder depools.
A. Yes.
Q. And then what is the third? Can you go over what that third kind of set of columns is?

A. Yes. So what I'm showing here is that you have received a lot of testimony about 2020 in this about what those bad cheese people did to the blend price. And then I'm talking about today, you know, the powder people are doing the same thing.

And then if you look at it on a long-term average, the one who's getting the short end of the stick is the direct shipper to a fluid plant because they can't depool. They never get their day in the sun.

Q. Okay. So can you just go over how that -- your numbers here is telling me that?

A. I -- again, it's just a simple average to say that when Class III depools, let's hope maybe those producers did a little better than the blend. And when Class IV depools, let's hope those producers did a little better than the blend. I can't depool. I never get my chance to do a little better than the blend.

Q. I understand the concept that -- I really do.

A. Okay.

Q. But I don't -- still don't grasp what the numbers, when you say 45% Class III utilization, 45% Class IV utilization, and 10% Class I utilization gives me a blend of 15.49 -- I understand how that number was calculated, based on the prices above.

A. That column is just a simple average of the other two columns. So, yeah. If you look at -- if you look at cheese in its depool month and its powder depool month, it's 20 and then 15, on average it was 17.50.

You look at, you know -- and the inverse for powder. On average, the two manufacturing classes were 17.50. The blend is always the lowest price.
Q. So it's -- so they are an average of the rows, not the average of the columns?
A. Yes. Yes. Everything there is just an average of the rows.
Q. Thank you.
A. Okay. Thank you.
Q. We only get one opportunity to ask you these questions, and then we go back to DC and look at this stuff and think, oh, man, we didn't ask him about that.
A. I'm not that hard to find. I guess it's not on record.
Q. I may call you.
A. All right.
THE COURT: That's not permitted.
THE WITNESS: All right.
MS. TAYLOR: We get one shot, and this is it.
THE WITNESS: Okay.
THE COURT: What is wonderful, to the extent the questions are forward-looking and they bring up topics that will not be decided by the Secretary based on the evidence here, it's very exciting to see all the different potential for the future. I'm just saying.
THE WITNESS: You are talking like me now.
BY MS. TAYLOR:
Q. So -- and then on the last page of your statement

you say, If USDA were to raise the base Class I skim price, it would make it harder to attract milk for fluid use. And that's the opposite goal of Federal Orders. And so the only proposal USDA should accept is MIG's.
So what I'm -- and you did discuss this a little bit with Dr. Bozic, but I still didn't get my brain with you two.
A. Okay.
Q. So let me ask this question.
MIG is -- and your members are contending that their proposal is roughly revenue neutral to the higher-of proposal of National Milk's?
A. Yes.
Q. So given that, I don't understand how this proposal, MIG's proposal, solves your issue as you have described it here?
A. It does not whatsoever, but it helps hedge. And if you want my opinion on which one I like more, it's the average-of, not the higher-of.
Q. Okay. So you're here -- you're supporting the hedging --
A. I'm just laying down a counterargument to some of the things that were said about the benefits of the higher-of, and I want to tell the room, that's not going to solve your problems.
If you think I'm going to do this and people are going to stop complaining about depooling, they won't. You know, I guess it's more to that.

Q. Okay. Thank you.
A. Yep.
Q. And then I wrote down, I think this -- I think this is my last question.
I wrote down how you had talked about, in some cross-examination, about current -- right now, given current prices, right? Butter prices are high, so milk wants to go to -- milk isn't going to butter right now, it's going to cheese?
A. No.
Q. And it's going to cheese because cheese getting, is getting a pool subsidy, which you had some discussion about, that's the payment from the pool so they can pay the blend?
A. Yes.
Q. Okay. So -- but what is preventing the cheese plant from deciding -- or the co-ops providing the cheese plant, I'm going to not put it in cheese, I'm going to sell it to this butter plant over here and get this higher Class IV price?
A. No, I want them to. I -- I think they should. When I have run manufacturing plants, like I said, if -- if I could get the money -- you know, someone was selling cheese on the exchange right now -- I don't know what happened today -- but yesterday they did. If I were a cheese plant, which I have worn that hat before in this industry, here's what I would do to make money.
One, I would say, you know what, the cheddar price

is $1.70 or whatever, but when you look at what's happening in butter, it's going to be really cheap to make reduced fat cheddar. So I would go to my sales guys and I would say, you know, you go and call everyone in the world, tell them that reduced fat cheddar's on sale next week. You call them up, tell them to do a promo, and we're going to put you on the schedule. How many pounds can I get you for?

And what that's going to do is allow me, as a cheese processor, to offer a lower price to my customer, maybe they want it. And then really, I'm going to spin off a load of cream and sell for $1.40 multiple and make a ton of money, and that's what the market needs right now.

Similarly, my customer could say, you know what? You need to sell me ten trucks a week of cheese because that's our contract. And I could say, okay, how about this, how about I, you know, give you a George Washington, a little $1.00 a hundredweight across the table, you go buy your cheese from the exchange, I'll go sell my milk to a powder plant for 18 bucks, everyone walks away the wiser.

That's the types of things that should be happening in the marketplace.

Q. And so my question is, then -- I mean, what I'm taking from your testimony is somehow Federal Orders are preventing that from happening, and I'm trying to understand how that -- your logic on how that is happening.

A. So at least in the California order, of the money we have, 90% of it is going to the cheese plant. So if I run my cheese plant, and I don't have pooling, I only get that Class III price, which is low. But if I run my cheese plant and I pool it, maybe I get an extra dollar or $2 from the pool, and that -- that helps me keep my dairy farmers viable, so I run my plant. But if that didn't exist, maybe I could make money for them another way.

Q. But what's preventing them from just saying, oh, I'm going to go sell my milk to the butter plant for 18 bucks, it's still a better deal than the $15 they could have gotten through the pool in total?

A. Absolutely. And we talked about that with Make Allowances. If you can cover your Make Allowance and do that, I think you should. It's called arbitrage. It's how markets work.

But, yeah, the slope between their pay price is muted if they can pool versus not pool with the blend money.

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

THE WITNESS: Okay. Thank you.

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

THE WITNESS: No, no, no.

THE COURT: Wait, I forgot about redirect.

THE WITNESS: Not so fast.

THE COURT: I forgot.

MS. VULIN: He did such a good job, it was a good

assumption there might not be much.
THE WITNESS: Okay.
CROSS-EXAMINATION
BY DR. CRYAN:
Q. You talked about arbitrage with Ms. Taylor.
A. Yes.
Q. Your situation having the powder plant and the fluid plant is very unusual, is it not?
A. It's something you would only build in a California milk order. You would never build it in a Federal Order.
Q. And -- and most of the plants in the country have been -- have responded to the current regulatory structure of the Federal Orders?
A. That's correct.
Q. And so most -- almost every other powder plant has the opportunity to depool in arbitrage --
A. Yes.
Q. -- under the current system?
A. Yes.
Q. Okay.
DR. CRYAN: Thank you very much.
THE COURT: Now I invite redirect.
MS. VULIN: Thank you.
REDIRECT EXAMINATION
BY MS. VULIN:
Q. I just wanted to finish off with the questions that Ms. Taylor was asking you about the slope.

A. Uh-huh.
Q. And make sure that I understand it as well.
And so your point isn't that FMMOs prevent the economic signals that would move cheese to butter or powder in that situation. It's that they make them less extreme or they dampen those signals from what they would be without that impact; is that right?
A. Yes.
Q. Okay. You had talked in your testimony on your -- in your PowerPoint on slide 8, which is Exhibit 268 --
A. Okay.
Q. -- and Mr. Miltner had asked you about the 1.4 million -- or billion Class IV pounds in that example.
Did you intend to suggest that that milk was all actually pooled in July of 2023?
A. No, it was not. It was just a rough estimate of what Class IV is a lot of days in production-wise. Not pool-wise, production-wise. And in the example, I was trying to draw it all into the pool.
Q. So your example was asking us to assume that all of the Class III and the Class IV milk was in the pool for purposes of demonstrating the impact of the Class I price?
A. Yes.
Q. And you had talked about earlier about the issue of, on page 2 of your testimony, when talking about your supply, you talked about Class III or IV manufacturers supplying milk for pooling access.
Is that a common practice for Class I processors

to purchase milk for that purpose?
A. Yes.
Q. Just in California or in other orders?
A. Everywheres. If you read the Federal Order language in any order that's -- here's what we do and here's how we do it.
Q. So Class III and IV, accessing the pool is part of the bread and butter of Federal Orders?
A. Absolutely.
Q. And you had mentioned also that you have one site, but we did hear you say "plants," plural.
So can you just give us a little overview of your operations and either the manufacturing lines, kind of the buildings, like, how does that all work?
A. So our other manufacturing plant, I didn't talk about much, is a smaller plant in Humboldt, California, that we do powder and ice cream with. It's a non-pool plant. We never pool it.
It's just -- it's organic, and it's small, and it's quirky, and it makes the greatest fluid milk on the planet, and the greatest organic ice cream on the planet, and I could go on about that. It's a fun place to visit. I recommend everyone go there.
Q. But you have been primarily talking --
A. Yes.
Q. -- about your main operation.
A. Our main operation is the bulk of everything.
Q. And so tell us what you do, again, at that main

operation.
A. We do everything. So, again, we have the dryer where we make various milk powders. We have a butter operation. We have an ice cream operation where we do a variety of lines. We have cottage cheese vats, sour cream, buttermilk, fluid milk. You know, you could go on forever.
Q. And these are all different lines or buildings on -- I like the description of the campus.
A. Yes. We have 17 different milk filling stations, and you name it.
Q. And then, lastly, you had mentioned or used this phrase that I really liked, that as an industry we must be gracious and humble to the customer.
What did you mean by that?
A. Well, they are the one paying for it, so we need to be respectful of that. We can't take them, you know, for granted. We need to -- we need to look out for their public interest as well here.
Q. Thank you.
MS. VULIN: Nothing further.
THE COURT: Admission into evidence of exhibits?
MS. VULIN: I just wanted to make sure there was no re-cross.
THE COURT: People are not wiggling.
MS. VULIN: Great.
So I would move that Exhibits 267 and 268 be admitted into evidence.

THE COURT: Is there any objection?

There is none. Exhibit 267 is admitted into evidence.

(Exhibit Number 267 was received into evidence.)

THE COURT: Exhibit 268 is admitted into evidence.

(Exhibit Number 268 was received into evidence.)

THE COURT: And now you may step down.

THE WITNESS: Thank you.

MS. VULIN: And the Milk Innovation Group would call as its next witness, Mike Newell with HP Hood.

MS. TAYLOR: Ms. Vulin, we do have one dairy farmer here, and I would like for him to be able to go on next.

MS. VULIN: Absolutely. Happy to accommodate.

MS. TAYLOR: Thank you. Yes.

Judge, we have Mr. Barlow here, and if -- I would invite him to come up to the stand.

THE COURT: I'm going to have us go off record while copies of the testimony are distributed.

We go off record at 9:57.

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

THE COURT: Should we go on record?

Let's go back on record.

MS. TAYLOR: Your Honor, I have passed out Mr. Barlow's statement, one to each of the parties present. This one is not online at the moment, but I will get an electronic copy, and we will get it up there by the end of the week so anyone can have access to it.

I would ask that be marked with an exhibit number.

THE COURT: All right. I am marking Mr. Barlow's testimony as Exhibit 269.

(Exhibit Number 269 was marked for identification.)

THE COURT: Mr. Barlow, welcome.

THE WITNESS: Thank you very much.

Hello. My name is H.H. Bar- --

THE COURT: I got more work to do.

State and spell your name.

THE WITNESS: My name is H.H. Barlow, B-A-R-L-O-W.

THE COURT: Have you previously testified in this proceeding?

THE WITNESS: No, ma'am.

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

THE WITNESS: Thank you.

H.H. BARLOW,

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

THE COURT: Now you may proceed.

MS. TAYLOR: And, Mr. Barlow, if I could just ask you to make sure you speak a little bit slower so our court reporter can get all of your words.

THE WITNESS: Okay.

Hello. My name is H.H. Barlow. I am presently milking 120 cows in Barren County, Kentucky. I also serve as executive director of the Kentucky Dairy Development Council. But today, I am testifying as an independent milk producer and dairy farmer shipping milk to the Borden plant in London, Kentucky.

It is an honor to be here, and I thank you for the opportunity to testify today.

My understanding is the purpose of our Federal Milk Marketing Order system is twofold: To provide an orderly marketing system for dairy farmers' milk production, and to provide the consumers with an adequate fresh supply of milk.

THE COURT: I'm going to interject just a moment. You have the perfect broadcast voice, but it needs to be slower.

THE WITNESS: My reason for testifying today is to express and explain my support for the proposals, along with a bit of a warning based on my lifelong career in dairy. I have firsthand experience as an independent dairy producer who has been harmed by volatility and pricing mechanisms. These factors have been detrimental to producers everywhere, causing a massive loss of dairy farms in my state and across the country, which in turn, created a significant loss of economic activity in rural community across the country.

In 2005, Kentucky had 1500 dairy farmers. Today we have 340. One cow on average produces 5 to $6,000 in milk sales revenue per year. Economists have determined that those 5 to $6,000 turn over eight more times in the local rural economy.

That $48,000 annually into a rural economy is not pocket change. For a herd of just 100 milking cows, this would nearly -- would remove nearly half a million dollar business from a local economy. Thus, you can understand the economic impact of losing dairy herds in a community.

In order to best illustrate my convictions today, I would ask you take a trip down memory lane with me and let me tell you a story. My dad got his first Jersey cow in 1929, and we have been milking continuously since then for the last 94 years. I paid my way through college at the University of Kentucky milking cows at the research farm.

After graduation in 1972, I married my college sweetheart and returned home to the family dairy farm, working full-time with my dad. We started a family, and I farmed for the next 11 years milking 100 cows while farming 400 acres.

The farm depression of the early 1980s almost wiped me out. After selling 150 acres and most of my cows, my wife and I started over on our own in 1986. We have maintained the dairy ever since, but not without many close calls. I started selling feed as a commissioned sales agent and have had the necessity of at least two jobs for the last 39 years.

My passionate love for cows kept me in the business, even through tough times. It was important to us to raise our family in this way of life. I credit

God's help and a praying wife for our survival.

In my 20s, I was elected to the Dairymen, Incorporated, Nashville Division board, serving six years. In the '80s, there were seven different potential markets for my milk to be marketed, plenty of options. My DI co-op market was the lowest price of the seven at that point, so I changed markets to become an independent producer for the next 20 years, selling to three different companies before finally getting the highest market price of all at Purity Dairy in Nashville. There was over a $1 to $2 difference between the co-op and the independent price. With the volatility of the market and overall financial conditions of farmers at that time, it was imperative that we searched for the highest pay price to stay in business.

The next challenge for dairymen and women in the Southeast market was the consolidation of privately-owned milk plants. For example, Dean Foods purchased Purity in Nashville; Mayfield in Athens, Tennessee; and Barber Dairy in Birmingham. Producer premiums quickly disappeared as consolidation took place. The situation further deteriorated when Suiza bought Dean Foods.

My high milk prices in the '90s completely disappeared by 2002. I organized a group of 60 to 70 dairies to look for another market. This endeavor came to the attention of Lone Star Milk Producers in Texas. And in 2003, this group of dairymen were offering membership in that co-op. I served as a director of Lone Star from

2003 to 2013.

The introduction of Lone Star brought some premiums into the marketplace and reduced the cost of hauling. This was advantageous to our member producers. This venture also gave Lone Star entrance into the Southeast market, so it was a mutually beneficial arrangement.

The Southern Marketing Agency was formed shortly thereafter. It was a great idea, because milk from several handlers was commingled on trucks, which created great efficiencies in hauling. This efficiency was an example of co-ops working together, and all dairy farmers benefitted.

I don't have the precise facts of what caused the Southern Marketing Agency to cease operations, but it was detrimental to the dairy farmers' pay prices. I continued marketing my milk through the co-op structure, but after a few years of comparing pay prices to my independent neighbors, the independent price was significantly higher.

Thus, in 2013, I led the initiative to take the 10 million monthly pounds of production being sold to Lone Star to the independent Borden bottling plant in London, Kentucky. This endeavor netted an immediate $2 price per hundredweight increase in my milk price, and for the past ten years, we have maintained the highest price in the available market.

Competition has been central to improve prices throughout my entire 50-year career. Today, there is less competition than ever before in the marketplace with the consolidation of co-ops and the closure of independent plants. This is detrimental to producer pay prices everywhere.

I have given you this history as a summary of actual events I have experienced as a dairy producer for 50 years. My dream was always to be a successful large dairy farmer. I am not complaining about my life, because I am blessed to have a great family, a nice farm, and a wonderful way of life. The challenge is the economic reward for small dairy farms has been eroded significantly by economic conditions in the market.

Therefore, I am in general agreement with National Milk Producers Federation proposals to modernize the pricing system. Today's market conditions are markedly different from year 2000 levels. The uses of milk are significantly different. Our products are still extremely nutritious and we must market our milk to meet producer and consumer needs and desires.

So first, let's tackle the higher-of formula. The return to the higher-of formula is an example of how the market should dictate our prices. Who would have ever imagined that butter would dictate my milk price as a dairy farmer?

For the month of August 2023, my 3.5 blend price of 19.64 was made up of $9.42 from skim and $10.22 for butterfat. This is just one example of my pay price being less than what it could be because the higher-of formula was not used to calculate my pay price.

Using the October reported Class III and IV prices that were reported on September 22nd, this resulted in a loss of $0.78 per hundredweight, meaning for the month I lost out on $1287. This would pay all of my electricity costs on the farm for one month.

Next up, the component pricing. The discussion to update the components in the skim milk portion of Class I pricing has already taken place in this hearing. I am very much in favor of this update. I have always produced high-component milk, and selling milk in Order 5 and 7 my entire career has never paid me for my higher component value milk.

In the marketplace today, high protein milk is where our growth is, and we should create every incentive to the farmer to produce higher protein and solids milk. As evidence, the success and growth of Fairlife is a testament to consumers' preference and the willingness to pay for the higher value milk. It would more accurately reflect consumers' desires for higher protein milk and incentivize farmers to produce a higher component milk through genetics, nutrition, and updated management practices.

Just for example, my average production over the last three years was 2.1 million pounds annually, and my protein percent was 3.7 annually. Using the calculation put forth on page 35 of National Milk's petition that the component changes would raise Class I price by $0.55, the difference in my pay price would be approximately $0.40 per hundredweight, considering the 70% utilization of Class I milk in Order 5. This would result in additional $8500 annually to my gross receipts. This would cover half of my fuel cost on the farm for a year.

Now let's move on to Make Allowances. I sell milk today in Order 5, and we are a high Class I utilization market. Order 5 has less manufacturing processors than most orders. The Make Allowance portion of this hearing is troublesome to me and my fellow producers from a philosophical standpoint. Why are producers' pay prices adjusted to guarantee the processor a manufacturing cost floor, basically assuring them a profit? No one is guaranteeing dairy men and women a cost of production floor in our operations. I have not seen any processor contract with the farmer guaranteeing him the cost of production. It is way past time for the processor to get his pay out of the marketplace instead of on the backs of dairy farmers.

The proposed increase of $1.25 in the Make Allowance would be extremely detrimental to producer pay prices. Those calculations have already been presented in this hearing. I can assure you lowering producer pay prices below what is in existence today will cause a mass exodus of small dairy farms across the nation. We are hanging on by a thread today, and a further reduction will be the straw that breaks the camel's back.

Finally, let's talk about location differentials. I am also in favor of raising Class I differentials to more accurately reflect the changes in the milk markets today compared to 20 years ago.

THE COURT: Would you re-read that sentence? You left out an important word. Location is the word you left out.

THE WITNESS: Finally, let's talk about location differentials. I am also in favor of raising Class I location differentials to more accurately reflect the changes in the milk markets today compared to 20 years ago.

I also believe the Southeast should continue producing milk, instead of having finished products imported into our markets. I believe that with some changes in the component values, we could have a growth area for milk production and processing. I know this is particularly true for the state of Kentucky, where we are very desirous of growing our milk production. Overall, I believe these proposed changes will contribute to the sustainability of local production and the growth of our Southeast dairy industry.

This hearing is about the modernization of the Federal Milk Marketing Order system. I have given you my thoughts from an independent producer's perspective. In summary, I support National Milk Producers Federation and the American Farm Bureau positions on the points I discussed. It is imperative that the final result of this hearing does not harm producer pay prices.

In closing, I have spent a lifetime as a dairy farmer and have been involved in the dairy industry in practically every phase of it. Dairying and cows are my life. But as you can see, I am in the sunset of my career. I came today, not so much for myself, but for all the young dairymen that have the passion I have always had, to be a successful dairyman. I have always treasured the thoughts that I produce a product that is good, healthy, and nutritious for my fellow man.

Thank you once again for giving me the forum to express my views.

THE COURT: Thank you so much, Mr. Barlow.

And I'm now going to invite anyone who would like to ask you questions to come forward one at a time.

CROSS-EXAMINATION

BY DR. BOZIC:

Q. Marin Bozic for Edge Dairy Farmer Cooperative.

Good morning, Mr. Barlow.

A. Good morning.

Q. One of the economists submitted a testimony that states that it's really not a problem if Make Allowance is set very high because that would be compensated by market forces through over-order premiums.

Do you share his confidence that that will indeed happen?

A. I remember when I had over-order premiums of a $1, $1.50 a lot, and that disappeared. And honestly, I do not

have that confidence.
Q. Thank you for your answer.
You mentioned in your testimony that you are in the, your words, sunset of your career. One of the arguments put forward for increasing Make Allowances is that it would expand plant capacity for producers' ability to grow.
Would you benefit personally if the plant capacity is expanded?
A. Yes.
Q. What would you do if the plant capacity is expanded?
A. Hopefully be able to incentivize producers in Kentucky to produce more milk and have a place to go with it.
Q. So --
DR. BOZIC: Thank you very much for your answers.
THE COURT: Thank you, Dr. Bozic.
CROSS-EXAMINATION
BY DR. CRYAN:
Q. Hello, Mr. Barlow. It's nice to see you again.
I'm Roger Cryan with the American Farm Bureau Federation.
A. Yes, sir.
Q. I have to say that every time I get up.
Are you a Farm Bureau member?
A. Yes, sir.
Q. I appreciate that.

And you came to our forum on Federal Orders last October in Kansas City?
A. Yes.
Q. And I appreciate that.
And I know you said you represent yourself today, but the Kansas City Dairy Development Council signed on, along with other state groups, and along with National Milk, with Farm Bureau, in a statement supporting updates and modernization of the system for the benefit of farmers; is that correct?
A. Yes, sir.
Q. And I appreciate that.
So just let me clarify. You support -- did you have any other takeaways from that forum?
A. I don't -- I don't have any at the moment.
Q. Okay. The forum -- that forum generated support for -- broad support for the higher-of; is that correct?
A. Yes, sir.
Q. And very broad support for increased Class I differentials?
A. Yes, sir.
Q. And -- and you are here -- well, you said so. You said you're here to support the -- oh, I remember -- I'm sorry, the last thing, the thing I wanted to clarify.
You support Farm Bureau's position that we should not have an increase in the Make Allowances unless there's an audited mandatory survey of the data that goes into that; is that correct?

A. Yes.
Q. Very good. Thank you very much for your testimony. Have a safe trip back.
A. Thank you.
DR. CRYAN: Thank you.
THE COURT: Thank you, Dr. Cryan.
CROSS-EXAMINATION
BY MS. HANCOCK:
Q. Good morning. I'm Nicole Hancock with National Milk. Thank you so much for being here today.
In your Exhibit 269, on page 4, you talk about the Make Allowances that you just talked about with Farm Bureau, and I just wanted to ask a couple questions about that.
Is one of your concerns with increasing Make Allowances for manufacturers just the amount of tremendous pressure you feel in your current pay prices as a dairy producer?
A. Yes. You know, I think people in this room obviously know, but we're over $8 per hundredweight under our January pay price. That's over a 30% drop. And our input costs have not changed at all. So we're in a very untenable position today as dairy farmers.
Q. Okay. And I think you testified to this, but I just want to tie it into this section.
Is your concern that if -- if -- if Make Allowances are increased and there is a corresponding drop in the pay prices to producers, that it would drive

producers out of business?
A. Yes, ma'am.
Q. And in turn, that would have a negative effect on the supply that's available in the marketplace?
A. That's correct.
Q. Okay. And then you talk on the last page of your testimony about how in Kentucky where you -- where you are farming, you have observed with your fellow dairy producers that there is an interest in growing their dairies; is that right?
A. Absolutely.
Q. Is that because as a small dairy, the efficiencies are just not there and it makes it too difficult to survive based on the current financial circumstances?
A. There are definitely, you know, advantageous factors for being in a larger scale without any question.
And fortunately, I'm surrounded by some young dairymen. You know, they are in business basically with their fathers, or their families, and they are obviously all in a growth phase.
And -- but at the same time, you know, I hate to see the 100- to 500-cow dairy or -- you know, suffering needlessly. Because as I stated in my testimony, you know, a 100-cow dairy is a pretty significant size business in any -- any locale. I live in a town -- or I lived actually on a farm, but my adjacent town is like 2,000 people. There are very few businesses, you know, almost none I would say -- there are some I think -- that

generate more income than I do on my 120-cow dairy.
So -- and the beautiful thing about my position is all of that money is spent locally. And, you know, we are a real economic engine in rural America.
Q. So if these small farms go out of business, it doesn't just affect those farmers and their families and the generations to come, but it affects the entirety of those communities, as well as the supply of milk?
A. Absolutely. Thank you for that, you know, confirmation.
Q. I just want to thank you on behalf of National Milk for your support and for taking the time to be here today.
A. Thank you.
THE COURT: Thank you, Ms. Hancock.
Who else has questions?

CROSS-EXAMINATION

BY MR. LAMERS:
Q. Good morning, Mr. Barlow.
Mark Lamers, Lamers Dairy. First I want to thank you for coming today.
A. Thank you.
Q. We operate a very small fluid plant up in Wisconsin, and we purchase our milk from producers just as yourself, so I really appreciate your insight.
Earlier the Judge had opened up -- or made a comment relative to the potential ideas of what could come out of this hearing. I'm going to go back again to a

little bit of the declared policy. And they talk about parity pricing, and they state a statute in there about what parity pricing is defined as.

And when you look at milk prices, the parity pricing is described as prices of feed, available supplies of feed, and other economic conditions which affect the market supply and demand for milk.

Currently in this system -- now, this is futuristic thinking here, because currently there is no factor used looking at those prices that farmers have to pay.

In your opinion, is there something that -- is that something that maybe the industry as a whole should be looking at, in the -- in the minimum pricing of milk?

A. You know, I -- philosophically I guess I'm against more government interference in our -- in our dairy operations, you know. So I -- I would have to study that to give you my real correct answer on that.

Q. Okay. The way I understand it, not being a lawyer, is that that should be part of the consideration to help the producer, or the farmer, help cover their cost of producing that milk to the market.

A. Well, we do have one advantage now in the Dairy Margin Coverage insurance for the smaller producer. That is a lifeline.

Our fellow grain producers have had crop insurance for years and years and years, and I am so thankful we had that incorporated in the 2018 Farm Bill. And I pray that we -- it will be continued in the 2023 Farm Bill. But, you know, that does give us a basic, you know, kind of floor to help us get through the tough times.

MR. LAMERS: Okay. Thank you very much.

THE COURT: Thank you, Mr. Lamers.

Are there additional questions before I turn to Agricultural Marketing Service to ask questions?

I turn to Agricultural Marketing Service.

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. Thank you, Mr. Barlow, for coming here today to testify.

A. My pleasure.

Q. Just a couple questions.

First, on your farm, 120 cows. We have been asking all our dairy farmers if they meet the Small Business definition, that is making $3.75 million or less in gross receipts annually on a whole farm basis.

Would you meet that definition?

A. Absolutely.

Q. And you mentioned DMC.

Am I correct, then, that you utilize DMC?

A. I do.

Q. And do you utilize any other risk management tools offered?

A. I do not.

Q. Thank you.

Your milk goes to the Borden plant in London, Kentucky.

About how far is that haul?

A. 100 miles.

Q. Okay. And I was wondering if you could talk a little bit about your transportation costs. You talked about how your other input costs have increased recently. And just a little bit about how that works for you as a direct shipper in paying your haul, and how have you seen your transportation costs impacted, let's say in the last five years, to service that plant.

A. Personally, I just so happen to have the best hauler in the state.

Q. You put that on the record. That's good.

A. And maybe I should clarify that a little bit. We have got a lot of good haulers, but I have the most economical hauling price of anybody in the state. I should clarify that as instead of saying the best hauler in the state.

This issue of hauling milk is probably the, you know, elephant in the room in Kentucky. We have -- you know, I pay $1.35 per hundredweight to get my milk hauled. We have producers in the state of Kentucky that are paying $3 a hundredweight to get their milk hauled. I don't see how they can survive that cost. So, you know, it is -- it is a real challenge to -- for all of us I think as we go forward.

And, again, that is -- as you lose producers, then that creates greater distances between dairy farms for haulers to go. And I think all of those factors, you know -- and just the cost of fuel, you know, the cost of labor, of finding the men and women to drive the trucks, all of those things are becoming a real, real big problem in our dairy industry, particularly in the south.

Q. So in your neck of the woods, your differentials were last updated in 2008.

And so can you -- so you pay $1.35 now.

Has it cost you more to haul your milk since 2008?

A. Oh, sure. Absolutely. You know, we actually had a $0.25 adjustment back at the first of the year, upward.

Q. From your hauler?

A. Yes.

Q. Okay. I wanted to turn to the third page of your statement.

In this -- in the top portion you talked about how -- the decision you made to go from being a member of Lone Star to an independent Borden shipper, and that by doing that your price increased $2.00 a hundredweight.

If I may ask, what do you attribute the $2.00 to? Is that -- was that in premiums? What is it lower hauling costs? How come you were able to see that $2.00 increase?

A. That is a tough question to answer. You know, obviously the independent producer has the advantage of -- or at least in Orders 5, I think, and 7, that we are not really involved in the balancing costs in the -- you know, of seasonal production. That is one major factor that gives the independent producer a -- you know, an opportunity to a bonus.

Secondly, you know, we don't have co-op costs obviously. You know, we don't have staff. We don't have field service. You know, those are things that are -- are good and -- but, obviously -- you know, to be honest, I have tried to be like, I guess you would say Ford Motor Company. I wanted to get the highest price I could get, so I did research the marketplace, and I have been involved in it very, you know, significantly. As you can see, I have changed a lot throughout my career. And we have -- you know, I have been asked to change just recently, but there was no difference in the marketplace so I did not change.

And -- but, you know, that $2.00 benefit has not stayed at that level. It was immediately at that time, but it's much, much closer today than it was at that time.

Q. I appreciate that segue.

I was going to ask currently or in the last few years, since you do ship to Class I, an independent Class I plant or a Class I plant and you're an independent shipper, can you talk about what's happened to your premiums in the past few years? You saw them be pretty constant, or decrease, etcetera, or maybe don't get premiums anymore?

A. You know, I alluded to it in my testimony, I guess you would say. In the '90s when I was shipping milk to an independent plant in Nashville, Tennessee, the Ezell family owned the Purity Milk plant there, and it was nothing for them to say, Purity premium, $1.00, $1.25. They literally followed the marketplace, and if they thought their producers were in need of extra income, I would see a -- it was called a Purity premium. It was at the bottom of the check. I have seen it as high as $1.50. It nearly always was over $0.50. Those went away totally, as I have testified.

And the Lone Star thing did bring some premiums back into the marketplace. That's one of the main reasons I went there. And was -- you know, I think all 60 or 70 producers that -- you know, there's nothing great about me, but because of being in the feed industry, I knew -- I know a lot of the producers. And, you know, I have been -- I followed the markets. And fortunately a lot of people have, you know, been willing to kind of follow me along the road.

But premiums basically disappeared completely after SMA went out. And, you know, even to going to the independent producer, there's still basically been no premiums.

Interestingly enough, and I just alluded to it in my testimony, competition in the marketplace is the key to profitability as much as any other factor. We have a brand new co-op that has been formed in the very southern, southwestern tip of Kentucky, and has producers from Kentucky and Tennessee in that co-op. And they made a -- you know, made a run at us Borden producers, I guess you would say, to take a lot of us to go to their new co-op.

What did Borden do? It put in a potential $0.90 premium into the marketplace. And so for the last eight months I have been receiving some premiums.

But competition is extremely important, and you know, I think that's, you know, my argument.

Q. And I want to get your perspective as an independent shipper. We have had a lot of dairy farmer testimony over the past five and a half weeks, but not a ton of direct shippers have, you know, been able to testify, or joined us to testify.

So from your perspective as a direct shipper, how do you think -- or does the Federal Order benefit you? And if it does, how does it benefit you?

A. Well, you know, I have been asked this question many times. You know, occasionally I hear the comment, you know, why don't we kick 'em out?

Well, I don't believe that's a tenable situation. Obviously, just the fact that they report, they keep it all in some good form of structure for our marketplace is absolutely essential, in my opinion.

And, you know, one of the things that's always disturbed me about dairy farming is we usually operate a lot on credit. And it's very difficult to go to a banker, and, you know, when he asks you, what do you think your milk price is, you know, to borrow $100,000, $300,000, whatever. You know, I have -- I have owed a lot of money in my life.

And being able to have, you know, the Federal

Order system to kind of keep all of that and reported to us, you know, like the CME and the futures markets and all of that -- all those factors together, give me some semblance of opportunity to, you know, address my credit supplier of where I am going.

But it's, you know, it's still a tough situation. But I'm -- overall, I am very much in favor of the Federal Order system.

Q. Okay. On the last page of your statement at the top you talk about using the October reported price.

And I just want to make sure it's clear for the record, you are talking about October 2023?

A. Yes. If you would follow -- if you follow that futures thing, my numbers are quite a bit less than what they are actually as of yesterday, because butter went up significantly, and Class IV futures I think went over 21, and the October reported price of Class III was like, less than 17.

Q. So these -- can I ask what Class III and IV prices did you use to compute your $0.78 per hundredweight loss?

A. The Class IV price, September -- the reported September 22nd.

Q. Reported by USDA?

A. Yes.

Q. Okay. I think that's it for AMS.

I really do appreciate you and your daughter coming up to be with us today. So I wish you safe travels back.

A. I should have introduced her. She is my eldest. We have three more children, and they have blessed my wife and I with 16 grandchildren. So I am a very rich man, even though I don't have a lot of money.

MS. TAYLOR: Thank you very, very much.

THE WITNESS: Thank you.

THE COURT: Is there any objection to the admission into evidence of Exhibit 269?

There is none. Exhibit 269 is admitted into evidence.

(Exhibit Number 269 was received into evidence.)

THE COURT: Mr. Barlow, you are indeed a blessed man. Thank you for being here.

MS. VULIN: Would we like a break or are we good to keep going?

THE COURT: We'll take a ten-minute break.

MS. VULIN: Sounds good.

THE COURT: Please be back and ready to go at around 10:47.

(Whereupon, a break was taken.)

THE COURT: Let's go back on record.

We're back on record at 10:49.

MS. VULIN: The Milk Innovation Group -- oh, I'm sorry, your Honor, I forgot my cue.

THE COURT: So I'm about to ask a person to state who he is. We're good.

All right. So would you please state and spell

your name?
THE WITNESS: Michael Newell, N-E-W-E-L-L.
THE COURT: Mr. Newell, have you previously testified in this proceeding?
THE WITNESS: I have not.
THE COURT: I'm going to swear you in.

MICHAEL NEWELL,

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

THE COURT: Thank you.

DIRECT EXAMINATION

BY MS. VULIN:
Q. Good morning, Mr. Newell. How are you?
A. Good morning. I'm good.
Q. You have before you a document entitled "Testimony of HP Hood, LLC, Part 2."
Do you see that?
A. I do.
Q. And is that your written testimony for the proceeding today?
A. That is my written testimony.
MS. VULIN: Your Honor, we had previously circulated this, so hopefully everyone has their copy from yesterday when I was a bit more -- maybe too optimistic on the schedule.
THE COURT: We didn't mark it yet, did we?
MS. VULIN: No, we have not.
THE COURT: Okay. That's good. That's -- that's

orderly. All right. I don't -- which is it? 270.
It will be 270.
MS. VULIN: Do you have a copy?
THE COURT: It's coming.
MS. VULIN: And in the meantime, I'll identify myself. Ashley Vulin with the Milk Innovation Group.
THE COURT: All right. So everyone, you may go ahead and mark your copy as 270, and up at the right-hand top it says MIG-Hood-Exhibit 11. You may proceed.
(Exhibit Number 270 was marked for identification.)
MS. VULIN: Thank you, your Honor.
BY MS. VULIN:
Q. Mr. Newell, will you please state your business address for the record?
A. It's 6 Kimball Lane, Lynnfield, Massachusetts.
Q. Thank you. And let's start with some of your background.
So, Mr. Newell, how did you get into the dairy industry?
A. So I have heard the comment made --
Q. Oh, and I'll jump in really quick. Make sure you go nice and slow. Thank you.
A. So like I have heard many others say in the two days that I have been here, I was kind of raised in the business. So my stepdad's family had a milk processing company in downtown Sacramento called Crystal Cream & Butter Company, and I'll get to that.

So when I was in high school, for many summers I worked clearing leaves off the roof, sweeping the gutters, painting the backs of trucks, and it really came to -- I mean, it was -- it was a way for me to earn my way into the company.

And so I eventually did that. And I went to college at UC Berkeley, got a degree in economics. Went to work in the family business as a management trainee, which was awesome because I got to work in all the different departments. And we -- not like -- unlike the Crystal that Jacob was talking about, we did everything, butter, powder, ice cream, a lot of ice cream mix, cultured products. So it was -- it was quite an education.

From there I went and I got an MBA at the Borden School of Business. Went back to the family business and worked my way up through sales. Became VP of marketing in 1997, company president in 2003. Hood was a customer of ours. We actually co-packed ESL eggnog for them.

And then the family decided it was time to sell. So we ended up selling the family business to HP Hood, but what Hood really wanted was our bottling plant, which was state of the art. They didn't want the brand, so we sold the Crystal brand to Foster Farms Dairy. And hence, that's the Crystal that Jacob works for.

Q. What a small world.
A. Yeah.
Q. Great.

A. So then with Hood, I really fulfill a sales role. So I have been responsible for private label sales on the West Coast, international sales, and then for about the last eight years, what we call national warehouse sales, which is really sales of our ESL products on the West Coast.
Q. And what's your current title at Hood?
A. I'm sales director.
Q. Sales director?
A. And then I kind of fulfill a dual role, which is why I'm here today. I'm in charge of industry relations in -- for California. So I sit on a number of boards: Dairy Institute, California Milk Processors Board, The Dairy Council of California, so --
Q. And are you based out of California?
A. Yes. Yeah. I live in -- I have an office at our Sacramento plant and live in Davis, California.
Q. And tell us a little bit about Hood's product offerings.
A. So Hood -- let me say this first, about Hood. Hood was founded in 1846 in Boston, Massachusetts, so New England's really the heart of its business. So in -- in the Northeast market, Hood -- Hood brand is the most well-known brand, has the largest market share, and markets a full line of Class II products and Class I products.
And distribution for those products is really DSD. There might be, like, a small amount through foodservice

warehouses, but really it's direct store delivery for our HTST products.
Q. Thank you.
And you mentioned fluid. How many fluid distributing plants does Hood have?
A. So Hood has four HTST plants and five ESL plants.
Q. And I believe you have, on page 2 of your testimony, a summary of where those plants are located; is that right?
A. That is correct.
Q. And I can see here they are located primarily in FMMO 1, but also FMMO 51; is that right?
A. Yeah. The Sacramento plant's in FMMO 51, and the rest are in FMMO 1.
Q. Okay. And what -- tell us a little bit about the types of Class I products that Hood processes.
A. Yeah. So it's really a full line of fluid milk products, so I mean -- and chocolate milk. Oh, so Class I products.
So then on the other side -- so that's HTST products.
ESL products we -- we -- you know, our big brand in ESL is -- or Class I brand, is Lactaid Lactose Free milk, so that's a brand that Hood has had the license on for many years.
Lactaid is -- the name is actually owned by McNeil Pharmaceuticals, and we're their licensee for the U.S.
Q. And so you said that -- that Hood has fluid milk

products that are HTST and fluid milk products that are ESL, correct?
A. Yes.
Q. And what's just kind of roughly the breakdown between the portion of each of those?
A. So I'm not going to put a number on it, but it is -- the ESL business is larger than the HTST business.
Q. Great. Thank you.
And I -- I -- you had shared with me the revenue for Lactaid last year just to give us a sense of the scope of that brand.
Would you be willing to share that?
A. Yeah. Well, so it was not the revenue for last year, but it was retail sales. We hit kind of a significant milestone at the end of May, which was Lactaid brand actually had done a billion dollars in retail sales, according to Circana, which is the -- what IRI is now going under. So -- and I think we were the first specialty milk brand to hit that number.
I'm going to give a little caveat. We also sell -- and a -- a plug for Lactaid -- we also sell Lactaid cottage cheese and Lactaid ice cream. So those were included in that number.
Q. And is the majority of the Lactaid sales in the milk, the cottage cheese, the ice cream?
A. I would say 90% is in milk. Yeah. Milk is really the franchise.
Q. And this innovative Lactaid product, then, has

been very successful?
A. Yes.
Q. Great. Thank you.
You said you focus on the sales side.
Can you give us just a little rough -- what does day to day look like for you in terms of selling Hood's fluid milk products?
A. So I manage a broker network, so it's really, you know, putting together programs for our retailers, making sure that -- that our pricing looks good in stores, is meeting our targets. If not, addressing it with retailers. Making sure our products are on shelves. So, yeah, that's -- that's kind of my primary focus.
Q. Great.
And does Hood do any risk management for its Class I products?
A. Hood does -- yes, does risk management. Class I -- I mean, Lactaid is where we will hedge a portion of the milk that we use for Lactaid.
Q. So you had said you have the HTST and the ESL.
So not for HTST, but, yes, Hood does hedge for some of its ESL products?
A. Yes.
Q. And you -- how does Hood manage risk for its ESL Class I products?
A. Yeah. So what we do is we buy futures for Class III and Class IV skim.
Q. And on page 4 of your testimony, Exhibit 270, at

the top you describe two ways that a Class I processor could hedge, purchasing futures contracts for the solids and the butterfat, and then these kind of custom contracts that commodity brokers can put together.
Do you see that there?
A. I do.
Q. Which of these, or both, does -- does Hood utilize to manage its risk --
A. We --
Q. -- for its --
A. We utilize --
Q. -- ESL products?
A. We utilize method one.
Q. Method one, the purchase of the solids and fat?
A. Yes. We purchase future contracts for solids, powder, or cheese -- actually, powder and cheese, and butterfat in the CME.
Q. And does Hood do any custom hedging as described under the second tab?
A. No.
Q. Why not?
A. It's more expensive to do that way. So I mean, method one is the way we have elected to do it.
Q. And did Hood do any futures hedging when the higher-of was the formula for the base Class I skim price?
A. We did not.
Q. Why not?
A. Because you wouldn't know which to hedge because

you wouldn't know what the higher-of was going to be.
Q. And do you personally manage these hedges?
A. No. I have nothing to do with hedging. I'm on the sell-side, and really that's my focus, and that's what I'm really here to talk about.
Q. So how do you know that Hood hedges its Lactaid milk?
A. Because I have talked to our team and found out that we -- we do.
Q. And you said on the -- you are on the sales side.
So tell me, how does hedging impact what you are doing on the sales side at Hood?
A. So I think the key thing to understand about ESL business -- and -- and I think I didn't mention it, those products are sold through grocery warehouses, so it's not a DSD business. It's --
Q. Sorry. What does DSD stand for?
A. DSD is what we do with HTST milk. We deliver it directly to the stores.
Q. And so it's direct store --
A. Delivery --
Q. -- delivery?
A. -- yes. That's primarily how -- that's the channel we use for HTST milk. For ESL products, they are con- -- what we'll call consumer products, so it's a very different mindset. Those are distributed through -- primarily through grocery warehouses.
Q. And just a quick reminder, make sure to let me

finish my question so we can keep the court record clear.
A. And I'll go slow.
Q. Thank you.
So you said ESL is a somewhat different sales avenue because it's not a direct store delivery, it goes through a warehouse.
Is there anything else that's different about how you sell or price the ESL products from the HTST?
A. Yeah. So with HTST, I know there's been testimony on this, it's -- it's really a passthrough business. So there's kind of a -- it's kind of universally accepted that with, like, two weeks' notice of a price change due to the markets moving monthly, those prices can be implemented by your customers.
With ESL products, consumer products going through a warehouse, you need to give much more notice of a price change. So with -- I think currently 60 to 90 days' notice of we're going to change your prices is required.
Q. Okay. And when you say --
A. Depending on the customer.
Q. Depending on the customer.
And do you utilize more stable or set pricing for your ESL products?
A. So with the ESL products, we utilize set pricing. So ideally with a consumer product, what you will do is you will come up with an annual plan of, you know, what you expect your price to be. You'll develop your marketing plan.

So for -- for Lactaid we do a lot of advertising. We have an annual promotion plan, and we kind of have the target retails where we want to be. I mean, retailers set the prices, but we have a general idea of where we want those prices to be and where we want to be on promotion, which is a big part of the consumer product.

Q. And so after you do all of the internal business work to develop your annual plan, your targets, you know, where your inputs fall in that, your marketing strategy, then you relay or put out an offer to retailers for a --

A. You --

Q. -- set price?

A. -- I mean -- so -- so -- I mean, that's really the time to figure out if -- if you need to take an increase, it's in advance of that -- that plan. We have had times where we have gone a couple of years without an increase.

So -- and -- and I didn't say it earlier, we also have a couple of plant-based brands that we market, and we take a similar approach with them. So that's pretty much standard for the ESL market, that the way ESL, both dairy and non-dairy products, are marketed.

Q. And for those ESL products, you said that in order to raise the prices from the set price that -- that was agreed upon, you need to have 60 to 90 days' notice, or thereabouts, of the retailers?

A. Of a price change, right. And some retailers also require you to provide a justification form for the change. So all retailers kind of treat things

differently, but --
Q. And this 60 to 90 days, has that historically been the amount of notice that you would have to give for a --
A. You --
Q. -- price change?
A. You know, it seems to me --
THE COURT: I'm just going to ask you, Mr. Newell, you have the perfect conversational style, but to make sure the court reporter has finished her question before she starts typing your answer, you actually need to count, one, two, three, and then answer.
THE WITNESS: Thank you.
THE COURT: You're welcome.
Would you ask again?
MS. VULIN: Sure.
BY MS. VULIN:
Q. This 60 to 90 days' notice that you have to give retailers for a price increase on your ESL products, has that historically been the window that you would have to give that notice or has that changed over time?
A. It seems to me that it's actually become longer. I think when -- when I first got involved on the license brand side of the business in 2013, it was -- it was more of a 30-day notice. So it's -- it's gotten longer.
Q. And these price increases, are they always one-to-one in the ESL market? So, for example, if you have a $0.15 price increase, do you typically see that the retailer matches that and passes along a 15% [sic]

increase to consumers, or do you see something different?
A. Yeah, no. So varies by retailer. But most of them have, you know, specific price points that they like. So they like 3.99, or 4.49, you know, maybe some of it with 4.29, but there -- I think there's certain price points that -- that they go to automatically.
So you may -- you may have a $0.20 change, but you may go up $0.50 in the stores. So that's a reason why you don't want to have frequent price changes, because it can significantly impact your retail.
Q. And how does Hood's ability to hedge help it manage or reduce these price changes to retailers and ultimately consumers?
A. So, obviously the fewer changes you need, the fewer the -- you know, the less the opportunity to see your prices creep up.
Q. And does hedging allow you to make fewer price increases?
A. Yes, it does.
Q. And so Hood has seen a tangible benefit from its ability now that it can hedge its ESL products?
A. Yes.
Q. And we have heard talk about price volatility.
How does price volatility impact Hood's ability to market its ESL products according to its plans?
A. So I mean, historically we have -- for the reasons I have talked about, we have not had a lot of changes. I think hedging gives us one more tool to manage that.

Plant-based products, typically you are contracting for your primary ingredient for a longer period of time, so it's not a month-to-month volatility. It might be an annual contract. So having the ability to hedge our dairy-based products kind of puts us on an even playing field with plant-based, whether it's our own or -- or a competitor's.

Q. Okay. So given that you see plant-based products as a key competitor now of dairy milk, having the ability to hedge allows dairy milk to gain some more competitive foothold against plant-based products?

A. Well, I think, let's call it ESL specialty dairy. Yes.

Q. But that would be true for ESL specialty products?

A. Yes, that would be true.

Q. And how does having more price stability impact Hood's ability to compete in the international market?

And I will say, I ask this question because you mention a specific example in your testimony that you had of an experience in how price volatility impacted Hood's ability to maintain a specific contract.

Can you tell us about that?

A. Yeah. This was an old example from when, but it got me thinking about the importance of hedging.

So we had a customer in Asia who came to us and said, I have -- you know, I have got a couple of major coffee chains that I can serve, and you know, would like you to supply it.

So we started supplying them with milk, with the understanding that we move with the market, so we're going to move monthly. I think he saw milk from the U.S., at that time, priced very favorably. So we -- we were very transparent that we're going to move.

He went out and signed, I think, annual contracts with his coffee chains. And about four or five months into our relationship -- this was 2013, 2014 -- we saw the powder markets really start to move upwards. And, you know, in the end, I think he had to get an emergency price increase with those customers, and then the market continued to move up, and we ceased to do business. He was under distress.

I think if we had had the ability to hedge and had, you know, worked out a plan with him, that business could be retained today.

Q. So -- and this price volatility made it more difficult for Hood to compete in the international market?

A. Yeah. Well, I just think, you know, that's our example.

But broader picture for U.S. dairy, I think having the ability to hedge Class I will allow you to compete better in the international market.

Q. And we have talked a lot about Hood's hedging of its ESL products.

And you said Hood does not hedge its HTST yet, correct?

A. Correct. That's correct.

Q. Would Hood ever want to or is there any circumstance in which you could see value in Hood's ability to hedge its HTST product?
A. Yeah. So I could see value definitely on the foodservice side where you have got customers, coffee chains, for example, that have fixed menu prices and would want to lock in a price over a given period of time. So I think -- I think that has a lot of value.
I think on the grocery side of the business, as I side earlier, we have a, you know, pretty established system of moving price changes through. So, you know, today being in this business for 40 years, my mind's a little slow getting away from the -- you know, the way it's always been done. So I can't envision that, but I think it could be a possibility.
Q. It would take some more time and education, though?
A. Yeah. And I know Jacob talked about a ten-year timeframe. So, yeah, I -- and -- and definitely willing partner. Yeah.
Q. And you said that Hood did not hedge under the higher-of formula but -- but does hedge now under the average-of, correct?
A. Yes.
Q. And do you know how long did it take Hood to begin hedging once the formula changed? Do you have any rough estimate there?
A. I really -- I don't. You know, maybe -- maybe a

year. I guess I said I don't, and I gave you a rough estimate.
Q. So about -- you are now. So less than four years?
A. Yeah.
Q. Okay. And you think that with additional time there might be some movement there also on the HTST side?
A. Who -- it's a possibility. And as I said, foodservice seems to be more -- more of an opportunity.
Q. Uh-huh.
And any final thoughts that you want to share on price stability or how the importance of hedging plays a role in Hood's business?
A. So I guess I wanted to thank the USDA for the opportunity to testify before you, and to consider, I want to restate, we think hedging is important. We support MIG's Proposal 15. We think it will also help create some more price stability for both processors and farmers and offer roughly the same price as -- as Sally talked about yesterday. So -- and then if -- if the USDA feels that Proposal 14 is -- offers more benefits, I just wanted to state that we are in favor of that as well.
Q. Thank you very much for your time.
MS. VULIN: Nothing further, your Honor.
THE COURT: Mr. Newell, I'm now going to invite questions from anyone who might like to ask you about your testimony.
Who would like to go first?
///

CROSS-EXAMINATION

BY DR. CRYAN:

Q. Good morning, Mr. Newell.

A. Good morning. How are you?

Q. Very well.

I'm Roger Cryan with the American Farm Bureau Federation. We met a couple days ago.

A. Yeah.

Q. Thanks for coming out to testify.

Would you like to see a Class I futures contract?

A. I think that could be very interesting, yeah.

Q. Would that help -- would that help you regardless of what Class I formulas came out of this proceeding?

A. I'm not an expert in -- in futures or hedging, as I have said. So I mean, I think it's something we would like to look at.

Q. Do you oppose the elimination of Class I advanced pricing?

A. No. No.

Q. You don't? Okay.

A. I think on the HTST side it's very well accepted, so -- Class I advanced pricing, so we know what the price is.

Q. You support advanced pricing.

A. Yes. Yes.

Q. Okay. I asked if you opposed elimination.

A. And I said I do not oppose the elimination, right? So that means I support advanced pricing.

Q. That means you would support the elimination?
A. Okay. No. Thank you. Thank you for -- yes. We support advanced pricing. We do not support the elimination of advanced pricing.
THE COURT: Start again, because I don't know why ESL is different from the other, and I totally missed the subtlety of your question, so --
BY DR. CRYAN:
Q. Do you oppose the Farm Bureau proposal to eliminate advanced pricing of the Class I?
A. Yes, we do oppose it.
Q. Why?
A. Because the advanced pricing is very well accepted on the HTST side of the business, which makes that market function very orderly, because you and all your competitors are kind of moving in conjunction.
Q. In effect, the industry is used to it?
A. Yes.
THE COURT: And then because he talked about ESL, I'd like to go back to that part of his testimony just so I know what he said.
DR. CRYAN: Please ask him whatever question -- that was my question with regard to Class I, but if you have a question for him, please.
THE COURT: All right.
You were talking about how advanced pricing is accepted in certain products, and then you went on to describe how it might be different with your ESL products.

THE WITNESS: Well, I mean, with ESL under the current situation and under the MIG proposals, it's -- it's just fine hand-in-hand with HTST.

THE COURT: Hand-in-hand?

THE WITNESS: Yeah.

THE COURT: Meaning?

THE WITNESS: Meaning they both work.

THE COURT: All right. Thank you.

BY DR. CRYAN:

Q. Do you oppose the proposal to eliminate advanced pricing for Class II skim milk?

A. We do. We do.

Q. Why?

A. And this is -- I'm -- this one I haven't given a lot of thought of, but, I mean, we -- we like to know what our costs are before we change prices. It's good to have certainty.

Q. Okay. Okay. That's it.

DR. CRYAN: Thank you very much.

THE COURT: Thank you, Dr. Cryan.

Mr. Miltner?

CROSS-EXAMINATION

BY MR. MILTNER:

Q. Good morning, Mr. Newell.

A. Good morning.

Q. My name is Ryan Miltner. I represent Select Milk Producers.

In your testimony on page 3 you -- you shared the

Class I utilization rate for Hood.
And am I correct that that is for Hood as an entire organization?
A. That is for our nine fluid plants. So that does not include -- and I didn't discuss it in my testimony. We have three culture plants and one ice cream plant. So that is not included in that number.
Q. Thank you.
Has that utilization rate been pretty consistent over time in that 80, 87% range?
A. So I just asked for the utilization rate for 2022 when I put my testimony together. Seems to me our business is fairly stable, so I think that's probably a fairly good -- good number.
Q. Great. Thank you.
Now, you mentioned, I think, when Ms. Vulin was questioning you, that your HTST business is mostly passthrough on pricing?
A. Yes.
Q. Can you just elaborate on that a little more on what you mean by "passthrough"?
A. Passthrough?
Q. Yes.
A. So I mean, we -- we find out what our milk cost is going up, and we -- we increase by that amount to our customers.
Q. And then the ESL business is not priced the same way?

A. The ESL business we have, we offer more of a fixed price over an extended period of time. So we -- we absorb a lot of changes. If we -- with hedging, we -- there's, you know, less upside risk, so that we even have more surety being able to kind of maintain our price.

Q. So for how long has Hood operated an ESL business?

A. So I don't know when we -- Hood first got into the ESL business. The -- in the late '90s we opened our Winchester plant, and prior to that I know we had a plant in Oneida. So I mean, we have been in the ESL business for probably 40 years, I'm guessing, 30 -- 30 years.

Q. And then are your -- your other ESL plants are newer than the ones you just referenced?

A. Yes. Well, so -- so Sacramento, older plant, but Hood repurposed it into an ESL-only facility. So when they bought it from Crystal, we had one ESL line. Now it's all ESL, and the fresh milk business has all sold off.

Our plant in Batavia, New York, was originally a Mueller Pepsi plant, and I think that their business didn't fly, so DFA bought it. And then we bought it from DFA and invested a lot of money into that plant. Yeah.

Q. Were those acquisitions before 2019?

A. Those acquisitions were before 2019, certainly. I mean, we made investments since then in plant capabilities.

Q. Now, before 2019, was Hood pricing its ESL products on a passthrough basis or on more of a flat price

basis?
A. No. It was -- it was a more of a flat -- flat price basis.
Q. You also testified that a portion of your Lactaid business is hedged?
A. Yes.
Q. Is it a majority of it that is hedged?
A. I can't speak to that, so I -- I don't work on that side of the business, so I'm really here to talk about the market side of the business.
Q. Okay. You also testified that of the two -- the two hedging opportunities or methods, that Hood used the first method exclusively purchasing futures contracts for commodities; is that correct?
A. Yes.
Q. And I did not hear, does -- does Hood purchase butterfat or butter contracts to hedge there?
A. What I was told was yes.
Q. Okay. Did they also inform you as to whether they purchased powder for those hedges?
A. Yeah, they -- yes. Yes.
Q. Okay. So butterfat -- or butter and powder and --
A. And class -- well, powder -- Class III and IV solids contracts.
Q. Okay. And is -- is that exclusively for that portion of your Lactaid business?
A. That's the business that we're looking to hedge.
Q. Does Hood use an outside consultant to help with

its hedging or is it all handled in-house?
A. We -- we buy a lot of information. I can't say that we -- so -- we -- yeah. We -- we contract with a number of consultants, I will say.
Q. There was testimony earlier in the hearing from a risk management consultant who offered her opinion that a program could be developed to effectively hedge milk costs using the higher-of.
Does Hood have an opinion on whether that is feasible?
A. I think our opinion is, you know, it -- it would be very expensive to do because you would need to hedge, you know, not a 50/50 hedge, but 100% hedge, and with the uncertainty, it wouldn't be worthwhile.
Q. Now, on page -- the top of page 5 of your statement you state, "I suspect that other processors are interested in hedging, even if they have not begun doing so yet."
I don't mean for this to sound flippant, but is that based on anything other than your suspicion?
A. Well, it could be based on, I think -- I think lots of conversations around hedging leading up to this hearing. I think we have all come to realize it's a valuable tool that really needs more -- more consideration, so -- yes. So that I think that that was the basis for that -- that comment.
Q. Thanks.
You also, in your statement on that same page, you

are describing this customer who was supplying a foreign coffee manufacturer or coffee distributor. I'm curious if you know when the relationship between that customer and Hood ended, if they replaced the milk supply with foreign milk or --
A. Yeah. So I -- I -- I think he was going to start buying milk from Australia. I don't know if that actually happened or if he went out of business or -- or what. But, yeah. It was -- it was a sad end to something that started out with a lot of promise.
Q. Sure.
Do you -- do you -- do you know, because I personally don't, what the pricing of fluid milk under the Australian system or others, how that compares with ours?
A. I do not. I do not. I -- I know that when he -- when came to us, he said he could get fixed prices elsewhere. And we told him, well, that's not how we do business. So he took that risk.
Q. Now, Proposal 15 that MIG has offered, it would be subject to periodic adjustments of the add-on to the average.
Is that your understanding as well?
A. Yes. Yes.
Q. Now, in 2007, there was another hearing, a lot like this, and Hood testified at that hearing.
And Mr. Latta then said that "Hood was opposed to the suggestion that any formula or portion of be subject to automatic adjustment or periodic updates."

I -- I assume that Hood's position has changed since then?

A. Yes. I don't -- I don't even know Mr. Latta, so this is our position now.

Q. Okay. Hood's position then was also that any adjustments or updating must be subject to the hearing process. And I -- I don't believe that MIG's proposal would call for a hearing for those adjustments.

Is Hood's position today different than it was in 2007 there as well?

A. I think that -- yeah. So we're -- we're endorsing maybe a more dynamic type of system.

Q. Now, Mr. Latta, when he was asked to explain why Hood's position was such, he testified -- and this is for the purpose of our record, on page 2,422 of that transcript -- he says, "What I'm trying to explain is we have major customers' accounts, institutional and at retail, who would like to do things like using the futures markets to hedge and things like that."

So, in 2007, your customers were asking you about hedging. Do you have any information you can help us with about how your customers were able to hedge before, say, 2019 and now?

A. I -- I do not.

Q. Because one of the things that a number of processors have said is that there really wasn't an effective way for -- for Class I participants to hedge until they got rid of the higher-of, and Mr. Latta seemed to indicate that was an interest about 12 years prior to that.

A. I think it was an interest, he didn't say it was being done.

Q. Okay. That's fair. I think that's all of my questions.

MR. MILTNER: Thank you.

THE WITNESS: Thank you.

CROSS-EXAMINATION

BY MS. HANCOCK:

Q. Good morning, Mr. Newell. Sometimes I forget if we have been at lunch already or not been at lunch.

A. I have only been here two days, and I can understand.

Q. I just want to maybe take you back a little bit and see if you can tell me about the evolution of Lactaid after it was -- after it was initially a concept and very innovative at the time.

A. Yes. So Lactaid was originally a pill, and still is a pill. And it would allow you to digest dairy, so -- my understanding is in the '70s they came up with the idea of, well, why don't we just take the lactose out of the milk. And so they developed an enzyme that splits the sugars into two simple sugars in a carton of milk. And that was -- that was the start of it.

Originally they had it licensed to -- in exclusive areas around the country. Hood was one of those licensees. And then eventually, because of mergers and

whatnot, Hood became the national licensee for Lactaid.
Q. And -- and then when did it become a product that was put into gallons or cartons and sold into the retail markets?
A. Oh, in the '70s it started being sold in cartons.
Q. And has it been on a continuous climb since the 1970s?
A. So I am going to say that, I mean, yes, it's been a growth area. I think it's really kind of picked up steam over the last 20 years, maybe, you know. I think consumers are always looking for something different. With Lactaid, they find a product that really works for them if they have a dairy sensitivity.
Q. Okay.
A. So it's a product they have a lot of trust in.
Q. And so when you say it's really picked up over the last 20 years or so, has that been at a time that correlates to kind of when consumers are becoming more aware of allergens and dietary reactions to the foods that they consume?
A. I would agree, yes.
Q. And -- and also at a time when consumers' buying power has increased significantly; is that fair?
A. Buying power in terms of their ability to -- I guess, you tell me what kind of buying power means.
Q. What I mean is consumers in the last 20 years have had more financial ability to pay premium pricing for things like Lactaid or other consumer goods that match up

with whatever kind of dietary issues that they --
A. I mean, I think in the grocery industry, yes, we have seen that trend certainly.
Q. And those are drivers that have helped benefit the sales and success of Lactaid?
A. I would say that hasn't -- definitely hasn't hurt. I think we have also spent -- we have done a lot of advertising, too, to, you know, promote the advantages of the Lactaid brand.
Q. And that advertising has resulted in a success in the growth of the product as well?
A. Yes. Yes.
Q. And you said over the last 20 years is when it really took off.
In the last 20 years, has that been on kind of a straight line trajectory of success or have there been any standout periods of time where it has really grown?
A. I mean, I think it's been pretty steady. And it it's -- it's -- we have -- we have, you know, had a few years where maybe we didn't, where we saw, you know, very small growth but -- or flatness. But, I mean, it's -- it's been pretty steady.
Q. And throughout that -- that 20 years, have you sold the product to your customers and into the retail outlets in the same manner that you describe today, through those contracts with your retailers?
A. Well, with kind of that annual plan mentality, yes.

Q. Okay. And you give your customers -- over the last 20 years, it's been consistent that you give them that annual contract --

A. Well, it's not -- I don't want to say it's a contract. We -- it's our own plan that we developed. And part of that we have promotions, you know, throughout the year with our retailers to incent consumers to try the product line.

Q. Okay. And so you don't fix your price over the -- over the year with your retail outlets --

A. We don't -- we don't, no. We don't have a fixed price contract with the retailers. No.

Q. And I think in --

A. We have a price list that we try to keep consistent.

Q. And if, for some reason, your input costs go up, that gives you the flexibility to try and pass those costs on to your customers?

A. Yeah. Like I said, we really try to avoid that because it's very disruptive to our promotion plan.

Q. Yeah.

A. But, yes. But, yes, we certainly can take a price increase if we have to.

Q. Okay. And I think you described earlier that oftentimes that will require, from your retailers, some explanation and verification that there's really something behind it driving that price increase?

A. Yes -- some retailers require a justification.

And, you know, milk cost is a big input cost. But certainly as we all know, as businesspeople, there's a lot of other input costs, too, that impact your cost of -- your product cost.

Q. And if your retail -- or I'm sorry -- if your cost of milk is increasing, and that's what's driving the increase in retail costs, oftentimes that'll mean your competitor's cost of milk is increasing as well?

A. Yes, that's true. But, I mean, if we're competing with other products, plant-based products or whatnot, then it's -- they've got more steady input costs.

Q. And throughout your career at Hood, you have always been in the sales side of the business?

A. At Hood, yes.

Q. And you have not -- I think you said that you don't -- you don't do the risk management yourself?

A. I don't. Yes. Not risk management, not milk procurement. Yeah. No, I'm strictly -- strictly sales. And, you know, I'm responsible for the industry relations in California.

Q. And to the extent that you have testified today about risk management, that was just asking one-off questions about specific elements of risk management --

A. Yeah. I spoke to our team. I spoke to our pricing team. I spoke to our -- our production accounting people. So together, the information that I included in the testimony.

Q. Okay. And I'm sorry if I'm going to cover something you already have, but I just want to make sure I'm clear on this.

Today, to the extent that you are utilizing risk management tools, it has -- it requires that you purchase Class III contracts, Class IV contracts, butter contracts, and --

A. Yes.

Q. -- other products that you might need to make sure that --

A. Well, not -- not other products. I think those are the three that I referred to in my testimony.

Q. And do you use any kind of swaps or OTC products?

A. Not that I'm aware of.

Q. Okay. Did you ask that question?

A. I did not ask that question.

Q. So --

A. But -- but that was not offered up. It was futures that was discussed, so...

Q. Okay. And futures meaning to -- to -- the ones that we just discussed?

A. Yes.

Q. And -- but you didn't ask specifically if there was swaps or OTC products that had been used by Hood, either currently or previously?

A. No.

Q. And do you know what Hood -- whether Hood used any kind of swaps or OTC products prior to 2019?

A. I was told we did not hedge Class I prior to 2019.

Q. But similar to not asking about swaps and OTC, you didn't ask about those for prior either?
A. I did not. But I was told -- yeah. So -- but I was told we did not hedge Class I prior to 2019. So I think that kind of covers the swaps or OTC, because I think that would fall under hedging.
Q. What percentage of your ESL is hedged every year?
A. I don't know that information.
Q. Do you know if it's more than half?
A. I don't know that.
Q. Do you know if it's 5%?
A. I don't know.
Q. Okay. And I --
A. Yeah, I'm -- I'm -- so -- right? So I do not work on that side of the business.
Q. And I'm just trying to whittle you down to just make sure we that have all of our bases covered.
You don't know if it is 1% or something above that?
A. I don't know.
Q. Okay. And do you know how much of the success of Hood's business has been attributed to its ability to hedge its milk products?
A. I think it's -- it's important for us, as far as maintaining consistent pricing. I can't -- yeah. I -- I can't put a percentage on that. I mean, our company does a lot of -- a lot of things right.
Q. Okay.

A. Yeah. I mean, and we have made a lot of investments in ESL capacity and building our brands, and so I think it all factors in.
Q. Okay. So it's fair to say that it is a useful tool to Hood, but you cannot quantify in a financial way if it has offered a financial benefit to Hood?
A. I cannot.
Q. Okay. And you don't know if it's driven sales volumes for any of Hood's products then, either?
A. No.
Q. No, you don't know?
A. No, I do not know if it's driven sales. Well, I think it contributes to flat pricing, but I can't -- I can't put a number on that.
Q. And you don't know if your customers, if they were not given flat pricing, whether they would change their buying habits, do you?
A. Well, I think if -- so if -- as I testified, they require 60 days' notice, 90 days' notice. So it would be -- if we were to change prices, as we do with HTST, it would not be possible.
Q. And you don't hedge that product anyway, right?
A. Right. Right.
Q. And do you know what the costs are that are related to the hedging that Hood does?
A. I do not.
Q. Whatever those costs are, that's built into your profit margins?

A. That -- it would be part of our cost of doing business, yes.
Q. Okay. Deducted out, it would essentially reduce the margins?
A. Yes.
Q. On page 4 of your testimony in Exhibit 270, at the very top of the page, you provide a definition of hedging there, or an answer to a question you pose in your testimony about what is hedging.
A. Uh-huh.
Q. And then you say, "Hedging is the use of a risk management tool to achieve a predictable price and reduce the upside price risk."
Do you see that?
A. Yes.
Q. Is there a -- does Hood profit if -- with a downside price movement?
A. So if prices go down and we're flat priced, certainly our margin gets better. If prices move up, our margin is reduced, yes. So...
Q. Do you have any mechanisms in order to make sure that you can reap the benefits of the downward but not moving upward? Is that the hedging tools that you use?
A. Hedging you are -- you're -- really with hedging, you -- you're giving up some of that downside risk to make sure you're, you know, having a steady price.
Q. Okay. And that's what Hood does now with its current hedging practices?

A. With a -- yes. With a portion of the milk that it buys.
Q. And if I go down to your third purpose of hedging that you have there, you say, "The key thing to understand about hedging is that it's not about making a higher return."
Do you see that?
A. Yes.
Q. Are you talking about a higher return to Hood in that instance? That this isn't a way that Hood is trying to drive a higher return?
A. It's -- it's -- right. It's not -- it's not about -- it's not about trying to beat the market. It's trying -- it's about trying to lock in a cost.
Q. Okay. And --
A. So I -- and I -- I heard a dairy farmer testify early on about using hedging and saying, but it was costing more than it was saving me, so I stopped.
I mean, there's always a -- kind of a buyer's remorse thing when you -- when you look to -- to hedge -- you know, an energy hedge or something else, when the market doesn't move up, it moves down, and you end up leaving money on the table. So that's kind of what I was -- was referring to here.
Q. Kind of like when you buy an insurance policy, if you never have to use it, it's just some money --
A. We all feel that way sometimes, but when we need it, we're really glad we have it. Yes.

Q. And so I'm just curious, though, do you think that the purpose of the Federal Order system is -- is to make sure that -- that Hood and others like Hood have the ability to insulate its risks by using a hedging program?
A. I think that if that helps us grow the market, I think that's a positive for -- for dairy farmers and processors alike. So I -- I think that that's one of the goals. And so I would say that that's important.
Q. And you haven't presented any evidence of your hedging practices actually growing your market, have you?
A. Have not. No.
Q. Okay. And you wouldn't suggest that having a system in place to allow manufacturers the ability to hedge to insulate those manufacturers from price risks should come at the expense of dairy farmers and the milk prices that they receive for that milk?
A. I'm -- no, I'm not suggesting that.
Q. Okay. That's all I have.
MS. HANCOCK: Thank you so much for your time.
THE WITNESS: Thank you.
THE COURT: Thank you, Ms. Hancock.
Who will go next?
CROSS-EXAMINATION
BY DR. BOZIC:
Q. Marin Bozic for Edge Dairy Farmer Cooperative.
Mike, good morning.
A. Good morning.
Q. Relating hedging and ability to hedge to sales,

would it be fair to say that if you lose the ability to hedge, it would have a harder time justifying any future investments in ESL capacity?

A. I think it helps make -- yes. I think it helps make investments in -- in ESL capacity.

Q. And with more investments means more product, means more sales, right?

A. I think it also -- you know, not for Hood, but for the industry in general, I know there's a lot of interest in ESL manufacturing. So I think that's kind of key to innovation.

Q. I asked a few other witnesses over the last few days, we seem to have a trend of fewer and fewer HTST plants and a larger number of ESL plants.

Does that correspond to how you see the industry as well?

A. I don't see a lot of new HTST plants being built. I do see new ESL plants being built. So I guess I would concur.

Q. Okay. What is driving that?

A. I -- I -- I mean, I think part of it is HTST plants, you have got mergers and consolidations, so you need a bigger plant to get more efficient, so I think that's why you are seeing fewer plants. HTST milk has been on the decline; ESL has been a growth path. So that's certainly driving it.

Q. And why has ESL been on the growth path while HTST has been on decline? What explains their relative

performance?
A. I think you see -- you see consumers looking for more -- more value-added. We have seen the market segment, over the last 20 years, a lot of organic milk is sold as ESL, not as HTST, so I think there's just more offerings. And a lot of that product is distributed through grocery warehouses, which are more efficient to distribute that way.
Q. So then, in general, would it be fair to say that if we want to reinvigorate Class I, we should consider what we can do to make business easier for processors that wish to pursue ESL?
A. I think that's a fair discussion for sure. Yeah.
DR. BOZIC: Thank you very much, Mike.
THE COURT: Thank you, Dr. Bozic.
Oh, you think the lad needs a bit of water? Good.
Are there any other questions before I ask Agricultural Marketing Service?
Seeing none, Agricultural Marketing Service, you may question.

CROSS-EXAMINATION

BY MS. TAYLOR:
Q. Good morning.
A. Good morning.
Q. Thanks for coming to testify today.
A. Thank you.
Q. So my first question is for Hood: How many employees in total does Hood have?

A. So we have, I think, a little over 3,000 employees.
Q. Okay. And that includes your other two plants you said you had that -- your non-fluid plants?
A. Oh, yes. Yeah. No, that's total -- total companywide.
Q. Okay. You mention that out of -- that your ESL production was more than HTST production?
A. Yes. Class I, yes.
Q. Yes.
Besides Lactaid, what other ESL products --
A. We do some export milk. We do half and half. We do some foodservice ESL product.
Q. But Lactaid is a majority of your ESL?
A. Lactaid would be the majority of our Class I ESL.
Q. I want to turn to page 4 of your testimony, and your fourth point you were trying to make is that it's possible -- discussing it's possible for producers and processors to hedge.
And your testimony has been about Class I hedging specifically. So --
A. Yes.
Q. -- I'm wondering if you could describe if -- and if so, how -- does Class I hedging benefit producers?
A. So I would say it -- it benefits producers in that it helps us grow our market and sell more Class I milk over time. So I think that's a benefit to producers.
Q. So I did want to ask you about that as well, since

you are a salesperson as you describe yourself.
Is -- since Hood has begun using some hedging on ESL, what have you seen happening with your sales of those Class I products?
A. So, I mean, Lactaid's business is up. It's grown. I can't really speak to our HTST products that we're not hedging.
Q. I'm curious about what you are hedging.
A. Yeah. Yeah. So that's -- that's it. Yes. So -- but Lactaid's up since we have. I would not point to hedging being the driver of that, but in that it helps us execute our plan, I guess it's certainly a contributing factor.
Q. So what would you think is driving your increase? If it's not hedging, your ability to hedge your increased sales --
A. Yeah, well, I mean, it's --
(Court Reporter clarification.)
BY MS. TAYLOR:
Q. If hedging is not what you think is driving the increase in your Lactaid sales, what would you attribute it to?
A. I think it's the popularity of the brand. It's the marketing we put behind it. It's our production capabilities I think also -- also help. I mean, I think a lot of things go into the success of the brand.
Q. And there's been discussion -- and I think you touched on it in your testimony, too -- how, you know, it

takes time for people to learn how to use these hedging tools, and so it's only been five years.
So have you -- has Hood steadily increased your use of those tools since the change in 2019?
A. I mean, I think we've started to use them. I think, you know, honestly probably just scratching the surface of what's possible.
And I mentioned the foodservice opportunity. I talked to our director of foodservice about the ability to hedge Class I, and he said, well, I didn't know we could -- we could do that.
So I think that -- I think -- and Sally touched on this yesterday -- COVID kind of reeked havoc and made us focus on certain things. Now we have the supply chain issues that followed that. And so we have had a number of things going on. We're starting to get back to business as usual.
I think this whole process certainly helps us become more focused on the opportunity we have.
Q. It's like you're reading my mind.
Because my next question was: You have a statement at the bottom of page 4 talking just about that, the pandemic that happened, etcetera, that slowed the adoption of risk management by the change, so I was just asking you to expand on that.
And I guess I'm curious then, does that mean even Hood maybe didn't quite utilize it as much during that time?

A. Yeah. I don't -- I don't think we realized the opportunity we have.
Q. On page 5, in the middle, before your listed number 1 and number 2, your sentence says -- and you are talking about going back to the higher-of: "Such a change would hurt Class I processors, it would hurt customers, and it would hurt consumers."
And I just wanted you to expand on how such a change, in your opinion, would hurt each of those three sectors.
A. Yeah. So I think just the added price volatility involved in that and losing the ability to hedge would certainly -- I mean, it would impact us. It would -- it would hurt our customers because they would see more price swings and consumers would -- would end up paying more for products.
Q. Do you see your Lactaid milk as more price elastic then than HTST milk if, you know, an increase in price would impact its sales?
A. Interesting question. I -- I think that being a higher-priced product, I think that, you know, there is a threshold up there that we could get to that could, yeah, make it more elastic.
Q. But you haven't reached that point yet? I ask -- I'll give you a little context.
A. Yes.
Q. We have had -- I'm sure you have not tuned in for five and a half weeks to listen to this hearing.

So we have had testimony in previous weeks about, you know, price might not be driving changing consumer habits when it comes to milk products. There's other things that impact those decisions.

And so when we're talking about, particularly, you know, your ESL price, and you are talking about providing pricing -- more price -- stable prices for those products.

A. Yes.

Q. And so that's why I ask that question is, do you think it would hurt your sales?

A. Yeah. I -- I mean, it -- we have a lot of loyalty, so I think, you know, that certainly argues that maybe it's -- it's inelastic.

But I think there comes a point where people look for private label alternatives or look to plant-base or look to something else. So, I mean, there's a risk there.

Q. So there is a -- at some point there is a limit?

A. Yes. Absolutely. I think with -- with fluid milk, I mean, just HTST milk, you see prices move monthly, so consumers are used to seeing some volatility there. But I think that, you know, when you have a big swing upward, it definitely impacts volume.

Q. Okay. And then your next sentence talks about the change would mean Class I processors cannot effectively utilize one of the two options. And I just wanted you to expand on the phrase "effectively utilize."

In your opinion, what does that mean? What would be impacted?

A. Yeah, I think it means that it's -- it would -- it's expensive. So it's -- it's -- maybe effectively utilized. I think it's just -- it's too -- too -- it's too -- too -- it's too expensive to have to hedge under that -- under the higher-of scenario.
Q. And when you say "expensive," I just want to make sure the record's clear, that's --
A. Because you are uncertain about what -- you know, what contract to buy, so --
Q. So there's risk that you'd buy the wrong one?
A. Yes.
Q. Okay. On the next page you mention, "Retailers will often" -- "often will margin up."
Can you provide a definition for that?
A. It -- it -- that would be that they take a price increase beyond the price increase that you have given them, and probably beyond maintaining their margin. So if you, you know, have a $0.20 increase and the price goes up $0.50 at retail, that would be margining up.
Q. So maybe they don't abide by the math rules of how to round and they --
A. They --
Q. -- always round up?
A. They -- they set the price, and they look to price points.
Q. Yeah.
Since you have started hedging your ESL products, can you talk a little bit on -- and I don't want any --

I'm not asking for any confidential information -- but big picture, how have your prices to your customers -- you know, how has that changed since you have had the ability to hedge?
A. I think our prices have been -- been stable. Aside from 2022, we have had to take increases, but everything was going up. So we had all sorts of materials, inputs, energy. So, yeah, it was unavoidable.
Q. And there --
A. And -- and -- and across the board, kind of on all -- all products.
Q. And so were you able to provide more stability since hedging, or is it just they -- both time periods have been stable, but hedging gave you an extra benefit?
A. I think definitely gives us an extra benefit, yeah.
Q. So has your pricing strategy changed since you have begun hedging?
A. No, it has not -- it has not changed. I mean, we have never wanted to have a lot of volatility in -- in our ESL product prices because it's really -- stable prices are important to the plan.
Q. Okay. And I just want to kind of circle the loop then.
When you are talking about providing more stable prices, hedging allows you to do that. And is -- I think what -- if I want to draw the circle on the margin up, that's because then you are not passing more volatile

increases on to your customers --
A. Right. You're --
Q. -- where you're more likely --
A. You're --
Q. -- to margin up?
A. Yes.
THE COURT: I wonder if we got that whole question in clearly before the "yes"?
THE WITNESS: Sorry.
THE COURT: Not clearly. So I'm sorry, that was a really good, long sentence. Can you do it again?
MS. TAYLOR: Sure.
BY MS. TAYLOR:
Q. Generally, I think what I was trying to ask was -- if I remember correctly -- was that the hedging has enabled you to provide more stable prices to your customers so that they are not inclined to margin up more often?
A. That is correct.
Q. And I hope I made that even a little shorter now that I had an extra minute to think about it. Thank you.
And that gets to your point down below on the next paragraph at the end, that the Proposal 15 would provide a more stable pricing system.
And that's kind of what you are talking about there?
A. That, and I think we also talked yesterday, Sally talked about the -- how with the MIG proposal, you would

see a little less volatility in the price mover.
Q. Okay.
A. So I was referring to both of those things.
Q. So we have had a few -- a number of entities talk about -- Class I processors talk about their use of hedging, and some are using it, some aren't, some are in its infancy. And, you know, the Secretary's being asked to seek a change in the mover to -- from some parties, to assist in that hedging activity.
Hedging's not part of the authorizing legislation for Federal Orders, and I won't regurgitate all of that to you, but those words aren't in there.
A. Yeah.
Q. And so a big picture question is, you know, how much -- you know, in your opinion, how much should the Secretary view hedging as -- or what percentage of hedging should be done in the market for the Secretary to see it as important to the industry?
Because it's, you know, what seems to be talked about here is it's available, but it's not very well used right now. So at what point --
A. Right.
Q. -- is it kind of --
A. Well, yeah --
Q. -- reach that threshold?
A. Yeah, I think Jacob gave a really good response earlier, that it -- it takes time for these tools to be adopted. So I think we're kind of in -- in -- in the

infancy here. But I would expect it to -- the pace to pick up over the next three to five years.

Q. Is that the plans for HP Hood?

A. I think that we'll be doing more, yes.

Q. And one last question.

As MIG's proposal has a rolling adjuster that adjusts every month, and there's other proposals that have a flat adjuster on some annual basis. Obviously you support the rolling one.

But my question is, does that play a role in -- in how well you can utilize hedging tools, the fact that that basis risk changes every month, or no?

A. You know, honestly, not my level of expertise, so I -- I'm not going to -- not going to give an opinion.

Q. Okay.

A. Thank you.

Q. Thank you so much.

MS. TAYLOR: That's it from AMS.

THE WITNESS: Thank you.

THE COURT: I love the sophistication of the witnesses, they know where not to go.

MS. VULIN: Just some very short follow-up.

REDIRECT EXAMINATION

BY MS. VULIN:

Q. So we have had some questions about trying to quantify or measure the impact that hedging has had on either the success of Lactaid, the sales, the price stability, so I just want to follow up on that.

I believe you testified earlier, I can't remember if it was here or in your testimony, that having hedging reduced the frequency with which you had to take -- or request price increases from retailers.
Is that right?
A. Well, it certainly helps, yes.
Q. Are those easy conversations on the ESL front? Is it like HTST where you, you know, send off a quick e-mail that your price is going up, have a nice day?
A. So, no. I talked about the 60- to 90-day notice. Some customers require cost justification forms. Yeah. No, it's not -- those -- it's -- it's not -- not pleasant.
Q. Okay. So it's quite difficult from a sales perspective, when you have to be asking for those price increases?
A. It's our job, though.
Q. And then you mention also on page 5 that -- that hedging helps you execute your annual marketing and trade promotional plans for Lactaid?
A. Yes.
Q. And you said that the marketing is a huge part of Lactaid success.
So can you tell us just a little bit about how hedging helps you execute those --
A. Well, I mean --
Q. -- those successful marketing plans?
A. So in that it -- it -- advertising is kind of separate. We invest a lot in advertising the Lactaid

brand. So as far as promotions go, if you have to take a price increase and you have your promotion plan in place, you're not going to get to the price point that you wanted to get to. So it kind of shifts your whole plan. Yeah. It's -- it just makes -- makes things difficult.

Q. So in addition to hedging, reducing the frequency with which you have to ask for price increases, and supporting the stability of the price, it also helps support your ability to execute important promotional plans?

A. Yes.

Q. Okay.

MS. VULIN: Thank you. Nothing further.

THE COURT: Thank you.

Are there any other questions before we deal with admitting the exhibit?

I see none.

MS. VULIN: I'd ask that Exhibit 270 be admitted into evidence, please.

THE COURT: Is there any objection?

There is none. Exhibit 270 is admitted into evidence.

(Exhibit Number 270 was received into evidence.)

MS. VULIN: So just a -- before lunch, afterwards we intend to call Chuck Turner, and then Tim Doelman, just so everyone has a heads-up.

THE COURT: Thank you.

Mr. Newell, thank you very much. It's a pleasure.
All right. Let's take a lunch break. We normally take an hour -- ah, but let's find out about the other witnesses that we may hear from, and then we'll take our break.
MR. ROSENBAUM: Your Honor, if we make it there, Mike Brown will be the next witness after the two MIG witnesses.
THE COURT: Very good. So you did fight it out in the hall. And Dr. Bozic is saved for -- well, we don't know.
MR. ROSENBAUM: If you look at me and Mr. Bozic, I don't think you would conclude there actually was a fistfight, since I have gone first.
THE COURT: All right. It's 12:11. Please be back and ready to go at 1:11. That's 1:11.
Thank you.
(Whereupon, luncheon recess took place.)
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THURSDAY, SEPTEMBER 28, 2023 - - AFTERNOON SESSION

THE COURT: Let's go back on record.

We're back on record. It's 1:13.

MS. VULIN: The Milk -- this is Ashley Vulin with the Milk Innovation Group. We would call next to the stand Chuck Turner, please.

THE COURT: Mr. Turner, I would like you to state and spell your name.

THE WITNESS: Chuck Turner, C-H-U-C-K, T-U-R-N-E-R.

THE COURT: Have you previously testified in this proceeding?

THE WITNESS: I have not.

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

CHUCK TURNER,

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

THE COURT: Thank you.

Ms. Vulin, you may proceed.

DIRECT EXAMINATION

BY MS. VULIN:

Q. Good afternoon, Mr. Turner.

A. Good afternoon.

Q. Can you please state your business address for the record?

A. Yes. 1049 Jefferson Road, Pittsburgh, Pennsylvania, 15235.

I hope the questions don't get harder.

Q. They won't.
And you have before you a document entitled MIG-Turner-12.
Do you see that?
A. I do.
Q. And is this document your written testimony for this hearing?
A. It is.
MS. VULIN: And I'd ask that that be marked Exhibit 271.
THE COURT: That shall be done.
(Exhibit Number 271 was marked for identification.)
BY MS. VULIN:
Q. And then you also have in front of you a document entitled MIG-Turner-12A.
Do you see that?
A. Yes.
Q. And is that a copy of the PowerPoint you are presenting today?
A. It is.
MS. VULIN: And I'd ask that that be marked Exhibit 272.
THE COURT: That shall be done.
(Exhibit Number 272 was marked for identification.)
BY MS. VULIN:
Q. Thanks, Mr. Turner.

Why don't you, if you could, please, pull up your PowerPoint, and we'll just go to the first -- the second slide. Great.

So just to start, how did you get into the dairy industry, Mr. Turner?

A. It's a family business, so I was born into it. Grew up doing farm work with my father and my grandfather from about the time I was age eight. And from the time I got into high school, and especially after I could drive, I worked in our plant -- our bottling plant.

Q. And you said your family had a bottling plant and a farm or --

A. Yeah. We were into pretty diversified farming as I was growing up, and over the years that kind of narrowed into only dairy processing.

Q. And what's your education post-high school?

A. I got a BS in food science from Penn State, and an MBA from the Katz School of Business at the University of Pittsburgh.

Q. And can you tell us, what did you do after you graduated from -- with your MBA?

A. Actually, after I graduated with my degree in food science, I came back to work at the company as our quality assurance manager, and essentially in the end of the 1980s I established our first QA department in our milk lab and some of the standards that we have in place, you know, still today.

And then from there progressed through into management of our plant. And then went back for my MBA and got more into executive management. And I have been president of our family business for the last 20 years.

Q. And tell us a little bit about the products that Turner processes.

A. Okay. So we're a fluid milk plant. In -- well, we're a fluid milk business. We actually have two -- two plants, and I guess we'll get to that in a bit.

But at -- everything is fresh fluid milk. So, you know, skim through whole milk, fresh creams, butter -- cultured products like buttermilk. We also do some non-dairy beverages, ice tea, and orange juice, and apple juice, things like that.

Q. Thank you.

And is Turner a small business as defined by the SBA?

A. Yes.

Q. How many employees does Turner have?

A. About 220.

Q. And how many -- you said Turner has two fluid milk distributing plants?

A. Yes. In 2017, we bought a competitor's plant that's actually in the city of Pittsburgh, so we -- we use that for culture, like the buttermilk, and some of our smaller items we make in that plant.

Q. And where is the other plant?

A. Okay. So our main plant, the plant I grew up with, is in Penn Hills, Penns- -- it's an eastern suburb

of Pittsburgh.
Q. Great.
And that's where you manufacture most of the fluid milk products?
A. Correct. That's what you will see pictures of in a bit.
Q. And are those -- what orders are those plants pooled under?
A. Both plants are in Allegheny County, Pennsylvania, and regulated by Federal Order 33.
Q. And is pooling something you work with within the business?
A. Yeah. So my -- my sister does the producer payroll. We just actually put in a new system to manage it. And then we have a gentleman that does the accounting, and does our monthly milk reporting, and that sort of thing. And I -- and he works for me, too.
Q. And you said it's a family business, and you started working when you were growing up.
When -- when did your family start in the business?
A. My grandfather started the business in 1930. And actually, he left his father -- his father had a -- was in the dairy business in Pittsburgh, and he actually left his father's business to start his own in the -- out in the country, what was the country then. And so he started with four cows and an old car in 1930.
Q. And tell me a little bit about your milk supply.

A. Our milk supply is what we -- was referred to earlier today as direct shippers. We call them independent family farms. And it's -- it's about three dozen farms. All but two of them are east of Pittsburgh, in the counties just east of Allegheny County, within about 70 miles of our plant. There are two that are in Ohio that are near a plant that we balance with, and their milk primarily goes to that balancing plant.

We have long-term relationships with these -- with these farmers. They remind -- the gentleman that spoke this morning reminds me of a lot of those folks.

They -- so we have long-term relationships. We have farmers, farm families that have been shipping to our company for longer than I have been alive. And, you know, I'm blessed to know three generations of their family active on their farm, and they know three generations of our family running the processing business.

Q. Do you know, are any of those suppliers small businesses?

A. I would be surprised if they are not all small businesses. They are -- there may be one or two that aren't.

Q. Thank you.

And tell us a little bit about the products we see here.

A. Okay. So what you have is -- the bookends are two jugs of white milk. The one on the left is a quart of whole milk; the jug on the right is a jug of 2% milk.

Everything that we make, or pretty nearly everything we make, is in our own brands. We don't do any private label.

In the middle are -- is a flavored milk. We have a very successful flavored milk program.

And then in the middle is a relatively new product for us, is a fresh lactose free. So it's a 2% lactose-free fresh, with a 21-day code.

Q. And if we could go to the next slide, please.

Tell us what we see here, please.

A. So that's -- that's an overhead shot of the bottling room in our plant in Penn Hills. So what you will see is there's three rotary fillers for plastic jugs.

Over on the right, far right, is a half-pint -- a four-lane, half-pint paper filler.

Up a little bit and ahead of that is a paper quart filler.

And buried in there is a -- is a -- is a dispenser filler that fills bag and box.

So those six, that -- we fill -- everything we make on those six filling lines. In addition, we can do some bulk totes.

Q. Thank you.

And the next slide.

A. This is an aerial shot of our plant in Penn Hills. It doesn't have the parking lots with the trucks, but that kind of gives you an idea of the -- you know, the different rooftops and how the plant's expanded over

90 years.
Q. I understand that Turner offers kind of specialty products throughout the year.
Can you tell us -- I know you have an example here. Can you tell us a little bit about that, please?
A. Yes. So one of the things we started doing, I think we're in it eight years now, is limited time offering flavored milks.
Sorry about that.
The one we have out right now is a chocolate caramel. So that's a fresh product 20 with a -- excuse me -- I think I'm having a technical difficulty here. I apologize for that. So all right.
Q. Again, tell us about this limited time offering.
A. Okay. So this is a good example. This, we just introduced this two weeks ago. If we did our projections right, it will last for another three or four weeks. We have -- it's an -- it's kind of a hard thing to do. We'll do four or five of these between now and next June.
We have done a lot of exciting flavors. I think the next one is going to be called brownie batter. It's going to be out for Thanksgiving and Christmas. Red velvet for Valentine's Day, if you are looking for something to get your husband.
Q. For myself?
A. Yourself.
So the idea is we get these out. They are new, they are something exciting, and the goal is to -- to get

shoppers' attention.

Where we kind of got this idea, there's a fellow that I have heard speak named Dr. John Stanton at the -- he's in food marketing at St. Joe's. And we had him talk at some association groups. And he has referred to the milk case in the supermarket as the Great White Tundra, because it's cold, white, and nothing ever changes.

So we kind of took the -- took the challenge and said, you know what, that's -- that's right. You know, if we want consumers to stop, we need to have something that changes.

So the idea is to get somebody to stop their shopping cart and say, "Wow, chocolate caramel." And what we've found is even if they don't buy that, they will buy a chocolate milk or maybe a white milk.

And we do the same thing, there's a -- the reason there's a half gallon and a pint is, we want to have an offering for big stores and then an offering for C stores. So we want the same kind of effect when you are walking the 12 doors in a convenience store.

Q. And tell us a little bit about how you would price a product like this for a retailer.

A. Right now we guess.

And the -- it was a little bit alluded to lately. One of the prob- -- one of the challenges -- there is a lot of challenges to doing a product like this. One of them is that you have to set up new items in your store chain all the time. So one of the things that shortens the lives of the people in our sales and marketing part of our business is trying to get stores to accept new items. And we're doing it to ourselves, you know, 10 or 12 times a year.

So one of the -- you know, one of the many things you need to set up a new price -- a new item is a price. And the three to six months in advance that we have to do this, we guess the price. And some months, you know, we sell it for too little, and some months we sell it for too much, but that's -- you know, it's not a big enough part of our business right now that we're -- that bothers us because that's not the intention of having this product out there. So we take the ups and the downs.

Q. And a limited time offering, how long would it be on the shelf for?

A. Well, we hope about six weeks. Sometimes they can be too successful. We have had some that only lasted seven days, which is not a good -- you know, it's good, but it's not good. And sometimes we have -- we'll have to cut them off. If they -- once they go two months or so, we'll cut them off and not finish up the supplies that we bought.

Q. And when you are pricing a specialty product like this, can you pass along a number of price increases in that six-week period?

A. No. There's no -- no, there's no way. We can't even -- we don't even change the price right before we introduce it, because it's -- it's usually set up in people's systems at a price, and we just live with that price.

Q. And Turner's milk, is it HTST, ESL, a mix?

A. All HTST. We're 21 days pasteurized products, white and flavored, and 25 days on fresh creams.

Q. Thank you.

So if you go could go to the next slide, please.

A. Sure.

THE COURT: We have seen this one.

BY MS. VULIN:

Q. What is Milk Pep?

A. Okay. Milk Pep is the promotion agency that the processors fund. So 20 -- I'm going to -- now I'm sitting up here, I'm not remembering things I usually remember -- but we pay $0.20 a hundredweight into a -- into an advertising fund, which is Milk Pep, which -- whose goal is to promote milk.

Q. And does Milk Pep do any analysis of sales or the marketplace for processors?

A. Yes. Yeah. They -- they review scanner data. We get reports every four weeks on -- very detailed reports on how milk is selling nationally and in different regions of the country, even to the city level.

Q. And if you could go to the next slide, please.

A. Sure.

Q. Is this a slide you obtained from Milk Pep?

A. Yeah. This is from a presentation that Milk Pep worked with a firm called Prime Consulting, who are really

experts on this scanner data information. And this is a presentation that they gave to the industry. So I -- I pulled two slides from an hour-long presentation that they gave to the industry at the beginning of 2002 -- 2022.
Q. And I see in the top right there's a -- a blue line and a purple line. And the blue line says "traditional milk," and the purple line says "value-added milk."
Can you just give us a short summary of the differentiation there, please?
A. Yeah. So it's starting -- I believe it was last year, Milk Pep came up with a new segmentation for us as an industry to think about how we're selling fluid milk, and tried to differentiate the selling of white jugs from value-added products, like lactose free. I would include our limited time offering products. But -- but items that aren't -- we're not trying to sell cheap.
Q. So a value-added product could be something like your chocolate caramel drink?
A. Right.
Q. Something like -- would ESL organic fall within that category?
A. Yes.
Q. Thank you.
So why don't you just tell us, what is this chart showing us -- or graph?
A. Okay. Basically what -- this was intended to be kind of a call-to-action to milk bottlers.

So what they are showing us is the black line at the top is a trend line that is fluid milk sales, which we're currently -- we currently have a 13-year losing streak, which even for a Pirates fan, it's a long time.

We're in our 14th year -- yeah, you think it's funny -- so their -- their message to us, as people that are working for us trying to sell milk, is if you don't do anything, this thing isn't going to bottom out for a long time, and we'll get to how long in the next slide. And they put together a strategy for how to get -- I don't want to say get us to the bottom, but get us back on the rise sooner. And that was -- so they have a strategy for value-added and a strategy for traditional.

Q. Okay. And I see here this dotted line at 21.

Is that when this analysis was done, or through I should say?

A. Yes. Right. So the presentation was February 2022, so the data was through 2021.

Q. And moving forward are projections of how Milk Pep suggested to stem the decline and turn it around?

A. Right. And I'm not -- I'm not going to focus on the strategies. They do have strategies. They were presented.

My -- my takeaway for today is more sober than that, is to give you a timeframe on what their -- you know, what their projections are.

Q. Yeah. So let's go to the next slide. That leads us in nicely.

A. I sure wish I could show it bigger, but I think I get you the one after that.

Q. So "Bottom Line: We Need Both Segments For Category Health."

Is this referring to both segments being the traditional milk and the value-added milk?

A. Right. So the way that I could interpret this graph for you is if we start with the green box at the top, that is if we don't do -- if we just let the current trends continue, we're going to end up by the green milk jug way over on the right, and it's going to be 2038 before this thing bottoms out and starts back up. Again, just -- they just extended current trends.

The blue milk jug is if we accelerate or we work hard on our value-added products, we will be able to turn this thing around sooner than that.

Q. Around 2035?

A. Yeah. 2035, correct.

The yellow milk jug is if we cut the sales -- if we cut our losses. So we're not -- it's kind of -- like compared to budget deficits, right? So we're not trying to grow it, we're just trying to cut the loss in half on traditional milk. If we could accomplish that, we could stem the -- stem the tide by 2032.

And their projection is if we do both, we'll hit the bottom and start back up as soon as 2029, which is six years from now.

And I can tell you 2022 and 2023 don't look like we change course.

Q. And so is it fair to summarize the message as, we don't want to look just at traditional milk, and we don't want to look just at value-added, we need to address both segments if we want to turn Class I health around?

A. That was their clear message to us, yes -- or is their clear message.

Q. And talking about how the Class I milk industry has changed over the course of recent years, you had mentioned to me earlier that you went to the Northeast Dairy Foods Association meeting recently?

A. Yeah. It was really -- it's -- again, it's a -- a symptom of the poor health of our -- poor condition of the processing industry in our country and in our region. I was at a conference last month that -- when I started going to this conference in the 1990s, there would have been 30 or 35 processors at it. Last month there was two. There was two -- four, two from Pennsylvania and two from New York. 40 -- 40 industry -- 40 suppliers, you know, around a conference room trying to figure out how to sell something to four of us, you know, was -- it was kind of sad.

Q. And so do you believe there is any disorderly marketing in the industry today?

A. I think that if -- if the goal is to provide fluid milk to -- to the citizens of our country, you know, processing is certainly a weak link. Not only from what has happened over the last few years to a number of

companies, but I would tell you that there's a lot of companies out there right now that aren't in great shape.
Q. And you're one of the four that made it still to that association meeting.
How is Turner able to succeed in this environment?
A. It's -- we're not immune to any of it. It's tough. We -- we work hard at it. We try to do the right things. We have been able to grow our sales volume on milk for seven out of the last ten years. But I don't -- I don't have a -- there's not a magic -- I don't have any -- I think a lot of it is relationships and building up trust throughout our -- our network, between our farmers and our customers and our employees, probably the biggest thing.
Q. And I'll maybe brag a little on your behalf.
Clearly from this work and the chocolate caramel product and your discussions, you put a lot of thought into how to innovate and how to move the industry forward; is that fair?
A. Yeah. We work hard at it.
Q. So in talking about what we're here to discuss today -- and there's been a lot of discussion, right, about how hedging plays into the base --
A. Yep.
Q. -- Class I price, and also price stability. So let's talk about stability first.
You said in your testimony, and I don't have the page number, but you said how difficult it is to tell

customers you are raising prices without a reasonable or market-based explanation to offer.
Tell me a little bit by what you meant there.
A. Yeah. Thanks, Ashley.
So the context to that was comparing the current mover we have with the higher-of. And my experience with higher-of is there was more volatility. And, in fact, any time that -- I would say one of three basic commodities spiked in price, fluid milk followed it.
So I would tell you, I really can't recollect whey ever causing a price spike in milk, but I can tell you I have personally seen powder and butter and cheese peak in price, and then a month, and two months later, for no apparent reason to a consumer or to our customers, the cost of a jug of milk goes up by, you know, a quarter or some number like that.
Q. And so the Class of III or IV spiking in one month didn't have any impact on Turner's ability to acquire milk in that month?
A. No. From our farmers?
Q. Uh-huh.
A. No, it didn't. No, it didn't detract from our ability to source milk.
Q. And is that because you have those long-term relationships in place?
A. Yeah. I don't -- maybe we're in a different part of the country than -- you know, that maybe Pennsylvania is different than California. But I don't think people

switch markets because of one month price or for short-term. I think people are -- I think what I see is our -- is farmers are looking for a long-term market.

Q. And so in your experience, farmers may respond to more big picture market signals, but they are not going to bounce around month to month.

A. Yeah, I think market signals a lot of time impact how much milk they make more than a willingness to switch markets.

Q. And we have talked about hedging as well.

Do you currently hedge any dairy products?

A. Yes.

Q. Can you tell us a little bit about that, please?

A. Yeah. We weren't part of the -- the -- any of the discussions or anything that led up to the 2018 Farm Bill, so it was -- it was news to me when I read in one of my papers that -- that -- that we went to an average-of mover and that there was -- one of the reasons for that was hedging.

So I -- it was on my to-do list, honestly, for a couple years, and I didn't get to it. And there's no excuses. But, you know, I was busy in 2020 and 2021.

But finally, last year, I got around to -- to work -- to experimenting with it, and I actually start -- I actually have a pretty active hedging program right now for butter -- sorry, I didn't even tell you for what. But what I'm doing is buying butter futures and using that to hedge our Class II cream usage.

Q. Uh-huh.
And about when did you say you started doing that?
A. My first contracts were last summer, summer of 2022.
Q. And how did you learn or discover how to manage your hedging program?
A. Well, just --just because I hadn't started it didn't mean I wasn't reading about it and -- and going to -- going to seminars.
And I met a -- I was at a seminar, and I introduced myself to one of the presenters who put on a -- you know, a pretty good explanation of how this worked. And so I approached her afterward and asked if we could talk. And -- and after a couple phone calls and a meeting at a dairy -- IDFA Dairy Summit -- Dairy Summit or -- Dairy Forum, you know, we -- we put together a plan to experiment with it last summer.
Q. And do you currently hedge Class I?
A. I do not.
Q. Why not?
A. I didn't -- some of it was based on the conversation with my -- the Ever.Ag -- my Ever.Ag person. But it was -- this is -- the Class II butterfat thing is easier. It's pretty easy to translate butter into pounds of butterfat. And the timing and -- you know, a pound of butterfat is a pound of butterfat. You can add your -- your -- you know, your little figures on over to the right depending on the class, and it settles the same. It

settles to the same price as the butterfat price. So it's pretty -- it's pretty straightforward. So we started there.

And I have -- there's a lot to learn. And I have figured out -- you know, I do plan to use it for Class I, and I have some ideas. You know, I hope they work.

Q. And are there any particular customers or lines of business where you think hedging and price stability could prove more valuable?

A. Yeah. The first one that comes to mind is schools. Typically, schools will bid their milk business out in the spring before they go away for the summer. So you -- so you bid, and you are awarded bids in the spring. And if you -- you know, if you get a bid, if it happens to be a fixed price bid where you are locked in at a certain price, we usually put -- there's language in it that gives us the right to -- to change the price if our cost changes. But it -- it's, in practice, kind of hard to do.

Because a lot of times the price that we predict will be all right for the fall semester, but by spring, we're a year -- you know, we're almost a year out from when we calculated this, and so that's when we can really get under water.

The problem is that that -- we're coming right back into bidding season. So do you want to go raise your school district's price the month or month before they are going to put out a bid? So it's hard business-wise to -- to -- even though there might be language that allows us to raise it, it's hard to -- it's actually a hard decision whether to do it or not.

If we were able to protect that and lock that price in, then we wouldn't have that worry.

Q. Uh-huh.

And I know you said you do HTST processing, correct?

A. Yeah.

Q. And for grocery stores, do you experience the kind of passthrough price changes that we heard mentioned earlier?

A. We do. Especially on the larger -- larger sizes, gallons, half gallons. Like, these limited time offerings are kind of immune to that a little bit.

Q. Yeah. And so those limited time offerings and, you know, school bids, there are other sectors of the business where you would benefit more from more stable pricing?

A. No, I think the whole business would.

Q. Tell me more about that.

A. Yeah. I think volatility is -- is a big -- is a big problem for fluid milk. And, you know, we talk a lot about -- and rightly so -- what's the right Class I price for dairy farmers. We might spend some time talking about the right kind of Class I price for bottlers. And to us, it -- it -- it can be -- it can, and really should be, the highest price in the market.

But I don't -- for an ideal price for a bottler, it would stay the same. It wouldn't move around. Volatility causes -- causes a lot of problems, especially when it comes to the retail -- retail pricing and, you know, what price point -- a lot of times they will raise prices, but they don't drop them back when the price goes back down.

Q. Uh-huh.

And so you had talked earlier about this big picture view. And so in thinking about Class I being the highest price, balancing those concerns, stability with that, would that counsel you towards looking at Class I being the highest price in more of a big picture way as opposed to jumping up and down every month?

A. Yeah. I don't -- I think farmers don't -- could live with it not being the highest price every single month, as long as they knew it was the highest price in the market, that over the course of a year they are going to get the highest price.

Q. Thank you.

And is there anything else that -- that you want to share with us today?

A. Not that I remember.

Q. Great. Well, thank you very much for your time. Appreciate it.

MS. VULIN: No further questions, your Honor.

THE COURT: Thank you, Ms. Vulin.

Now everyone in the room has an opportunity to ask you questions, so we'll see who --

THE WITNESS: Everyone.
THE COURT: Everyone. They look like a friendly crowd.

CROSS-EXAMINATION

BY MR. LAMERS:
Q. Mark Lamers, Lamers Dairy. Good afternoon.
Looking at your written testimony, page 3, kind of in the middle --
A. Did you -- excuse me, did you say 3?
Q. Page 3 of 7, yes, in your written testimony.
I'd like for you to explain, you have a sentence in there that reads, "More recently, we find ourselves competing with cooperative-owned plants who, although FMMO regulated, are not required to pay their members the regulated minimum price like we must pay our independent farmers. The FMMO playing field has never been level in our part of the country, but it seems to be increasingly tilted against us in both directions."
Could you elaborate on that a little bit?
A. Yes. And let me start with a the second sentence you read just to put it in a perspective.
So we're in Allegheny County. We're on the east side of the city. Our farmers are in counties east of Pittsburgh. And right beyond those -- these -- right in the middle of these county lines is where Federal Order 33 ends. Okay?
And so just because it's not on a Federal Order map doesn't mean nobody lives there or nobody does

anything there. In fact, a lot of them don't even know they are not in a Federal Order.

And so there's plants out there that don't have to pay into the pool that we're competing for the same farmers with. So it's -- we are in a -- already in a tough situation being regulated and competing with those handlers that don't have to pay into the pool. And now we find on our other side that we have more than one cooperative has bought plants in our competitive area, and they are not required to -- their member -- they -- the co-op is the farmer, so they are not required to pay their member producers the minimum prices like we are.

Q. And that would give them a competitive advantage?

A. It could.

MR. LAMERS: Thank you.

THE WITNESS: Sure.

CROSS-EXAMINATION

BY DR. BOZIC:

Q. Marin Bozic for Edge Dairy Farmer Cooperative.

Chuck, good afternoon.

A. Good afternoon, Dr. Bozic.

Q. I thank you for sharing how the bidding for school milk works.

That happens mid -- about -- you said was it May, June?

A. It starts in March. And we unfortunately, have schools that don't do it until August, but typically it's an April-May thing.

Q. So when do you typically need to put your bid in, the first -- first one --
A. April or May.
Q. April?
A. Yeah.
Q. I assume this is one of the reasons why MIG's proposal has a rolling adjuster with a 12-month window?
A. That is the feature -- if I had to differentiate between MIG's proposal and IDFA's proposal, that's the feature that I think is important to me, is that if I had -- I could go out a year, you know, or --
Q. Sure.
A. And it really doesn't need to be a full year. Because from what I understand you do Class I kind of the month before.
Q. Uh-huh.
A. So to protect May, I would have to cover April.
Q. Right.
A. So -- yeah. So that 12-month knowledge of what the 12-month prices are would help me.
Q. So -- so the IDFA proposal runs through July for the next calendar year, right? There -- so you wouldn't know three out of 24 months that you would need for the calculation then?
A. I think. Yeah. And it's not a huge deal, but it is -- it would help to know, to know all -- you know, all the -- every month's price during the school year.
Q. But I'm asking because, you know, the organization

that I represent here at the hearing also has a similar adjuster that -- that runs through July and then is applied to next calendar year.

Our reason -- there is a question here, I promise -- our reason was -- reasoning was that people set their budgets in September, typically the budgets are for the calendar year, so that was the appropriate -- I was not -- you know, we were not aware of the timing for that. So thank you for illuminating us on that.

A. And you are right about the budgets for, like, institutional, business, and restaurants, and things like that, that is -- that is the correct cycle.

Q. Okay.

DR. BOZIC: Thank you very much.

CROSS-EXAMINATION

BY MR. MILTNER:

Q. Good afternoon, Mr. Turner. How are you?

A. I'm doing all right. How are you?

Q. I'm fine. My name is Ryan Miltner. I represent Select Milk Producers.

A. Good afternoon.

Q. Mr. Lamers asked you a little more about the competitive dynamic in your part of Pennsylvania.

It's quite unique, isn't it?

A. I think so. I've really never been anywhere else in this business, so --

Q. I mean, I think it's unique in the sense that you're in a federal area, and you are competing against

processors that are in an unregulated area, which doesn't happen everywhere.
A. Right.
Q. And then you note that you're a proprietary bottler, and you have cooperative bottlers you are competing against?
A. Correct.
Q. Did I accurately state kind of what you are dealing with?
A. Yes. Yes. And there are other proprietary bottlers in our same situation that are regulated, and so we have more competition than just those two groups. Which there's a lot of cities in the country that don't have that competition right now.
Q. Right.
Now, when -- when you are paying the farmers that are supplying your plant and you need to maintain a competitive pay price against other farmers in the area, what do you think is the biggest challenge you face in maintaining that competitive pay price?
A. It's -- as everything in milk, it's complicated. But the challenge is that we can't spend so much that we're not competitive on the street when we compete with all these dairies on the -- for wholesale business. So I can't pay too much, but I need to pay enough to -- to get not only milk, but we we're looking for producers that really meet a really high standard on the rating on their federal inspections, and that meet really strict bacteria

counts. So we tend to focus on quality premiums.
Q. Now, in your statement you state that "we need to pay our dairy farmers premiums above the Federal Order blend to be competitive in the country with these unregulated plants."
May I assume that the -- the farms that do supply unregulated plants usually pay more than the federal blend price?
A. Yes.
Q. Now, you also, in the same paragraph -- and this is -- I saw you flipping -- I'm on page 3, and it's the first full paragraph.
And you're -- you're talking about your experience competing against cooperative-owned plants, and you note that those plants are not required to pay their members the regulated minimum milk price.
Do you -- I'm curious if you know that that's happening in your area from -- from any source, I guess?
A. Yes.
Q. Okay. So then those cooperative producers are getting paid less than the federal blend price.
Would that be correct?
A. I don't want to make that as a blanket statement that all -- all of those. But I do know that I have talked to handlers and producers that are getting paid less than the blend.
Q. So in some parts of the country I have heard producers suggest that they have minimal options as far as

where to sell their milk.

It sounds like in Western Pennsylvania, producers still have a fair degree of choice as to where they ship their milk to; is that correct?

A. It is correct. It's not as -- I would tell you that statement would have been more correct ten years ago or 20 years ago than it is now.

Q. And so for the producer, do you think that economic signals are working in terms of their ability to deliver their milk to -- to the highest -- to obtain the highest value option when they sell their milk?

A. Forgive me for not -- I don't think I -- I don't think I got my mind wrapped around that question.

Q. When I said the question, I wondered if I had stated it well.

If you have -- I guess -- there's a situation in your part of the world where cooperative members might not be receiving the blend price. You're paying more than the blend price. The unregulated area is paying at or above the blend price. To me, it sounds like economic forces are working to give producers an option about where their milk goes.

Would you agree with that?

A. Yes.

I think the other thing that -- part of that choice depends on their willingness to -- for lack of a more polite way to say it -- to run a clean operation. You know, they might not have the choice if they -- if

they can't meet bacteria counts and standards.
Q. For those that aren't meeting it --
A. Sorry. That's where the word economic kind of threw me. It is not all -- maybe that is economics. I don't know but...
Q. So for your company as one that is out there trying to source milk and acquire milk, those economics, I assume, work for you as well, that you can identify a farm with sufficient quality and offer them enough money to want to supply your plant instead of another.
Is that the case?
A. Well, that's the challenge, is can -- can I -- can I -- you know, the good farmers have options. And can I offer enough to keep the -- to keep those top farmers shipping their milk to us and still be competitive on the street, you know, while we're out selling our milk against other dairies. That's the challenge.
Q. Thank you.
A. You're welcome.
Q. Now, beginning on the next page of your statement you start to talk about hedging activities or risk management activities, and you make reference to foodservice accounts, and then in questioning you talked about school milk accounts.
For foodservice and for school milk, would those be primarily the half-pint gable top products you showed in one of your slides?
A. Firstly, I don't think I showed it in the slide,

but that would be the primary package. They are -- restaurants also buy milk in larger containers, also.
Q. I think you showed the filler, not the products --
A. Yes.
Q. -- that's what I was referring to.
A. I knew you weren't trying to cross me up.
THE COURT: So if I could ask, you mentioned half-pint. I would have thought pint would be more frequently used.
Could you talk about that a little bit?
THE WITNESS: With regard to schools in particular, it is almost all half-pints. Healthcare, other institutional type business like that is all half-pints. Same with prisons.
When you get to, in my mind, C stores, convenience stores anymore, act as much like foodservice as they do as retail. And in that -- in that instance then you start to see a pint become a more prevalent -- the prevalent single-serve container.
BY MR. MILTNER:
Q. And I think the half-pint for school milk is because they consider a cup to be a serving of milk; is that right?
A. That is exactly right.
Q. You don't have to answer this because it's proprietary information. I'm sure it is.
A. Okay.
Q. What does it cost you to put out a half-pint, not

counting the milk inside?
A. I not only won't answer it, but I don't know it off the top of my head.
Q. Okay. Have you supplied milk to General McLane School District?
A. Yes.
Q. Okay. Their school newsletter says that you do.
A. Okay. Yeah. I can't even tell you where they are, but I have heard the name.
Q. Yeah, I don't readily see it on here, either. I'm guessing it's in Pennsylvania.
They sell milk to their students, at least in the last school, year at $0.60 a pint.
Would you be selling them milk at above or below that price?
A. Did you mean half-pint?
Q. Yes, I did. Thank you.
A. We would be selling them milk for less than $0.60 a half-pint.
And I might add that that's not -- that's an à la carte price. Most of their sales are reimbursements through the school lunch program, so they are not -- they are not getting $0.60 on most of the half-pints that they sell. So they are selling a lunch that's subsidized by USDA, and the milk is part of that lunch.
Q. That's a very valid point. And their menu price was not listed on there.
A. Right.

Q. Thank you.
Now, were you -- you're describing in your -- your hedging activities.
And I believe you answered in response to a question that at least as of now you have not hedged any Class I milk, correct?
A. That is correct.
Q. But that you do have an interest in doing so.
A. Yes. And I have actually had conversations with our broker about it.
Q. And you -- I guess it doesn't matter to me really who your broker is. You mentioned Ever.Ag. And --
A. Yeah.
Q. -- in your conversations with your broker, Ever.Ag or otherwise, did they -- did you get into discussions about the availability of a milk hedging program if there were to be a reversion to the higher-of?
A. We did not.
Q. There was a -- a risk management consultant who testified earlier in the hearing, and she testified that it would be possible to craft a risk management program for Class I milk under the higher-of.
Do you have any knowledge or opinion as to whether that could or couldn't be done?
A. I'm not an expert on that. But in all the reading I have done and investigation, I have not seen anything that's at least straightforward.
Q. You also talked a little bit about the Milk Pep

program.
And I'm curious if in addition to what you presented, if they shared what they believe to be the root causes of fluid milk sale declines?
A. They did.
And if -- and I -- you're next going to ask me if I recollect that, right?
Q. Yes.
A. And I'm not sure if this is what they told us or my own opinion, but the reasons are vary -- are many. And the very first one and the biggest one is competitive beverages.
I mentioned going to a convenience store with 12 doors of refrigerated beverages, and there are 500 SKUs. I grew up in a -- in a world where you -- you know, you drank milk, juice, and that maybe you reconstituted it yourself, or soda if it was a holiday, or water out of the faucet. And there are just a lot of -- there's a lot of choices out there, so that's number one.
Number two, and maybe it's not the second biggest reason, but we're, quite frankly, as an industry, not really good at this, I think.
You know, I think -- I'd have to think about the other.
Yeah, the competitive beverages is the biggest one. I think, you know, we need to do better as an industry of selling milk.
Q. Your childhood sounds like mine, first of all.

A. Sorry.
Q. No, no, I think -- it looks like we both turned out okay enough.
So I mean, in addition to 500 SKUs, if I'm on my way home, I don't necessarily want to be drinking out of an eight-pound container, right?
A. Right.
Q. The maintenance of an effective cold chain from farm to consumer is very important, correct?
A. Correct.
Q. And not very consistent throughout the country, at least in what I understand?
A. You're right. It's harder to do than it looks.
Q. In your slides, I think it is on page 7 --
A. Slides.
Q. It's that one.
A. Yeah. Okay.
Q. So if you look at the black line, which is the total Class I category, you see this bump in 2020.
A. Yes.
Q. And that was during COVID, correct?
A. Correct.
Q. And during that period, foodservice sales were depressed terribly, correct?
A. Correct.
Q. School sales were depressed terribly, correct?
A. Right.
Q. People were staying home, though, more, weren't

they?
A. Right.
Q. People were eating breakfast at home more often, correct?
A. They were.
Q. In a lot of ways, our lives looked, as a country, much more like 1980 than 2020 in terms of where people ate their meals, correct?
A. Yes.
Q. And so when the pandemic is over, you see that -- that bump go away. I would -- I look at this chart, and I think our -- our consumption patterns as a society have contributed a lot to how much milk we consume.
Would you agree with that?
A. Yeah. For sure.
Q. Did Milk Pep talk about price volatility and managing price volatility as a key reason for milk sales declines?
A. I don't believe they did.
Q. Do you distribute your milk into Ohio at all or is it all in Pennsylvania?
A. Yes, into Ohio and a little bit into West Virginia.
Q. About how far west in Ohio do you get?
A. Pretty much to where people stop being Steeler fans and start being Browns fans.
Q. I'm unfortunately on the edge of Bengals country, so I won't be able to get your chocolate caramel milk, but

if it got there, I would try it.
A. Again, I'm sorry.
Q. That's okay.

CROSS-EXAMINATION

BY MS. HANCOCK:
Q. I am Nicole Hancock on behalf National Milk. And I don't actually follow football, and you guys all make me wish that I did, so...
A. Was that the Penn State thing?
Q. Yeah. Are you talking football?
A. Yeah.
Q. Just checking. Okay.
Good afternoon, Mr. Turner. I'd just like to talk about your written statement in Exhibit -- well, let's do this. Let's talk about Exhibit 272 where Mr. Miltner just left off.
A. Forgive me. Which one is that?
Q. That is your PowerPoint presentation.
A. Okay.
Q. And I think you were on page 7.
A. Okay.
Q. And this is -- this is not your work product, is it?
A. It is not.
Q. This was Prime Consulting's work product?
A. Yeah. And that's why I showed the cover page to the presentation to give credit where it is due.
Q. Okay. And you don't have any data that was used

to populate the graph that's shown on pages 7 and 8 of your PowerPoint presentation?
A. I mean, they supplied a lot of -- I mean, they did supply all the data behind that in their annual reports and in their every-four-week reports.
Q. Okay. Not something that we have in this hearing though?
A. I don't know.
Q. Not something that you have provided?
A. Not something I have provided, no. But I don't know what's in the other 270 exhibits.
Q. Okay. All right. Let's look at Exhibit 271.
Do you know -- you were also just talking with Mr. Miltner about how some of the milk leaves Pennsylvania, that -- or some of your products leave Pennsylvania?
A. We deliver them.
Q. Okay. And how much of your product stays in Pennsylvania?
A. Most of it.
Q. More than 80%?
A. Yeah.
Q. And are you regulated under PMMB?
A. Yes.
Q. And that's the Pennsylvania Milk Marketing Board?
A. That's correct.
Q. How does the regulation work under PMMB in conjunction with the Federal Order regulations?

A. We don't suffer for lack of regulation. It's -- both entities check every producer's payment is sufficient every month.

Pennsylvania requires a bond for our -- the milk we buy from our producers. They regulate the price -- PMMB, when I say "they," they -- PMMB regulates the price between handlers and producers, but it also regulates the price that we sell for to wholesale accounts as well. And, in fact, it also regulates the minimum price that stores are allowed to sell milk for in the Commonwealth.

Q. Okay. Is it a price enhancement program for dairy producers?

A. I would say it's not a price enhancement program for dairy farmers.

Q. Does it serve to enhance the price of dairy producers?

A. Yes.

Q. And does PMMB administer the milk marketing laws for the State of Pennsylvania?

A. Yes.

Q. And they also administer the Milk Producer Security Act?

A. Yes.

Q. And do you have any role -- have you ever served in any role on any of the committees or in testifying to the PMMB?

A. I -- so the PMMB is -- that's a government -- it's a government agency, so I have not had a role within it or

sitting on the board. I have testified on behalf of our company and the dairy farmers that ship to us before the board at their -- at some of their proceedings.
Q. And do they hold proceedings annually in order to set that minimum price?
A. Yes.
Q. And do they -- the PMMB will set the milk selling price that you can sell milk to the wholesalers?
A. They set a minimum price that -- a floor price that we cannot go below.
Q. And because they set a minimum price, and you are also governed under the Federal Order system, that minimum price that's set by PMMB becomes an over-order premium that has to be paid to dairy producers in Pennsylvania?
A. Not -- I'd have to say no to that.
Q. Does it create an over-order premium that has to be paid to dairy producers in Pennsylvania?
A. An over- -- there is an over-order premium that -- that has to be paid to producers in Pennsylvania. It is part of the minimum price. It is not created by the minimum price.
Q. Okay. But it has to exceed what's set by the Federal Order system?
A. It is -- it -- I don't know that it has to or not. It does build on the Federal Order price, so it starts -- it -- in practicality, it starts with the Federal Order price and builds up. But there are places in Pennsylvania that don't have a Federal Order price, so that's -- I

don't know that it has to do anything with regard to the Federal Order price in those instances.
Q. And I was just trying to clarify. It can't fall -- it can't -- PMMB can't set a price that would take the price below the Federal Order minimum price; is that right?
A. Legally or practically?
Q. Just your understanding.
A. My understanding is they don't.
Q. Okay.
A. Could they? I don't know.
Q. Okay.
A. Then we would still -- we would still have to the pay the high -- I hate to say the higher-of, but we would have to pay -- we would have to be -- we have to be in compliance with both, let's put it that way.
Q. Okay. So when you talk about, in your testimony, that you pay an over-order premium, that's due, in part, due to the additional regulations that you have under the PMMB?
A. What I mentioned in my testimony?
Q. Yeah.
A. On page -- I actually don't believe it was. That's why I'm trying to find it, so I tell you the truth.
Q. Maybe it was what you testified to with Ms. Vulin that you pay an over-order, or that you pay an over-premium price to your dairy producers?
A. We do. We pay a quality premium over and above

what's required by the Federal Order system, and over and above what's required by the PMMB.
Q. Okay. And that's to reflect the additional quality parameters that you have set for your milk products?
A. Quality and sanitary standards.
Q. Okay.
A. So how the farm is and how the milk is.
Q. And even with paying under both the -- even with exceeding both regulatory systems that you operate under, you have been able to grow your business or the sales of your -- Class I sales by 70% in the last ten years?
A. No.
Q. What did you say on your growth?
A. We have been able to -- out of the last ten years, we have been able to increase our volumes seven of those years.
Q. Okay. So --
A. So seven -- so seven out of ten years we'd be in the black on comparing this year's sales to last year's sales.
Q. Okay. So 70% of the time, not volume, but 70% of the time you have been able to grow year over year under this pricing mechanisms under both the PMMB and the Federal Order system?
A. Yeah.
Q. And on page 3 of your testimony, at the very bottom there, you said, "Our proposed base one Class" --

I'm sorry, let me say that again.

At the very last sentence there it says, "Our proposed base Class I skim milk formula would protect dairy farmers from future unintended and unanticipated losses like those experienced primarily due to COVID pandemic supply and demand disruptions while maintaining the benefits of that formula for processing."

I'm wondering if you could explain how it would protect them.

A. Yeah. So -- and, again, I wasn't -- I wasn't involved with any of the negotiations or the decision to go with the average-of mover, but from all -- all accounts that I have heard from the people that were, there was no intention to hurt dairy farmers. This was done in good faith and looking back over 17 years or so of regulated pricing and saying, this is a fair -- you know, this is a fair number, and everybody agreed to it.

Q. Okay. So when you make the statement that -- that you believe that Proposal 15 is going to protect dairy farmers, that's just based on your understanding that it's just fair for everyone?

A. No. I'm -- I'm saying that as a result -- we -- we understand that -- that the current system -- the current number is going to change because dairy farmers are getting hurt and nobody wanted them to get hurt.

So we are proposing something where there is not going to be that gap. So they are going to get the -- you know, whatever the gap is between III and IV is going to

be reflected in their Class I, I guess, mover, and differential if I -- it's starting to all run together for me. But it's going to be -- it is going to hit their price -- you know, every single penny of it is going to hit their Class I price at some point in the future.
Q. Okay. Based on the adjuster that's happening in -- three years after the actual price?
A. Yeah, a lot like three years.
Q. Okay. And you don't think that that has any harm -- harmful effect on dairy farmers?
A. Not at all.
Q. Okay. So if a dairy farmer today --
A. Yeah.
Q. -- was operating under that average-of system --
A. Yeah.
Q. -- where the adjuster has a three-year lookback --
A. Right.
Q. -- but let's say they go out of business --
A. Uh-huh.
Q. -- if they go out of business, how is it that their adjuster that they have earned in year one that doesn't happen until year three, how will that protect them then?
A. Well, firstly, I guess it's hard to say they are not harmed if they are out of business, right? But they could actually have gotten money that they shouldn't have got. I mean, this -- it goes both ways, right? So it's a 24-month cycle. That 24 months could have more ups than

they are going to get in the next 24 -- you know, the next overlapping 24 months. So they might actually go out of business and be above water. It's as likely as they will be above as below. So that doesn't -- that example doesn't bother me at all, other than that the farm went out of business.

Q.   Okay. And it's fair to say, then, that the farmer's economic conditions that he's experiencing in year one with an adjuster that has a three-year lookback is not reflective of the same time periods?

A.   It's not reflective of the same -- of what same time periods?

Q.   I'm just trying to sum up your answer, which was the farmer could have had -- could be experiencing a time period that's even better than -- than -- than it should have otherwise been because the adjuster is looking back to a different time period?

Is that a fair summary of what you were explaining? That it can go both ways --

A.   It can go --

Q.   -- it could get better or worse?

A.   Yeah, it's just the arithmetic. It's indifferent to whether the -- it's indifferent -- it's just a rolling calculation. It's indifferent to, you know, whether somebody's in business or out of business, or it's -- you know, nobody's going to time their exit from the business to be on a -- you know, a low note. So I don't -- I don't really see the correlation. And forgive me if I'm missing

something.
Q. No. I'm just trying to make sure I understand why you said it doesn't bother you. Because as I understood it, you were saying that -- that it is, you know, it could go either way --
A. Right.
Q. -- in positive direction or a negative direction?
A. Right. So it's a flip of a coin. So it's a -- it's a -- to me, it's of no -- it's just the math that month. It's not -- there's no money saved or gained. It's just that's the way that we're choosing to calculate the Class I differential that month.
Q. Okay. And when we talk about it's the flip of the coin --
A. Well --
Q. -- I want -- well, let me just finish my question -- the flip of the coin is, today's prices under the proposal that you are supporting is based on current average-of prices between Class III and IV, and then the mover is the average of a period 36 to 18 months or -- I'm sorry, the last --
A. 36 to 12?
Q. -- 36 to 12 months of the time period prior?
A. Yeah, maybe 36 to 13. I'm not sure. But in any event, yeah.
Q. Okay. And that's the flip of the coin, is how reflective that 24-month period is as compared to today's higher-of calculation.

A. Well, yeah, except that the higher-of is just a benchmark that we're thinking about in our minds, it's not a -- it's not a real thing. So we can -- you know, so, yeah, you can -- I guess you can do that arithmetic anytime and come up with a different answer, if that's the question.
Q. Yeah. And you do it every month, right?
A. You could. I mean, if, you know, I -- and I hope producers aren't doing that math for the next five or ten years, but they might be.
Q. And you would agree with me that the producers that you know and that you have worked with -- with -- you said you have three generations?
A. About three.
Q. -- three generations of an overlap, you would agree with me that over the last few years they have been doing that calculation, haven't they?
A. They have been reading about it. I don't know that they have been doing that calculation, no.
Q. Those dairy farmers that you are working with, did they have an opinion on the higher-of?
A. I'm sure they are influenced by what they read, but I think if they knew they were being made whole going forward, they would be satisfied with that.
Q. And have you been able to convince them of that?
A. No.
MS. HANCOCK: I have no further questions. Thank you.

THE WITNESS: You said everyone, but you didn't say anyone could go twice, did you?
THE COURT: He's taller than everyone else.
DR. BOZIC: It goes by height.

CROSS-EXAMINATION

BY DR. BOZIC:
Q. Marin Bozic, Edge Dairy Farmer Cooperative.
Chuck, when you invest in your plant, let's say that you modernize, build new equipment or sell, do you charge your dairy producers any deductions to fund that investment?
A. No. Never.
Q. Do you temporarily reduce premiums to fund that investment?
A. No.
Q. And if you were to do that, if -- if somebody were to charge their current patrons an assessment or a retain, would it be fair to say that those same patrons might not be in the business by the time the investment in the plant is done and over the life of that plant?
A. So if I were to charge them, they might not be there to --
Q. Right.
A. -- pay it back. Yeah.
Q. Right. Okay.
DR. BOZIC: No further questions. Thank you much.
THE WITNESS: Thank you.
Did I mess something up?

MR. ENGLISH: No, you didn't at all.
Chip English --
THE COURT: You do wonder why they were looking at their watches, don't you?
MR. ENGLISH: Well, the question is whether a break -- but I don't think -- it's up to you whether you -- okay.

CROSS-EXAMINATION

BY MR. ENGLISH:
Q. So with National Milk Producers' attorney we wandered into the Pennsylvania Milk Marketing Board, correct?
A. We did.
Q. Yes. Okay.
And so whether I'm forestalling some questions you might otherwise get, or maybe make it worse, you and I have had a number of experiences together involving Pennsylvania, correct?
A. Correct.
Q. Okay. So these are really just clarifying questions --
A. Okay.
Q. -- because the issue of the Pennsylvania Milk Marketing Board is not yet -- or at least it wasn't until a few minutes ago -- in the record.
So with Ms. Hancock you discussed Pennsylvania's over-order premium, correct?
A. Yes.

Q. Now, that premium is calculated on Pennsylvania produced, Pennsylvania processed, and Pennsylvania sold milk, correct?
A. Right. That's -- they -- the Commonwealth can only regulate transactions that happen in the Commonwealth.
Q. So to the extent you had response to questions from Mr. Miltner, you noted that you have sales in Ohio?
A. I did.
Q. That the plant -- your own calculation on the over-order premium would not include those sales outside of Pennsylvania, correct, because they are not Pennsylvania sales?
A. When you say my "own calculation," you mean the Milk Marketing Board's calculation --
Q. Calculation --
A. -- calculation of our numbers would not.
Q. Correct. Is that correct?
A. In the privacy of our own office we can calculate it --
Q. I --
A. -- however we want.
Q. -- understand. I'm sorry. I --
(Court Reporter clarification.)
BY MR. ENGLISH:
Q. I did not mean to imply what you don't calculate.
But the obligation that Pennsylvania enforces, and calculated on your behalf by Pennsylvania, would not

include sales outside of the Commonwealth of Pennsylvania?
A. That is correct.
Q. Whether in West Virginia or Ohio, correct?
A. Correct.
Q. And similarly, you mentioned some milk supplies from Ohio in terms of the farmer side.
That would also be excluded from the calculation because it's not Pennsylvania produced milk, correct?
A. It's more complicated, but, yes.
Q. Okay.
A. Complications don't matter here.
Q. Right.
And also, unlike the Federal Milk Order system, to the extent Pennsylvania produced, Pennsylvania processed, Pennsylvania sold milk, is subject to a Pennsylvania over-order premium, that premium is not pooled among Pennsylvania farmers, correct?
A. It is not.
MR. ENGLISH: That's all I have. Thank you.
THE COURT: Before I turn to Agricultural Marketing Service, are there any other questions?
I ask -- oh, you're coming. Good.

CROSS-EXAMINATION

BY MR. SJOSTROM:
Q. Lucas Sjostrom, Edge Dairy Farmer Cooperative.
Chuck, you compelled me to come forward. Following up on some of the questioning that's just happened, I just want to be clear.

When one of your supplying farmers, Mr. Turner, goes out of business, do you buy their cows?
A. No.
Q. Do you buy their real estate?
A. No.
Q. Do you have a contractor to take ahold of any of the assets for the farms that supply you?
A. No.
Q. So would it be fair to say that there may be many other factors than the monthly milk price that you are paying, whether there's looking back, looking forward, for them to go out of business?
I can restate it if you would like.
A. It might help.
Q. Are there many other factors, besides the monthly milk price, that would cause a farm that supplies you to go out of business?
A. Sure.
Q. And so would it be fair to say that whether there's a rolling adjuster or a higher-of type scenario, both situations would have unfairness when you are looking at milk price? However, there would be -- it would be -- the decision would be up to the farmer supplier on -- on whether they believe they could continue to compete in the market?
A. I might disagree and say that neither is unfair.
MR. SJOSTROM: Thank you very much.
THE COURT: And before Agricultural Marketing

Service asks you questions, we'll take a ten-minute break. You are free to roam.

Come back, please, at 2:43.

(Whereupon, a break was taken.)

THE COURT: Let's go back on record.

We're back on record at 2:43, and I'm inviting the Agricultural Marketing Service.

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. Good afternoon.

A. Good afternoon.

Q. Thanks for joining us today.

I will state for Mr. English, that even if Ms. Hancock didn't bring up PMMB, that was my plan, so I'm going to ask you those questions anyways.

A. All right.

Q. And I do appreciate some of the clarifications that Mr. English helped you make on the record.

I did have one question, because I only caught part of the answer at the very end. Something about the premiums are not pooled with Pennsylvania farmers, and I honestly don't know what the question or the full answer was, but I just kind of want to make sure I was clear about whatever that was.

A. Not to bring up the idea of a handler pool, but we basically -- that calculation is done on a handler-by-handler basis, so whatever Class I we -- whatever Class I sales in our own plant are -- I want to make sure I say this right.

Whatever our -- I can't remember what word Chip used. So whatever our premium obligation is that calculated on a month-to-month basis, our Class I sales that are -- that the premium applies to is calculated, and that's paid to our Pennsylvania farmers. It's not pooled -- in other words, there is -- you know, it -- every far- -- every handler -- farmers are getting a different number.

Q. Okay. So essentially, because you got the money from the market --

A. Right.

Q. -- because of those --

A. Yeah.

Q. -- regulated prices, that's the money you use to pay to just your farmers?

A. Yeah. We're essentially the pre- -- we're essentially the collector of the money and the distributor of the money.

Q. Got you. Thank you so much.

A. Sure thing.

Q. And so you do talk about the heavy regulatory burden on Turner Dairy, and you talk about Federal Orders.

But I'm guessing it's both Federal Orders and Pennsylvania orders combined gives you an extra special burden?

A. You would be right.

Q. I'm trying not to be repetitive. Some of my

questions were answered, so bear with me.
Okay. On the bottom of page 3, into the page 4, you talk about how the MIG proposal would protect dairy farmers from future unintended and unanticipated losses. And I think there was some discussion on what you meant there.
Essentially the proposal, because of the way it does the rolling average, kind of makes things a little more stable than if you were up and down all the time?
A. I think also the -- and I can't remember what Dr. Bozic called it, but there's an unbalanced risk. So there was that $0.74 kind of had --
Q. Asymmetric, is that the word?
A. Asymmetric, right. Yeah.
Q. Got you.
And so in your opinion --
A. This does not --
Q. -- the rolling adjuster, it eliminates the asymmetric risk?
A. All the ups and all the downs are going to be captured.
Q. Okay. And then the second part of that sentence says, "While maintaining the benefits of that formula for processing."
And I wondered if you just could expand on that piece.
A. Yeah. That -- that would get to -- and it's -- some of my writing might not be clear, but I really do

think that the average-of has knocked some peaks off of this Class I price over the last three or four years.

You know, there's been quite a lot of talk about the USDA Food Box program and, you know, what was lost. But I -- I cannot imagine if Class I prices followed that $3 cheese price through the roof in the second half of 2020, and, you know, we're sitting there without all of our foodservice business and trying to make boxes, and it -- and, you know, consumers not having any certainty of how much money they had in the bank, it would have just -- it would have been devastating to -- to our whole industry, not just the -- but processors included.

Q. So there would have been some demand response to that is what you are basically saying that --

A. Oh, yeah. I mean, if we'd had $5 milk out there in 2020, it, you know, would have been your -- plus free milk in the USDA giveaway, it would have just been worse than it -- worse than it was, and we might not be recovered from it yet.

Q. Okay. And you don't do hedging yet, but do you plan to start engaging in that --

A. Yeah.

Q. -- dipping your toe in it?

I am curious, because you are on IDFA -- in IDFA.

Are the trade associations helping Class I processors kind of learn about hedging and start to come up with their risk management programs or is it --

A. I don't think they could. I think there's --

there's -- I think there's a line there where there's an education. But I don't think IDFA would want to -- and I can't speak for IDFA, but I don't think they would want to be anywhere near having a bunch of processors figure out how to do the prices together. Right?

Q. Certainly. I would hope not.

A. Yeah. So --

Q. As a government official, I do not advocate that.

A. Yeah. Right. So -- so the -- you know, like I said, I was at a seminar, I met a person at Dairy Summit, but I don't -- I have never sat in a classroom and had somebody say, here's how you figure it out.

Q. I was just curious about -- since, you know, there was a lot of discussion at the time about why that change was made, and the agreement was reached, how much -- after the change was made -- effort there was to help at least alert Class I processors that, hey, this change was made, and now you might be able to do this. And so that's why I was kind of asking that question, not trying to advocate some collusion or something like that.

A. I would love to hear Mike Brown's answer to that question.

Q. I will write it down on my list for him for tomorrow, or maybe today. I don't know. We'll see.

And so when you do talk about how you have had to raise your prices to cover costs, at the -- towards the end of this page, because there would be a spike in butter or spike in cheese, and so it would eventually show up in the Class I price. And you would say, "We were left having to raise our prices to cover cost, but with no reasonable or market-based explanation to offer our customers."

And I wanted you to expand on that. I think you touched on it, is that -- maybe the explanation, since it is based on market prices, just wasn't one that they -- made sense to them.

Is that kind of what you are getting at?

A. Yeah, I really like that line, but -- that I wrote there -- but the -- yeah. So they -- yeah. I get, as an industry person, that cheese went up, so Class III is going to go up.

But, you know, believe me, our -- our customers don't -- this is really complicated to us. They don't understand it at all. And it -- and then consumers are a whole other level away.

I kind of -- the one that does make sense to people is if -- I can tell people that butter markets went up and that's why you are paying more for cream. Okay? They get that connection. But beyond that, it's -- they -- they don't see the connection.

Q. But you attribute some of that spikes to some of the decline overall in milk sales in the last 18 years? I do think you indicated that your sales have been up, but just as an overall.

A. Yeah. Yes. And I think it gets to what Mike was saying earlier, that, you know, retailers don't raise their price in lockstep with our increases. And maybe what's worse on fluid milk, is once they get it up, like if -- you know, if it goes down, we -- we announce a price decrease, they don't always go down. Right? So that -- that's where we get hurt, those spikes hurt us.

Q. I want to turn to page 5 in the paragraph above your conclusion. And you make -- in the second sentence it reads, "We are now competing with fluid milk plants owned by cooperatives that have the option of reblending to reduce volatility for their customers."

I wanted you to expand on that, because as I think of reblending for cooperatives, that's to their producers, not to their customers.

So could you kind of explain what you are trying to get at there?

A. Yeah. So that's kind of a new phenomenon in our world is we didn't used to -- and I know they have existed, but in our -- in Federal Order 33, we now have cooperative competitors, and so they don't necessarily need to pass that up and down. They don't -- they can -- they can -- I don't want to say -- level their cost a little bit by the reblend. And maybe this is just in my imagination, but if they don't have to pay their member producers every penny that month of a spike, you know, and save it for the next month, we don't have that option.

Q. Okay. So that's still reblending on -- to the producer side --

A. Yes. Right. No.

Q. Okay.
A. Forgive me for saying no, I didn't mean no.
Q. On page 6, below your bullet points --
A. Uh-huh.
Q. -- the end sentence of that paragraph: The key to all of the above, of course, is the Federal Order system, where all dairy farmers in the order get the exact same price for their milk, regardless of what is used -- what it is used for or how it is marketed.
And I -- I -- I drew up a question because I wasn't sure what you meant by "key to all of the above."
A. Yeah. So that -- this is a little bit of my pet peeves with our industry, but every -- we all want to act like all milk is the same, you know. I have been through issues where Pennsylvania used to have a AA standard, and the milk -- you know, the IMS kind of forced it to go away because you couldn't say AA -- you know, AA was better than A. And, you know, just all the things that press everything together, and we want to just say it's milk and leave it alone, it's the same.
And I think that all starts with the idea why everybody gets the same price. So how do you tell a farmer that -- or how do you talk with your -- you know, you don't tell a farmer anything actually, right?
How do you work with a group of farmers to say, hey, here's what we want to do, here's the market, you know. So in our -- in our case, it happens to be quality. You know, it could be, you know, what they eat. It could

be whether they listen to classical music at night, whatever. But how do you -- what's the incentive to work with a group of farmers to get them to do something different for your customers, when they are all get paid the same in the end anyway.

Q. Do you -- but you use -- you utilize premiums to help do some of that differentiation?

A. Right.

MS. TAYLOR: That's it for AMS. Thank you.

THE WITNESS: Thank you.

THE COURT: Redirect?

MS. VULIN: No redirect, thank you. Just would move to admit Exhibits 271 and 227, please.

THE COURT: Is there any objection to the admission into evidence of these two exhibits, 271 and 272?

There is none. Exhibit 271 is admitted into evidence.

(Exhibit Number 271 was received into evidence.)

THE COURT: Exhibit 272 is admitted into evidence.

(Exhibit Number 272 was received into evidence.)

MS. VULIN: Your Honor, the Milk Innovation Group would call Tim Doelman of Fairlife. But if we could do a five-minute stretch break, that might allow us to get the AV side up and running, please.

THE COURT: Excellent. Let's take five minutes.

If you do leave the room, don't go very far.
Please be back at 3:02.
MS. VULIN: Thank you, your Honor.
(Whereupon, a break was taken.)
THE COURT: Let's go on record.
We're back on record at 3:02 p.m.
I'd like the witness to state and spell your name, please.
THE WITNESS: Tim Doelman. Tim, T-I-M; Doelman, D-O-E-L-M-A-N.
THE COURT: D-O-E-L.
THE WITNESS: That's correct, M-A-N.
THE COURT: Thank you.
Have you previously testified in this proceeding?
THE WITNESS: I have not.
THE COURT: I would like to swear you in.

TIM DOELMAN,

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

DIRECT EXAMINATION

BY MS. VULIN:
Q. Good afternoon, Mr. Doelman.
A. Good afternoon.
Q. And just a friendly reminder for all of us, we have got our court reporter over here taking everything down, so you will want to speak almost artificially slowly.
A. Okay.

Q. Can you tell us your business address, please?
A. 1001 West Adams Street, Chicago, Illinois, 60607.
Q. And you have a document in front of you entitled Testimony of Fairlife, LLC, Part I.
Do you see that?
A. Yes.
Q. And is this your written testimony for this proceeding today?
A. Yes, it is.
MS. VULIN: I'd ask, your Honor, that this document be marked as Exhibit 273.
THE COURT: It will be. Thank you.
(Exhibit Number 273 was marked for identification.)
BY MS. VULIN:
Q. And you have another document in front of you, a copy of your PowerPoint with Fairlife's logo on the front.
Do you see that?
A. Yes.
MS. VULIN: And I would ask that this document be marked as Exhibit 274.
THE COURT: It will be.
(Exhibit Number 274 was marked for identification.)
MS. VULIN: Thank you, your Honor.
BY MS. VULIN:
Q. And I think I have you have a copy of the PowerPoint pulled up?

A. I do.
Q. Great. There you go.
So to start us off, why don't you tell us how you got into the dairy industry.
A. Born in the industry. Parents dairy farmed in Washington State. Father, part of Darigold's Board of Directors for, I don't know, up to 40 years. A very active member at National Milk for probably at least 20 of those years. So been in the industry from the very beginning. Most of my family and relatives were also in the industry.
I have a degree in dairy science from Cal Poly San Luis Obispo. Spent years after school at Dreyer's Ice Cream before venturing out in the innovation company that was initially called the Good Cow Company, which then later became Fairlife.
So I have been in the industry my entire life.
Q. Tell us, what's your education post-high school?
A. Bachelor of science in dairy science.
Q. And when did you start at Fairlife? Can you just tell us a little bit about that?
A. Sure. I'm one of the founders of Fairlife from -- we started in 1998, believe it or not, again, as what I would call the Good Cow Company. And then over the years as we toiled in the wilderness to create an innovative kind of product in the space of fluid milk, we ultimately re-branded ourselves later on when we formed a JV with the Coca-Cola Company in -- I believe it was in 2012.

So I have been a key member of the Fairlife group from the very beginning.
Q. And what's your current title at Fairlife?
A. The CEO.
Q. And if you could go to the next slide, please.
Could you tell us a little bit about the fluid products that Fairlife offers?
A. Yes. I put two pictures up here. On the left-hand side you can see our -- what most people think of when they first hear about Fairlife, which is our ultrafiltered milk. And you can see a variety of different package sizes there. We have the 52-ounce in the front, with a variety of different fat levels, as well as flavored UFM milk. Then you see some smaller bottles where we'll have some flavored -- or some non-flavored white milk as well as some flavored milks in that category.
And to the right of that you will see that we have some other products that are what we -- fall into currently the Class II kind of space, which we call the kind of the high-protein, sports recovery type of products, or meal replacement type of products, all made from fresh milk.
Q. Thank you.
THE COURT: I didn't catch that last phrase. "Sports recovery" or what?
THE WITNESS: Sports recovery would be one category. You see the Core Power on the picture.

And then the other products you see on the back right is Fairlife Protein, which we would call kind of meal replacement, weight management category.
BY MS. VULIN:
Q. And you talked about toiling in the wilderness of innovation.
Tell us a little bit about that. What innovation did Fairlife bring to the market?
A. Yes. Fairlife really developed a filtration process on fresh raw milk to essentially split apart the many components of milk, and then figure out a way to recombine them into a product that consumers want and -- and works for them, and has attributes that they desire and are willing to pay for.
And so that was quite a journey to figure out, one, how to do the process; two, to figure out how to actually market it and sell it to the end consumer; and then, three, do it in a way where you actually make money.
When we started, I still remember kicking the business off, people would say, you are going to sell a gallon of milk with 1.6 gallons of milk in it? Good luck.
So, yes, it was quite a challenge to figure out how to create value out of raw milk, and that was our journey.
Q. And tell me about your processing facilities, please.
A. Sure. We have a facility in Coopersville, Michigan, where we have these products being manufactured,

of which fall into Class I, Class II, and Class IV.
We have a small yogurt plant in Indiana, which only makes Class II yogurt.
And I want to make a clarity real quick here. I think in the written testimony that I have here, I think I state that all of our plants are Class I, II, and IV, and this plant -- that was a mistake on my side -- only does Class II, just for clarity.
Q. And when you say "this plant," remind us which one?
A. The Indiana facility.
Q. And that Indiana facility does which classes?
A. Just Class II.
Q. Just II?
A. We make a yogurt there.
Q. Great. Thank you.
A. Yep.
And then we have a facility in Goodyear, Arizona. That, again, manufactures all of these products that you see.
And then we have another plant in New Mexico, where we learned a lot of these tricks and technologies on how to do filtration, and it just does the filtration portion of the business for us.
Q. And so the milk you purchase is regulated on which orders?
A. So --
Q. I believe it's on page 2 of your written

testimony.

A. Yeah. I had to write it down here just to make sure I got it right.

But, yeah, we're in Order 33 in the -- in the Coopersville and the Indiana facility. We're in Order 126 in New Mexico. And then 131 for our Arizona facility.

Q. Thank you.

And if you could go to the next slide, please.

We have heard a little bit about kind of the innovation and growth of Fairlife. Share a little bit of the company highlights with us, if you will, please.

A. Sure.

So after many years of toiling in the desert trying to figure out how to get, really, consumers to pay attention to the nutrition of milk. And, again, that is a mission that we have had from the very beginning of the business when we started in 1998.

Having that desire, you know, we spent much time developing the technology, as I mentioned, probably ten years working with different partners out there on the technology side, working with customers trying to figure out how to sell it, working with big companies that could potentially get behind this and help create a brand.

Truthfully, we had no desire initially to create a brand, because that costs a lot of money. And the CPG world is littered failures on the brand side of the business. So we initially were a technology company in regards to this.

We recognized big companies don't usually go after building brands, so we recognized as a group we would have to go build a brand. So we started that process, really, initially, with what became Core Power today. And that started -- that journey started around the 2011 kind of timeframe, even prior to hooking up with Coca-Cola.

Then we formed the JV with Coca-Cola, and then spent many years investing and developing products that we felt the customers and the consumer would be interested in.

So we, again, initially had what is Core Power today. We then developed the Fairlife brand to market the ultrafiltered milk. Then ultimately we had numerous other products and trials that we have tried, sometimes with success, and one of them that you still see out there is this nutrition prime protein, which is a --

Q. Slow it down a little bit and start us with, one of them you see there is.

A. The back right there you will see, not the ice cream but the one in front of it, that's a very successful product that we sell today.

And so you will see us constantly trying new things in the space to try to find the right kind of product, package, price point that works for the consumers, and it's been successful.

What I don't show here is, you know, quite honestly, some of the failures that we have had along the way. We have had some. And we continue to innovate as kind of a backbone of our business. And so we'll always try things.

And what you see are the ones that are successful ultimately, and we continue to put money behind them, to the point of which in 2022 we celebrated surpassing the billion dollar brand mark, as Mike also mentioned, on the Lactaid side, which is a very -- you know, a big deal for companies to be able to recognize that your brand has presence and it's -- it becomes something that you can put more and more marketing dollars and investments behind to continue to support the innovation side.

Q. Congratulations.

A. Thank you.

Q. How many employees does Fairlife have?

A. We have around 850 employees.

Q. And I understand that you are here today to tell us a little bit about hedging, or a lot about hedging.

A. I will try to explain hedging from what we do and why it's very beneficial to our business.

Q. And I would say throughout our hedging conversation, imagine I'm a smart sophomore in high school, and if we could keep it at that level, I think that would help everyone here. We have gotten some education, but we're all really trying to wrap our arms around it. So if you could go to the next slide, please.

So what -- what is hedging?

A. Hedging really is simply a tool or a method that allows us to secure a price in the future, today. It allows us to know what the price will be that we're going to pay for the milk.

Q. And we have heard some examples of hedging. One is a futures.

What's a futures contract?

A. A futures contract is a certain quantity of a commodity at a price at a time point.

So for us, a futures six months out from today -- and we are in the month of September, so I will call it April, maybe I'm off a month, March -- I would go out and I would buy a future contract for a certain commodity, call it powdered milk, for instance, NFDM, and it will be a for a certain quantity of pounds of protein or skim milk converted back out, at a certain price.

So when I buy a future, I am essentially locking in a price for that skim milk or that -- that protein for us. That's kind of how we look at the value of it, at a known price.

Q. And then I see options.

What is an options contract?

A. Options is another way of securing a price with a slightly different methodology around it. An option, instead of locking in a specific price, I will purchase an option so that if the price goes above or below a certain price, I have the option to transact it and purchase it. So I tend to pay a small premium for that ability to lock in a price at a later point.

Q. And practically, if I wanted to buy a futures or

an options contract in the dairy industry, where do I go to do that?
A. The CME.
Q. And can you hire consultants or get advice from banks? Where do I find information about how to do this?
A. There's a variety of industry folks that will do your transactions for you on the CME, give you advice. It is, what we found, the best vehicle for transparency and price.
When you go to banks -- and not that we're against some of the over-the-counter potential approaches that you go do with a bank -- but you don't have as much of a marketplace. There's not as much liquidity in that. That's more of a one-on-one transaction on, do you agree on a price, do I agree on a price?
When you go to the marketplace, the CME, you get everyone's visibility on what that price is going to be. So I can put out a price, and I can have speculators buy it, I can have a farmer buy it, or basically sell his milk to me at that time from -- it doesn't matter where he is in the country. So it allows a large people to participate in the marketplace.
Q. And you say "the marketplace."
So when we talk about a futures contract or an options contract, someone has to be on the other side of that contract, correct?
A. Yes.
Q. And so to the extent that what you are asking for

or offering in that contract is highly speculative, very, very likely to happen or very, very unlikely to happen, that can impact how many people may be interested in purchasing the other side of that contract, correct?
A. I don't know if I totally followed that question.
Q. What -- there has to be someone else on the other side the futures or options contract, correct?
A. Yes.
Q. What would make someone more likely or less likely to want to buy the other side of that contract?
A. It depends on their financial, you know, disposition on what they are trying to achieve. It could be a speculator who is deciding that I'm offering too much money for the -- for that milk at a time in the future, so therefore they may buy it because they know they are going to be able to sell it at a price that profits them.
Another buyer, for instance, could be a farmer -- or I should say he would sell his milk to me, and it would allow him to potentially de-risk his business. So, again, if my price is high enough in the futures world, then that farmer would be incentivized to potentially sell his milk to me, which allows him to have clarity on what his price is going to be -- or him or her -- and I will have clarity on what my price is going to be in the future.
On my side, I can now have confidence in what I do with that price of milk in determining my marketing plans and my sales plans and my capital plans, and vice versa, the farmer on the other end can have confidence when he

decides to go buy some corn on the futures market, which is a very liquid market, easy for him to do or, you know, maybe make an investment in his barn.

So it allows people to have confidence or certainty in the price they are going to get for their product they are selling, as well as I'm able to secure a price that allows me to make appropriate business decisions.

Q. We have heard this word "liquidity."

And tell me if my understanding is correct. The more participants in the marketplace, the more people offering contracts, and the more people willing to accept the other end of those contracts, the more liquid the marketplace; is that accurate?

A. That's what we mean by the term liquid. There are more participants. And vice versa, an ill-liquid market would be a market in which there's few participants, and it can be easily distorted to where it doesn't reflect maybe a true market value. So the more participants, the better.

And it's -- that's what you see in pretty much most commodities around the world. You see it with financial instruments, again, oil, corn, sticking to agriculture. And it's something I think the dairy industry has done a great job facilitating in regards to Class III and cheese. We're getting better in Class IV. But the more participation we can get, the better it is for all parties involved.

Q. And I see here you say, hedging is "not gambling," it "cannot be a guess."
Tell us a little bit more about that, please.
A. Yeah. It was -- I believe Mike shared this earlier, it's really an insurance policy is what it is for us on our side. So for a processor as -- if we were to call ourselves a processor -- yeah, it's a way for us to de-risk the potential price volatility associated with the commodity that we're using. So it can be a gamble if you speculate, but we're not in the business of speculating.
It's helpful to have speculators in the marketplace. This is why it's nice to be in a CME kind of a category, because it -- it helps create an accurate view of price in the future. And so the more participants, the better price discovery the tool is. And that's just why I believe we should, as an industry, do everything we can to facilitate hedging in all classes.
Q. And you say "price discovery."
Again, tell me if I have this right. Does that mean the more people out there offering a futures contract for Class III at $15 a hundredweight six months from now, as you start to see those stack up, that gives you some insight as to what everyone else in the marketplace is thinking will happen to the Class III price; is that right?
A. That's perfect.
Q. I studied very hard for that one.
And then you say, hedging is "not free."

Tell us a little bit about the costs of hedging.

A. Yeah. I mean, there's a transactional cost to a hedge. It's -- it's not massive, but it's not free. And it -- depending upon what kind of hedge you create, it can have higher costs. Like, an option will have a higher cost than a future. A future is a guaranteed price that I lock in. An option is an option to transact, and I will pay a premium for that option.

So it -- you know, it doesn't necessarily lock in a specific price, but it gives me protection, potentially, if the price goes up too high, I can exercise the option. And vice versa the other way, if I were, you know, maybe the person selling it, if it were to drop too low, I can exercise an option to make sure I get a higher price than what the marketplace is doing. So there are costs associated with it. Obviously, there's managerial costs associated with it also.

By and large, though, it's not overly expensive. It's a very, I think, effective tool to figure out price discovery into the future.

Q. Uh-huh.

Would it be fair to say a lot of the investment in hedging is the internal work of developing the program, understanding how best to structure those to match your specific business, and then getting the team aligned there?

A. That's correct. I think there's a process of education and then figuring out how to do it successfully.

No one wants to go into it potentially making a major mistake and impacting negatively the business. So there's a process of learning. Walk before you run.

Q. And does Fairlife hedge its Class I products?

A. We do.

Q. Okay. Tell us a little bit about that. How does Fairlife hedge its products?

A. Sure. Again, we will look out into the future, and depending upon, kind of, you know, different needs of the business at the time, we will try to secure our price for the -- as far as we believe we have a good liquidity look into the future.

I'll just kind of share the nature of the industry from our perspective. We believe the Class III and the Class IV and butter commodities are pretty good six months out right now. You have pretty good liquidity associated with it, interest, and -- that means on all sides. And so we tend to have more either options or futures associated with our volume for the first, you know, zero to six months.

We have been very active over this last year to look out a full 12 months, and we probably -- I don't like to be, but we're probably market makers in some of these things, because the liquidity's not all there yet. But we're hopeful that as more people participate and speculate -- you know, outsiders of the industry, are a part of this process -- that that continues to develop. The same as if were you to look at a corn market, or an oil market, or a gold market.

So we're hoping and we're participating in this market so that it can continue to develop and become more and more liquid, and more and more of an advantageous tool for both the buyer and the seller.

Q. When did Fairlife begin hedging its Class I products?

A. In 2019, when it was allowed to be able to do it. And I say "allowed." You could "try" to hedge prior, but as you will see in some examples, you really can't with the higher-of because you don't know what to hedge. You don't know if you are going to be based on a Class IV price or a Class III price, and so there really is no way to definitively hedge and know what price you are going to pay.

Q. And when Fairlife started hedging, were you hedging 100% of your milk at that time?

A. No. No. Like I said, you walk before you run.

And I'd say the first year might have been 10%, again, learning how to do it. The following year probably goes up to 20%. I will say this year we are looking to be able to hedge a majority of our milk. And so we are, again, constantly using this tool and learning how to use this tool to effectively benefit our business.

Q. And you mentioned this over-the-counter or kind of custom hedging program.

Has Fairlife ever utilized one of those types of hedges?

A. Not with any significance as of yet.
Q. And you discussed this problem of figuring out which class to hedge under the higher-of.
So if you could go to the next slide, please.
So I have -- again, as a -- as a top-of-my-class high school sophomore -- walk us through an example of how you place a hedge to hedge your Class I milk.
A. Sure.
So in the current formula since 2019, we take an average-of Class III and Class IV. And I'm going to, for now, just for simplicity, limit it to the skim portion of the milk. And so knowing that it's a blend, or a 50/50 blend of each Class III and Class IV components --
Q. Sorry. I'll stop you there.
So it's 50/50 blend because the price -- the skim milk price, the base Class I skim milk price, is calculated as an average. So 50% of that value is coming from III and 50% of that value is coming from IV, correct?
A. That is correct.
Q. And that's what we see here in the images of the cheese wedge and the powder with the Roman numeral IV above it; is that right?
A. The powder design is suspect. But, yes.
Q. I'll speak with your counsel about that one.
And then just tell us just so we can kind of track what we have got here. What is below in the red circle there?
A. That is essentially saying, can I go forward and

make a deal now with my customer with some price certainty on my side? And so right now it's circled, but you will see in the next couple of examples, is that can I go forward or can I not?

And so, again, I'll just go through the numbers here. You can see, for Class III, we'll say some time in the future, I'm at $16, and so I'm going to hedge 50% of my needs at $16. On the powder side for Class IV, I'm going to hedge 50% of my needs at $14. And so now I have essentially, you know, taken a -- you know, an average of the both, and I'm going to end up with a $15 skim price.

Q. And with that you are able to commit to your customer a price with the anticipation that in six months you can honor a price that is based upon a $15 base Class I skim price; is that right?

A. That is correct.

Q. Okay. So you place your hedge. You commit to your customer based on your hedge.

What happens next?

A. Well, we have placed the hedge, and we see whether or not we got it right. And it's not so much about getting it right. I have confidence now with the average system what the price is going to be. And I'll kind of walk through how those mathematics work in the next slide.

Q. So even if you're right or even if you are wrong, that doesn't matter so much as now you have certainty that you can honor the price you have given your customer?

A. That's correct.

Q. Okay.
A. And I will know exactly what the impact to our business is and act accordingly.
Q. Thank you.
So let's head to the next slide and let's see what happens with your hedge.
A. So this is, again, using the average-of formula. The actual price of Class III here unfortunately went down -- I say unfortunately because I have a farmer bent to things, too -- so it went down to $12, and -- but I hedged it at 16. So that means on my hedge, I lost $4, because I bought it at 16, so I have lost $4, essentially.
Q. And that's over --
A. Rather -- I'm sorry.
Q. I'm sorry to interrupt. I just wanted to point out the math.
And that's where the $16, where you placed your hedge, right? And your $12, the difference of that is $4?
A. Correct.
Q. And that's what we see under the hedge gain/loss column.
A. Yes. You will see I lost $4.
Now, you will see in red that essentially against the volume of milk that I hedged, I'm only going to use $2 because it only represents 50% of the cost.
Does that make sense for folks?
Q. Yeah.
A. Okay. All right. So on the next -- the next area

in Class IV, relative to the Class IV price, I -- again, my hedge position was $14, the actual price came in at $18, so I actually made $4 on the hedge itself on the future, on the position. Again, it only represents 50% of the volume that we have committed -- or, you know, that I have sold. So when you net the loss of $2 of $0.50 [sic], and the gain of the $2 from the Class IV hedge, I ultimately end up with a zero difference in my -- in my price that I have paid. So I end up with my average still being the $15, which is 50% of the original 16, and 50% of the original 14.
Q.   And so in this case, even though the market has gone in different directions, you have been able to lock in your price?
A.   That's correct. I have -- from the very beginning, I knew that 50% of the $16 hedge, and 50% of the $14 hedge was going to give me that base class price of $15. And as time went on, and I sold or, you know, realized the value of those futures I purchased, I have recognized equal offsets to those changes to where my net price is still $15.
Q.   Right.
So if we can go to the next slide then, please.
A.   Yep.
Q.   Oh, sorry.
A.   I want to make sure people understand this slide.
Again, maybe stated even easier, just conceptually for people to understand, when I purchase a contract out

in the future, I'm essentially setting that price. And I have set it, again, at $16. For instance, I'm going to go back to this Class III. The price went down to $12; I lost $4. I hope people can kind of follow that.

Equally, I bought Class IV contract at $14, and it went up to $18. I made $4 on that. They offset.

And again, I just -- I know I am saying the same thing again, but I think sometimes it's good for people to hear it twice to understand that nets out to no difference to me, so I have been able to lock in effectively that $16 initial price and that $14 initial price.

And, again, if I bought them equally, Class III and Class IV, my base price will be that $15.

Q. Right. Thank you.

So let's head to the next slide.

So this now we're under the higher-of, correct?

A. Correct.

Q. And you had explained earlier that the challenge of the higher-of is knowing what to hedge, right?

A. That is correct.

Q. And so we have the same example here, but the problem being that at the end of the example only one of your hedges really matters; is that right?

A. That is correct.

Q. And so walk us through that, please.

A. So in this circumstance, again, I bought an equal amount of contracts of Class III and Class IV. I bought III at 16; I bought Class IV at $14. You can see that in the higher-of the Class III becomes irrelevant to me. So the gain associated with it winds up being negated. It's not there.

In the Class IV you can see the price goes up to $18. So I've lost the money associated with III, but in IV, I still have this cost. So my base has now climbed from $15 to $18.

Q. Thank you.

And because you don't know which to hedge, you are not able to offset that fully, correct?

A. That's correct.

Q. And if you had hedged 100% of Class IV, you may have been able to do that, correct?

A. Correct.

Q. But had you hedged 100% of Class III, you would be even worse off?

A. Correct.

Q. And this idea of not gambling, is that reflected in this concept here?

A. Yeah. I -- if it's the higher-of, I'm gambling. I don't know which one to hedge.

Q. And so here, the $2 under the Class IV hedge, is that $2 you made?

A. When you say "made," what do you mean?

Q. $2 benefit from that hedge?

A. Yes.

Q. Okay. And so then I think I have one correction.

When we're looking at the base Class I skim price, that $18, should it be minus the $2 from the hedge equals 16?

A. Yes. Yes.

Q. Thank you.

MS. VULIN: So I'll have that on the record, your Honor, if I could read out that correction, please?

THE COURT: Yes.

MS. VULIN: So in the bottom right there's a box that says "Base Class I Skim," it says $18 minus $0 equals $18. And it should read $18 minus $2 equals $16.

THE WITNESS: Correct.

BY MS. VULIN:

Q. And so the point there is, even though you did make some money because 50% of your hedge was correct --

A. Correct.

Q. -- it's not enough to offset the loss?

A. That's correct.

Q. And is this why -- is this cost, even though your loss would be less if you guessed fully right or wrong, like, why is that still not something you would want to undertake?

A. Because I no longer have the price certainty necessary to lock in the price with the customer that I'm selling the final product to. I just don't have enough certainty on the price. So depending upon the extremity of the change in the Class III or Class IV price, it just leaves too much open to us.

Q. Is it similar to the concept of throwing good money after bad, that you would just be taking money you otherwise could use to grow your brand, to invest, and putting it in something that you just have no idea if it will work or not?

A. That is correct.

THE COURT: Let's stop for just a minute.

Does anyone have a red pen for us to mark the record copy accordingly?

Let's go off record just a moment. It's 3:40.

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

THE COURT: We're back on record at 3:41. We have made the changes to page 7 of Exhibit 274. Thank you.

MS. VULIN: Thank you, your Honor.

BY MS. VULIN:

Q. And so appreciate you walking us through -- now, this is a simplified example of hedging, correct?

A. Correct.

Q. There will be more moving parts to this likely?

A. Yes.

Q. But does the general principle or concept of why hedging under the higher-of still hold even when you add in the complexities of the industry and how to construct a hedge?

A. Yes. Everything holds. The ability to hedge, you -- it's -- it's almost -- I guess analogous would be, you wouldn't hedge copper to -- to lock in a price for gold. And -- and that's what this would be akin to. You don't lock in a cheese price when you are buying powder.

In other words, you don't know which one is going to be the commodity to base things on, unless it's an average-of. Then you definitively know what you are buying. A higher-of doesn't work. I don't know what commodity I'm buying.
Q. Thank you.
Now, if we could go to the next slide, please.
We have heard some discussion about the adjuster that MIG has in its Proposal 15, correct?
A. Correct.
Q. And I know the explanation here of how it works, and we have had some of that, but I'm hoping you can just tell us why the adjuster with the one-year lag, what about that design is critical to support risk management?
A. Yes. So I'm going to back up just a bit in regards to the desires here.
The desires here is to come up with a solution that we can hedge and the dairyman still gets the benefit of having the higher-of.
So as a buyer, we're not -- you know, we're not trying to change the system. We're -- we're basically looking for the solutions for the industry.
So with that said, again, I just mentioned the higher-of doesn't work for us because I don't know what commodity to buy. Am I buying gold or copper? Am I buying Class III or Class IV? The 24-month rolling adjuster and a 12-month lag, someone might understand, why do you need all of that?

I'm going to first address the 12-month lag. The 12-month lag is because I need to be able to go out and buy today, 12 months into the future. So it's -- from a continuum -- time continuum perspective, that 12-month lag is taking into consideration that I'm going to be buying futures 12 months into the future from today.

Then the 24-month average is, what has been that differential between the Class III and Class IV? What has that higher-of been averaging? And so putting them together allows us to know what that premium structure is going to look like associated with the adjuster, definitively 12 months going into the future. And -- and that's why you need the 12-month lag combined with the 24-month average.

Q. And this idea of a delay in payment, a farmer is still going to receive the full base Class I skim price at the time it's calculated, correct?

A. He will, or she will, absolutely get the whole price.

Q. There's no pile of money that's held for 36 months and paid out late?

A. Not at all.

Q. And this issue of looking at this time period, the driver there was more to find a way to mimic the higher-of formula, correct?

A. That is correct.

Q. And so really, the payment price of this base Class I skim formula is intended to more or less be the same on the day it's paid as what the higher-of would have offered?

A. That is correct.

Q. And this idea of a dynamic adjuster, why do you think it is more accurate, better, important to have an adjuster that changes with the marketplace as opposed to something that is fixed? Because seemingly, that would be easier to hedge.

A. The -- it is easier to hedge. A fixed system is easier to hedge. And I think everyone knows we have a $0.74 fixed system right now.

But there's potential aberrations that can occur in a market, and we just witnessed that with COVID. We had very volatile pricing that resulted in a spread that was greater than the $0.74. And, you know, from the farm perspective, they feel like they were getting -- you know, not getting what they deserved in the higher-of.

So the downside with having a fixed $0.74 is it doesn't change depending upon what happens in the marketplace. So the dynamic adjuster is going to -- going to take that into consideration. So if there are some, you know, significant market changes that occur, such as a one-time, you know, significant event like COVID, or maybe there's an underlying industry change that's occurring that causes one of them to be significantly -- one of the classes to be significantly higher than the other, this rolling adjuster will take that into consideration. And it will be an ongoing solution for both the farmer, from what he receives, he's going to still get -- he or she, is still going to get the higher-of, and -- and from a processing side, we'll be able to participate in hedging effectively.

Without this kind of ability to know, again, as I mentioned, I need to know what we're going to hedge, and -- and -- and the average-of allows that. The adjuster allows the farmer to get the higher-of.

So I believe this is, to me, a very -- a very good compromise or a good approach that works for all parties.

Q. And if we could go to the next slide.

I am not sure there has ever been an FMMO hearing that talked about hedging anywhere near as much as this one, at least none I know about, and so why is it so critical for Class I processors, and Fairlife in particular, why are you here fighting for this? Why is it so important to you?

A. Again, if you go back from a history perspective, innovation is super key for what we do. We believe we're looking for ways to improve the industry and how we market products. But then also, again, around this kind of price discovery side of it, it -- it -- having certainty in price and consistency in price allows us to market our innovations that much more effectively.

Again, I think it's heard in other testimony, certainly in ESL, or what I will call value-added dairy products, whether or not it's a dairy product -- and, again, forgive me for saying this, but even the non-plant stuff is in the category value-added dairy -- having price consistency matters. It matters to the customer. It matters to the seller. It allows them to put marketing programs around it, pricing programs around it, to promote that particular product. And so having a consistent price matters ultimately to, I think, everyone involved, customers and consumers, the -- and -- and certainly from the processor side.

And I believe at the end of the day, anything that helps get consistency or certainty on future pricing for the farmer is just as important.

Q. So you say what we think of as hedging or risk management on the processor side translates on the consumer side, both the retailer and the consumer, to price stability.

Is that what your -- is that a fair summary?

A. Yes.

Q. And here your heading, "where should our industry focus," is it that consumer, getting that milk to the consumer?

A. Anything we can do to facilitate marketing our product successfully to the end consumer will help the industry in large.

Q. And consistent with this idea that hedging might be something new, at least for Class I processors, and new to the consideration of what we're talking about here, I know we received some questions about how does -- how is this consistent with the AMAA?

And I'm just wondering if you can speak a little bit to how you think processors' ability to hedge supports the goals of --of orderly marketing.

A. Yeah. From what I understand, and I'm not an expert, but I have read some -- some of the passages around the AMAA. You know, a core functionality is to make sure we're doing things that help -- help the consumer side of it, as well as help stabilize pricing. And, again, I believe the -- a futures market, an actively participated-in futures market, is the best market-driven approach to create price stability.

Again, you look at other -- and it's why us as an industry over the last, call it 20 years has put a lot of money and time and energy to develop the CME to where it's at, and it's been an evolution. I believe that allows us to have the appropriate tools on all sides of the coin to bring and create stable products for the consumer, so --

Q. And when you -- this word "tools." I liked that.

So in thinking about the tools that that AMAA maybe allows for in order to encourage orderly marketing, could one of those be Make Allowances?

A. I don't know how Make Allowance necessitates any kind of futures stability around price, so I --

Q. Could it be -- is that part of the formulas USDA uses to create an overall program that they -- that leads to orderly marketing?

A. I mean, I assume it can be. But I mean, to me, again, it is -- it's more about deciding upon what a future price will look like through a futures tool. So to me, it's not necessarily the tool that's going to allow us to have steadier prices.

Q. Maybe if I can phrase it a little better.

Do you think it should be part of the number of considerations that USDA takes into account when crafting policy that meets this kind of more general goal of orderly marketing?

A. If -- if the goal is for, again, the AMS or USDA to kind of help facilitate determining an appropriate price in the marketplace, it can be a tool that gets used for that.

Q. And we know that Fairlife has seen a lot of success in recent years, and congratulations on that.

Is it your belief that it's important for Fairlife to continue to have this risk management tool in order to facilitate future success?

A. Yes.

Q. Thank you.

MS. VULIN: No further questions, your Honor.

THE COURT: This is probably beyond the scope of this hearing, but how did you choose what numbers for your hedge? What did you look at? Did you just look at that three -- that two years lookback and you're rolling forward one year?

THE WITNESS: Yeah. This -- this is an example. It doesn't even -- there's elements to this that would make this more sophisticated or complicated, but let's just say this is six months out.

So we look at a price six months out, and then we decide whether or not we should purchase at that price. And -- and this is an example of us buying an equal amount of Class III and an equal amount of Class IV contracts. And so this is a relatively simple way of explaining, you know, what we do every day.

Now, we might buy six months out. We'll buy one month out. We'll buy nine months out. It depends what our -- our kind of goals are. Ultimately we're trying to basically de-risk anything associated with the milk price for us. So it could have been three months out or five months out or any one of those.

THE COURT: Thank you. All right. I'm sure there are lots of questions.

Who would like to begin cross-examination?

Dr. Cryan.

CROSS-EXAMINATION

BY DR. CRYAN:

Q. Thank you. Roger Cryan with the American Farm Bureau Federation. We met a little while ago. Thanks for coming. I think you make a great product. You took the only flaw in milk and turned into an advantage.

And I -- what I understand from your testimony, your primary concern is, at least in the discussion today, is the ability to hedge Class I milk; is that correct?

A. Correct.

Q. The CME Group sent a representative to testify earlier in the hearing, and they said they are open to considering a Class I futures and options complex.

Would a Class I futures contract meet and op- -- Class I futures and options meet your needs?

A. It would if I knew the instruments kind of behind it.

Q. If there was sufficient liquidity and it settled against the Class I prices that you were --

A. Yes.

Q. Very good.

You -- you talked about how you turn a gallon and half of milk into a gallon of milk. I presume that that other half gallon is -- you hedge that as well, Class IV contracts to hedge that fortification?

A. That is correct.

Q. Okay. I think that's it.

DR. CRYAN: Thanks very much.

CROSS-EXAMINATION

BY DR. BOZIC:

Q. Marin Bozic for Edge Dairy Farmer Cooperative.

Good afternoon, Mr. Doelman.

Do you do hedge accounting?

A. As a company?

Q. Yes.

A. Yes.

Q. How long -- can you describe in a few sentences? Like what was the process like to get a hedge accounting status for your hedging program in dairy?

A. First off, I'll say I'm not the expert within our company. I have someone in charge of our hedging process, so -- but I will share what I know.

We essentially have, I think a couple different options of different groups that we use that participate on the CME for the hedging process, and they will -- you know, we're set up with them. I think they have got all the licenses. And then we ask them on our behalf to transact.

Q. Those would be brokers, right?

A. That's correct.

Q. Okay. And then do you have to do a certain kind of reporting to show that your hedges were effective?

A. That is correct.

Q. If perhaps you had a conversation with your in-house expert, would they be able to achieve hedge accounting status if we were to return to the higher-of regime?

A. I don't even know how we would do it, because we're not sure how to hedge that against a specific quantity of milk that we would be purchasing. So it would almost be more speculative at the point. So I'm not sure how the accounting would work.

Q. You don't think that the OTC contracts could do the trick?

A. OTC for us is a risk from a transparency perspective. We do not believe we have the same level of transparency in the marketplace.

Q. And how does your ability to -- currently -- how does your current ability to hedge affect what Coca-Cola would like to do with your company long-term? Do they see that as a benefit?
A. Absolutely. Coca-Cola is 130-year-old business that, from a commodity perspective, is probably hedged out on 80% of what they sell.
Q. Would it be fair to say that they would be less keen to invest in further potential plant investments if the ability to hedge were to go away?
A. Absolutely.
Q. Do you have any HTST business or is it all ESL aseptic?
A. We do not have HTST business.
Q. And you mentioned before, in the context of your examples, that a problem with hedging under the higher-of regime is that the mover class changes, you thought what was going to be Class III ends up being Class IV.
Would you venture a guess, over the last decade or so, how often does the mover class change, expected versus actual?
A. I have seen it recent -- well, you see it today, right?
Q. Right.
A. Today Class IV is significantly higher than Class III. Maybe to answer that, every -- every other year, every year or so there's a flip-flop essentially.
Q. Would it surprise you to learn that it's about

one-third of the time, almost every third month? Not -- not -- nothing -- not a switch, but like when you count all the months, it's about one-third of the months that --

A. Yeah. I'm surprised it's even that frequent. But, yeah, that's I would have guessed, once a year or so where it kind of changes and flips from one to the other.

Q. I would like to read a paragraph from the Agricultural Marketing Act, just in case you have insomnia. It's from the -- apologize for the joke -- it's from the -- from the very beginning of the Act, declaration of policy. This is the section of the Act when they are saying this is why we are doing this. This is why the policy is implemented.

And this is the paragraph 4. I understand you don't have in front of you, so I won't ask you to validate the language, just to comment upon, you know, as you hear it.

And the paragraph says: Through the exercise of the power conferred upon the Secretary of Agriculture under this title, to establish and maintain such orderly marketing conditions for any agricultural commodity enumerated in section 608c(2) as we will provide. In the interest of producers and consumers, an orderly flow of the supply thereof to market throughout its normal marketing season -- and then I will emphasize the last phrase -- to avoid unreasonable fluctuations in supplies and prices.

Do you believe that the reversal from average-of

to higher-of would be in line with the stated objective to avoid unreasonable fluctuations in prices?
A. I believe that it detracts from our ability to hedge, which then actually makes the hedging markets that much less liquid, so I would say it does not help.
Q. So maybe they didn't call it risk management in 1937, but they did keep in -- they were very much concerned with fluctuations of cost to producers?
THE COURT: That's a bit of a stretch, Doctor.
DR. BOZIC: I object.
THE COURT: You may rephrase. I guess leave out the part, "perhaps they didn't call it a hedge," but just go to the kernel of your thought.
DR. BOZIC: Thank you, your Honor.
BY DR. BOZIC:
Q. Do you believe, in your opinion, would the creators of the Act prefer stability of prices to consumers or higher amplitude in fluctuations of prices to consumers?
A. I think the consumer wants a steadier price in the marketplace.
Q. Based on what you heard from the Act, is it your understanding that that's a policy objective as well?
A. Yes.
DR. BOZIC: Thank you very much.
CROSS-EXAMINATION
BY MS. HANCOCK:
Q. Good afternoon.

A. Good afternoon.
Q. I'm Nicole Hancock with National Milk.
Can you remind me again what year you said you launched Fairlife?
A. 2014, I believe, is when the UFM Fairlife product was in the market.
Q. That was the initial product?
A. Yes.
Q. And it's patented technology?
A. Yes.
Q. And the kind of branded premium market value is derived from the lower sugar content and the higher protein content.
Is that a fair characterization?
A. Yes.
Q. And -- and that's a -- those are value-adds that are used to market and sell the product to consumers.
A. Correct.
Q. And for that, and for all of the investment in R&D that you had to -- that you had to put into this to obtain that patent and those value-adds, you get a premium price for your milk?
A. We get a premium price for the milk because the consumer is willing to pay for the product.
Q. Okay. And that's for those lower sugar, higher protein attributes?
A. Some of those attributes, as well as other attributes.

Q. Okay. Do you want to tell me what they are?
A. Packaging is significant. The price point matters. Availability, distribution. All significant factors. The -- the brand image.
Q. And the shelf life?
A. That's another one. Thank you.
Q. You're welcome.
A. And actually, probably the most important one is the flavor they get.
Q. And I think that you said that -- well, let me strike that. Let me say this.
What -- what are the volumes that you are hedging today? Would you be willing to share that?
A. Not precisely. But as I shared, I think, earlier when we started, it might have been 5 or 10% of our volume initially. We have steadily increased it.
From our perspective going into this next year, we would want it as much as 80%. Whether or not we'll be able to achieve it, we don't know. But I'm kind of sharing with you because of the significance of the program for us.
Q. Okay. And so what is it -- what's the percent? If you want to get to 80% going into the next year --
A. Yeah.
Q. -- what is it for 2023?
A. We're more than -- if I started at 10, and I needed to get to 80, we're more than halfway there.
Q. Okay. So you are over 40% today?

A. Yes.
Q. Okay. And when you started at 5 to 10%, what year was that?
A. Right -- 2019 timeframe.
Q. Okay. So 40% today, and 5 to 10% in 2019; before that you didn't hedge at all?
A. I do not believe we hedged at all. We may have hedged a little Class II potentially because that's a known product that we could have hedged against.
Q. Okay. And then in addition to the percentages of the total volume that you purchase, has your total volume that you purchase also increased?
A. Yes.
Q. So we're not just comparing 40% of 2019 volume. It's 40% today of your total volume?
A. That's correct.
Q. Okay. And so a considerable amount more that you are hedging today than even last year, just based on both your percentage increase and your volume increase?
A. That's correct.
Q. And it's fair to say that Fairlife has been very successful; would you agree?
A. Yes, I do.
Q. I think you said -- what did you say, you just hit a billion dollars?
A. In 2021, we finished the year of a billion dollars in Nielsen sales.
Q. Okay.

A. So which was the billion dollar brand, so...
Q. And did you also listen to the witness from Nestle who testified about their hedging activity on their Class I sales?
A. I did not.
Q. Okay. And I will represent to you that she told me that she did not hedge anything before 2019, but now, today, they hedge all of their Class I sales.
And you would agree with me that -- well, I guess -- you're familiar with Nestle; is that fair?
A. Yes. I think I mentioned, I opened I was working with them.
Q. And she said that they are the biggest purchaser of Class I in the entire world.
Is that consistent with what you know about them as well?
A. I don't -- well, as a purchaser of milk? Perhaps. I'm not sure. From a worldwide perspective, I don't -- Class I, I only believe is in the U.S., so I'm not 100% sure how to answer that.
Q. So is it fair to say, at least based on your use of hedging for Fairlife and Nestle's use of hedging, that between the two of your organizations, that there is a lot more buying power of the Class I products today than there was in 2018?
A. Yeah. For sure. Absolutely. Sounds that way. Sounds like we both are actively using it, if what you shared is correct.

Q. And even if we go back to a higher-of mover for Class I milk, that means that there's a lot more customers on the market for hedging that milk today than there were in 2018; is that fair?
A. Could you repeat that? I want to make sure I followed that question correctly.
Q. Yeah.
Now -- you talked about the additional liquidity in the market and how that means there is more people willing to buy and sell products today than there were previously in 2018.
A. In regards to Class III futures or instruments or the Class IV instruments? Is that what you are referring to?
Q. I think your liquidity example talked about Class III and IV.
A. Yes.
Q. But you would agree --
A. There are more people in it. Absolutely. The industry has done a good job gaining more people in those categories, yes.
Q. And that's not just people in the industry, but as you described it, the speculators, who are people who see an opportunity to profit from those willing to buy and sell in those class of products.
A. That is correct.
Q. And so today, now that there has been a market that has evolved in the Class I market, there's even a

greater need for a Class I product to be sold on the CME than there was in 2018?
A. If -- if you are trying to create another commodity in the marketplace for just Class I, I would say it potentially is -- again, I don't know what the proposal is, but I -- it can't be -- based upon the kind of the formulations around milk and the alternative uses for milk, I do not believe it can be detached from the Class III and the Class IV either.
So I would -- I don't know what you are proposing, but I would say in a marketplace that has been shrinking, Class I as a category, I would be a little bit concerned about the future of that participation of people in the Class I instrument if it were created.
For us, we like the fact that it's -- well, I think anyone in the industry likes the fact that we're rooted in the core of our industry, which is cheese and butter powder. And so for us, being based on that core, I think fundamentally is correct in deciding the value of the milk.
Q. And between 2014 and 2019, how did you protect your risks?
A. Couldn't.
Q. You didn't protect it at all?
A. No. There was -- there was not a mechanism to do it.
Q. And you were still able to grow your product sales?

A. We took lots of risks. And -- and -- and there were years you were not making any money, that's for sure. You're losing a lot of money. So we feel very fortunate to be able to get into a position where we, you know, have some ability to sell our product, and we have instruments we can use now to help kind of guarantee what that price is going to be for us when we purchase.

Q. And you are not saying if you lost money, that it was attributed to average -- or having the higher-of mover in milk, are you?

A. I am not necessarily saying it by itself was a reason we would either make or lose money, but it is a part of the overall package of what we market and bring to the marketplace.

MS. HANCOCK: Thank you so much for your time.

THE WITNESS: Thank you.

MS. TAYLOR: Your Honor, I'm sorry, my mic didn't turn on very fast. I think we might need to take a five-minute stretch break.

THE COURT: I think we should take ten.

MS. TAYLOR: Even better.

THE COURT: Let's take ten minutes.

Be back at 4:23. We go off record at 4:13.

(Whereupon, a break was taken.)

THE COURT: Let's go back on record.

We're back on record at 4:23.

You may proceed.

MR. SJOSTROM: Your Honor, I think the witness would like to mention something first.

THE COURT: Oh.

THE WITNESS: I would like to make an adjustment to the notes.

THE COURT: Yes.

THE WITNESS: Referring back to the higher-of slide, I don't know if it's -- if we're able to pull it back up.

THE COURT: Is this page 7? Yes.

THE WITNESS: This was incorrectly changed. It is accurate as it states. I apologize. But it was -- again, I'll state it clearer this time.

The X out doesn't mean I didn't lose the $2 on the contract. And that's -- you guys probably all figured this out already. Thank you.

The circle on the 18, I made my $2, but the net of those is zero, so I don't have any change. And my base price that I thought I would hope to try to lock in at $15, actually is now the $18 price.

Could have said that much clearer the first time. Thank you.

MS. VULIN: This is Ashley Vulin with the Milk Innovation Group. I give myself a B minus in my hedging class.

THE COURT: Very generous.

MS. VULIN: But I do -- but I do have a clean copy, and I'll make sure that the record has the correct copy that Mr. Doelman had drafted.

THE COURT: Okay. I am sorry. I still need you to explain to me. I was listening.

THE WITNESS: Good.

THE COURT: But -- all right. So on your -- on your cheese trade, we know that you lost money.

THE WITNESS: On the cheese trade I actually made money, because the price went down to $12. Again, I hedged -- I hedged 50% of 16, so --

THE COURT: Oh, so you get the 16?

THE WITNESS: No, I'm sorry, I apologize. The cheese trade is -- is -- I stated that wrong.

I lose $2 on the cheese price, the minus 2. I apologize. So you are correct. It dropped. I lost $2. I paid too much for the cheese, essentially. I paid $16 for it, but it ended up only being worth $12, so I lost $4. But it's only representing 50% of the volume, so I lost $2.

THE COURT: Yes.

And then you made money on your powder?

THE WITNESS: Correct.

THE COURT: You made $4 on your powder, but you get credit for only half of that?

THE WITNESS: That's correct.

THE COURT: I see how it works.

THE WITNESS: So they counteract each other. I made $2 on the powder, and I lost $2 on the cheese, so I net out having no difference. I don't gain any more money in my pocket in this hedging program. So I -- that's why it's a zero.

On the math below that, that shows the actual comes in for the powder at $18, and since it's the higher-of, 18 versus 12, it winds up going into the formula. So it's 18 minus the zero for my hedge program, so my net base Class I skim price is the $18.

I was thinking I was hedging it around the $15. But because it's the higher-of, I'm incorrect. So I have missed it by $3.

THE COURT: So you did this as a warning to start with just 5% of your volume in your hedging program until you get the knack of it?

THE WITNESS: Yeah. I did explain it to you correctly the first time. But trust us, we did hedge the 5%, we did it correctly.

THE COURT: Very good.

THE WITNESS: Thank you.

THE COURT: So I like your solution to just -- well, except there are lots of copies that the Agricultural Marketing Service tucks in its envelope.

Do you have enough for all their record copies?

MS. VULIN: Yes. I'll make sure she has enough.

THE COURT: Great. All right. We're going to substitute clean copies as were originally presented, and I strike all those instructions to change page 7 of Exhibit 274, because we did not need to change page 7. It was fine the way it was. All right. Good.

Now you may identify yourself and proceed.

MR. SJOSTROM: Thank you, your Honor. Lucas Sjostrom, Edge Dairy Farmer Cooperative.

CROSS-EXAMINATION

BY MR. SJOSTROM:

Q. Thank you so much for being here, Mr. Doelman. Just a few questions on dairy farmer priorities.

Are you familiar with Dairy Management, Inc.?

A. Yes.

Q. Are you familiar with dairy farmers who serve on the board at Dairy Management, Inc.? Have you had conversations over the years with dairy farmers?

A. Yes.

Q. Would you say -- what would you say is the purpose of Dairy Management, Inc., or Dairy Checkoff, if we want to use a different term?

A. The way I understand it is to promote, you know, milk demand, essentially.

Q. Thank you.

And where would you say fluid milk innovation ranks on their list of things they want accomplished through their promotion of sales and their trust increasing?

A. I don't know exactly where it rates.

Q. Have you had conversations with farmers there about fluid milk innovation?

A. Recently or in the past?

Q. Ever.

A. Oh, no, DMI was very influential in our business getting up and running. They were an active party in us. They contributed some dollars in our business as we were starting up. And it was a very helpful kind of backing to have as a startup.

Q. So what -- where I was getting to, would it be fair to say in your background growing up on a farm, knowing farmers, knowing our top promotion organization in the country, would you say that dairy innovation in the fluid category is a high priority for the dairy farmers you have talked to over the years?

A. I mean, against which priorities, I'm not sure. I think it is important to them. I think they would all love to see fluid milk do better in the U.S.

Q. Okay.

MR. SJOSTROM: No further questions. Thank you.

THE WITNESS: Thank you.

THE COURT: Are there other questions of this witness before -- yes, Mr. Miltner.

CROSS-EXAMINATION

BY MR. MILTNER:

Q. Good afternoon, Mr. Doelman.

So this is a little different. From the time that Fairlife launched its Class I product in 2014 up to 2019, was Fairlife offering a fixed price to its customers for that product?

A. When you say "fixed price," could you elaborate upon what you mean?

Q. Sure. If I -- if I recall correctly, you

testified that it's your goal to offer those products to your customers on a price that's fixed or stable for a six- to 12-month period; is that correct?
A. I would use the word stable. Our desire is to have stable pricing for our product.
Q. Were you able to offer that stable pricing from, say, 2014 through 2019?
A. We offered stable pricing the best we could during that period of time.
Q. Have you been able to further stabilize your price from 2019 through now?
A. Yes.
Q. Okay. Now, you mentioned that -- when I say Fairlife milk, I'm talking about the Class I, 52-ounce product.
You say there's 1.6 gallons of milk in a gallon of that product, correct?
A. Roughly.
Q. Roughly.
Is it that -- about the .6 gallons, is that the Class IV fortification amount?
A. Roughly.
Q. Okay. Of the gallon that would, I suspect, be Class I, it seems to me on average about 40% of that price is butterfat at, say, 2% fat.
Does that sound about right?
A. It could be in that range.
Q. Okay. Are you able to effective ly hedge the

butterfat and the Class IV portion of your flagship product even under a higher-of pricing mechanism?
A. Yes. But it represents a smaller portion of our -- like, butterfat doesn't matter, right? On the higher-of. I believe it's equally used in either formula for cheese and for powder. And, again, I'm going off of memory here.
So, yeah, I think your statement would be accurate in regards to the butterfat portion in influence in either one of those commodities.
Q. And the same would go for the fortification amount, the Class IV portion, Fairlife, or any handler, could hedge that regardless of what the mover is, correct?
A. In regards to -- are you still on butterfat or are you on something else now?
Q. I'm only talking about the volume of milk that's used and classified as fortification.
A. Okay. Yeah. So no butterfat is in the fortification portion at all, so it would just be the skim solid side of it.
Q. And for those skim solids, are you able to effectively hedge those?
A. Yes, you can.
Q. Okay. So really what -- what your -- for your flagship Fairlife milk, it's the skim solids classified as Class I that poses a hedging problem under a higher-of?
A. As well as the fat portion with it. Well, you are correct, on the higher-of, but from a formula perspective,

it should flow through. So it should be the skim side, yes.
Q. Great.
There's been some testimony --
A. And real quick, I just want to say, I think that's correct, but I don't have the formulas in front of me to know exactly how they carry through.
Q. I'll take it with that caveat.
So the main -- from Fairlife's perspective, I understand your support for MIG's proposal is really tied to hedging, and that is -- that is the main benefit to Fairlife of that over the higher-of; is that correct?
A. That is correct.
Q. So I want you to think to your producer world and that part of your life. And a producer that is trying to hedge their milk income, and they're in an order where essentially it's 50% Class III and 50% Class IV. Okay?
A. No Class I?
Q. Well, let's assume that Class I -- we have incorporated the Class I components in III and IV, so III and IV are there drivers. Okay?
A. Okay.
Q. And then depooling occurs after they have hedged, and those producers don't get the benefit of what they thought they hedged. At least that's testimony we have heard in this hearing, that that has occurred.
We have also heard testimony that the higher-of helps to mitigate that for producers to get them a better

benefit of their hedging efforts.

And I wondered if you had an opinion as to whether USDA should be more concerned with a handler's ability to get the benefit of their hedge or the producer's ability to get the benefit of their hedge?

A. I would love both people to get the benefit of the hedge. I would kind of go back to your question around the pooling side of it. If -- if people can just decide to be in and out of the pool, it feels like it's defeating the purpose of the pool from a farmer perspective.

But, again, I'm -- from a farmer perspective, if I knew my guy down the street was jumping in and out of the pool to benefit him, and I only get the benefit half the time, I would be frustrated. So I guess that's where I would start.

Q. So American Farm Bureau Federation and Edge Cooperative have a proposal to get rid of advanced pricing, which would, at least in my estimation, all but eliminate opportunistic depooling.

Would that be a -- would that be something Fairlife could live with?

A. Not fully understanding the proposal, but as you share it with me, that sounds very interesting. If that eliminates this issue where the dollars in the pool dis- -- don't disappear all of a sudden when it's beneficial for one party, I think that makes a lot of sense.

So, at a high level, from my perspective.

Q. And that would mean that your milk would be priced after the fact?

A. Understood.

And this is where the hedging, I believe, comes in so importantly. And, again, I would be -- from our perspective, you know, that much even more vested in this. I -- from a -- in our business, again, we use the hedging to help have price certainty as we go into the months as opposed to just waiting for it to be declared.

Q. And then so --

MR. MILTNER: Well, I think that's all I have then. Thanks very much, Tim.

THE WITNESS: Thanks, Ryan.

THE COURT: Are there other questions before I call on the Agricultural Marketing Service questions? None.

Thank you, Agricultural Marketing Service.

MS. TAYLOR: Thank you.

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. Good afternoon.

A. Good afternoon.

Q. You might have hopes of getting out of here today.

A. Thank you.

Q. I'll try to keep this to less than 22 minutes. Thanks for coming to testify today.

I wanted to turn first to your PowerPoint, Exhibit 273, and --

THE COURT: The PowerPoint is 274.
MS. TAYLOR: Okay. Sure. Yes. Thank you, Judge.
BY MS. TAYLOR:
Q. 274, slide 6. And page 6.
I wanted to first ask, you know, in your -- I do -- I appreciate the simple examples. And in your example, the change and the difference between your hedge position and your actual position was an offset, an even trade.
What happens if it's not an even offset?
A. Then we don't have an even offset. I don't know how to --
Q. So I guess my question is, I mean, does that make it not as an effective hedge? Like, in this example one goes down by 4 and the other goes up by 4. What if one goes down by 5 and the other one goes up by 6?
A. It would -- it really doesn't matter on the price, on the $16 going to 12, or the 14 going to 18. What matters is whether or not we have the 50% kind of 50/50 split correct.
If we have that wrong, then the base class price, I will not have an appropriate offset associated with it.
Q. So I did -- I took your example, but I did, what if the Class III price went down to $10. Okay?
A. Okay.
Q. So then I did your math that you did in the hedge gain/loss column. It went down by 10, so I lost 6; at 50%, that means I really lost 3.

A. Yep.
Q. Okay. So in this case I gained 2 on my Class IV position, because it went up to 18, but I lost 3 on my Class III position.
A. And you left Class IV at $18?
Q. Yeah.
A. Okay. All right.
Q. I just wanted to create one example where the differences did not equal each other.
A. Okay.
Q. So I lost 3 and I gained 2, so somewhere I lost 1.
How does that affect my hedge position?
It seems to be worse off for you, but I need you to tell me why that would be, where that is.
A. If I take your 10 for Class III and your 18 for Class IV, the actual price is $14, correct?
Q. Yes.
A. But you lost 3 and you gained 2 -- yeah, something's wrong. It should be a plus 1 so that it equals the 15.
You lost 3, you gained 2, minus 1 -- no. No. I'm sorry, we changed the wrong -- did I take -- you still have the hedge position at 16 and 14, correct? At the beginning?
Q. Yeah. The original hedge positions didn't change. And so as I look at that, you came to an average base Class I skim price is $15. So that's what you --
A. Yes.

Q. And the way you have been describing it, that's then what you --
A. That's my --
Q. -- set your price to your company at --
A. Yeah.
Q. -- 15, okay.
So then I wanted to move to what actually happened, and I wanted to do something where the change wasn't -- didn't equal out --
A. Sure, sure, sure.
Q. -- to see how that affected your hedge.
And so I need you to walk me through that.
A. Let's do it together then.
Q. Okay.
A. Because -- and hopefully -- and feel free to someone correct me if I do it wrong, but hopefully I'll get it right here.
So the 16 winds up dropping to 10.
Q. Uh-huh.
A. So I essentially lose $6 of 50%, so I'm saying I have a minus 3.
Q. That's where I was.
A. Okay. On the Class IV, I have it positioned at 14.
It says at 18 we're saying?
Q. Yes.
A. Okay. So it's -- it should, the exact same numbers, right? I have a gain of 2.

What am I missing here? I did something wrong here.

I'm sorry?

Yeah, but something's not right.

THE COURT: Ms. Vulin --

THE WITNESS: Well, 15 -- real quick -- I'm not saying it quite right.

So the -- the -- what's -- hold on. Let's see here. 3 and 3 should be 15 minus 1 is $14.

THE COURT: Ms. Vulin?

THE WITNESS: What am I missing here? Someone needs to clarify this.

THE COURT: You may come to the podium and help us.

Please, Dr. Bozic.

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

So let me just first confirm the numbers. So we are looking at the average-of example?

MS. TAYLOR: Yes, on page 6 of 10.

DR. BOZIC: Okay. So we're at $16 for Class III? We went down to $10?

MS. TAYLOR: Yes.

DR. BOZIC: So we bought at 16, we sold at 10, and we lost $6 per hundredweight hedged. We hedged only 50% of milk, so we really lost $3 there.

MS. TAYLOR: I'm with you.

DR. BOZIC: On the Class IV, we were at $14. Went up to $18, right?

MS. TAYLOR: Yes.

DR. BOZIC: So we gained $4 per hundredweight hedged, we only hedged half of it, so we only won 2. So on our total hedge portfolio we lost $1.

MS. TAYLOR: Right.

DR. BOZIC: Okay. Now we wanted to hedge 15. 10 plus 18 is 28, divided by two is $14.

MS. TAYLOR: Hold on.

Yes, the average is -- okay. I'm with you.

DR. BOZIC: Yeah. So on our cash side we are -- we have -- we are better off than expected by $1, so the gains in the cash are offset by the losses on the hedging exactly.

MS. TAYLOR: Okay.

DR. BOZIC: You're very welcome.

MS. TAYLOR: Thank you for that --

THE WITNESS: And thank you.

MS. TAYLOR: Thank you, Judge, for allowing that little bit of a lesson.

THE COURT: Well, you know, until you practice at this, it doesn't seem easy to me. But I'm sure if you practice, you -- you know, you do your homework, you can do it.

MS. TAYLOR: I will second Ms. Vulin's comment earlier that this has been a six-week lesson in risk management, and I'm still on 101.

THE WITNESS: Yeah.

BY MS. TAYLOR:
Q. So that's helpful.
A. Yeah. I apologize missing the 10 plus the 18 divided by two for the 14. Apologize.
Q. I think even simple examples are complicated.
A. Yep. Thank you.
Q. Okay. So that's helpful.
I did want to ask, how does the adjuster enter into this equation, for you as a processor? I understand how you're hedging 50/50 on III and IV, so you get that -- that helps you hedge your base price. So -- how I just want to know from -- what happens on that adjuster for you.
A. The way we have proposed it?
Q. Yeah.
A. Or -- o the --
Q. I understand how operational for how it worked in the pricing of the Federal Order scheme.
But how would you account for that in your hedging program?
A. It's a -- it's a known adder to whatever this base is. It's just like a premium for our milk we know we're going to pay.
Q. And so do you add that on to what you charge your customer?
A. So, for instance, this -- this mathematics to determine this base Class I skim, you add an adjuster to it of $0.74 or $1 or whatever. As long as I know what it

is going to be, I'll know how to transfer that price ultimately to the customer effectively.
Q. So it doesn't matter to you if it's a -- I know you support the rolling average, but --
A. Yes.
Q. -- it doesn't matter necessarily if it's a rolling average or it's set for a year, as long as you know in -- know in enough -- in advance enough to set your price you can do that?
A. Precisely.
Q. And from what I gather right now, you are hedging out about six months, but you hope to get to the 12-month?
A. We -- we are active even nine, ten months out, but it is less liquid. So the desire is to -- whatever program we place, it's where we're going, not limiting us to ever be able to get there.
And so, yes, we're more effective in the six-month window because of the liquidity of the market, but we're active in nine, ten months.
Unfortunately, like I shared, it winds up making us market makers sometime, and we're hoping to be able to develop that so that we have better price discovery out, you know, 12 months in advance. So you're precisely correct.
You could change it on an annual basis also. We like the idea of having gradual changes so that the end customer and the end consumer get to see gradual changes, you know, kind of predicted in the price.

Q. So, with that thought, then, would you say, I guess perhaps a fixed adjuster might lead to more of a sudden change?
A. Yes.
Q. Right. Okay.
A. And potentially it occurs -- and I don't know that there's necessarily cycles for selling. We talked about fluid milk at the school earlier today, you know, spring time or whatever. There are some natural kind of windows of selling, if it doesn't hit quite right timing-wise or, say -- say, the industry makes -- the purchasing industry makes a slight change on when they are purchasing, those kinds of changes on the annual basis might be difficult from a selling perspective, so depending upon which customer you are selling to, which channel you are selling to.
Q. Okay. Okay. If we could turn to the next slide.
I do -- I followed the math. I'm not going to ask us to redo math on this. But I think one piece might have been lost when you talked about it earlier. Your hedge positions offset each other.
A. Correct.
Q. But under this part you still -- am I correct in assuming, you still price the milk to your customer at 15, so it's led you to a $3 loss?
A. That's correct.
Q. I don't know if that was clear in the earlier discussion. I want to make sure that was clear.

A. Yes, you are correct.
Q. Okay. That's it on the slides.
A. Thank you, Erin.
Q. I want to turn to page 3 of your statement.
Under the list number 3, when you are talking about how hedging is important for everyone. And here you are talking about farmers and the benefits to them. But you are not talking -- or are you talking about the benefits to them of the fact that you can hedge Class I or just the benefits to them that they can hedge however they choose to hedge in the market?
A. Yeah. Not necessarily Class I. But, again, the main instruments for our industry are III and IV, or cheese and powder, however you want to look at it, and then butter. So the fact that there's more activity in any all of those I think helps the farmer.
Q. Okay. And then later on you talked about the importance of price stability and price uncertainty does allow -- does not allow us to set prices for that long -- fluid -- for that long, and fluid processors risk losing shelf space to plant-based or other alternative beverage products.
Have you experienced that? I'm just -- lots of people talk about that, and I'd like to get some firsthand experience of has that happened.
A. As kind of Ryan was asking earlier, we have been pretty conscientious to try to keep the price steady, whether or not we make money or lose money. And so we

were very dedicated to that early on in the business, and we continue to be, but now with tools to be able to appropriately hedge. So I think we toughed it out, you could say, either way, to make sure we didn't lose to the plant-based products.

But to have the tool is -- allows us to be much more effective in being able to control that price much more effectively.

Q. You touched on this earlier. I want to make sure it's clear though.

Your pricing strategy, kind of pre or post 2019, that hasn't really changed. It's just that now maybe you are more in the black and less in the red?

A. It allows us to be more thorough and get a better understanding of what the total portfolio will look like from a margin perspective. That's correct.

Q. On page 5 in the first full paragraph, you wrote, "The historical difference" -- and here you are talking about the $0.74 -- "won't capture the shift in the way the higher-of difference could have."

I just want you to be -- make clear for the record what you mean with the higher-of difference. Are you talking about MIG's Proposal 15 there?

A. Which sentence specifically so I can look at it?

Q. Yep. I am in that first full paragraph.

A. Yep.

Q. And it's the sentence -- it's the third sentence, starts "if there are underlying shifts"?

A. Got it. I see it, the last -- the last clause, "the historical difference won't capture."

I'm basically in that sentence stating I'm sympathetic to the farmer they are not going to get higher-of with a fixed $0.74 that isn't changing. So that's what I call static.

Q. Uh-huh.

A. They won't get the higher-of. They are going to get whatever $0.74 is.

And historically over the 19 years or whatever they looked at when they went back and did the math on the $0.74, that represented an average of those 19 years and what happens between those price differences. So I'm sympathetic to that. So this is why I'm offering up a more dynamic way to deal with that, so that they can have a mechanism that gives them the higher-of.

Q. So then on the next page, page 6, in the first paragraph there -- and I think this goes to your earlier point -- the end of that first sentence states, "ensure the" -- basically the MIG proposal -- "ensures that Class I prices maintains more consistency month to month, but takes into account the pricing in other classes."

Is that what you are talking about there, takes into account more of the current III and IV market because it's dynamic?

A. The -- yes. Exactly correct. It takes into consideration what III and IV -- what the spread is.

Q. In the next sentence when you talk about how the spikes -- the MIG proposal essentially "would have raised the base Class I skim price in a more gradual way, but also with a longer-term impact than if the price skewed in immediate reaction to those changes."

And here you are talking about what happened during the pandemic?

A. Correct.

Q. I just wanted to know if you could just expand on what you mean there by as a "longer-term impact."

A. I was kind of being asked earlier to check on this. The price could -- the higher-of impact, the $0.74, for instance, if the -- if the price were to go up, if you had a higher-of formula, and we weren't -- and we didn't have an average-of, you know, it's good for a month, and then the next month, it -- you know, depending upon which one's there, you know, maybe it comes and falls down beneath the $0.74, and it's actually a lower price then, because it's in the $0.74 kind of window.

By having a 24-month rolling average, whatever the -- whatever it's capturing is a steadier price. And so over time, you know, the farmer is going to see a more gradual change to those differences between the higher-of. That's what I'm referring to there.

Q. And so -- and we talked -- you talk -- most people are talking about the benefit of getting higher prices over a longer time. But you can extend that to the flip side, it would get the cost of the lower prices for --

A. That's correct.

(Court Reporter clarification.)
MS. TAYLOR: -- for an extended period of time?
BY MS. TAYLOR:
Q. My last question is on page 7, you mention, "The Make Allowances and MIG's Proposal 20," so --
A. Which -- which sentence are you on? Which page?
Q. The middle -- I'm on page 7.
A. Okay.
Q. And you said, "Similarly, updating Make Allowance and MIG's Proposal 20 to remove the non-applicable premiums are examples of updating milk value calculations."
And since you're a member of MIG, I'm assuming you were supporting at least Proposal 20 that MIG has put forward. And I just wanted -- but your statement doesn't really go into that.
So I was just wondering if you had any additional thoughts you wanted to add on that, those particular topics, both Make Allowances and Proposal 20, since you mentioned it?
A. Yeah. Specific to the make orders, I realize the industry wants to make some changes with it. So from my perspective, we support it. If -- if that's what the industry wants to do, we support that, so...
The other kind of, you know, non-applicable premiums, updating, yeah, there's probably numerous potential examples, that -- well, there's nothing else I don't really -- there isn't anything being proposed right

now, but I could see other structures -- actually there are, later on the class differentials and stuff of that nature. But I will come back to address those at the time.

MS. VULIN: That's what I meant to jump up to say.

MS. TAYLOR: Perfect. I never want to lose my opportunity. I don't know when people come in and out of this room.

THE WITNESS: No. I will come back for everything kind of non-hedge based or whatever to discuss.

MS. TAYLOR: That's it from AMS, and I beat myself by two minutes.

THE COURT: Redirect.

MS. VULIN: Thank you, your Honor.

REDIRECT EXAMINATION

BY MS. VULIN:

Q. So just a couple quick questions.

The talk about support, your support for Proposal 15 and the hedging, I know in response -- you said you believe hedging supports consumers and producers because it allows Class I to grow and to hopefully capture more market share there.

But the other side of just general price stability, do you believe that brings any value to producers, retailers, and consumers as well, to totally setting aside the ability of Class I to hedge?

A. Yeah. I think in general, the more stable the price, again, the better it is for the consumer and the customers who are buying these products. So by that nature, I think if it means that they will do a better job promoting the product, there will be more promotion activity around it. I think that will ultimately be better for the producers also because it will drive more demand for that product.

Q. And I know you received some questions from Mr. Miltner on advanced pricing, and you said that could be potentially something you would think about.

Is the reason why that's something you could consider because you have such a robust hedging program?

A. It would be the only reason. If I -- if I were an HTST operator, which I am not, I would probably be very concerned about how the pricing mechanism works, unless I had a robust system in here around Class I and -- and hedging.

So, again, depending upon where they are in their journey -- I kind of shared with you, we're probably five years into it, four and a half years into it. It takes time to develop it. So it would probably not be something I'd want to jump to right away, but certainly from a principle perspective, I -- from my -- and, again, I'm not an expert in this -- this pool methodology at all, but it is -- I think there should be some kind of mechanism that prevents people jumping in and out of pools. But again, I am not an expert on that. That's speaking from a farmer perspective.

Q. And so you would agree, given the lack of

widespread adoption of hedging in the HTST marketplace, it indicates we're probably not ready to get rid of --
A. That would --
Q. -- the advanced pricing?
A. Yes, I would -- said another way, yes.
Q. Okay. Great.
THE COURT: Would you state your sentence again?
MS. VULIN: Yes.
BY MS. VULIN:
Q. And just give me one moment to finish the question.
So given the lack of broad adoption of hedging in the HTST marketplace, you would agree with me that it would not be a good idea right now get rid of advanced pricing?
A. I would agree with that.
Q. Yeah.
MS. VULIN: Thank you. Nothing further.
THE COURT: That sparked an interest.
RECROSS-EXAMINATION
BY MR. MILTNER:
Q. This will take less than 60 seconds, depending on you, Mr. Doelman.
Based on how Fairlife has constructed its hedges for its Class I skim, do you think that -- do you think that an HTST processor would have -- would develop a program significantly different from yours?
A. I would think they would develop something that's

very similar to ours.

MR. MILTNER: Thank you. That's all.

REDIRECT EXAMINATION

BY MS. VULIN:

Q. In order to develop that program, the HTST plants' customers would also have to be on board, correct?

A. Correct. I think there's timing associated with all of that to be able to make that happen if it is the right idea. Again, very conceptual.

MS. VULIN: Thank you.

THE COURT: All right. Let's deal with the exhibits. So I want to identify them a little more fully.

I want to say that the exhibit that's marked as 273, up at the right upper corner says MIG-Fairlife-10, and the exhibit that's been marked 274 has been identified as MIG-Fairlife-10A.

MS. VULIN: Your Honor --

THE COURT: Your request.

MS. VULIN: I would request that those be admitted intoed record, please.

THE COURT: Is there any objection?

There is none. Exhibit 273 is admitted into evidence.

(Exhibit Number 273 was received into evidence.)

THE COURT: Exhibit 274 is admitted into evidence.

(Exhibit Number 274 was received into evidence.)

MS. VULIN: Nothing further from the Milk Innovation Group today, your Honor. Thank you.

THE COURT: Thank you.

Now, let's talk about tomorrow.

Mr. Rosenbaum, I bet you are hoping your two witnesses start tomorrow?

MR. ROSENBAUM: Well, I just have one witness, your Honor, which is Mike Brown. But I'm -- I think the plan is that he will be the first witness.

THE COURT: Is that -- does that work that he goes on at 8:00?

MS. TAYLOR: Yes. So on -- on the list I have Mike Brown to go first tomorrow. And should we finish with him before 11:00, then Dr. Bozic will go on as next on the list. And I guarantee we won't finish those two in three hours.

THE COURT: You guarantee that we --

MS. TAYLOR: We will not. If I was a betting woman, I would not take that bet.

THE COURT: Which one of those is the longer one, do you suppose?

MS. TAYLOR: Well, that's a good question. We should bet on that.

THE COURT: Now, you also promised me that the way we do Friday is we stop at 11:00 for lunch, and at 12 noon we have three hours of farmers?

MS. TAYLOR: Yes. And I wanted to -- it's virtual testimony. And I just had the list if you give me one second, I was trying to find the list for everybody.

Okay. So tomorrow we have nine farmers signed up to do virtual testimony starting at noon. And my apologies in advance for any mispronunciation.

We have Joe Borgerding from Minnesota; Perry Tjaarda from California; Clara Ayer from Vermont; Jennifer Lawrence from Pennsylvania; Heidi Fischer from Wisconsin; Spencer Frost from Wisconsin; Simon Vander Woude from California; Brenda Cochran from Pennsylvania; and Sarah Lloyd from Wisconsin.

MS. HANCOCK: What was the first one again?

MS. TAYLOR: Joe, and I'm going to spell the last name, B-O-R-G-E-R-D-I-N-G.

I am not sure this is the order they will be coming in, but that's the list for tomorrow. We'll start at noon. And my guess is that will take up pretty close to all three hours has been our experience, and then plan to end the day at 3:00 p.m.

THE COURT: Good. Thank you. I will see you all tomorrow morning at 8:00. And we now go off record at 5:06 p.m.

(Whereupon, the proceedings concluded.)

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STATE OF CALIFORNIA)
) ss
COUNTY OF FRESNO)

I, MYRA A. PISH, Certified Shorthand Reporter, do hereby certify that the foregoing pages comprise a full, true and correct transcript of my shorthand notes, and a full, true and correct statement of the proceedings held at the time and place heretofore stated.

DATED: November 15, 2023
FRESNO, CALIFORNIA

Myra A. Pish

MYRA A. PISH, RPR CSR
Certificate No. 11613

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