

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

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1 THURSDAY, SEPTEMBER 28, 2023 - - MORNING SESSION

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

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

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

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

10 THE COURT: Thank you. You remain sworn.  
11 You may proceed.

12 JACOB SCHUELKE,  
13 Having been previously sworn, was examined  
14 and testified as follows:

15 MS. VULIN: Thank you, your Honor.

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

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

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

21 THE COURT: Absolutely. Yes.

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

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

24 We're back on record at 8:01.

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

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



1 THE COURT: All right. And the other document  
2 that we identified and began to testify about yesterday,  
3 was Exhibit 268. So I have them both in front of me.

4 MS. VULIN: Great. Thank you.

5 And this is Ashley Vulin with the Milk Innovation  
6 Group.

7 (CONTINUED) DIRECT EXAMINATION

8 BY MS. VULIN:

9 Q. So, Mr. Schuelke, yesterday we learned a little  
10 bit about your background and the products that Crystal  
11 sells.

12 What kinds of Class I products does Crystal sell?

13 A. We make milks and creams of all kinds.

14 THE COURT: Make sure that mic is closer to you.

15 THE WITNESS: Okay.

16 THE COURT: You might want to straighten it so  
17 that it is taller or something.

18 MS. VULIN: And if you scoot your chair, that can  
19 help a little bit, too.

20 THE WITNESS: All right. We're on it.

21 BY MS. VULIN:

22 Q. What kinds of Class I products does Crystal  
23 process?

24 A. Milks and creams.

25 Q. Are -- are they ESL or HTST, your milk?

26 A. We are an HTST plant.

27 Q. Exclusively?

28 A. Yes.



1 Q. And we heard yesterday also about some of the  
2 higher protein products that you sold.

3 How does Crystal ensure the higher protein content  
4 of its products?

5 A. The milk does not come in that way. In California  
6 we have a fortification standard, so we need to buy  
7 additional solids. We add them to our fluid milks in the  
8 form of condensed milk, others use nonfat dry milk. And  
9 we pay for them and pool for them appropriately.

10 Q. And do you think that the protein in milk has  
11 value or appeal to consumers?

12 A. I do.

13 Q. But are you able to sell those products for a  
14 higher price because of their protein content?

15 A. No. We have never had a customer in Oregon or  
16 Arizona say, hey, you know that milk with 20% more  
17 protein, we want to pay you 20% more for it.

18 I know Fairlife and others have found value doing  
19 that, but we haven't found that on a mass level anywhere.

20 Q. And yesterday we had talked about some of your  
21 significant experience in risk management.

22 Have you ever hedged any dairy products that a  
23 company you work for sells?

24 A. Yeah. Well, certainly I started in the extension  
25 service doing research from a USDA risk management service  
26 grant, and with that, we really helped grow the futures  
27 market as dairy farmers first started buying Class III  
28 contracts. It was really a nothing at first.





1           And the same thing could be said -- so that would  
2 be my experience at the extension service. We did a lot  
3 of risk management education, and over time it grew.

4           The same would be said for the larger  
5 manufacturers that I came to work with, first being Hilmar  
6 Cheese when I went there. They really didn't offer fixed  
7 price sales, things like that. And over time, they did.  
8 And over time, the CME said, "Hey, because this is  
9 growing, let's not just sell a Class III contract, let's  
10 sell a cheese contract, a whey contract, a butter, a  
11 nonfat dry milk." It took time, but we grew.

12         Q.    Uh-huh.

13           And you talked about your experience at the  
14 extension service. What year was that?

15         A.    It would have started in 2003.

16         Q.    And that's when you think hedging in the cheese  
17 market was really in its infancy?

18         A.    Yeah. It started before then, but when you look  
19 at the significant volumes, that's really around where I  
20 feel it started to pick up.

21         Q.    And then after that, have you ever done any butter  
22 hedging?

23         A.    Certainly. Obviously I worked for California  
24 Dairies and did their risk management. They make a little  
25 bit of butter. And I do that in my job today as well.  
26 We -- we manufacture butter. We are also a large ice  
27 cream manufacturer, and we use butter futures to offer  
28 fixed price contracts to our customers.



1 Q. And so historically, hedging has been a big part  
2 of how you manage risk for the companies that you work  
3 for?

4 A. Yes.

5 Q. And it's grown over time?

6 A. Uh-huh.

7 Q. Have you ever done any --

8 THE COURT: I'm sorry, what was that answer?

9 THE WITNESS: Yes.

10 MS. VULIN: Thank you, your Honor.

11 BY MS. VULIN:

12 Q. Have you ever done any hedging on a Class I  
13 product?

14 A. No, I have not.

15 Q. Why not?

16 A. Well, up until a few years ago it really wasn't  
17 possible. And at the moment, I don't have a lot of  
18 customers knocking down the door asking for it. That, you  
19 know, we have trained them very well in this room to  
20 accept the price fluctuations.

21 That said, I feel I have a lot of customers who  
22 buy HTST milk and would find a lot of value in it, namely  
23 school lunch programs, USDA feeding programs. These are  
24 programs where people are allocated a fixed budget amount  
25 for the entire year, and when the Class I price starts  
26 going all over the place, they really struggle to supply  
27 that milk and meet their budget constraints. So if I  
28 could offer them a level set price for their entire budget



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

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

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

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

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

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

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

22 Q. Thank you.

23 So now if you have your PowerPoint available.

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

27 BY MS. VULIN:

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



1 please.

2 A. I'm doing that.

3 And then I also thought maybe as a matter we  
4 should introduce the California pool report that I'm  
5 talking about into the record. If -- or if not. But it's  
6 there.

7 Q. If you have checked it and that's where the source  
8 of your testimony came from, we can cover that in your  
9 exam.

10 A. Good enough.

11 There's a picture on your screen of it. I didn't  
12 make these numbers up.

13 What I did here --

14 Q. Oh, just one moment.

15 A. Oh, no, it's not there. Anyways, this is the box  
16 at the top of the California pool report.

17 Q. Just one moment, Mr. Schuelke. Let's give -- so  
18 if we can go to the next slide. There we go.

19 So can you tell us what -- can you tell us about  
20 what Class I utilization is in California, at least in  
21 July of 2023.

22 A. Yeah. So if you look at the pool report, it would  
23 have said 17% of the milk pooled went to Class I, 6%  
24 Class II; 73, III.

25 Doing a rough estimation, which I'll get to later,  
26 the milk produced and sold in California probably was more  
27 like the numbers above, which was 10 in Class I, 3 in II,  
28 44 in III, and 42 in IV.



1 Q. And how did you --

2 THE COURT: Now, for those of us who are looking  
3 at this, we understood that. For someone who is just  
4 reading the transcript, you can't leave out "Class I,  
5 10%," you have to say the whole thing.

6 So go back through, if you would.

7 BY MS. VULIN:

8 Q. Why don't we start at the top and you can read  
9 from the top down of the data you have presented here.

10 A. My best guess of how milk was really sold in  
11 California in the month of July 2023 was 10% went into the  
12 Class I market; 2% went into the Class III market --

13 Q. Sorry, I think you inverted those. Go back to --

14 A. Oh, 3% went into the Class II market --

15 Q. There you go.

16 A. -- 44% went into the Class III market; and 42%  
17 went into the Class IV market.

18 Q. And how did you estimate these numbers?

19 A. I took the July pool report, and then I plugged in  
20 1.4 billion pounds of milk into Class IV, which is an  
21 approximate value of what you would normally expect to see  
22 there. And it also made the total at the bottom tie to  
23 the USDA estimate of milk production for the state.

24 Q. Okay. And how did you know that there were about  
25 1.4 billion pounds of Class IV?

26 A. When it is pooled, that's the kind of number you  
27 see there.

28 Q. Okay. Thank you.



1           Now, that was just the milk within the order and  
2 the utilization of that milk.

3           Now can you tell us for that same month, July  
4 2023, what the California pool utilization was.

5           A.    Yes.  So here what I'm going to walk through is, I  
6 wanted to show the room what is depooling.  So here is  
7 what got pooled in the order for that month:  17% of the  
8 milk was in Class I; 6% was in Class II; 73% was in  
9 Class III; and 4% was in Class IV.

10          Q.    And given the amount of utilization in Class IV,  
11 what does that -- compared to the amount in the total  
12 order, what does that tell you about what the prices were  
13 in July of 2023?

14          A.    This tells you that the Class IV price was above  
15 the blend price.

16          Q.    Thank you.

17          A.    Yep.

18          Q.    And so because the Class IV price was above the  
19 blend price, what was Class IV doing with their milk?

20          A.    They were not pooling it.

21          Q.    Thank you.

22                    So let's go to the next slide, if we can, please.

23          A.    Okay.  And on this slide, to walk it through --

24          Q.    And let's start just with the pounds and the  
25 prices in green, please.

26          A.    Yes.  Do you want me to say the pounds or --

27                    THE COURT:  You have to pretend like people can't  
28 see this.



1 THE WITNESS: Okay. So those same percentages  
2 that I talked about before, you will find these pounds --  
3 these are the pounds that reported as pooled on the  
4 California Statistical Uniform Report.

5 BY MS. VULIN:

6 Q. And the green highlighted data, was this the  
7 actual price of those classes for July of 2023?

8 A. Yes. This is the price as taken from the top box  
9 of the pool report. In the real world, we have location  
10 differentials and things, but let's keep it simple and  
11 only look at the top of the report for now. We can add  
12 the other stuff later.

13 Q. And I see at the bottom, the weighted average,  
14 that row has the total pounds and then a \$15.24.

15 Do you see that?

16 A. Yes.

17 Q. What is that number, the \$15.24?

18 A. So what I did here was I did a simple weighted  
19 average of the pounds reported per class, and the price  
20 reported per class from the top of the pool report. This  
21 number here will vary slightly from the statistical  
22 uniform price in the city of L.A., as you would see at the  
23 bottom of the report, but let's keep it simple.

24 Q. Okay. And here, as you described earlier, because  
25 the Class IV price was higher than the uniform price, that  
26 Class IV milk was depooled, or not pooled that month,  
27 correct?

28 A. You will actually see a large number of Class IV



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

4 So what happened here was I paid \$18.26 into the  
5 pool, but the dairy farmer who sold milk to me only got  
6 \$15.24.

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

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

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

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

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

17 Can you walk us through that?

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

25 So if you look at that number times the volume of  
26 milk I ran in my pool plant for Class IV and Class II,  
27 that's how much more money this month, you know -- this  
28 isn't all mine, utilization, but a lot of it is -- that's





1 how much money I paid into the pool, and the difference  
2 would be how much less my farmers received.

3 So what I wanted to point out is, if you had milk  
4 to sell me and you wanted a really good deal, you could  
5 say, well, if it goes into my plant, some of it's going to  
6 go into Class I, and I'm going to pay 19.42; some of it's  
7 going to go into Class II and I'm going to pay 19.12; some  
8 of it is going to go into Class IV, and I'm going to pay  
9 18.26.

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

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

18 Q. Okay. Thank you.

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

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

24 A. Yes.

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

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



1 order to incentivize Class IV to stay in the pool; is that  
2 right?

3 A. Yes. That is correct.

4 Q. So can you walk us through how you raised the  
5 Class I price and how high it had to be in order to impact  
6 Class IV pooling decisions?

7 A. Yes. And the other way of looking at it would be,  
8 how high do I need to raise the Class I price in order to  
9 pull milk out of a Class IV plant?

10 So in California, we have a very low Class I  
11 utilization. So if I raise the Class I price by \$5 to  
12 \$25, multiply it by those pounds, and spread the money  
13 over the pool, I only raised the blend up to 16.20. I'm  
14 still \$2 below Class IV.

15 THE COURT: And you have raised the blend from  
16 what dollar amount to what dollar amount?

17 THE WITNESS: 15.24 to 16.20.

18 THE COURT: So \$15.24. And after you added about  
19 \$5 to what you were paying for the Class I milk --

20 THE WITNESS: Yes.

21 THE COURT: So describe it that way, if you will.

22 THE WITNESS: Okay. And then if we go up, so now  
23 let's say I were to increase the Class I price to \$30,  
24 does that raise the blend enough to attract milk? The  
25 answer is no.

26 Now, my blend price --

27 MS. VULIN: I'm sorry, go ahead.

28 THE WITNESS: My blend price only went up to



1 17.07. In order to --

2 THE COURT: Would that be \$17.07?

3 THE WITNESS: \$17.07.

4 THE COURT: Thanks.

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

9 BY MS. VULIN:

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

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

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

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

24 Q. Thank you.

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

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



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

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

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

15 So the way this works for the Class III processor,  
16 they are able to run their plant on \$2, and then provide  
17 \$13.77 to their dairy farmer.

18 Another way, though, would be what if they did  
19 nothing? What if I just paid the Class III guy \$2 for his  
20 employees to not show up to work that day, or to go to  
21 work and sit on their hands? Now, if I did that, I could  
22 still pay my Class III farmers \$13.77, and then I could  
23 pay my Class III plant \$2 to do nothing, that is only  
24 \$15.77. The Class IV price is \$18.26. There's a spread  
25 there. That means there's a market.

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

28 And that's what I did when I worked for a powder



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

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

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

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

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

28 A. Yes.



1 Q. Thank you.

2 If you could go to the next slide, please.

3 A. And on this slide here, I just said -- I added  
4 that 1.4 billion pounds of milk to Class IV, as we talked  
5 about earlier, and said, okay, we went to \$37, I pulled  
6 the Class IV guys in, now I got to get the Class II guys.  
7 I want it all.

8 Now how much did I need to raise the price? And  
9 the real problem is here, in the last example the Class I  
10 market was 17% of the pool, now I'm only 10% of the pool,  
11 and it's really, really hard for me to move the blend. So  
12 I had to get to \$47 in order to incentivize Class II to  
13 want to pool now.

14 Q. Thank you.

15 A. Yep.

16 Q. And so what we saw is that the Class I price was  
17 not -- not an effective mechanism to compel either III or  
18 IV to both pool; if we expand that to all classes, it  
19 becomes even more difficult?

20 A. Yes.

21 Q. And now if you could go to the next slide -- oh,  
22 you beat me there.

23 So can you tell me, who are Crystal's suppliers?

24 THE COURT: For those who may not have what we're  
25 looking at, we're now on page 9 of this exhibit, which  
26 is -- I'm sorry?

27 MS. VULIN: 268.

28 THE COURT: Thanks. 268.



1 BY MS. VULIN:

2 Q. So who -- who are -- tell me about Crystal's  
3 suppliers again.

4 A. Crystal is -- we started as our own dairy farm,  
5 and then in the late '80s took on a number of direct  
6 shippers. And more recently as we have entered the  
7 Federal Order, we have added a very diversified network of  
8 cooperatives and manufacturing plants to that, looking for  
9 pooling access.

10 Q. And you say here, "The higher-of offers no relief  
11 to direct shippers."

12 Can you explain to us why that is?

13 A. Yeah. So this is another hypothetical example.  
14 Let's keep it simple for now. We're not going to talk  
15 about advance and actual, all that. Let's pretend it's  
16 all the same for simple math.

17 So what I have here is a typical cheese depool  
18 month, which we could call year 2020, and a powder depool,  
19 which would be 2023, and an average. Let me walk you  
20 through what's going on here in my simple pool model.

21 So let's start with the cheese depool month under  
22 the current formula. Let's say the Class III price is  
23 \$20, and the Class IV price is \$15. This is in a 1.70  
24 Class I zone, so now the Class I price is the average of  
25 Class III and Class IV, which is \$17.50, plus \$0.74, plus  
26 \$1.70 for my location. That means the Class I price this  
27 month is \$19.94.

28 We know what's going to happen. The cheese plant



1 is going to depool. So what does that mean the blend  
2 price is? If 90% of the people in the pool pay \$15, and  
3 10% of the people in the pool pay \$19.94, the blend price  
4 is going to be \$15.49. And then as we go down to the  
5 bottom, the person who shipped to the cheese plant got  
6 \$20. The person who shipped to the powder plant got  
7 \$15.49. And the person who shipped to the fluid plant got  
8 \$15.49.

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

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

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

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

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





1 get the lowest price.

2 Q. And is that why MIG put forth alternative  
3 proposals like the assembly credit?

4 A. Yes. That would be -- not for today, but when we  
5 talk about how can we innovate and do fun things, that's  
6 what gets me excited. That's how we can fix depooling  
7 with the tools that we have available to us today.

8 Q. And in your experience, is there enough milk on  
9 the market to meet fluid needs?

10 A. I live in the Central Valley of California. From  
11 Modesto to Tulare is the largest and most dense milk shed  
12 on the entire planet. There is plenty of milk to go  
13 around.

14 Q. And so this example is not about generating enough  
15 milk to meet fluid need, it's about how you would want to  
16 take better care of your direct shippers?

17 A. Yes. When you look at the pay prices that I pay  
18 into the pool, and the pay prices that my farmers are  
19 getting paid versus what their neighbors are getting paid  
20 shipping to manufacturing plants who can depool, I don't  
21 think we're achieving an equal outcome.

22 Q. And do you think we need to adjust the base  
23 Class I skim price back to the higher-of in order to  
24 either address that outcome or ensure a sufficient supply  
25 of fluid milk?

26 A. No. As I have highlighted in this example, the  
27 idea that, you know, we're going to fix this by raising  
28 the price, and then giving 90% of the money to the



1 manufacturing class, and 10% of the money to the fluid  
2 shipper, is not going to fix the problem.

3 Q. Anything else that you wanted to share? I think  
4 we have one more slide after that.

5 A. No, that would be it on these examples.

6 Q. Okay. Is -- and then just your summary?

7 A. Yeah. The summary is that in California, at  
8 least, and in these large manufacturing orders, the  
9 Class I market is just too small to carry the burden. I  
10 can't subsidize every single truck of cheese going into a  
11 cheese plant in California to the tune of \$5 a  
12 hundredweight. I just can't do it. There isn't enough  
13 money on the planet -- well, there is, but the U.S.  
14 consumer doesn't want to pay it.

15 Moving to the higher-of is not going to fix the  
16 problem. It's just more of the same. We need to think  
17 about the tools we have. I'm already paying a lot of  
18 money into the pool. We just need no find a way to direct  
19 that more to the people who are supplying the fluid  
20 plants. We don't need more money.

21 There's plenty of milk out there, especially in  
22 California. For me, I'm just talking about the California  
23 order. I'm not talking about anywheres else.

24 And, again, I'm paying a lot of money; my farmers  
25 aren't seeing it. We need to think about the money that  
26 I'm already paying and think about ways to give it to  
27 those people more, to get a more equitable outcome.

28 MS. VULIN: Thank you, Mr. Schuelke.



1 THE WITNESS: Yep.

2 MS. VULIN: Nothing further.

3 CROSS-EXAMINATION

4 BY DR. BOZIC:

5 Q. Marin Bozic for Edge Dairy Farmer Cooperative.

6 Good morning, Jacob.

7 A. Good morning.

8 Q. So to summarize your statement about average-of  
9 versus higher-of, and the incentive it provides for moving  
10 milk between manufacturer classes.

11 Did I understand correctly that your example  
12 demonstrates that average-of provides stronger incentives  
13 to move milk from a lower price manufacturing class to the  
14 higher price manufacturing class?

15 A. Only in that example. In other markets it could  
16 be opposite because the average-of could pay more. You  
17 know, in a -- the average-of is a -- we're talking about a  
18 two-year average. So depending on -- as National Milk  
19 brought up, when we first introduced this, it kind of paid  
20 a little better, you know, so I don't want to write a  
21 blanket statement. But I would say in these markets where  
22 things swing wildly, and we do need to move milk from III  
23 to IV, or IV to III, the average-of would help the  
24 facilitate that a little better.

25 Q. Wouldn't it be the case that average-of would tend  
26 to be higher than higher-of when there's little need to  
27 move milk between manufacturing classes?

28 A. Yes.



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

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

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

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

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

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

23 A. Yes.

24 Q. Just thinking on the fly.

25 A. Okay. Yeah.

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

28 A. Okay.



1 DR. BOZIC: Thank you very much.

2 CROSS-EXAMINATION

3 BY MR. MILTNER:

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

6 Good morning, Mr. Schuelke.

7 A. Good morning.

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

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

13 Did I understand that correctly?

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

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

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

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

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



1 system has got a 40-year history of negative sales growth,  
2 and when we look at the organic and the Fairlife and these  
3 other products that are more stably priced, they have  
4 positive sales growth. I think there's something there.

5 Q. Do you currently serve school -- school accounts?

6 A. Yes.

7 Q. Are those bid out competitively?

8 A. Yes.

9 Q. How many competitors do you have?

10 A. Oh, two to three in most districts.

11 Q. Are those contracts for a set price for the entire  
12 year?

13 A. No, they are not. And when we have to raise  
14 prices, we get pushback about how that's not in the  
15 budget.

16 Q. Do your competitors offer a fixed price on their  
17 milk for the school year?

18 A. No, they do not.

19 Q. Being on a school board in Ohio, I'll say that's  
20 not my experience personally, but California is different.

21 So we have been operating under this -- this new  
22 mover for four-plus years, but nobody's approached you  
23 about it, correct?

24 A. I wouldn't say that.

25 Q. Okay. So they have approached you about it?

26 A. Mildly. And I would say most of those people have  
27 gone to other processors, mainly the ESL, and gotten that  
28 pricing formula.



1 Q. And you are talking about a fixed price, right?

2 A. Yes.

3 Q. Okay. Okay. Thank you.

4 A. And, again, I would guess I would just -- you  
5 know, from my experience building this with dairy farmers,  
6 building it with the manufacturers, it takes time.

7 Q. Is depooling of milk a problem for Crystal  
8 Creamery?

9 A. I highlighted that I pay a lot of money into the  
10 pool, and I'm not able to pay that money to my farmers.  
11 If I could depool my Class II and IV plants and pay that  
12 money to my farmers, I think they would get a more  
13 equitable outcome.

14 Q. Do you depool your Class II and IV plants?

15 A. No, I do not.

16 Q. Do you not have the ability to do that?

17 A. It's one site. I can't cut it in half.

18 Q. You said "plants," as if it was plural, but it's  
19 one plant, correct?

20 A. Yes.

21 Q. Okay. So would Crystal Creamery like to not see  
22 any depooling?

23 A. No. I don't like what's going on right now with  
24 butter at an all-time high. I don't want people to go  
25 into the grocery store on Thanksgiving and see butter at  
26 \$7 a pound, and see a pint of heavy cream at \$5 because we  
27 couldn't move milk from Class III to Class IV, and we made  
28 a bunch of barrels because the pool subsidized it.



1 Q. Explain that a little more, please. Why would  
2 that occur?

3 A. If we can go back to my slide where I talk about  
4 the July California pool.

5 Q. I think there were three of those. Which one were  
6 you talking about: 6, 7, or 8?

7 A. It would be page 7.

8 Q. Thank you.

9 A. So in this month, and in the month of October, the  
10 market is screaming for butter, it is not asking for  
11 cheese. I believe yesterday on the Exchange, cheese was  
12 sold, and the market went down. Butter went to an  
13 all-time high. I don't think that's an efficient thing to  
14 be doing with our milk. I think we should shut down  
15 cheese plants and move that milk into powder plants.

16 And this time of year, especially in California,  
17 those powder plants are only running at 70 to  
18 80% capacity. We need to move milk into them. That's  
19 what the market wants, that's what the consumer wants,  
20 that's what's going to make value for the dairymen.

21 Q. So because the market -- the prices for cheese and  
22 butter are market-set prices, correct?

23 A. Uh-huh.

24 THE COURT: That was a "yes"?

25 THE WITNESS: Yes, I'm sorry.

26 BY MR. MILTNER:

27 Q. And you believe right now that milk cannot move to  
28 butter powder plants efficiently; is that your testimony?





1           A.     Because of the blend price, cheese plants are  
2 getting a subsidy that hinders it. I still think there's  
3 a slope there for it to be done, but I believe that if we  
4 could find a -- if pooling didn't exist, the slope between  
5 III and IV would be greater, and it would happen on a  
6 higher level. And long-term, I want people to put whipped  
7 cream on their pumpkin pie. I don't want them to say,  
8 jeez, that's pricey, I'll go without.

9           Q.     How would eliminating depooling change the  
10 Class III and IV prices to change the slope between those  
11 prices?

12          A.     What do you mean eliminating depooling?

13          Q.     I think what -- I guess I'm having trouble  
14 tracking your answer --

15          A.     Okay.

16          Q.     -- and it's probably me.

17                    You said that you wanted to increase the slope  
18 between -- was it between III and IV?

19          A.     Yes.

20          Q.     Okay. And I think you said that you tied that to  
21 the ability or inability of plants to depool, correct?

22          A.     No.

23          Q.     No.

24          A.     So I can't depool, and I also make fluid milk. So  
25 I took money on the fluid milk side from consumers. I  
26 could have -- if this didn't exist, and we didn't have  
27 Class I pricing in the state of California, I would be  
28 able to procure milk for much less than the Class I price



1 on average every month, I would be able to pay my dairy  
2 farmers a higher price for that milk, and when I sold my  
3 fluid products in the stores, they would be at a lower  
4 price and more stable.

5 Q. So what you really want is no minimum pricing for  
6 Class I?

7 A. Well, I didn't -- I'm saying, in California, it's  
8 not necessary would be my point there. But that's not  
9 what we're talking about. We don't live in that world.

10 We live in a world where the government has given  
11 us the power of the police state to levy a tax on the  
12 consumer and then take that money. As an industry, I  
13 might not think that's necessary in California, but I  
14 respect it.

15 And if we're going to have that authority, I would  
16 ask three things: One would be that we are gracious and  
17 humble to the consumer who is paying for it; two, I would  
18 ask that we levy that tax in a way that is appropriate and  
19 markets are milked the best way; and three, I would ask  
20 once we have that money, we spend it wisely.

21 Q. Do you pay a minimum wage to your employees?

22 A. We pay well above that.

23 Q. Okay. Do you view the minimum wage as a tax  
24 imposed by government?

25 A. It's a minimum price.

26 Q. Is that a tax imposed by government?

27 A. It's not necessarily a tax, but it's a regulation.

28 Q. So turning to your analysis on your slides.



1           How did you determine the 1.4 billion pounds of  
2 milk to shove into Class IV when you adjusted the  
3 analysis?

4           A.    I looked at previous months and pulled the number  
5 out of the air, and then I tried to tie the total to what  
6 the USDA said milk production was for the state that  
7 month.

8           Q.    So when you -- when you added that 1.4 billion  
9 pounds, you end up with a pooled milk volume of  
10 3.3 billion pounds for July?

11          A.    And that would be a number very close to what the  
12 USDA said was produced in California that month.

13          Q.    Produced in California by all farms, pooled or  
14 not; is that correct?

15          A.    Yes.

16          Q.    So I'm looking at the pool reports.

17                Did you look at all the pool reports, or a number  
18 of pool reports, to come up with that 1.4 billion pounds  
19 and determine whether it's pooled or not?

20          A.    I didn't put a lot of thought into it, to be  
21 honest. But we can plug it any number you want. I don't  
22 think you are going to get a different result.

23          Q.    Well, I think we ought to plug in numbers that are  
24 somewhat, you know, in line with what's actually happening  
25 in California. And when I looked at the pool reports, I  
26 didn't look at them all, mind you, but I looked at  
27 several, and I really didn't see milk pooled in that -- in  
28 a volume like that.



1           Did you find, in the pool reports, a month where  
2   3.3 billion pounds of milk was pooled?

3           A.   No.  Again, I was -- we were doing examples but --  
4   I don't know where you are going.

5           Q.   Okay.  We'll get there.

6           The month you selected, you noted that there is a  
7   \$4.50 gap between IV and III.  Those prices are inverted  
8   to the tune of over \$4, correct?

9           A.   Yes.

10          Q.   Did you look at what the utilization in the  
11   California order is in a month where prices are more  
12   rationally aligned?

13          A.   We could look at the first few months of the year.

14          Q.   Did you look at those in preparing your analysis?

15          A.   I pool milk in California regularly.  I lived it.

16          Q.   So I think that's a no; is that right?

17                THE COURT:  That sounded to me like a yes.  Go  
18   ahead and ask him another question to clarify.

19                MR. MILTNER:  Thank you.

20                BY MR. MILTNER:

21          Q.   Did you look at the January pool reports when you  
22   prepared the analysis on slides 7 and 8?

23          A.   I don't believe I opened it up when I was plugging  
24   1.4 perfectly into that cell, no.

25          Q.   So if that January pool report shows that there  
26   was 2-point -- a little less than 2.4 billion pounds of  
27   milk pooled, would that sound right to you?

28          A.   I don't have the pool report in front of me.



1 Q. If that pool report said that the Class I  
2 utilization was not 10% but 18%, would that sound correct  
3 to you?

4 A. The Class I utilization in the example I used is  
5 17%, so I'll take your word for it.

6 Q. Am I correct that when you added 1.4 billion  
7 pounds to the pool, you said -- or that determined a  
8 Class I utilization for the state of 10%?

9 A. Yes. I believe I stated that was my estimate of  
10 where all the milk was sold, not pooled.

11 Q. Okay. And when you added that 1.4 billion pounds  
12 of milk, you added it all to Class IV, correct?

13 A. Yes.

14 Q. Do you believe that 42%, or thereabout, is the  
15 volume of California milk that is processed at Class IV  
16 plants?

17 A. It's -- you know, it's very seasonal. But, yeah,  
18 I guess I put the number in the cell.

19 Q. Now, you worked with Gallo Cheese for a time,  
20 correct?

21 A. Yes.

22 Q. Were you familiar with their participation in the  
23 former California pool?

24 A. Yes.

25 Q. Was that plant pooled under the California system?

26 A. The plant -- there were several non-pool plants in  
27 the California system. And I don't know where you are  
28 going, but I used to depool Grade A milk in California.



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

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

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

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

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

17 A. I do not.

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

20 A. I do not.

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

25 A. I -- can you state that again?

26 Q. Sure.

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



1 Class IV, correct?

2 A. I roughly plugged a number in there.

3 THE COURT: That's not responsive to his question.

4 Ask it again, please.

5 BY MR. MILTNER:

6 Q. In your analysis, did you assume that the  
7 1.4 billion pounds not pooled was all Class IV milk?

8 A. Yes. It was a play example to illustrate a point.

9 If you would like, I would give you the Excel file  
10 and you can plug any number in that cell you want. It's  
11 not going to materially change the answer.

12 Q. I don't want your Excel file.

13 If you plugged -- if you put that milk in  
14 Class III, would it change your analysis, sir?

15 A. If I put --

16 Q. Any portion of that 1.4 billion pounds into  
17 Class III instead of Class IV, would it change your  
18 analysis?

19 A. If we put more milk into Class III, now the blend  
20 price is going to be lower because I have even more milk  
21 paying at the lowest price.

22 MR. MILTNER: I don't have any other questions.  
23 Thank you.

24 THE COURT: Let me have you look at page 6.

25 THE WITNESS: Yes.

26 THE COURT: So the bottom part of that indicates  
27 percentages of milk by class in the California pooled  
28 utilization.



1 THE WITNESS: Yes.

2 THE COURT: That is not a play number, those are  
3 actually --

4 THE WITNESS: Those are real, and those -- that's  
5 when I said, maybe we can enter the July California pool  
6 report into the record.

7 THE COURT: And the reason that is relevant, is  
8 that when you look at the next page, page 7, using those  
9 pool statistics which are real, you illustrate your point?

10 THE WITNESS: Yeah. On page 7 I'm using real  
11 numbers in the pool from the very top of the pool report.

12 THE COURT: Understood. Thank you.

13 Who's next?

14 CROSS-EXAMINATION

15 BY MS. HANCOCK:

16 Q. Good morning, Mr. Schuelke.

17 A. Good morning.

18 Q. I just want to --

19 THE COURT: Ms. Hancock?

20 MS. HANCOCK: This is Nicole Hancock with National  
21 Milk.

22 BY MS. HANCOCK:

23 Q. If we can turn to page 2 of Exhibit 267, that is  
24 your testimony?

25 A. Uh-huh.

26 Q. Yeah?

27 A. Yep.

28 Q. Okay. Under Section B, on the Company Background,





1 you have a statement there that says, "We supply our  
2 plants through a diversified network of direct-ship  
3 dairies, Class III, IV manufacturers, supplying milk for  
4 pooling access.

5 I'm just wondering if you could help me understand  
6 what that means. What's the pooling access that you  
7 supply your customers?

8 A. So I run a cheese or a powder plant, and I want  
9 pool revenue. So in order to do that, you might say I run  
10 ten trucks a day of milk into my plant, but I want to  
11 pool. So instead of doing that, I'm going to supply nine  
12 trucks to my plant and one truck to a fluid plant.

13 Q. Okay. And so you are -- you are allowing  
14 additional access into your pool in order to take  
15 advantage of those market conditions?

16 A. I'm filling my plant up with milk, and they're  
17 getting a ticket to the pool.

18 Q. When you say, "They are getting a ticket to the  
19 pool," who are you referring to?

20 A. The manufacturer. If they don't supply a Class I  
21 plant, they can't play.

22 Q. Okay. So you're allowing another manufacturer to  
23 have access to your pool, which then allows them to  
24 participate in the total pool price?

25 A. Yes. You have got a 10% delivery requirement on  
26 the pool in California.

27 Q. Okay. And then the milk that they pay into the  
28 pool is at that -- is at their Class I price?



1 A. No. They -- all milk sold to me, regardless if  
2 you are a direct-ship farmer, a co-op, whatever, you get  
3 the blend price.

4 Q. Okay. So even -- even though they would otherwise  
5 be supplying to Class I, they would get the blend price in  
6 that situation, but it would allow them to participate in  
7 the pool.

8 A. Yes. So in the example on the other page, they  
9 would get -- let's not go there. Yes.

10 Q. Okay. Are you referring to your PowerPoint?

11 A. Yeah. It's just, the load of milk that they sold  
12 me, they get the blend on. Regardless of what I did with  
13 it, they get the blend on that load of milk.

14 Q. And then do you charge them a fee for that service  
15 of allowing them access to the pool?

16 A. Over-order premiums.

17 Q. Okay. And can you give me a range about what the  
18 percentage is that you charge on those over-order premiums  
19 to grant them that access?

20 A. Absolutely not. Never. That is proprietary  
21 information.

22 Q. Okay. I didn't know if there's just a -- a common  
23 price point that people can pay for access to the pool.

24 A. I am not going to disclose that.

25 Q. Okay. That would be something that you negotiate  
26 with that manufacturer --

27 A. Yes. And very privately.

28 Q. Okay. And do you -- is that under an annual



1 contract or is it just on a per-load basis?

2 A. Most contracts are annual.

3 Q. Okay. So this is something that you have built in  
4 to your business practice to do on an annual basis?

5 A. Yes.

6 Q. Okay. How many manufacturing plants do you  
7 provide that kind of pool access to?

8 A. I don't think that's something I want to say  
9 either, but I do.

10 Q. Okay. Multiple, though.

11 A. Yeah. I don't think my customers or suppliers of  
12 milk necessarily want to be named here, or should be named  
13 here.

14 Q. And I don't want any names. I was just trying to  
15 get a sense of how prevalent this is.

16 A. It -- yeah. It happens.

17 Q. Okay. Something that you have done consistently  
18 over the years since you have been at Crystal?

19 A. At Crystal, under the California order things were  
20 a little different. So as we transitioned to the  
21 California order, a lot of these relationships have really  
22 been established over the last few years.

23 Q. Okay. And does the net -- excuse me -- does the  
24 net effect of allowing that access tend to have a diluting  
25 effect on the total amount of the blend price in the pool?

26 A. When they are pooling milk at the lowest class,  
27 yes. Well, the milk that they sold me doesn't necessarily  
28 do that. It's -- they sold me one load, and now they can



1 pool nine loads of the lowest class milk onto the pool.

2 That's what really pulls the money out.

3 Q. And then because those other nine loads at the  
4 lower class are brought into the pool, that's what has the  
5 net effect of pooling the blend price of the pool down?

6 A. Yes.

7 Q. And that does not have any benefit to you in order  
8 for you to get any milk, because I think as you described  
9 earlier, you already can get all the milk that you need;  
10 is that right?

11 A. Can you restate that?

12 Q. Yeah. You don't enter into these agreements  
13 because it's what allows you to get the milk you need,  
14 because you can otherwise get it anytime you want; is that  
15 right?

16 A. That's how I get my milk.

17 Q. But if you didn't enter into those pool access  
18 agreements with those other manufacturers, you wouldn't  
19 have a problem getting your milk otherwise, would you?

20 A. As I mentioned before, the pool price isn't  
21 necessarily an attractive price, but there's plenty of  
22 farms around. So if I can't attract milk to my plant  
23 because all the money is going to manufacturers and  
24 depooling, I'm going to have to pay a lot of money in  
25 over-order premiums in order to fill my plant up. But the  
26 dairies are there.

27 Q. Okay. Have you ever had any trouble getting milk  
28 to your plants when you need it?



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

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

9           A.     Yes.

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

13          A.     Uh-huh.

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

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

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



1 Q. Okay. So you -- you are just saying that even  
2 though the higher-of would create a higher Class I price,  
3 by the time the farmers paid out of the pool, they are  
4 going to get the amount that's diluted by the other  
5 classed that have paid into the pool?

6 A. Yes.

7 Q. Okay. And that's magnified by things like selling  
8 pool access; is that right?

9 A. I -- I don't know what you mean by pool access or  
10 magnified by selling. This is a very simple example.  
11 Just trying to show the room what we talk about with  
12 pooling and depooling and who gets paid what.

13 If you want to talk about real world stuff, we can  
14 do that as well. But I don't think -- well, this might  
15 get us there. It might be a good starting place but...

16 Q. Okay. And when you are -- just so the record is  
17 clear, you are referencing the chart here in this example  
18 as being the one that's not the real world example?

19 A. It is an immensely simplified example that I hope  
20 helps the room show what's going on. They always laugh  
21 and say, you know, put ten dairy economists in a room, ask  
22 them how milk pooling works, and you will get ten  
23 different answers. It's true. So I'm trying to keep it  
24 simple here.

25 Q. Okay. And it's true also that when you do add in  
26 real world examples, like seasonal supplies and demand,  
27 weather events, school going into session, whatever else  
28 that happens in the real world, pandemics, wars, things



1 like that, all of that has a lot of effect on what this  
2 example would be in real life?

3 A. Yes.

4 Q. Okay. If we turn to the last page of your  
5 testimony. You have a statement up here that says, "So if  
6 USDA were to raise the base Class I skim price, USDA would  
7 make it harder to attract milk for fluid use."

8 And are you basing that on what we just looked at  
9 in that example on the prior page?

10 A. Let's see where -- where is the sentence you are  
11 going for here?

12 Q. Oh, I'm at the top of page 4, the very top  
13 sentence.

14 A. Yeah. Adding more milk to the pool or the concept  
15 of, let me help you out, let's raise the price a dollar,  
16 I'll keep \$0.90, give you \$0.10, it doesn't help me.

17 Q. So adding more milk to the pool doesn't help it;  
18 is that what you are saying?

19 A. No, I said adding a dollar to the pool and then  
20 paying \$0.90 of it to somebody else doesn't help the  
21 direct shipper so much.

22 Q. Okay. Can you tell me how MIG's proposal would  
23 make it easier to attract that milk, that milk for fluid  
24 use?

25 A. How would it make it easier?

26 Q. Yeah.

27 A. I don't necessarily -- well, I mean you are going  
28 to pay lower into the pool, so I'm going to have less



1 people, less money incentivizing the manufacturing  
2 depooling.

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

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

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

15 A. Yes.

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

17 THE WITNESS: Thank you.

18 MS. HANCOCK: -- for your time.

19 CROSS-EXAMINATION

20 BY MR. LAMERS:

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

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

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

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

28 A. Okay.





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

2 If the Agricultural Marketing Agreement Act of  
3 1937, the purpose of the order was to make sure that all  
4 farmers receive a minimum blend price and a fair -- based  
5 on the use of the milk in the market; is that correct?

6 A. I really --

7 Q. Okay. Let's --

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

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

13 A. Yes.

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

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

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

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

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



1 I just buy and sell milk.

2 Q. Right. So if we are here today trying to fix the  
3 system, you might want to say, and you want to make sure  
4 that all producers are receiving a fair and accurate price  
5 for their milk that they produce, should it not be taken  
6 into consideration that when Class III and IV prices  
7 exceed the Class I price, that those producers should  
8 share in that value?

9 A. I -- again -- I -- I can't --

10 Q. Okay. Let me move on.

11 The other part -- language in there is that, any  
12 changes made to the order has to be in the best interest  
13 of the consumer?

14 A. Yes. I agree with you there.

15 Q. Okay. So I think you're illustration on page 7 of  
16 your exhibit where you look out to what the Class I price  
17 would have to be in order to get at more equalized  
18 value -- and I know we haven't gotten to this subject yet.  
19 I know National Milk has proposals also to increase that  
20 Class I differential.

21 Basically you are illustrating what that would  
22 really look like before we even get there?

23 A. Yes. And in an order like California, it's a tall  
24 order to ask 10% of the milk to carry the lower  
25 manufacturing class every month.

26 Q. Okay. So by artificially raising that Class I  
27 price, is that in the best interest of the consumer?

28 A. No. I believe that's a lot of money to pay out.



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

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

6 A. Okay.

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

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

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

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

15 A. All right. I'm sorry.

16 Q. Thank you.

17 MR. LAMERS: No further questions.

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

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

22 THE WITNESS: All right.

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

25 (Whereupon, a break was taken.)

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

27 We are back on record at 9:29.

28 Who would next like to ask this witness questions?



1 THE WITNESS: All right.

2 MR. SLEPER: Good morning, Judge. My name is Jim  
3 Sleper, S-L-E-P-E-R. Jim, J-I-M. Sleper Consulting.

4 CROSS-EXAMINATION

5 BY MR. SLEPER:

6 Q. Good morning, Jacob.

7 A. Good morning.

8 Q. Appreciate your concern to ensure dairy farmers  
9 who service the Class I market get those particular monies  
10 and so forth.

11 At the end of the day, aren't you really  
12 advocating for individual handler pooling?

13 A. I have said, you know, in this process, I feel  
14 there's any number of ways we could address this concern.  
15 Everyone talks about depooling. You know, I haven't even  
16 said it's necessarily a bad thing. There's any number of  
17 tools we could use to solve that problem.

18 Q. Are you aware of any Federal Order that currently  
19 has individual handler pooling provisions?

20 A. No.

21 Q. Do you know the reasons why there aren't any  
22 individual handler pools today?

23 A. No.

24 Q. Do you understand some of the -- or could you  
25 provide me some of the benefits, some of the disadvantages  
26 of individual handler pools?

27 A. In all honesty, I don't know what you are talking  
28 about.



1 Q. Okay. Well, I assumed your earlier response you  
2 knew what I was talking about.

3 Individual handler pool is basically where dairy  
4 farmers receive the actual utilization of an individual  
5 plant. So if I was shipping to Crystal Farms --

6 A. Okay.

7 Q. -- and if you are 80% Class I and 20% other, I  
8 would get 80% of the Class I price, and the rest would  
9 be -- so I'd get a much higher blend price than if it was  
10 market-wide pool, where Federal Order 51 is market-wide  
11 pooling where all of the pounds are included, and so I  
12 only get a share of, I think your statistics show 10% or  
13 17% of the Class I market.

14 So I -- I know I'm lecturing here, and I  
15 apologize, but basically I get your individual handler  
16 Class I utilization.

17 A. I get the concept. I guess it hasn't really been  
18 brought forward by USDA, and didn't think it was on the  
19 list of things to talk about.

20 Q. Okay. You're correct. I'm just simply stating  
21 the fact that it appears, when I read your testimony, I  
22 hear your cross-examination, you're really advocating for  
23 individual handler pooling, but I'll move on. Okay.

24 One last one. Crystal Farms, I kind of view as a  
25 campus in terms of your processing. You have lots of  
26 Class I. You have got Class IV with your dryer, etcetera,  
27 etcetera.

28 Hypothetically, if a plant such as that would have



1 an individual receiving bay, say, for their dryer, would  
2 that be -- that milk be priced differently and would you  
3 be able to have the ability to depool then?

4 A. You don't know, Don is over there, he's really  
5 mean. He audits me bad. Like, bad, bad. I can only  
6 imagine the day when I send a load of Class IV milk to the  
7 Class I side, and, you know, the mess it would be.

8 I understand the concept, but I don't -- I don't  
9 want the liability of, you did something to the pool, now  
10 you owe everyone in the state of California because the  
11 milk receiver did something weird.

12 I understand the concept, and I have kind of  
13 looked at it, but I don't want the liability. I got -- I  
14 pay millions of dollars into the pool every month just  
15 because I want to be on the up and up.

16 Q. Okay.

17 MR. SLEPER: Thank you, Jacob.

18 THE COURT: Before I ask Agricultural Marketing  
19 Service what questions they have, is there anyone else who  
20 has questions for this witness?

21 I now ask Agricultural Marketing Service to ask  
22 any questions they have of this witness.

23 CROSS-EXAMINATION

24 BY MS. TAYLOR:

25 Q. Good morning.

26 A. Good morning.

27 Q. I do try to make this pretty painless --

28 A. Okay.



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

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

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

8 A. And also independent manufacturers.

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

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

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

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

19 Q. Yeah. Roughly.

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

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

28 Q. So your direct ships are both conventional and



1 organic?

2 A. Uh-huh.

3 THE COURT: That was a "yes"?

4 THE WITNESS: Yes.

5 MS. TAYLOR: Thank you, Judge Clifton.

6 BY MS. TAYLOR:

7 Q. So I wanted to turn to your statement, page 3.  
8 That's Exhibit 267. And in the bottom of your first  
9 paragraph -- I'll read the sentence because I want to  
10 ask -- need to expand on it a little bit.

11 "Other adjusters that maintain higher-of are  
12 simply unhedgeable with existing tools available and  
13 formulas that update the fixed adjuster on an annual date  
14 are convenient to talk about in a hearing setting but  
15 needlessly cumbersome when trying to actually place hedge  
16 orders six months out."

17 I just would like you to expand on that.

18 A. I would first like to say, so what I'm talking  
19 about is the higher-of, and we talked about risk  
20 management and how I'd love to -- USDA has a bid for a  
21 food program, give them a delivered price for, you know,  
22 October 1 to September 30, don't worry about it. I feel  
23 that helps me there.

24 The other ones, the MIG group came to -- it gets  
25 kind of clunky. So now let's say, it's a wonderful world,  
26 the government says I'm going to fund the government  
27 tomorrow, and the WIC program got all this money, and we  
28 want to buy milk on a fixed price contract because we





1 don't like the volatility.

2 When I do my hedge, I'm going to have -- depending  
3 on when I start it and when it sets and the information  
4 available at the time -- it -- it gets a little clunky.  
5 When that December reset happens, if I try to enter my  
6 hedge in April or something, I don't have all the  
7 information so now I have got to do some things.

8 That said, that's not a hill to die on. If -- if  
9 we want to go with the IDFA proposal, that's wonderful,  
10 too. Just if I had to pick one, that's it.

11 But if IDFA, I'm happy with that as well.

12 Q. You just find the base part, so either the -- some  
13 form of the average-of is more hedgeable, in your opinion,  
14 than the higher-of?

15 A. Yes.

16 Q. And whether it's a fixed adjuster updated at some  
17 interval or a rolling one as proposed by MIG, that's not a  
18 make or break it for you?

19 A. No. No, not at all.

20 Q. And you are talking -- when you are talking your  
21 hedges, it seems to be particularly focused on government  
22 contracts or school lunches --

23 A. Those are the customers who complain the most  
24 because they can't pass the price on. They have a budget.  
25 You know, they -- they can't do it.

26 Q. Okay. So I just want to make sure we're clear.  
27 That's -- that's -- so that is more on that side, less on  
28 the retail consumer, retail customer side.



1 A. Absolutely. Yeah. We -- we have trained our --  
2 our grocery stores well. Whether or not it's the best way  
3 to sell the milk is a side topic, but they -- it's -- yes.

4 Q. Okay. And then I -- I'm not sure if I caught the  
5 answer to the question then.

6 Do you currently hedge your -- any for your -- let  
7 me say a sentence.

8 Do you currently hedge at all, provide that  
9 service for any of your customers?

10 A. We do a lot of fixed price ice cream contracts, so  
11 we can level set your ice cream contract. And, again,  
12 that's something we have grown over time. We're very  
13 comfortable. We do a lot. We don't do anything in the  
14 Class I space today, but I'd like to do more.

15 Q. Okay. And I think I heard you say you were able  
16 to do ice cream because you used, like, butter futures?

17 A. Yes.

18 Q. Okay. In your example you provided, you have --  
19 this is at the bottom of 3 and then some of that's on your  
20 slide deck as well. I'm just curious why you didn't  
21 include Class II. I just want to make it clear --

22 A. Just --

23 Q. -- for the record why it's not in there.

24 A. -- keeping it simple. This is -- you know, when  
25 we -- we introduce Class II, and then all of a sudden I  
26 introduce -- you know, Class I really isn't priced on III,  
27 IV, it's priced on the advanced mover. And now we start  
28 introducing 30 moving pieces, and it's hard to kind of



1 isolate a concept. And that's what I was just trying to  
2 do here.

3 Q. I can appreciate that sentiment.

4 And you talked about, through your examples, and  
5 I'll focus on the one on page 3, you know, you said, well,  
6 when the Class III price is high, those plants will depool  
7 because it's higher than the blend, and then they can pay  
8 their producers a Class III price, and everybody else who  
9 is pooled gets the blend price?

10 A. Uh-huh.

11 Q. And I guess, who guarantees that those producers  
12 get that Class III price?

13 A. No one. And I believe we have had a lot of  
14 testimony to that.

15 Q. Okay. So they can depool, but there's no  
16 guarantee that the producers get the money?

17 A. No, there is not a guarantee that the producers  
18 get the money.

19 Q. Can we -- can we look at the bottom of page 3? If  
20 we go to the right side of your chart under the average,  
21 so your first section deals with when the cheese example  
22 when cheese depools.

23 A. Uh-huh.

24 Q. The second sentence deals with the example of when  
25 the powder depools.

26 A. Yes.

27 Q. And then what is the third? Can you go over what  
28 that third kind of set of columns is?



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

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

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

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

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

19           A.    Okay.

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

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



1           You look at, you know -- and the inverse for  
2 powder. On average, the two manufacturing classes were  
3 17.50. The blend is always the lowest price.

4           Q. So it's -- so they are an average of the rows, not  
5 the average of the columns?

6           A. Yes. Yes. Everything there is just an average of  
7 the rows.

8           Q. Thank you.

9           A. Okay. Thank you.

10          Q. We only get one opportunity to ask you these  
11 questions, and then we go back to DC and look at this  
12 stuff and think, oh, man, we didn't ask him about that.

13          A. I'm not that hard to find. I guess it's not on  
14 record.

15          Q. I may call you.

16          A. All right.

17          THE COURT: That's not permitted.

18          THE WITNESS: All right.

19          MS. TAYLOR: We get one shot, and this is it.

20          THE WITNESS: Okay.

21          THE COURT: What is wonderful, to the extent the  
22 questions are forward-looking and they bring up topics  
23 that will not be decided by the Secretary based on the  
24 evidence here, it's very exciting to see all the different  
25 potential for the future. I'm just saying.

26          THE WITNESS: You are talking like me now.

27 BY MS. TAYLOR:

28          Q. So -- and then on the last page of your statement



1 you say, If USDA were to raise the base Class I skim  
2 price, it would make it harder to attract milk for fluid  
3 use. And that's the opposite goal of Federal Orders. And  
4 so the only proposal USDA should accept is MIG's.

5 So what I'm -- and you did discuss this a little  
6 bit with Dr. Bozic, but I still didn't get my brain with  
7 you two.

8 A. Okay.

9 Q. So let me ask this question.

10 MIG is -- and your members are contending that  
11 their proposal is roughly revenue neutral to the higher-of  
12 proposal of National Milk's?

13 A. Yes.

14 Q. So given that, I don't understand how this  
15 proposal, MIG's proposal, solves your issue as you have  
16 described it here?

17 A. It does not whatsoever, but it helps hedge. And  
18 if you want my opinion on which one I like more, it's the  
19 average-of, not the higher-of.

20 Q. Okay. So you're here -- you're supporting the  
21 hedging --

22 A. I'm just laying down a counterargument to some of  
23 the things that were said about the benefits of the  
24 higher-of, and I want to tell the room, that's not going  
25 to solve your problems.

26 If you think I'm going to do this and people are  
27 going to stop complaining about depooling, they won't.  
28 You know, I guess it's more to that.



1 Q. Okay. Thank you.

2 A. Yep.

3 Q. And then I wrote down, I think this -- I think  
4 this is my last question.

5 I wrote down how you had talked about, in some  
6 cross-examination, about current -- right now, given  
7 current prices, right? Butter prices are high, so milk  
8 wants to go to -- milk isn't going to butter right now,  
9 it's going to cheese?

10 A. No.

11 Q. And it's going to cheese because cheese getting,  
12 is getting a pool subsidy, which you had some discussion  
13 about, that's the payment from the pool so they can pay  
14 the blend?

15 A. Yes.

16 Q. Okay. So -- but what is preventing the cheese  
17 plant from deciding -- or the co-ops providing the cheese  
18 plant, I'm going to not put it in cheese, I'm going to  
19 sell it to this butter plant over here and get this higher  
20 Class IV price?

21 A. No, I want them to. I -- I think they should.  
22 When I have run manufacturing plants, like I said, if --  
23 if I could get the money -- you know, someone was selling  
24 cheese on the exchange right now -- I don't know what  
25 happened today -- but yesterday they did. If I were a  
26 cheese plant, which I have worn that hat before in this  
27 industry, here's what I would do to make money.

28 One, I would say, you know what, the cheddar price



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

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

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

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

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





1           A.     So at least in the California order, of the money  
2 we have, 90% of it is going to the cheese plant. So if I  
3 run my cheese plant, and I don't have pooling, I only get  
4 that Class III price, which is low. But if I run my  
5 cheese plant and I pool it, maybe I get an extra dollar or  
6 \$2 from the pool, and that -- that helps me keep my dairy  
7 farmers viable, so I run my plant. But if that didn't  
8 exist, maybe I could make money for them another way.

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

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

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

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

22           THE WITNESS:   Okay. Thank you.

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

24           THE WITNESS:   No, no, no.

25           THE COURT:     Wait, I forgot about redirect.

26           THE WITNESS:   Not so fast.

27           THE COURT:     I forgot.

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



1 assumption there might not be much.

2 THE WITNESS: Okay.

3 CROSS-EXAMINATION

4 BY DR. CRYAN:

5 Q. You talked about arbitrage with Ms. Taylor.

6 A. Yes.

7 Q. Your situation having the powder plant and the  
8 fluid plant is very unusual, is it not?

9 A. It's something you would only build in a  
10 California milk order. You would never build it in a  
11 Federal Order.

12 Q. And -- and most of the plants in the country have  
13 been -- have responded to the current regulatory structure  
14 of the Federal Orders?

15 A. That's correct.

16 Q. And so most -- almost every other powder plant has  
17 the opportunity to depool in arbitrage --

18 A. Yes.

19 Q. -- under the current system?

20 A. Yes.

21 Q. Okay.

22 DR. CRYAN: Thank you very much.

23 THE COURT: Now I invite redirect.

24 MS. VULIN: Thank you.

25 REDIRECT EXAMINATION

26 BY MS. VULIN:

27 Q. I just wanted to finish off with the questions  
28 that Ms. Taylor was asking you about the slope.



1 A. Uh-huh.

2 Q. And make sure that I understand it as well.

3 And so your point isn't that FMMOs prevent the  
4 economic signals that would move cheese to butter or  
5 powder in that situation. It's that they make them less  
6 extreme or they dampen those signals from what they would  
7 be without that impact; is that right?

8 A. Yes.

9 Q. Okay. You had talked in your testimony on your --  
10 in your PowerPoint on slide 8, which is Exhibit 268 --

11 A. Okay.

12 Q. -- and Mr. Miltner had asked you about the  
13 1.4 million -- or billion Class IV pounds in that example.

14 Did you intend to suggest that that milk was all  
15 actually pooled in July of 2023?

16 A. No, it was not. It was just a rough estimate of  
17 what Class IV is a lot of days in production-wise. Not  
18 pool-wise, production-wise. And in the example, I was  
19 trying to draw it all into the pool.

20 Q. So your example was asking us to assume that all  
21 of the Class III and the Class IV milk was in the pool for  
22 purposes of demonstrating the impact of the Class I price?

23 A. Yes.

24 Q. And you had talked about earlier about the issue  
25 of, on page 2 of your testimony, when talking about your  
26 supply, you talked about Class III or IV manufacturers  
27 supplying milk for pooling access.

28 Is that a common practice for Class I processors



1 to purchase milk for that purpose?

2 A. Yes.

3 Q. Just in California or in other orders?

4 A. Everywheres. If you read the Federal Order  
5 language in any order that's -- here's what we do and  
6 here's how we do it.

7 Q. So Class III and IV, accessing the pool is part of  
8 the bread and butter of Federal Orders?

9 A. Absolutely.

10 Q. And you had mentioned also that you have one site,  
11 but we did hear you say "plants," plural.

12 So can you just give us a little overview of your  
13 operations and either the manufacturing lines, kind of the  
14 buildings, like, how does that all work?

15 A. So our other manufacturing plant, I didn't talk  
16 about much, is a smaller plant in Humboldt, California,  
17 that we do powder and ice cream with. It's a non-pool  
18 plant. We never pool it.

19 It's just -- it's organic, and it's small, and  
20 it's quirky, and it makes the greatest fluid milk on the  
21 planet, and the greatest organic ice cream on the planet,  
22 and I could go on about that. It's a fun place to visit.  
23 I recommend everyone go there.

24 Q. But you have been primarily talking --

25 A. Yes.

26 Q. -- about your main operation.

27 A. Our main operation is the bulk of everything.

28 Q. And so tell us what you do, again, at that main



1 operation.

2 A. We do everything. So, again, we have the dryer  
3 where we make various milk powders. We have a butter  
4 operation. We have an ice cream operation where we do a  
5 variety of lines. We have cottage cheese vats, sour  
6 cream, buttermilk, fluid milk. You know, you could go on  
7 forever.

8 Q. And these are all different lines or buildings  
9 on -- I like the description of the campus.

10 A. Yes. We have 17 different milk filling stations,  
11 and you name it.

12 Q. And then, lastly, you had mentioned or used this  
13 phrase that I really liked, that as an industry we must be  
14 gracious and humble to the customer.

15 What did you mean by that?

16 A. Well, they are the one paying for it, so we need  
17 to be respectful of that. We can't take them, you know,  
18 for granted. We need to -- we need to look out for their  
19 public interest as well here.

20 Q. Thank you.

21 MS. VULIN: Nothing further.

22 THE COURT: Admission into evidence of exhibits?

23 MS. VULIN: I just wanted to make sure there was  
24 no re-cross.

25 THE COURT: People are not wiggling.

26 MS. VULIN: Great.

27 So I would move that Exhibits 267 and 268 be  
28 admitted into evidence.



1 THE COURT: Is there any objection?

2 There is none. Exhibit 267 is admitted into  
3 evidence.

4 (Exhibit Number 267 was received into  
5 evidence.)

6 THE COURT: Exhibit 268 is admitted into evidence.

7 (Exhibit Number 268 was received into  
8 evidence.)

9 THE COURT: And now you may step down.

10 THE WITNESS: Thank you.

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

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

16 MS. VULIN: Absolutely. Happy to accommodate.

17 MS. TAYLOR: Thank you. Yes.

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

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

22 We go off record at 9:57.

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

24 THE COURT: Should we go on record?

25 Let's go back on record.

26 MS. TAYLOR: Your Honor, I have passed out  
27 Mr. Barlow's statement, one to each of the parties  
28 present. This one is not online at the moment, but I will



1 get an electronic copy, and we will get it up there by the  
2 end of the week so anyone can have access to it.

3 I would ask that be marked with an exhibit number.

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

6 (Exhibit Number 269 was marked for  
7 identification.)

8 THE COURT: Mr. Barlow, welcome.

9 THE WITNESS: Thank you very much.

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

11 THE COURT: I got more work to do.

12 State and spell your name.

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

14 THE COURT: Have you previously testified in this  
15 proceeding?

16 THE WITNESS: No, ma'am.

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

18 THE WITNESS: Thank you.

19 H.H. BARLOW,

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

22 THE COURT: Now you may proceed.

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

26 THE WITNESS: Okay.

27 Hello. My name is H.H. Barlow. I am presently  
28 milking 120 cows in Barren County, Kentucky. I also serve



1 as executive director of the Kentucky Dairy Development  
2 Council. But today, I am testifying as an independent  
3 milk producer and dairy farmer shipping milk to the Borden  
4 plant in London, Kentucky.

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

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

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

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

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





1 local rural economy.

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

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

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

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

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



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

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

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

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



1 2003 to 2013.

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

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

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

20 Thus, in 2013, I led the initiative to take the  
21 10 million monthly pounds of production being sold to Lone  
22 Star to the independent Borden bottling plant in London,  
23 Kentucky. This endeavor netted an immediate \$2 price per  
24 hundredweight increase in my milk price, and for the past  
25 ten years, we have maintained the highest price in the  
26 available market.

27 Competition has been central to improve prices  
28 throughout my entire 50-year career. Today, there is less



1 competition than ever before in the marketplace with the  
2 consolidation of co-ops and the closure of independent  
3 plants. This is detrimental to producer pay prices  
4 everywhere.

5 I have given you this history as a summary of  
6 actual events I have experienced as a dairy producer for  
7 50 years. My dream was always to be a successful large  
8 dairy farmer. I am not complaining about my life, because  
9 I am blessed to have a great family, a nice farm, and a  
10 wonderful way of life. The challenge is the economic  
11 reward for small dairy farms has been eroded significantly  
12 by economic conditions in the market.

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

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

25 For the month of August 2023, my 3.5 blend price  
26 of 19.64 was made up of \$9.42 from skim and \$10.22 for  
27 butterfat. This is just one example of my pay price being  
28 less than what it could be because the higher-of formula



1 was not used to calculate my pay price.

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

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

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

24 Just for example, my average production over the  
25 last three years was 2.1 million pounds annually, and my  
26 protein percent was 3.7 annually. Using the calculation  
27 put forth on page 35 of National Milk's petition that the  
28 component changes would raise Class I price by \$0.55, the



1 difference in my pay price would be approximately \$0.40  
2 per hundredweight, considering the 70% utilization of  
3 Class I milk in Order 5. This would result in additional  
4 \$8500 annually to my gross receipts. This would cover  
5 half of my fuel cost on the farm for a year.

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

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



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

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

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

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

23           This hearing is about the modernization of the  
24 Federal Milk Marketing Order system. I have given you my  
25 thoughts from an independent producer's perspective. In  
26 summary, I support National Milk Producers Federation and  
27 the American Farm Bureau positions on the points I  
28 discussed. It is imperative that the final result of this



1 hearing does not harm producer pay prices.

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

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

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

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

16 CROSS-EXAMINATION

17 BY DR. BOZIC:

18 Q. Marin Bozic for Edge Dairy Farmer Cooperative.

19 Good morning, Mr. Barlow.

20 A. Good morning.

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

25 Do you share his confidence that that will indeed  
26 happen?

27 A. I remember when I had over-order premiums of a \$1,  
28 \$1.50 a lot, and that disappeared. And honestly, I do not





1 have that confidence.

2 Q. Thank you for your answer.

3 You mentioned in your testimony that you are in  
4 the, your words, sunset of your career. One of the  
5 arguments put forward for increasing Make Allowances is  
6 that it would expand plant capacity for producers' ability  
7 to grow.

8 Would you benefit personally if the plant capacity  
9 is expanded?

10 A. Yes.

11 Q. What would you do if the plant capacity is  
12 expanded?

13 A. Hopefully be able to incentivize producers in  
14 Kentucky to produce more milk and have a place to go with  
15 it.

16 Q. So --

17 DR. BOZIC: Thank you very much for your answers.

18 THE COURT: Thank you, Dr. Bozic.

19 CROSS-EXAMINATION

20 BY DR. CRYAN:

21 Q. Hello, Mr. Barlow. It's nice to see you again.

22 I'm Roger Cryan with the American Farm Bureau  
23 Federation.

24 A. Yes, sir.

25 Q. I have to say that every time I get up.

26 Are you a Farm Bureau member?

27 A. Yes, sir.

28 Q. I appreciate that.



1           And you came to our forum on Federal Orders last  
2           October in Kansas City?

3           A.    Yes.

4           Q.    And I appreciate that.

5           And I know you said you represent yourself today,  
6           but the Kansas City Dairy Development Council signed on,  
7           along with other state groups, and along with National  
8           Milk, with Farm Bureau, in a statement supporting updates  
9           and modernization of the system for the benefit of  
10          farmers; is that correct?

11          A.    Yes, sir.

12          Q.    And I appreciate that.

13          So just let me clarify. You support -- did you  
14          have any other takeaways from that forum?

15          A.    I don't -- I don't have any at the moment.

16          Q.    Okay. The forum -- that forum generated support  
17          for -- broad support for the higher-of; is that correct?

18          A.    Yes, sir.

19          Q.    And very broad support for increased Class I  
20          differentials?

21          A.    Yes, sir.

22          Q.    And -- and you are here -- well, you said so. You  
23          said you're here to support the -- oh, I remember -- I'm  
24          sorry, the last thing, the thing I wanted to clarify.

25          You support Farm Bureau's position that we should  
26          not have an increase in the Make Allowances unless there's  
27          an audited mandatory survey of the data that goes into  
28          that; is that correct?



1 A. Yes.

2 Q. Very good. Thank you very much for your  
3 testimony. Have a safe trip back.

4 A. Thank you.

5 DR. CRYAN: Thank you.

6 THE COURT: Thank you, Dr. Cryan.

7 CROSS-EXAMINATION

8 BY MS. HANCOCK:

9 Q. Good morning. I'm Nicole Hancock with National  
10 Milk. Thank you so much for being here today.

11 In your Exhibit 269, on page 4, you talk about the  
12 Make Allowances that you just talked about with Farm  
13 Bureau, and I just wanted to ask a couple questions about  
14 that.

15 Is one of your concerns with increasing  
16 Make Allowances for manufacturers just the amount of  
17 tremendous pressure you feel in your current pay prices as  
18 a dairy producer?

19 A. Yes. You know, I think people in this room  
20 obviously know, but we're over \$8 per hundredweight under  
21 our January pay price. That's over a 30% drop. And our  
22 input costs have not changed at all. So we're in a very  
23 untenable position today as dairy farmers.

24 Q. Okay. And I think you testified to this, but I  
25 just want to tie it into this section.

26 Is your concern that if -- if -- if  
27 Make Allowances are increased and there is a corresponding  
28 drop in the pay prices to producers, that it would drive



1 producers out of business?

2 A. Yes, ma'am.

3 Q. And in turn, that would have a negative effect on  
4 the supply that's available in the marketplace?

5 A. That's correct.

6 Q. Okay. And then you talk on the last page of your  
7 testimony about how in Kentucky where you -- where you are  
8 farming, you have observed with your fellow dairy  
9 producers that there is an interest in growing their  
10 dairies; is that right?

11 A. Absolutely.

12 Q. Is that because as a small dairy, the efficiencies  
13 are just not there and it makes it too difficult to  
14 survive based on the current financial circumstances?

15 A. There are definitely, you know, advantageous  
16 factors for being in a larger scale without any question.

17 And fortunately, I'm surrounded by some young  
18 dairymen. You know, they are in business basically with  
19 their fathers, or their families, and they are obviously  
20 all in a growth phase.

21 And -- but at the same time, you know, I hate to  
22 see the 100- to 500-cow dairy or -- you know, suffering  
23 needlessly. Because as I stated in my testimony, you  
24 know, a 100-cow dairy is a pretty significant size  
25 business in any -- any locale. I live in a town -- or I  
26 lived actually on a farm, but my adjacent town is like  
27 2,000 people. There are very few businesses, you know,  
28 almost none I would say -- there are some I think -- that



1 generate more income than I do on my 120-cow dairy.

2 So -- and the beautiful thing about my position is  
3 all of that money is spent locally. And, you know, we are  
4 a real economic engine in rural America.

5 Q. So if these small farms go out of business, it  
6 doesn't just affect those farmers and their families and  
7 the generations to come, but it affects the entirety of  
8 those communities, as well as the supply of milk?

9 A. Absolutely. Thank you for that, you know,  
10 confirmation.

11 Q. I just want to thank you on behalf of National  
12 Milk for your support and for taking the time to be here  
13 today.

14 A. Thank you.

15 THE COURT: Thank you, Ms. Hancock.

16 Who else has questions?

17 CROSS-EXAMINATION

18 BY MR. LAMERS:

19 Q. Good morning, Mr. Barlow.

20 Mark Lamers, Lamers Dairy. First I want to thank  
21 you for coming today.

22 A. Thank you.

23 Q. We operate a very small fluid plant up in  
24 Wisconsin, and we purchase our milk from producers just as  
25 yourself, so I really appreciate your insight.

26 Earlier the Judge had opened up -- or made a  
27 comment relative to the potential ideas of what could come  
28 out of this hearing. I'm going to go back again to a



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

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

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

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

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

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

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

26 Our fellow grain producers have had crop insurance  
27 for years and years and years, and I am so thankful we had  
28 that incorporated in the 2018 Farm Bill. And I pray that



1 we -- it will be continued in the 2023 Farm Bill. But,  
2 you know, that does give us a basic, you know, kind of  
3 floor to help us get through the tough times.

4 MR. LAMERS: Okay. Thank you very much.

5 THE COURT: Thank you, Mr. Lamers.

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

8 I turn to Agricultural Marketing Service.

9 CROSS-EXAMINATION

10 BY MS. TAYLOR:

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

13 A. My pleasure.

14 Q. Just a couple questions.

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

19 Would you meet that definition?

20 A. Absolutely.

21 Q. And you mentioned DMC.

22 Am I correct, then, that you utilize DMC?

23 A. I do.

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

26 A. I do not.

27 Q. Thank you.

28 Your milk goes to the Borden plant in London,



1 Kentucky.

2 About how far is that haul?

3 A. 100 miles.

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

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

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

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

19 This issue of hauling milk is probably the, you  
20 know, elephant in the room in Kentucky. We have -- you  
21 know, I pay \$1.35 per hundredweight to get my milk hauled.  
22 We have producers in the state of Kentucky that are paying  
23 \$3 a hundredweight to get their milk hauled. I don't see  
24 how they can survive that cost. So, you know, it is -- it  
25 is a real challenge to -- for all of us I think as we go  
26 forward.

27 And, again, that is -- as you lose producers, then  
28 that creates greater distances between dairy farms for





1 haulers to go. And I think all of those factors, you  
2 know -- and just the cost of fuel, you know, the cost of  
3 labor, of finding the men and women to drive the trucks,  
4 all of those things are becoming a real, real big problem  
5 in our dairy industry, particularly in the south.

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

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

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

10 A. Oh, sure. Absolutely. You know, we actually had  
11 a \$.25 adjustment back at the first of the year, upward.

12 Q. From your hauler?

13 A. Yes.

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

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

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

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



1 opportunity to a bonus.

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

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

17 Q. I appreciate that segue.

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

25 A. You know, I alluded to it in my testimony, I guess  
26 you would say. In the '90s when I was shipping milk to an  
27 independent plant in Nashville, Tennessee, the Ezell  
28 family owned the Purity Milk plant there, and it was



1 nothing for them to say, Purity premium, \$1.00, \$1.25.  
2 They literally followed the marketplace, and if they  
3 thought their producers were in need of extra income, I  
4 would see a -- it was called a Purity premium. It was at  
5 the bottom of the check. I have seen it as high as \$1.50.  
6 It nearly always was over \$0.50. Those went away totally,  
7 as I have testified.

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

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

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



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

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

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

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

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

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

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

28           And being able to have, you know, the Federal



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

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

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

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

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

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

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

23 Q. Reported by USDA?

24 A. Yes.

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

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



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

5           MS. TAYLOR:  Thank you very, very much.

6           THE WITNESS:  Thank you.

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

9           There is none.  Exhibit 269 is admitted into  
10    evidence.

11           (Exhibit Number 269 was received into  
12    evidence.)

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

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

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

18           MS. VULIN:  Sounds good.

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

21           (Whereupon, a break was taken.)

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

23           We're back on record at 10:49.

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

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

28           All right.  So would you please state and spell



1 your name?

2 THE WITNESS: Michael Newell, N-E-W-E-L-L.

3 THE COURT: Mr. Newell, have you previously  
4 testified in this proceeding?

5 THE WITNESS: I have not.

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

7 MICHAEL NEWELL,

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

10 THE COURT: Thank you.

11 DIRECT EXAMINATION

12 BY MS. VULIN:

13 Q. Good morning, Mr. Newell. How are you?

14 A. Good morning. I'm good.

15 Q. You have before you a document entitled "Testimony  
16 of HP Hood, LLC, Part 2."

17 Do you see that?

18 A. I do.

19 Q. And is that your written testimony for the  
20 proceeding today?

21 A. That is my written testimony.

22 MS. VULIN: Your Honor, we had previously  
23 circulated this, so hopefully everyone has their copy from  
24 yesterday when I was a bit more -- maybe too optimistic on  
25 the schedule.

26 THE COURT: We didn't mark it yet, did we?

27 MS. VULIN: No, we have not.

28 THE COURT: Okay. That's good. That's -- that's



1 orderly. All right. I don't -- which is it? 270.

2 It will be 270.

3 MS. VULIN: Do you have a copy?

4 THE COURT: It's coming.

5 MS. VULIN: And in the meantime, I'll identify  
6 myself. Ashley Vulin with the Milk Innovation Group.

7 THE COURT: All right. So everyone, you may go  
8 ahead and mark your copy as 270, and up at the right-hand  
9 top it says MIG-Hood-Exhibit 11. You may proceed.

10 (Exhibit Number 270 was marked for  
11 identification.)

12 MS. VULIN: Thank you, your Honor.

13 BY MS. VULIN:

14 Q. Mr. Newell, will you please state your business  
15 address for the record?

16 A. It's 6 Kimball Lane, Lynnfield, Massachusetts.

17 Q. Thank you. And let's start with some of your  
18 background.

19 So, Mr. Newell, how did you get into the dairy  
20 industry?

21 A. So I have heard the comment made --

22 Q. Oh, and I'll jump in really quick. Make sure you  
23 go nice and slow. Thank you.

24 A. So like I have heard many others say in the two  
25 days that I have been here, I was kind of raised in the  
26 business. So my stepdad's family had a milk processing  
27 company in downtown Sacramento called Crystal Cream &  
28 Butter Company, and I'll get to that.





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

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

15           From there I went and I got an MBA at the Borden  
16 School of Business. Went back to the family business and  
17 worked my way up through sales. Became VP of marketing in  
18 1997, company president in 2003. Hood was a customer of  
19 ours. We actually co-packed ESL eggnog for them.

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

26           Q.    What a small world.

27           A.    Yeah.

28           Q.    Great.



1           A.     So then with Hood, I really fulfill a sales role.  
2     So I have been responsible for private label sales on the  
3     West Coast, international sales, and then for about the  
4     last eight years, what we call national warehouse sales,  
5     which is really sales of our ESL products on the West  
6     Coast.

7           Q.     And what's your current title at Hood?

8           A.     I'm sales director.

9           Q.     Sales director?

10          A.     And then I kind of fulfill a dual role, which is  
11     why I'm here today. I'm in charge of industry relations  
12     in -- for California. So I sit on a number of boards:  
13     Dairy Institute, California Milk Processors Board, The  
14     Dairy Council of California, so --

15          Q.     And are you based out of California?

16          A.     Yes. Yeah. I live in -- I have an office at our  
17     Sacramento plant and live in Davis, California.

18          Q.     And tell us a little bit about Hood's product  
19     offerings.

20          A.     So Hood -- let me say this first, about Hood.  
21     Hood was founded in 1846 in Boston, Massachusetts, so New  
22     England's really the heart of its business. So in -- in  
23     the Northeast market, Hood -- Hood brand is the most  
24     well-known brand, has the largest market share, and  
25     markets a full line of Class II products and Class I  
26     products.

27                     And distribution for those products is really DSD.  
28     There might be, like, a small amount through foodservice



1 warehouses, but really it's direct store delivery for our  
2 HTST products.

3 Q. Thank you.

4 And you mentioned fluid. How many fluid  
5 distributing plants does Hood have?

6 A. So Hood has four HTST plants and five ESL plants.

7 Q. And I believe you have, on page 2 of your  
8 testimony, a summary of where those plants are located; is  
9 that right?

10 A. That is correct.

11 Q. And I can see here they are located primarily in  
12 FMMO 1, but also FMMO 51; is that right?

13 A. Yeah. The Sacramento plant's in FMMO 51, and the  
14 rest are in FMMO 1.

15 Q. Okay. And what -- tell us a little bit about the  
16 types of Class I products that Hood processes.

17 A. Yeah. So it's really a full line of fluid milk  
18 products, so I mean -- and chocolate milk. Oh, so Class I  
19 products.

20 So then on the other side -- so that's HTST  
21 products.

22 ESL products we -- we -- you know, our big brand  
23 in ESL is -- or Class I brand, is Lactaid Lactose Free  
24 milk, so that's a brand that Hood has had the license on  
25 for many years.

26 Lactaid is -- the name is actually owned by McNeil  
27 Pharmaceuticals, and we're their licensee for the U.S.

28 Q. And so you said that -- that Hood has fluid milk



1 products that are HTST and fluid milk products that are  
2 ESL, correct?

3 A. Yes.

4 Q. And what's just kind of roughly the breakdown  
5 between the portion of each of those?

6 A. So I'm not going to put a number on it, but it  
7 is -- the ESL business is larger than the HTST business.

8 Q. Great. Thank you.

9 And I -- I -- you had shared with me the revenue  
10 for Lactaid last year just to give us a sense of the scope  
11 of that brand.

12 Would you be willing to share that?

13 A. Yeah. Well, so it was not the revenue for last  
14 year, but it was retail sales. We hit kind of a  
15 significant milestone at the end of May, which was Lactaid  
16 brand actually had done a billion dollars in retail sales,  
17 according to Circana, which is the -- what IRI is now  
18 going under. So -- and I think we were the first  
19 specialty milk brand to hit that number.

20 I'm going to give a little caveat. We also  
21 sell -- and a -- a plug for Lactaid -- we also sell  
22 Lactaid cottage cheese and Lactaid ice cream. So those  
23 were included in that number.

24 Q. And is the majority of the Lactaid sales in the  
25 milk, the cottage cheese, the ice cream?

26 A. I would say 90% is in milk. Yeah. Milk is really  
27 the franchise.

28 Q. And this innovative Lactaid product, then, has



1     been very successful?

2           A.     Yes.

3           Q.     Great.  Thank you.

4                     You said you focus on the sales side.

5                     Can you give us just a little rough -- what does  
6     day to day look like for you in terms of selling Hood's  
7     fluid milk products?

8           A.     So I manage a broker network, so it's really, you  
9     know, putting together programs for our retailers, making  
10    sure that -- that our pricing looks good in stores, is  
11    meeting our targets.  If not, addressing it with  
12    retailers.  Making sure our products are on shelves.  So,  
13    yeah, that's -- that's kind of my primary focus.

14          Q.     Great.

15                     And does Hood do any risk management for its  
16    Class I products?

17          A.     Hood does -- yes, does risk management.  
18    Class I -- I mean, Lactaid is where we will hedge a  
19    portion of the milk that we use for Lactaid.

20          Q.     So you had said you have the HTST and the ESL.  
21                     So not for HTST, but, yes, Hood does hedge for  
22    some of its ESL products?

23          A.     Yes.

24          Q.     And you -- how does Hood manage risk for its ESL  
25    Class I products?

26          A.     Yeah.  So what we do is we buy futures for  
27    Class III and Class IV skim.

28          Q.     And on page 4 of your testimony, Exhibit 270, at



1 the top you describe two ways that a Class I processor  
2 could hedge, purchasing futures contracts for the solids  
3 and the butterfat, and then these kind of custom contracts  
4 that commodity brokers can put together.

5 Do you see that there?

6 A. I do.

7 Q. Which of these, or both, does -- does Hood utilize  
8 to manage its risk --

9 A. We --

10 Q. -- for its --

11 A. We utilize --

12 Q. -- ESL products?

13 A. We utilize method one.

14 Q. Method one, the purchase of the solids and fat?

15 A. Yes. We purchase future contracts for solids,  
16 powder, or cheese -- actually, powder and cheese, and  
17 butterfat in the CME.

18 Q. And does Hood do any custom hedging as described  
19 under the second tab?

20 A. No.

21 Q. Why not?

22 A. It's more expensive to do that way. So I mean,  
23 method one is the way we have elected to do it.

24 Q. And did Hood do any futures hedging when the  
25 higher-of was the formula for the base Class I skim price?

26 A. We did not.

27 Q. Why not?

28 A. Because you wouldn't know which to hedge because



1 you wouldn't know what the higher-of was going to be.

2 Q. And do you personally manage these hedges?

3 A. No. I have nothing to do with hedging. I'm on  
4 the sell-side, and really that's my focus, and that's what  
5 I'm really here to talk about.

6 Q. So how do you know that Hood hedges its Lactaid  
7 milk?

8 A. Because I have talked to our team and found out  
9 that we -- we do.

10 Q. And you said on the -- you are on the sales side.  
11 So tell me, how does hedging impact what you are  
12 doing on the sales side at Hood?

13 A. So I think the key thing to understand about ESL  
14 business -- and -- and I think I didn't mention it, those  
15 products are sold through grocery warehouses, so it's not  
16 a DSD business. It's --

17 Q. Sorry. What does DSD stand for?

18 A. DSD is what we do with HTST milk. We deliver it  
19 directly to the stores.

20 Q. And so it's direct store --

21 A. Delivery --

22 Q. -- delivery?

23 A. -- yes. That's primarily how -- that's the  
24 channel we use for HTST milk. For ESL products, they are  
25 con- -- what we'll call consumer products, so it's a very  
26 different mindset. Those are distributed through --  
27 primarily through grocery warehouses.

28 Q. And just a quick reminder, make sure to let me



1 finish my question so we can keep the court record clear.

2 A. And I'll go slow.

3 Q. Thank you.

4 So you said ESL is a somewhat different sales  
5 avenue because it's not a direct store delivery, it goes  
6 through a warehouse.

7 Is there anything else that's different about how  
8 you sell or price the ESL products from the HTST?

9 A. Yeah. So with HTST, I know there's been testimony  
10 on this, it's -- it's really a passthrough business. So  
11 there's kind of a -- it's kind of universally accepted  
12 that with, like, two weeks' notice of a price change due  
13 to the markets moving monthly, those prices can be  
14 implemented by your customers.

15 With ESL products, consumer products going through  
16 a warehouse, you need to give much more notice of a price  
17 change. So with -- I think currently 60 to 90 days'  
18 notice of we're going to change your prices is required.

19 Q. Okay. And when you say --

20 A. Depending on the customer.

21 Q. Depending on the customer.

22 And do you utilize more stable or set pricing for  
23 your ESL products?

24 A. So with the ESL products, we utilize set pricing.  
25 So ideally with a consumer product, what you will do is  
26 you will come up with an annual plan of, you know, what  
27 you expect your price to be. You'll develop your  
28 marketing plan.





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

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

11          A.    You --

12          Q.    -- set price?

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

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

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

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



1 differently, but --

2 Q. And this 60 to 90 days, has that historically been  
3 the amount of notice that you would have to give for a --

4 A. You --

5 Q. -- price change?

6 A. You know, it seems to me --

7 THE COURT: I'm just going to ask you, Mr. Newell,  
8 you have the perfect conversational style, but to make  
9 sure the court reporter has finished her question before  
10 she starts typing your answer, you actually need to count,  
11 one, two, three, and then answer.

12 THE WITNESS: Thank you.

13 THE COURT: You're welcome.

14 Would you ask again?

15 MS. VULIN: Sure.

16 BY MS. VULIN:

17 Q. This 60 to 90 days' notice that you have to give  
18 retailers for a price increase on your ESL products, has  
19 that historically been the window that you would have to  
20 give that notice or has that changed over time?

21 A. It seems to me that it's actually become longer.  
22 I think when -- when I first got involved on the license  
23 brand side of the business in 2013, it was -- it was more  
24 of a 30-day notice. So it's -- it's gotten longer.

25 Q. And these price increases, are they always  
26 one-to-one in the ESL market? So, for example, if you  
27 have a \$0.15 price increase, do you typically see that the  
28 retailer matches that and passes along a 15% [sic]



1 increase to consumers, or do you see something different?

2 A. Yeah, no. So varies by retailer. But most of  
3 them have, you know, specific price points that they like.  
4 So they like 3.99, or 4.49, you know, maybe some of it  
5 with 4.29, but there -- I think there's certain price  
6 points that -- that they go to automatically.

7 So you may -- you may have a \$0.20 change, but you  
8 may go up \$0.50 in the stores. So that's a reason why you  
9 don't want to have frequent price changes, because it can  
10 significantly impact your retail.

11 Q. And how does Hood's ability to hedge help it  
12 manage or reduce these price changes to retailers and  
13 ultimately consumers?

14 A. So, obviously the fewer changes you need, the  
15 fewer the -- you know, the less the opportunity to see  
16 your prices creep up.

17 Q. And does hedging allow you to make fewer price  
18 increases?

19 A. Yes, it does.

20 Q. And so Hood has seen a tangible benefit from its  
21 ability now that it can hedge its ESL products?

22 A. Yes.

23 Q. And we have heard talk about price volatility.

24 How does price volatility impact Hood's ability to  
25 market its ESL products according to its plans?

26 A. So I mean, historically we have -- for the reasons  
27 I have talked about, we have not had a lot of changes. I  
28 think hedging gives us one more tool to manage that.



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

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

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

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

15 A. Yes, that would be true.

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

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

22 Can you tell us about that?

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

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



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

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

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

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

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

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

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

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

28           A.    Correct. That's correct.



1 Q. Would Hood ever want to or is there any  
2 circumstance in which you could see value in Hood's  
3 ability to hedge its HTST product?

4 A. Yeah. So I could see value definitely on the  
5 foodservice side where you have got customers, coffee  
6 chains, for example, that have fixed menu prices and would  
7 want to lock in a price over a given period of time. So I  
8 think -- I think that has a lot of value.

9 I think on the grocery side of the business, as I  
10 side earlier, we have a, you know, pretty established  
11 system of moving price changes through. So, you know,  
12 today being in this business for 40 years, my mind's a  
13 little slow getting away from the -- you know, the way  
14 it's always been done. So I can't envision that, but I  
15 think it could be a possibility.

16 Q. It would take some more time and education,  
17 though?

18 A. Yeah. And I know Jacob talked about a ten-year  
19 timeframe. So, yeah, I -- and -- and definitely willing  
20 partner. Yeah.

21 Q. And you said that Hood did not hedge under the  
22 higher-of formula but -- but does hedge now under the  
23 average-of, correct?

24 A. Yes.

25 Q. And do you know how long did it take Hood to begin  
26 hedging once the formula changed? Do you have any rough  
27 estimate there?

28 A. I really -- I don't. You know, maybe -- maybe a



1 year. I guess I said I don't, and I gave you a rough  
2 estimate.

3 Q. So about -- you are now. So less than four years?

4 A. Yeah.

5 Q. Okay. And you think that with additional time  
6 there might be some movement there also on the HTST side?

7 A. Who -- it's a possibility. And as I said,  
8 foodservice seems to be more -- more of an opportunity.

9 Q. Uh-huh.

10 And any final thoughts that you want to share on  
11 price stability or how the importance of hedging plays a  
12 role in Hood's business?

13 A. So I guess I wanted to thank the USDA for the  
14 opportunity to testify before you, and to consider, I want  
15 to restate, we think hedging is important. We support  
16 MIG's Proposal 15. We think it will also help create some  
17 more price stability for both processors and farmers and  
18 offer roughly the same price as -- as Sally talked about  
19 yesterday. So -- and then if -- if the USDA feels that  
20 Proposal 14 is -- offers more benefits, I just wanted to  
21 state that we are in favor of that as well.

22 Q. Thank you very much for your time.

23 MS. VULIN: Nothing further, your Honor.

24 THE COURT: Mr. Newell, I'm now going to invite  
25 questions from anyone who might like to ask you about your  
26 testimony.

27 Who would like to go first?

28 ///



## 1 CROSS-EXAMINATION

2 BY DR. CRYAN:

3 Q. Good morning, Mr. Newell.

4 A. Good morning. How are you?

5 Q. Very well.

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

8 A. Yeah.

9 Q. Thanks for coming out to testify.

10 Would you like to see a Class I futures contract?

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

12 Q. Would that help -- would that help you regardless  
13 of what Class I formulas came out of this proceeding?14 A. I'm not an expert in -- in futures or hedging, as  
15 I have said. So I mean, I think it's something we would  
16 like to look at.17 Q. Do you oppose the elimination of Class I advanced  
18 pricing?

19 A. No. No.

20 Q. You don't? Okay.

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

24 Q. You support advanced pricing.

25 A. Yes. Yes.

26 Q. Okay. I asked if you opposed elimination.

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



1 Q. That means you would support the elimination?

2 A. Okay. No. Thank you. Thank you for -- yes. We  
3 support advanced pricing. We do not support the  
4 elimination of advanced pricing.

5 THE COURT: Start again, because I don't know why  
6 ESL is different from the other, and I totally missed the  
7 subtlety of your question, so --

8 BY DR. CRYAN:

9 Q. Do you oppose the Farm Bureau proposal to  
10 eliminate advanced pricing of the Class I?

11 A. Yes, we do oppose it.

12 Q. Why?

13 A. Because the advanced pricing is very well accepted  
14 on the HTST side of the business, which makes that market  
15 function very orderly, because you and all your  
16 competitors are kind of moving in conjunction.

17 Q. In effect, the industry is used to it?

18 A. Yes.

19 THE COURT: And then because he talked about ESL,  
20 I'd like to go back to that part of his testimony just so  
21 I know what he said.

22 DR. CRYAN: Please ask him whatever question --  
23 that was my question with regard to Class I, but if you  
24 have a question for him, please.

25 THE COURT: All right.

26 You were talking about how advanced pricing is  
27 accepted in certain products, and then you went on to  
28 describe how it might be different with your ESL products.



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

4 THE COURT: Hand-in-hand?

5 THE WITNESS: Yeah.

6 THE COURT: Meaning?

7 THE WITNESS: Meaning they both work.

8 THE COURT: All right. Thank you.

9 BY DR. CRYAN:

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

12 A. We do. We do.

13 Q. Why?

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

18 Q. Okay. Okay. That's it.

19 DR. CRYAN: Thank you very much.

20 THE COURT: Thank you, Dr. Cryan.

21 Mr. Miltner?

22 CROSS-EXAMINATION

23 BY MR. MILTNER:

24 Q. Good morning, Mr. Newell.

25 A. Good morning.

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

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



1 Class I utilization rate for Hood.

2 And am I correct that that is for Hood as an  
3 entire organization?

4 A. That is for our nine fluid plants. So that does  
5 not include -- and I didn't discuss it in my testimony.  
6 We have three culture plants and one ice cream plant. So  
7 that is not included in that number.

8 Q. Thank you.

9 Has that utilization rate been pretty consistent  
10 over time in that 80, 87% range?

11 A. So I just asked for the utilization rate for 2022  
12 when I put my testimony together. Seems to me our  
13 business is fairly stable, so I think that's probably a  
14 fairly good -- good number.

15 Q. Great. Thank you.

16 Now, you mentioned, I think, when Ms. Vulin was  
17 questioning you, that your HTST business is mostly  
18 passthrough on pricing?

19 A. Yes.

20 Q. Can you just elaborate on that a little more on  
21 what you mean by "passthrough"?

22 A. Passthrough?

23 Q. Yes.

24 A. So I mean, we -- we find out what our milk cost is  
25 going up, and we -- we increase by that amount to our  
26 customers.

27 Q. And then the ESL business is not priced the same  
28 way?



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

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

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

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

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

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

23          Q.     Were those acquisitions before 2019?

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

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



1 basis?

2 A. No. It was -- it was a more of a flat -- flat  
3 price basis.

4 Q. You also testified that a portion of your Lactaid  
5 business is hedged?

6 A. Yes.

7 Q. Is it a majority of it that is hedged?

8 A. I can't speak to that, so I -- I don't work on  
9 that side of the business, so I'm really here to talk  
10 about the market side of the business.

11 Q. Okay. You also testified that of the two -- the  
12 two hedging opportunities or methods, that Hood used the  
13 first method exclusively purchasing futures contracts for  
14 commodities; is that correct?

15 A. Yes.

16 Q. And I did not hear, does -- does Hood purchase  
17 butterfat or butter contracts to hedge there?

18 A. What I was told was yes.

19 Q. Okay. Did they also inform you as to whether they  
20 purchased powder for those hedges?

21 A. Yeah, they -- yes. Yes.

22 Q. Okay. So butterfat -- or butter and powder and --

23 A. And class -- well, powder -- Class III and IV  
24 solids contracts.

25 Q. Okay. And is -- is that exclusively for that  
26 portion of your Lactaid business?

27 A. That's the business that we're looking to hedge.

28 Q. Does Hood use an outside consultant to help with



1 its hedging or is it all handled in-house?

2 A. We -- we buy a lot of information. I can't say  
3 that we -- so -- we -- yeah. We -- we contract with a  
4 number of consultants, I will say.

5 Q. There was testimony earlier in the hearing from a  
6 risk management consultant who offered her opinion that a  
7 program could be developed to effectively hedge milk costs  
8 using the higher-of.

9 Does Hood have an opinion on whether that is  
10 feasible?

11 A. I think our opinion is, you know, it -- it would  
12 be very expensive to do because you would need to hedge,  
13 you know, not a 50/50 hedge, but 100% hedge, and with the  
14 uncertainty, it wouldn't be worthwhile.

15 Q. Now, on page -- the top of page 5 of your  
16 statement you state, "I suspect that other processors are  
17 interested in hedging, even if they have not begun doing  
18 so yet."

19 I don't mean for this to sound flippant, but is  
20 that based on anything other than your suspicion?

21 A. Well, it could be based on, I think -- I think  
22 lots of conversations around hedging leading up to this  
23 hearing. I think we have all come to realize it's a  
24 valuable tool that really needs more -- more  
25 consideration, so -- yes. So that I think that that was  
26 the basis for that -- that comment.

27 Q. Thanks.

28 You also, in your statement on that same page, you



1 are describing this customer who was supplying a foreign  
2 coffee manufacturer or coffee distributor. I'm curious if  
3 you know when the relationship between that customer and  
4 Hood ended, if they replaced the milk supply with foreign  
5 milk or --

6 A. Yeah. So I -- I -- I think he was going to start  
7 buying milk from Australia. I don't know if that actually  
8 happened or if he went out of business or -- or what.  
9 But, yeah. It was -- it was a sad end to something that  
10 started out with a lot of promise.

11 Q. Sure.

12 Do you -- do you -- do you know, because I  
13 personally don't, what the pricing of fluid milk under the  
14 Australian system or others, how that compares with ours?

15 A. I do not. I do not. I -- I know that when he --  
16 when came to us, he said he could get fixed prices  
17 elsewhere. And we told him, well, that's not how we do  
18 business. So he took that risk.

19 Q. Now, Proposal 15 that MIG has offered, it would be  
20 subject to periodic adjustments of the add-on to the  
21 average.

22 Is that your understanding as well?

23 A. Yes. Yes.

24 Q. Now, in 2007, there was another hearing, a lot  
25 like this, and Hood testified at that hearing.

26 And Mr. Latta then said that "Hood was opposed to  
27 the suggestion that any formula or portion of be subject  
28 to automatic adjustment or periodic updates."



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

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

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

9 Is Hood's position today different than it was in  
10 2007 there as well?

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

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

20 So, in 2007, your customers were asking you about  
21 hedging. Do you have any information you can help us with  
22 about how your customers were able to hedge before, say,  
23 2019 and now?

24 A. I -- I do not.

25 Q. Because one of the things that a number of  
26 processors have said is that there really wasn't an  
27 effective way for -- for Class I participants to hedge  
28 until they got rid of the higher-of, and Mr. Latta seemed





1 to indicate that was an interest about 12 years prior to  
2 that.

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

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

7 MR. MILTNER: Thank you.

8 THE WITNESS: Thank you.

9 CROSS-EXAMINATION

10 BY MS. HANCOCK:

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

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

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

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

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



1 whatnot, Hood became the national licensee for Lactaid.

2 Q. And -- and then when did it become a product that  
3 was put into gallons or cartons and sold into the retail  
4 markets?

5 A. Oh, in the '70s it started being sold in cartons.

6 Q. And has it been on a continuous climb since the  
7 1970s?

8 A. So I am going to say that, I mean, yes, it's been  
9 a growth area. I think it's really kind of picked up  
10 steam over the last 20 years, maybe, you know. I think  
11 consumers are always looking for something different.  
12 With Lactaid, they find a product that really works for  
13 them if they have a dairy sensitivity.

14 Q. Okay.

15 A. So it's a product they have a lot of trust in.

16 Q. And so when you say it's really picked up over the  
17 last 20 years or so, has that been at a time that  
18 correlates to kind of when consumers are becoming more  
19 aware of allergens and dietary reactions to the foods that  
20 they consume?

21 A. I would agree, yes.

22 Q. And -- and also at a time when consumers' buying  
23 power has increased significantly; is that fair?

24 A. Buying power in terms of their ability to -- I  
25 guess, you tell me what kind of buying power means.

26 Q. What I mean is consumers in the last 20 years have  
27 had more financial ability to pay premium pricing for  
28 things like Lactaid or other consumer goods that match up



1 with whatever kind of dietary issues that they --

2 A. I mean, I think in the grocery industry, yes, we  
3 have seen that trend certainly.

4 Q. And those are drivers that have helped benefit the  
5 sales and success of Lactaid?

6 A. I would say that hasn't -- definitely hasn't hurt.  
7 I think we have also spent -- we have done a lot of  
8 advertising, too, to, you know, promote the advantages of  
9 the Lactaid brand.

10 Q. And that advertising has resulted in a success in  
11 the growth of the product as well?

12 A. Yes. Yes.

13 Q. And you said over the last 20 years is when it  
14 really took off.

15 In the last 20 years, has that been on kind of a  
16 straight line trajectory of success or have there been any  
17 standout periods of time where it has really grown?

18 A. I mean, I think it's been pretty steady. And it  
19 it's -- it's -- we have -- we have, you know, had a few  
20 years where maybe we didn't, where we saw, you know, very  
21 small growth but -- or flatness. But, I mean, it's --  
22 it's been pretty steady.

23 Q. And throughout that -- that 20 years, have you  
24 sold the product to your customers and into the retail  
25 outlets in the same manner that you describe today,  
26 through those contracts with your retailers?

27 A. Well, with kind of that annual plan mentality,  
28 yes.



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

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

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

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

13 Q. And I think in --

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

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

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

21 Q. Yeah.

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

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

28 A. Yes -- some retailers require a justification.



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

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

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

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

14 A. At Hood, yes.

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

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

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

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

28 Q. Okay. And I'm sorry if I'm going to cover



1 something you already have, but I just want to make sure  
2 I'm clear on this.

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

7 A. Yes.

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

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

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

13 A. Not that I'm aware of.

14 Q. Okay. Did you ask that question?

15 A. I did not ask that question.

16 Q. So --

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

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

21 A. Yes.

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

25 A. No.

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

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



1 Q. But similar to not asking about swaps and OTC, you  
2 didn't ask about those for prior either?

3 A. I did not. But I was told -- yeah. So -- but I  
4 was told we did not hedge Class I prior to 2019. So I  
5 think that kind of covers the swaps or OTC, because I  
6 think that would fall under hedging.

7 Q. What percentage of your ESL is hedged every year?

8 A. I don't know that information.

9 Q. Do you know if it's more than half?

10 A. I don't know that.

11 Q. Do you know if it's 5%?

12 A. I don't know.

13 Q. Okay. And I --

14 A. Yeah, I'm -- I'm -- so -- right? So I do not work  
15 on that side of the business.

16 Q. And I'm just trying to whittle you down to just  
17 make sure we that have all of our bases covered.

18 You don't know if it is 1% or something above  
19 that?

20 A. I don't know.

21 Q. Okay. And do you know how much of the success of  
22 Hood's business has been attributed to its ability to  
23 hedge its milk products?

24 A. I think it's -- it's important for us, as far as  
25 maintaining consistent pricing. I can't -- yeah. I -- I  
26 can't put a percentage on that. I mean, our company does  
27 a lot of -- a lot of things right.

28 Q. Okay.



1 A. Yeah. I mean, and we have made a lot of  
2 investments in ESL capacity and building our brands, and  
3 so I think it all factors in.

4 Q. Okay. So it's fair to say that it is a useful  
5 tool to Hood, but you cannot quantify in a financial way  
6 if it has offered a financial benefit to Hood?

7 A. I cannot.

8 Q. Okay. And you don't know if it's driven sales  
9 volumes for any of Hood's products then, either?

10 A. No.

11 Q. No, you don't know?

12 A. No, I do not know if it's driven sales. Well, I  
13 think it contributes to flat pricing, but I can't -- I  
14 can't put a number on that.

15 Q. And you don't know if your customers, if they were  
16 not given flat pricing, whether they would change their  
17 buying habits, do you?

18 A. Well, I think if -- so if -- as I testified, they  
19 require 60 days' notice, 90 days' notice. So it would  
20 be -- if we were to change prices, as we do with HTST, it  
21 would not be possible.

22 Q. And you don't hedge that product anyway, right?

23 A. Right. Right.

24 Q. And do you know what the costs are that are  
25 related to the hedging that Hood does?

26 A. I do not.

27 Q. Whatever those costs are, that's built into your  
28 profit margins?





1 A. That -- it would be part of our cost of doing  
2 business, yes.

3 Q. Okay. Deducted out, it would essentially reduce  
4 the margins?

5 A. Yes.

6 Q. On page 4 of your testimony in Exhibit 270, at the  
7 very top of the page, you provide a definition of hedging  
8 there, or an answer to a question you pose in your  
9 testimony about what is hedging.

10 A. Uh-huh.

11 Q. And then you say, "Hedging is the use of a risk  
12 management tool to achieve a predictable price and reduce  
13 the upside price risk."

14 Do you see that?

15 A. Yes.

16 Q. Is there a -- does Hood profit if -- with a  
17 downside price movement?

18 A. So if prices go down and we're flat priced,  
19 certainly our margin gets better. If prices move up, our  
20 margin is reduced, yes. So...

21 Q. Do you have any mechanisms in order to make sure  
22 that you can reap the benefits of the downward but not  
23 moving upward? Is that the hedging tools that you use?

24 A. Hedging you are -- you're -- really with hedging,  
25 you -- you're giving up some of that downside risk to make  
26 sure you're, you know, having a steady price.

27 Q. Okay. And that's what Hood does now with its  
28 current hedging practices?



1 A. With a -- yes. With a portion of the milk that it  
2 buys.

3 Q. And if I go down to your third purpose of hedging  
4 that you have there, you say, "The key thing to understand  
5 about hedging is that it's not about making a higher  
6 return."

7 Do you see that?

8 A. Yes.

9 Q. Are you talking about a higher return to Hood in  
10 that instance? That this isn't a way that Hood is trying  
11 to drive a higher return?

12 A. It's -- it's -- right. It's not -- it's not  
13 about -- it's not about trying to beat the market. It's  
14 trying -- it's about trying to lock in a cost.

15 Q. Okay. And --

16 A. So I -- and I -- I heard a dairy farmer testify  
17 early on about using hedging and saying, but it was  
18 costing more than it was saving me, so I stopped.

19 I mean, there's always a -- kind of a buyer's  
20 remorse thing when you -- when you look to -- to hedge --  
21 you know, an energy hedge or something else, when the  
22 market doesn't move up, it moves down, and you end up  
23 leaving money on the table. So that's kind of what I  
24 was -- was referring to here.

25 Q. Kind of like when you buy an insurance policy, if  
26 you never have to use it, it's just some money --

27 A. We all feel that way sometimes, but when we need  
28 it, we're really glad we have it. Yes.



1 Q. And so I'm just curious, though, do you think that  
2 the purpose of the Federal Order system is -- is to make  
3 sure that -- that Hood and others like Hood have the  
4 ability to insulate its risks by using a hedging program?

5 A. I think that if that helps us grow the market, I  
6 think that's a positive for -- for dairy farmers and  
7 processors alike. So I -- I think that that's one of the  
8 goals. And so I would say that that's important.

9 Q. And you haven't presented any evidence of your  
10 hedging practices actually growing your market, have you?

11 A. Have not. No.

12 Q. Okay. And you wouldn't suggest that having a  
13 system in place to allow manufacturers the ability to  
14 hedge to insulate those manufacturers from price risks  
15 should come at the expense of dairy farmers and the milk  
16 prices that they receive for that milk?

17 A. I'm -- no, I'm not suggesting that.

18 Q. Okay. That's all I have.

19 MS. HANCOCK: Thank you so much for your time.

20 THE WITNESS: Thank you.

21 THE COURT: Thank you, Ms. Hancock.

22 Who will go next?

23 CROSS-EXAMINATION

24 BY DR. BOZIC:

25 Q. Marin Bozic for Edge Dairy Farmer Cooperative.  
26 Mike, good morning.

27 A. Good morning.

28 Q. Relating hedging and ability to hedge to sales,



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

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

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

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

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

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

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

20 Q. Okay. What is driving that?

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

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



1 performance?

2 A. I think you see -- you see consumers looking for  
3 more -- more value-added. We have seen the market  
4 segment, over the last 20 years, a lot of organic milk is  
5 sold as ESL, not as HTST, so I think there's just more  
6 offerings. And a lot of that product is distributed  
7 through grocery warehouses, which are more efficient to  
8 distribute that way.

9 Q. So then, in general, would it be fair to say that  
10 if we want to reinvigorate Class I, we should consider  
11 what we can do to make business easier for processors that  
12 wish to pursue ESL?

13 A. I think that's a fair discussion for sure. Yeah.

14 DR. BOZIC: Thank you very much, Mike.

15 THE COURT: Thank you, Dr. Bozic.

16 Oh, you think the lad needs a bit of water? Good.

17 Are there any other questions before I ask

18 Agricultural Marketing Service?

19 Seeing none, Agricultural Marketing Service, you  
20 may question.

21 CROSS-EXAMINATION

22 BY MS. TAYLOR:

23 Q. Good morning.

24 A. Good morning.

25 Q. Thanks for coming to testify today.

26 A. Thank you.

27 Q. So my first question is for Hood: How many  
28 employees in total does Hood have?



1 A. So we have, I think, a little over 3,000  
2 employees.

3 Q. Okay. And that includes your other two plants you  
4 said you had that -- your non-fluid plants?

5 A. Oh, yes. Yeah. No, that's total -- total  
6 companywide.

7 Q. Okay. You mention that out of -- that your ESL  
8 production was more than HTST production?

9 A. Yes. Class I, yes.

10 Q. Yes.

11 Besides Lactaid, what other ESL products --

12 A. We do some export milk. We do half and half. We  
13 do some foodservice ESL product.

14 Q. But Lactaid is a majority of your ESL?

15 A. Lactaid would be the majority of our Class I ESL.

16 Q. I want to turn to page 4 of your testimony, and  
17 your fourth point you were trying to make is that it's  
18 possible -- discussing it's possible for producers and  
19 processors to hedge.

20 And your testimony has been about Class I hedging  
21 specifically. So --

22 A. Yes.

23 Q. -- I'm wondering if you could describe if -- and  
24 if so, how -- does Class I hedging benefit producers?

25 A. So I would say it -- it benefits producers in that  
26 it helps us grow our market and sell more Class I milk  
27 over time. So I think that's a benefit to producers.

28 Q. So I did want to ask you about that as well, since



1 you are a salesperson as you describe yourself.

2 Is -- since Hood has begun using some hedging on  
3 ESL, what have you seen happening with your sales of those  
4 Class I products?

5 A. So, I mean, Lactaid's business is up. It's grown.  
6 I can't really speak to our HTST products that we're not  
7 hedging.

8 Q. I'm curious about what you are hedging.

9 A. Yeah. Yeah. So that's -- that's it. Yes. So --  
10 but Lactaid's up since we have. I would not point to  
11 hedging being the driver of that, but in that it helps us  
12 execute our plan, I guess it's certainly a contributing  
13 factor.

14 Q. So what would you think is driving your increase?  
15 If it's not hedging, your ability to hedge your increased  
16 sales --

17 A. Yeah, well, I mean, it's --

18 (Court Reporter clarification.)

19 BY MS. TAYLOR:

20 Q. If hedging is not what you think is driving the  
21 increase in your Lactaid sales, what would you attribute  
22 it to?

23 A. I think it's the popularity of the brand. It's  
24 the marketing we put behind it. It's our production  
25 capabilities I think also -- also help. I mean, I think a  
26 lot of things go into the success of the brand.

27 Q. And there's been discussion -- and I think you  
28 touched on it in your testimony, too -- how, you know, it



1 takes time for people to learn how to use these hedging  
2 tools, and so it's only been five years.

3 So have you -- has Hood steadily increased your  
4 use of those tools since the change in 2019?

5 A. I mean, I think we've started to use them. I  
6 think, you know, honestly probably just scratching the  
7 surface of what's possible.

8 And I mentioned the foodservice opportunity. I  
9 talked to our director of foodservice about the ability to  
10 hedge Class I, and he said, well, I didn't know we  
11 could -- we could do that.

12 So I think that -- I think -- and Sally touched on  
13 this yesterday -- COVID kind of reeked havoc and made us  
14 focus on certain things. Now we have the supply chain  
15 issues that followed that. And so we have had a number of  
16 things going on. We're starting to get back to business  
17 as usual.

18 I think this whole process certainly helps us  
19 become more focused on the opportunity we have.

20 Q. It's like you're reading my mind.

21 Because my next question was: You have a  
22 statement at the bottom of page 4 talking just about that,  
23 the pandemic that happened, etcetera, that slowed the  
24 adoption of risk management by the change, so I was just  
25 asking you to expand on that.

26 And I guess I'm curious then, does that mean even  
27 Hood maybe didn't quite utilize it as much during that  
28 time?





1 A. Yeah. I don't -- I don't think we realized the  
2 opportunity we have.

3 Q. On page 5, in the middle, before your listed  
4 number 1 and number 2, your sentence says -- and you are  
5 talking about going back to the higher-of: "Such a change  
6 would hurt Class I processors, it would hurt customers,  
7 and it would hurt consumers."

8 And I just wanted you to expand on how such a  
9 change, in your opinion, would hurt each of those three  
10 sectors.

11 A. Yeah. So I think just the added price volatility  
12 involved in that and losing the ability to hedge would  
13 certainly -- I mean, it would impact us. It would -- it  
14 would hurt our customers because they would see more price  
15 swings and consumers would -- would end up paying more for  
16 products.

17 Q. Do you see your Lactaid milk as more price elastic  
18 than HTST milk if, you know, an increase in price  
19 would impact its sales?

20 A. Interesting question. I -- I think that being a  
21 higher-priced product, I think that, you know, there is a  
22 threshold up there that we could get to that could, yeah,  
23 make it more elastic.

24 Q. But you haven't reached that point yet? I ask --  
25 I'll give you a little context.

26 A. Yes.

27 Q. We have had -- I'm sure you have not tuned in for  
28 five and a half weeks to listen to this hearing.



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

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

8           A.    Yes.

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

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

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

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

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

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

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



1           A.    Yeah, I think it means that it's -- it would --  
2           it's expensive. So it's -- it's -- maybe effectively  
3           utilized. I think it's just -- it's too -- too -- it's  
4           too -- too -- it's too expensive to have to hedge under  
5           that -- under the higher-of scenario.

6           Q.    And when you say "expensive," I just want to make  
7           sure the record's clear, that's --

8           A.    Because you are uncertain about what -- you know,  
9           what contract to buy, so --

10          Q.    So there's risk that you'd buy the wrong one?

11          A.    Yes.

12          Q.    Okay. On the next page you mention, "Retailers  
13          will often" -- "often will margin up."

14                    Can you provide a definition for that?

15          A.    It -- it -- that would be that they take a price  
16          increase beyond the price increase that you have given  
17          them, and probably beyond maintaining their margin. So if  
18          you, you know, have a \$0.20 increase and the price goes up  
19          \$0.50 at retail, that would be margining up.

20          Q.    So maybe they don't abide by the math rules of how  
21          to round and they --

22          A.    They --

23          Q.    -- always round up?

24          A.    They -- they set the price, and they look to price  
25          points.

26          Q.    Yeah.

27                    Since you have started hedging your ESL products,  
28          can you talk a little bit on -- and I don't want any --



1 I'm not asking for any confidential information -- but big  
2 picture, how have your prices to your customers -- you  
3 know, how has that changed since you have had the ability  
4 to hedge?

5 A. I think our prices have been -- been stable.  
6 Aside from 2022, we have had to take increases, but  
7 everything was going up. So we had all sorts of  
8 materials, inputs, energy. So, yeah, it was unavoidable.

9 Q. And there --

10 A. And -- and -- and across the board, kind of on  
11 all -- all products.

12 Q. And so were you able to provide more stability  
13 since hedging, or is it just they -- both time periods  
14 have been stable, but hedging gave you an extra benefit?

15 A. I think definitely gives us an extra benefit,  
16 yeah.

17 Q. So has your pricing strategy changed since you  
18 have begun hedging?

19 A. No, it has not -- it has not changed. I mean, we  
20 have never wanted to have a lot of volatility in -- in our  
21 ESL product prices because it's really -- stable prices  
22 are important to the plan.

23 Q. Okay. And I just want to kind of circle the loop  
24 then.

25 When you are talking about providing more stable  
26 prices, hedging allows you to do that. And is -- I think  
27 what -- if I want to draw the circle on the margin up,  
28 that's because then you are not passing more volatile



1 increases on to your customers --

2 A. Right. You're --

3 Q. -- where you're more likely --

4 A. You're --

5 Q. -- to margin up?

6 A. Yes.

7 THE COURT: I wonder if we got that whole question  
8 in clearly before the "yes"?

9 THE WITNESS: Sorry.

10 THE COURT: Not clearly. So I'm sorry, that was a  
11 really good, long sentence. Can you do it again?

12 MS. TAYLOR: Sure.

13 BY MS. TAYLOR:

14 Q. Generally, I think what I was trying to ask was --  
15 if I remember correctly -- was that the hedging has  
16 enabled you to provide more stable prices to your  
17 customers so that they are not inclined to margin up more  
18 often?

19 A. That is correct.

20 Q. And I hope I made that even a little shorter now  
21 that I had an extra minute to think about it. Thank you.

22 And that gets to your point down below on the next  
23 paragraph at the end, that the Proposal 15 would provide a  
24 more stable pricing system.

25 And that's kind of what you are talking about  
26 there?

27 A. That, and I think we also talked yesterday, Sally  
28 talked about the -- how with the MIG proposal, you would



1 see a little less volatility in the price mover.

2 Q. Okay.

3 A. So I was referring to both of those things.

4 Q. So we have had a few -- a number of entities talk  
5 about -- Class I processors talk about their use of  
6 hedging, and some are using it, some aren't, some are in  
7 its infancy. And, you know, the Secretary's being asked  
8 to seek a change in the mover to -- from some parties, to  
9 assist in that hedging activity.

10 Hedging's not part of the authorizing legislation  
11 for Federal Orders, and I won't regurgitate all of that to  
12 you, but those words aren't in there.

13 A. Yeah.

14 Q. And so a big picture question is, you know, how  
15 much -- you know, in your opinion, how much should the  
16 Secretary view hedging as -- or what percentage of hedging  
17 should be done in the market for the Secretary to see it  
18 as important to the industry?

19 Because it's, you know, what seems to be talked  
20 about here is it's available, but it's not very well used  
21 right now. So at what point --

22 A. Right.

23 Q. -- is it kind of --

24 A. Well, yeah --

25 Q. -- reach that threshold?

26 A. Yeah, I think Jacob gave a really good response  
27 earlier, that it -- it takes time for these tools to be  
28 adopted. So I think we're kind of in -- in -- in the



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

3 Q. Is that the plans for HP Hood?

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

5 Q. And one last question.

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

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

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

15 Q. Okay.

16 A. Thank you.

17 Q. Thank you so much.

18 MS. TAYLOR: That's it from AMS.

19 THE WITNESS: Thank you.

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

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

23 REDIRECT EXAMINATION

24 BY MS. VULIN:

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



1 I believe you testified earlier, I can't remember  
2 if it was here or in your testimony, that having hedging  
3 reduced the frequency with which you had to take -- or  
4 request price increases from retailers.

5 Is that right?

6 A. Well, it certainly helps, yes.

7 Q. Are those easy conversations on the ESL front? Is  
8 it like HTST where you, you know, send off a quick e-mail  
9 that your price is going up, have a nice day?

10 A. So, no. I talked about the 60- to 90-day notice.  
11 Some customers require cost justification forms. Yeah.  
12 No, it's not -- those -- it's -- it's not -- not pleasant.

13 Q. Okay. So it's quite difficult from a sales  
14 perspective, when you have to be asking for those price  
15 increases?

16 A. It's our job, though.

17 Q. And then you mention also on page 5 that -- that  
18 hedging helps you execute your annual marketing and trade  
19 promotional plans for Lactaid?

20 A. Yes.

21 Q. And you said that the marketing is a huge part of  
22 Lactaid success.

23 So can you tell us just a little bit about how  
24 hedging helps you execute those --

25 A. Well, I mean --

26 Q. -- those successful marketing plans?

27 A. So in that it -- it -- advertising is kind of  
28 separate. We invest a lot in advertising the Lactaid





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

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

11 A. Yes.

12 Q. Okay.

13 MS. VULIN: Thank you. Nothing further.

14 THE COURT: Thank you.

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

17 I see none.

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

20 THE COURT: Is there any objection?

21 There is none. Exhibit 270 is admitted into  
22 evidence.

23 (Exhibit Number 270 was received into  
24 evidence.)

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

28 THE COURT: Thank you.



1 Mr. Newell, thank you very much. It's a pleasure.

2 All right. Let's take a lunch break. We normally  
3 take an hour -- ah, but let's find out about the other  
4 witnesses that we may hear from, and then we'll take our  
5 break.

6 MR. ROSENBAUM: Your Honor, if we make it there,  
7 Mike Brown will be the next witness after the two MIG  
8 witnesses.

9 THE COURT: Very good. So you did fight it out in  
10 the hall. And Dr. Bozic is saved for -- well, we don't  
11 know.

12 MR. ROSENBAUM: If you look at me and Mr. Bozic, I  
13 don't think you would conclude there actually was a  
14 fistfight, since I have gone first.

15 THE COURT: All right. It's 12:11. Please be  
16 back and ready to go at 1:11. That's 1:11.

17 Thank you.

18 (Whereupon, luncheon recess took place.)

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1 THURSDAY, SEPTEMBER 28, 2023 - - AFTERNOON SESSION

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

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

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

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

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

11 THE COURT: Have you previously testified in this  
12 proceeding?

13 THE WITNESS: I have not.

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

15 CHUCK TURNER,

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

18 THE COURT: Thank you.

19 Ms. Vulin, you may proceed.

20 DIRECT EXAMINATION

21 BY MS. VULIN:

22 Q. Good afternoon, Mr. Turner.

23 A. Good afternoon.

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

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

28 I hope the questions don't get harder.



1 Q. They won't.

2 And you have before you a document entitled  
3 MIG-Turner-12.

4 Do you see that?

5 A. I do.

6 Q. And is this document your written testimony for  
7 this hearing?

8 A. It is.

9 MS. VULIN: And I'd ask that that be marked  
10 Exhibit 271.

11 THE COURT: That shall be done.

12 (Exhibit Number 271 was marked for  
13 identification.)

14 BY MS. VULIN:

15 Q. And then you also have in front of you a document  
16 entitled MIG-Turner-12A.

17 Do you see that?

18 A. Yes.

19 Q. And is that a copy of the PowerPoint you are  
20 presenting today?

21 A. It is.

22 MS. VULIN: And I'd ask that that be marked  
23 Exhibit 272.

24 THE COURT: That shall be done.

25 (Exhibit Number 272 was marked for  
26 identification.)

27 BY MS. VULIN:

28 Q. Thanks, Mr. Turner.



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

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

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

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

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

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

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

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

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

28                 And then from there progressed through into



1 management of our plant. And then went back for my MBA  
2 and got more into executive management. And I have been  
3 president of our family business for the last 20 years.

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

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

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

14 Q. Thank you.

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

17 A. Yes.

18 Q. How many employees does Turner have?

19 A. About 220.

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

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

26 Q. And where is the other plant?

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



1 of Pittsburgh.

2 Q. Great.

3 And that's where you manufacture most of the fluid  
4 milk products?

5 A. Correct. That's what you will see pictures of in  
6 a bit.

7 Q. And are those -- what orders are those plants  
8 pooled under?

9 A. Both plants are in Allegheny County, Pennsylvania,  
10 and regulated by Federal Order 33.

11 Q. And is pooling something you work with within the  
12 business?

13 A. Yeah. So my -- my sister does the producer  
14 payroll. We just actually put in a new system to manage  
15 it. And then we have a gentleman that does the  
16 accounting, and does our monthly milk reporting, and that  
17 sort of thing. And I -- and he works for me, too.

18 Q. And you said it's a family business, and you  
19 started working when you were growing up.

20 When -- when did your family start in the  
21 business?

22 A. My grandfather started the business in 1930. And  
23 actually, he left his father -- his father had a -- was in  
24 the dairy business in Pittsburgh, and he actually left his  
25 father's business to start his own in the -- out in the  
26 country, what was the country then. And so he started  
27 with four cows and an old car in 1930.

28 Q. And tell me a little bit about your milk supply.



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

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

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

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

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

23           Q.     Thank you.

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

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





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

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

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

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

10 Tell us what we see here, please.

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

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

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

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

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

23 Q. Thank you.

24 And the next slide.

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



1 90 years.

2 Q. I understand that Turner offers kind of specialty  
3 products throughout the year.

4 Can you tell us -- I know you have an example  
5 here. Can you tell us a little bit about that, please?

6 A. Yes. So one of the things we started doing, I  
7 think we're in it eight years now, is limited time  
8 offering flavored milks.

9 Sorry about that.

10 The one we have out right now is a chocolate  
11 caramel. So that's a fresh product 20 with a -- excuse  
12 me -- I think I'm having a technical difficulty here. I  
13 apologize for that. So all right.

14 Q. Again, tell us about this limited time offering.

15 A. Okay. So this is a good example. This, we just  
16 introduced this two weeks ago. If we did our projections  
17 right, it will last for another three or four weeks. We  
18 have -- it's an -- it's kind of a hard thing to do. We'll  
19 do four or five of these between now and next June.

20 We have done a lot of exciting flavors. I think  
21 the next one is going to be called brownie batter. It's  
22 going to be out for Thanksgiving and Christmas. Red  
23 velvet for Valentine's Day, if you are looking for  
24 something to get your husband.

25 Q. For myself?

26 A. Yourself.

27 So the idea is we get these out. They are new,  
28 they are something exciting, and the goal is to -- to get



1 shoppers' attention.

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

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

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

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

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

23 A. Right now we guess.

24 And the -- it was a little bit alluded to lately.  
25 One of the prob- -- one of the challenges -- there is a  
26 lot of challenges to doing a product like this. One of  
27 them is that you have to set up new items in your store  
28 chain all the time. So one of the things that shortens



1 the lives of the people in our sales and marketing part of  
2 our business is trying to get stores to accept new items.  
3 And we're doing it to ourselves, you know, 10 or 12 times  
4 a year.

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

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

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

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

26 A. No. There's no -- no, there's no way. We can't  
27 even -- we don't even change the price right before we  
28 introduce it, because it's -- it's usually set up in



1 people's systems at a price, and we just live with that  
2 price.

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

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

6 Q. Thank you.

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

8 A. Sure.

9 THE COURT: We have seen this one.

10 BY MS. VULIN:

11 Q. What is Milk Pep?

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

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

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

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

25 A. Sure.

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

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



1 experts on this scanner data information. And this is a  
2 presentation that they gave to the industry. So I -- I  
3 pulled two slides from an hour-long presentation that they  
4 gave to the industry at the beginning of 2002 -- 2022.

5 Q. And I see in the top right there's a -- a blue  
6 line and a purple line. And the blue line says  
7 "traditional milk," and the purple line says "value-added  
8 milk."

9 Can you just give us a short summary of the  
10 differentiation there, please?

11 A. Yeah. So it's starting -- I believe it was last  
12 year, Milk Pep came up with a new segmentation for us as  
13 an industry to think about how we're selling fluid milk,  
14 and tried to differentiate the selling of white jugs from  
15 value-added products, like lactose free. I would include  
16 our limited time offering products. But -- but items that  
17 aren't -- we're not trying to sell cheap.

18 Q. So a value-added product could be something like  
19 your chocolate caramel drink?

20 A. Right.

21 Q. Something like -- would ESL organic fall within  
22 that category?

23 A. Yes.

24 Q. Thank you.

25 So why don't you just tell us, what is this chart  
26 showing us -- or graph?

27 A. Okay. Basically what -- this was intended to be  
28 kind of a call-to-action to milk bottlers.



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

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

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

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

17           A.    Yes. Right. So the presentation was February  
18 2022, so the data was through 2021.

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

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

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

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



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

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

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

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

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

17 Q. Around 2035?

18 A. Yeah. 2035, correct.

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

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

28 And I can tell you 2022 and 2023 don't look like





1 we change course.

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

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

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

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

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

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



1 companies, but I would tell you that there's a lot of  
2 companies out there right now that aren't in great shape.

3 Q. And you're one of the four that made it still to  
4 that association meeting.

5 How is Turner able to succeed in this environment?

6 A. It's -- we're not immune to any of it. It's  
7 tough. We -- we work hard at it. We try to do the right  
8 things. We have been able to grow our sales volume on  
9 milk for seven out of the last ten years. But I don't --  
10 I don't have a -- there's not a magic -- I don't have  
11 any -- I think a lot of it is relationships and building  
12 up trust throughout our -- our network, between our  
13 farmers and our customers and our employees, probably the  
14 biggest thing.

15 Q. And I'll maybe brag a little on your behalf.

16 Clearly from this work and the chocolate caramel  
17 product and your discussions, you put a lot of thought  
18 into how to innovate and how to move the industry forward;  
19 is that fair?

20 A. Yeah. We work hard at it.

21 Q. So in talking about what we're here to discuss  
22 today -- and there's been a lot of discussion, right,  
23 about how hedging plays into the base --

24 A. Yep.

25 Q. -- Class I price, and also price stability. So  
26 let's talk about stability first.

27 You said in your testimony, and I don't have the  
28 page number, but you said how difficult it is to tell



1 customers you are raising prices without a reasonable or  
2 market-based explanation to offer.

3 Tell me a little bit by what you meant there.

4 A. Yeah. Thanks, Ashley.

5 So the context to that was comparing the current  
6 mover we have with the higher-of. And my experience with  
7 higher-of is there was more volatility. And, in fact, any  
8 time that -- I would say one of three basic commodities  
9 spiked in price, fluid milk followed it.

10 So I would tell you, I really can't recollect why  
11 ever causing a price spike in milk, but I can tell you I  
12 have personally seen powder and butter and cheese peak in  
13 price, and then a month, and two months later, for no  
14 apparent reason to a consumer or to our customers, the  
15 cost of a jug of milk goes up by, you know, a quarter or  
16 some number like that.

17 Q. And so the Class of III or IV spiking in one month  
18 didn't have any impact on Turner's ability to acquire milk  
19 in that month?

20 A. No. From our farmers?

21 Q. Uh-huh.

22 A. No, it didn't. No, it didn't detract from our  
23 ability to source milk.

24 Q. And is that because you have those long-term  
25 relationships in place?

26 A. Yeah. I don't -- maybe we're in a different part  
27 of the country than -- you know, that maybe Pennsylvania  
28 is different than California. But I don't think people



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

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

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

10 Q. And we have talked about hedging as well.  
11 Do you currently hedge any dairy products?

12 A. Yes.

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

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

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

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



1 Q. Uh-huh.

2 And about when did you say you started doing that?

3 A. My first contracts were last summer, summer of  
4 2022.

5 Q. And how did you learn or discover how to manage  
6 your hedging program?

7 A. Well, just --just because I hadn't started it  
8 didn't mean I wasn't reading about it and -- and going  
9 to -- going to seminars.

10 And I met a -- I was at a seminar, and I  
11 introduced myself to one of the presenters who put on a --  
12 you know, a pretty good explanation of how this worked.  
13 And so I approached her afterward and asked if we could  
14 talk. And -- and after a couple phone calls and a meeting  
15 at a dairy -- IDFA Dairy Summit -- Dairy Summit or --  
16 Dairy Forum, you know, we -- we put together a plan to  
17 experiment with it last summer.

18 Q. And do you currently hedge Class I?

19 A. I do not.

20 Q. Why not?

21 A. I didn't -- some of it was based on the  
22 conversation with my -- the Ever.Ag -- my Ever.Ag person.  
23 But it was -- this is -- the Class II butterfat thing is  
24 easier. It's pretty easy to translate butter into pounds  
25 of butterfat. And the timing and -- you know, a pound of  
26 butterfat is a pound of butterfat. You can add your --  
27 your -- you know, your little figures on over to the right  
28 depending on the class, and it settles the same. It



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

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

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

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

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

24 The problem is that that -- we're coming right  
25 back into bidding season. So do you want to go raise your  
26 school district's price the month or month before they are  
27 going to put out a bid? So it's hard business-wise to --  
28 to -- even though there might be language that allows us



1 to raise it, it's hard to -- it's actually a hard decision  
2 whether to do it or not.

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

5 Q. Uh-huh.

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

8 A. Yeah.

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

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

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

19 A. No, I think the whole business would.

20 Q. Tell me more about that.

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

28 But I don't -- for an ideal price for a bottler,



1 it would stay the same. It wouldn't move around.  
2 Volatility causes -- causes a lot of problems, especially  
3 when it comes to the retail -- retail pricing and, you  
4 know, what price point -- a lot of times they will raise  
5 prices, but they don't drop them back when the price goes  
6 back down.

7 Q. Uh-huh.

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

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

19 Q. Thank you.

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

22 A. Not that I remember.

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

25 MS. VULIN: No further questions, your Honor.

26 THE COURT: Thank you, Ms. Vulin.

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





1 THE WITNESS: Everyone.

2 THE COURT: Everyone. They look like a friendly  
3 crowd.

4 CROSS-EXAMINATION

5 BY MR. LAMERS:

6 Q. Mark Lamers, Lamers Dairy. Good afternoon.

7 Looking at your written testimony, page 3, kind of  
8 in the middle --

9 A. Did you -- excuse me, did you say 3?

10 Q. Page 3 of 7, yes, in your written testimony.

11 I'd like for you to explain, you have a sentence  
12 in there that reads, "More recently, we find ourselves  
13 competing with cooperative-owned plants who, although FMMO  
14 regulated, are not required to pay their members the  
15 regulated minimum price like we must pay our independent  
16 farmers. The FMMO playing field has never been level in  
17 our part of the country, but it seems to be increasingly  
18 tilted against us in both directions."

19 Could you elaborate on that a little bit?

20 A. Yes. And let me start with a the second sentence  
21 you read just to put it in a perspective.

22 So we're in Allegheny County. We're on the east  
23 side of the city. Our farmers are in counties east of  
24 Pittsburgh. And right beyond those -- these -- right in  
25 the middle of these county lines is where Federal Order 33  
26 ends. Okay?

27 And so just because it's not on a Federal Order  
28 map doesn't mean nobody lives there or nobody does



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

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

13 Q. And that would give them a competitive advantage?

14 A. It could.

15 MR. LAMERS: Thank you.

16 THE WITNESS: Sure.

17 CROSS-EXAMINATION

18 BY DR. BOZIC:

19 Q. Marin Bozic for Edge Dairy Farmer Cooperative.

20 Chuck, good afternoon.

21 A. Good afternoon, Dr. Bozic.

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

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

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



1 Q. So when do you typically need to put your bid in,  
2 the first -- first one --

3 A. April or May.

4 Q. April?

5 A. Yeah.

6 Q. I assume this is one of the reasons why MIG's  
7 proposal has a rolling adjuster with a 12-month window?

8 A. That is the feature -- if I had to differentiate  
9 between MIG's proposal and IDFA's proposal, that's the  
10 feature that I think is important to me, is that if I  
11 had -- I could go out a year, you know, or --

12 Q. Sure.

13 A. And it really doesn't need to be a full year.  
14 Because from what I understand you do Class I kind of the  
15 month before.

16 Q. Uh-huh.

17 A. So to protect May, I would have to cover April.

18 Q. Right.

19 A. So -- yeah. So that 12-month knowledge of what  
20 the 12-month prices are would help me.

21 Q. So -- so the IDFA proposal runs through July for  
22 the next calendar year, right? There -- so you wouldn't  
23 know three out of 24 months that you would need for the  
24 calculation then?

25 A. I think. Yeah. And it's not a huge deal, but it  
26 is -- it would help to know, to know all -- you know, all  
27 the -- every month's price during the school year.

28 Q. But I'm asking because, you know, the organization



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

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

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

13 Q. Okay.

14 DR. BOZIC: Thank you very much.

15 CROSS-EXAMINATION

16 BY MR. MILTNER:

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

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

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

21 A. Good afternoon.

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

24 It's quite unique, isn't it?

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

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



1 processors that are in an unregulated area, which doesn't  
2 happen everywhere.

3 A. Right.

4 Q. And then you note that you're a proprietary  
5 bottler, and you have cooperative bottlers you are  
6 competing against?

7 A. Correct.

8 Q. Did I accurately state kind of what you are  
9 dealing with?

10 A. Yes. Yes. And there are other proprietary  
11 bottlers in our same situation that are regulated, and so  
12 we have more competition than just those two groups.  
13 Which there's a lot of cities in the country that don't  
14 have that competition right now.

15 Q. Right.

16 Now, when -- when you are paying the farmers that  
17 are supplying your plant and you need to maintain a  
18 competitive pay price against other farmers in the area,  
19 what do you think is the biggest challenge you face in  
20 maintaining that competitive pay price?

21 A. It's -- as everything in milk, it's complicated.  
22 But the challenge is that we can't spend so much that  
23 we're not competitive on the street when we compete with  
24 all these dairies on the -- for wholesale business. So I  
25 can't pay too much, but I need to pay enough to -- to get  
26 not only milk, but we we're looking for producers that  
27 really meet a really high standard on the rating on their  
28 federal inspections, and that meet really strict bacteria



1 counts. So we tend to focus on quality premiums.

2 Q. Now, in your statement you state that "we need to  
3 pay our dairy farmers premiums above the Federal Order  
4 blend to be competitive in the country with these  
5 unregulated plants."

6 May I assume that the -- the farms that do supply  
7 unregulated plants usually pay more than the federal blend  
8 price?

9 A. Yes.

10 Q. Now, you also, in the same paragraph -- and this  
11 is -- I saw you flipping -- I'm on page 3, and it's the  
12 first full paragraph.

13 And you're -- you're talking about your experience  
14 competing against cooperative-owned plants, and you note  
15 that those plants are not required to pay their members  
16 the regulated minimum milk price.

17 Do you -- I'm curious if you know that that's  
18 happening in your area from -- from any source, I guess?

19 A. Yes.

20 Q. Okay. So then those cooperative producers are  
21 getting paid less than the federal blend price.

22 Would that be correct?

23 A. I don't want to make that as a blanket statement  
24 that all -- all of those. But I do know that I have  
25 talked to handlers and producers that are getting paid  
26 less than the blend.

27 Q. So in some parts of the country I have heard  
28 producers suggest that they have minimal options as far as



1 where to sell their milk.

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

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

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

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

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

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

23 Would you agree with that?

24 A. Yes.

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



1 they can't meet bacteria counts and standards.

2 Q. For those that aren't meeting it --

3 A. Sorry. That's where the word economic kind of  
4 threw me. It is not all -- maybe that is economics. I  
5 don't know but...

6 Q. So for your company as one that is out there  
7 trying to source milk and acquire milk, those economics, I  
8 assume, work for you as well, that you can identify a farm  
9 with sufficient quality and offer them enough money to  
10 want to supply your plant instead of another.

11 Is that the case?

12 A. Well, that's the challenge, is can -- can I -- can  
13 I -- you know, the good farmers have options. And can I  
14 offer enough to keep the -- to keep those top farmers  
15 shipping their milk to us and still be competitive on the  
16 street, you know, while we're out selling our milk against  
17 other dairies. That's the challenge.

18 Q. Thank you.

19 A. You're welcome.

20 Q. Now, beginning on the next page of your statement  
21 you start to talk about hedging activities or risk  
22 management activities, and you make reference to  
23 foodservice accounts, and then in questioning you talked  
24 about school milk accounts.

25 For foodservice and for school milk, would those  
26 be primarily the half-pint gable top products you showed  
27 in one of your slides?

28 A. Firstly, I don't think I showed it in the slide,





1 but that would be the primary package. They are --  
2 restaurants also buy milk in larger containers, also.

3 Q. I think you showed the filler, not the products --

4 A. Yes.

5 Q. -- that's what I was referring to.

6 A. I knew you weren't trying to cross me up.

7 THE COURT: So if I could ask, you mentioned  
8 half-pint. I would have thought pint would be more  
9 frequently used.

10 Could you talk about that a little bit?

11 THE WITNESS: With regard to schools in  
12 particular, it is almost all half-pints. Healthcare,  
13 other institutional type business like that is all  
14 half-pints. Same with prisons.

15 When you get to, in my mind, C stores, convenience  
16 stores anymore, act as much like foodservice as they do as  
17 retail. And in that -- in that instance then you start to  
18 see a pint become a more prevalent -- the prevalent  
19 single-serve container.

20 BY MR. MILTNER:

21 Q. And I think the half-pint for school milk is  
22 because they consider a cup to be a serving of milk; is  
23 that right?

24 A. That is exactly right.

25 Q. You don't have to answer this because it's  
26 proprietary information. I'm sure it is.

27 A. Okay.

28 Q. What does it cost you to put out a half-pint, not



1 counting the milk inside?

2 A. I not only won't answer it, but I don't know it  
3 off the top of my head.

4 Q. Okay. Have you supplied milk to General McLane  
5 School District?

6 A. Yes.

7 Q. Okay. Their school newsletter says that you do.

8 A. Okay. Yeah. I can't even tell you where they  
9 are, but I have heard the name.

10 Q. Yeah, I don't readily see it on here, either. I'm  
11 guessing it's in Pennsylvania.

12 They sell milk to their students, at least in the  
13 last school, year at \$0.60 a pint.

14 Would you be selling them milk at above or below  
15 that price?

16 A. Did you mean half-pint?

17 Q. Yes, I did. Thank you.

18 A. We would be selling them milk for less than \$0.60  
19 a half-pint.

20 And I might add that that's not -- that's an  
21 à la carte price. Most of their sales are reimbursements  
22 through the school lunch program, so they are not -- they  
23 are not getting \$0.60 on most of the half-pints that they  
24 sell. So they are selling a lunch that's subsidized by  
25 USDA, and the milk is part of that lunch.

26 Q. That's a very valid point. And their menu price  
27 was not listed on there.

28 A. Right.



1 Q. Thank you.

2 Now, were you -- you're describing in your -- your  
3 hedging activities.

4 And I believe you answered in response to a  
5 question that at least as of now you have not hedged any  
6 Class I milk, correct?

7 A. That is correct.

8 Q. But that you do have an interest in doing so.

9 A. Yes. And I have actually had conversations with  
10 our broker about it.

11 Q. And you -- I guess it doesn't matter to me really  
12 who your broker is. You mentioned Ever.Ag. And --

13 A. Yeah.

14 Q. -- in your conversations with your broker, Ever.Ag  
15 or otherwise, did they -- did you get into discussions  
16 about the availability of a milk hedging program if there  
17 were to be a reversion to the higher-of?

18 A. We did not.

19 Q. There was a -- a risk management consultant who  
20 testified earlier in the hearing, and she testified that  
21 it would be possible to craft a risk management program  
22 for Class I milk under the higher-of.

23 Do you have any knowledge or opinion as to whether  
24 that could or couldn't be done?

25 A. I'm not an expert on that. But in all the reading  
26 I have done and investigation, I have not seen anything  
27 that's at least straightforward.

28 Q. You also talked a little bit about the Milk Pep



1 program.

2 And I'm curious if in addition to what you  
3 presented, if they shared what they believe to be the root  
4 causes of fluid milk sale declines?

5 A. They did.

6 And if -- and I -- you're next going to ask me if  
7 I recollect that, right?

8 Q. Yes.

9 A. And I'm not sure if this is what they told us or  
10 my own opinion, but the reasons are vary -- are many. And  
11 the very first one and the biggest one is competitive  
12 beverages.

13 I mentioned going to a convenience store with 12  
14 doors of refrigerated beverages, and there are 500 SKUs.  
15 I grew up in a -- in a world where you -- you know, you  
16 drank milk, juice, and that maybe you reconstituted it  
17 yourself, or soda if it was a holiday, or water out of the  
18 faucet. And there are just a lot of -- there's a lot of  
19 choices out there, so that's number one.

20 Number two, and maybe it's not the second biggest  
21 reason, but we're, quite frankly, as an industry, not  
22 really good at this, I think.

23 You know, I think -- I'd have to think about the  
24 other.

25 Yeah, the competitive beverages is the biggest  
26 one. I think, you know, we need to do better as an  
27 industry of selling milk.

28 Q. Your childhood sounds like mine, first of all.



1 A. Sorry.

2 Q. No, no, I think -- it looks like we both turned  
3 out okay enough.

4 So I mean, in addition to 500 SKUs, if I'm on my  
5 way home, I don't necessarily want to be drinking out of  
6 an eight-pound container, right?

7 A. Right.

8 Q. The maintenance of an effective cold chain from  
9 farm to consumer is very important, correct?

10 A. Correct.

11 Q. And not very consistent throughout the country, at  
12 least in what I understand?

13 A. You're right. It's harder to do than it looks.

14 Q. In your slides, I think it is on page 7 --

15 A. Slides.

16 Q. It's that one.

17 A. Yeah. Okay.

18 Q. So if you look at the black line, which is the  
19 total Class I category, you see this bump in 2020.

20 A. Yes.

21 Q. And that was during COVID, correct?

22 A. Correct.

23 Q. And during that period, foodservice sales were  
24 depressed terribly, correct?

25 A. Correct.

26 Q. School sales were depressed terribly, correct?

27 A. Right.

28 Q. People were staying home, though, more, weren't



1 they?

2 A. Right.

3 Q. People were eating breakfast at home more often,  
4 correct?

5 A. They were.

6 Q. In a lot of ways, our lives looked, as a country,  
7 much more like 1980 than 2020 in terms of where people ate  
8 their meals, correct?

9 A. Yes.

10 Q. And so when the pandemic is over, you see that --  
11 that bump go away. I would -- I look at this chart, and I  
12 think our -- our consumption patterns as a society have  
13 contributed a lot to how much milk we consume.

14 Would you agree with that?

15 A. Yeah. For sure.

16 Q. Did Milk Pep talk about price volatility and  
17 managing price volatility as a key reason for milk sales  
18 declines?

19 A. I don't believe they did.

20 Q. Do you distribute your milk into Ohio at all or is  
21 it all in Pennsylvania?

22 A. Yes, into Ohio and a little bit into West  
23 Virginia.

24 Q. About how far west in Ohio do you get?

25 A. Pretty much to where people stop being Steeler  
26 fans and start being Browns fans.

27 Q. I'm unfortunately on the edge of Bengals country,  
28 so I won't be able to get your chocolate caramel milk, but



1 if it got there, I would try it.

2 A. Again, I'm sorry.

3 Q. That's okay.

4 CROSS-EXAMINATION

5 BY MS. HANCOCK:

6 Q. I am Nicole Hancock on behalf National Milk. And  
7 I don't actually follow football, and you guys all make me  
8 wish that I did, so...

9 A. Was that the Penn State thing?

10 Q. Yeah. Are you talking football?

11 A. Yeah.

12 Q. Just checking. Okay.

13 Good afternoon, Mr. Turner. I'd just like to talk  
14 about your written statement in Exhibit -- well, let's do  
15 this. Let's talk about Exhibit 272 where Mr. Miltner just  
16 left off.

17 A. Forgive me. Which one is that?

18 Q. That is your PowerPoint presentation.

19 A. Okay.

20 Q. And I think you were on page 7.

21 A. Okay.

22 Q. And this is -- this is not your work product, is  
23 it?

24 A. It is not.

25 Q. This was Prime Consulting's work product?

26 A. Yeah. And that's why I showed the cover page to  
27 the presentation to give credit where it is due.

28 Q. Okay. And you don't have any data that was used



1 to populate the graph that's shown on pages 7 and 8 of  
2 your PowerPoint presentation?

3 A. I mean, they supplied a lot of -- I mean, they did  
4 supply all the data behind that in their annual reports  
5 and in their every-four-week reports.

6 Q. Okay. Not something that we have in this hearing  
7 though?

8 A. I don't know.

9 Q. Not something that you have provided?

10 A. Not something I have provided, no. But I don't  
11 know what's in the other 270 exhibits.

12 Q. Okay. All right. Let's look at Exhibit 271.

13 Do you know -- you were also just talking with  
14 Mr. Miltner about how some of the milk leaves  
15 Pennsylvania, that -- or some of your products leave  
16 Pennsylvania?

17 A. We deliver them.

18 Q. Okay. And how much of your product stays in  
19 Pennsylvania?

20 A. Most of it.

21 Q. More than 80%?

22 A. Yeah.

23 Q. And are you regulated under PMMB?

24 A. Yes.

25 Q. And that's the Pennsylvania Milk Marketing Board?

26 A. That's correct.

27 Q. How does the regulation work under PMMB in  
28 conjunction with the Federal Order regulations?





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

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

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

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

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

17          A.     Yes.

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

20          A.     Yes.

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

23          A.     Yes.

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

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



1 sitting on the board. I have testified on behalf of our  
2 company and the dairy farmers that ship to us before the  
3 board at their -- at some of their proceedings.

4 Q. And do they hold proceedings annually in order to  
5 set that minimum price?

6 A. Yes.

7 Q. And do they -- the PMMB will set the milk selling  
8 price that you can sell milk to the wholesalers?

9 A. They set a minimum price that -- a floor price  
10 that we cannot go below.

11 Q. And because they set a minimum price, and you are  
12 also governed under the Federal Order system, that minimum  
13 price that's set by PMMB becomes an over-order premium  
14 that has to be paid to dairy producers in Pennsylvania?

15 A. Not -- I'd have to say no to that.

16 Q. Does it create an over-order premium that has to  
17 be paid to dairy producers in Pennsylvania?

18 A. An over- -- there is an over-order premium that --  
19 that has to be paid to producers in Pennsylvania. It is  
20 part of the minimum price. It is not created by the  
21 minimum price.

22 Q. Okay. But it has to exceed what's set by the  
23 Federal Order system?

24 A. It is -- it -- I don't know that it has to or not.  
25 It does build on the Federal Order price, so it starts --  
26 it -- in practicality, it starts with the Federal Order  
27 price and builds up. But there are places in Pennsylvania  
28 that don't have a Federal Order price, so that's -- I



1 don't know that it has to do anything with regard to the  
2 Federal Order price in those instances.

3 Q. And I was just trying to clarify. It can't  
4 fall -- it can't -- PMMB can't set a price that would take  
5 the price below the Federal Order minimum price; is that  
6 right?

7 A. Legally or practically?

8 Q. Just your understanding.

9 A. My understanding is they don't.

10 Q. Okay.

11 A. Could they? I don't know.

12 Q. Okay.

13 A. Then we would still -- we would still have to the  
14 pay the high -- I hate to say the higher-of, but we would  
15 have to pay -- we would have to be -- we have to be in  
16 compliance with both, let's put it that way.

17 Q. Okay. So when you talk about, in your testimony,  
18 that you pay an over-order premium, that's due, in part,  
19 due to the additional regulations that you have under the  
20 PMMB?

21 A. What I mentioned in my testimony?

22 Q. Yeah.

23 A. On page -- I actually don't believe it was.  
24 That's why I'm trying to find it, so I tell you the truth.

25 Q. Maybe it was what you testified to with Ms. Vulin  
26 that you pay an over-order, or that you pay an  
27 over-premium price to your dairy producers?

28 A. We do. We pay a quality premium over and above



1 what's required by the Federal Order system, and over and  
2 above what's required by the PMMB.

3 Q. Okay. And that's to reflect the additional  
4 quality parameters that you have set for your milk  
5 products?

6 A. Quality and sanitary standards.

7 Q. Okay.

8 A. So how the farm is and how the milk is.

9 Q. And even with paying under both the -- even with  
10 exceeding both regulatory systems that you operate under,  
11 you have been able to grow your business or the sales of  
12 your -- Class I sales by 70% in the last ten years?

13 A. No.

14 Q. What did you say on your growth?

15 A. We have been able to -- out of the last ten years,  
16 we have been able to increase our volumes seven of those  
17 years.

18 Q. Okay. So --

19 A. So seven -- so seven out of ten years we'd be in  
20 the black on comparing this year's sales to last year's  
21 sales.

22 Q. Okay. So 70% of the time, not volume, but 70% of  
23 the time you have been able to grow year over year under  
24 this pricing mechanisms under both the PMMB and the  
25 Federal Order system?

26 A. Yeah.

27 Q. And on page 3 of your testimony, at the very  
28 bottom there, you said, "Our proposed base one Class" --



1 I'm sorry, let me say that again.

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

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

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

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

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

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



1 be reflected in their Class I, I guess, mover, and  
2 differential if I -- it's starting to all run together for  
3 me. But it's going to be -- it is going to hit their  
4 price -- you know, every single penny of it is going to  
5 hit their Class I price at some point in the future.

6 Q. Okay. Based on the adjuster that's happening  
7 in -- three years after the actual price?

8 A. Yeah, a lot like three years.

9 Q. Okay. And you don't think that that has any  
10 harm -- harmful effect on dairy farmers?

11 A. Not at all.

12 Q. Okay. So if a dairy farmer today --

13 A. Yeah.

14 Q. -- was operating under that average-of system --

15 A. Yeah.

16 Q. -- where the adjuster has a three-year lookback --

17 A. Right.

18 Q. -- but let's say they go out of business --

19 A. Uh-huh.

20 Q. -- if they go out of business, how is it that  
21 their adjuster that they have earned in year one that  
22 doesn't happen until year three, how will that protect  
23 them then?

24 A. Well, firstly, I guess it's hard to say they are  
25 not harmed if they are out of business, right? But they  
26 could actually have gotten money that they shouldn't have  
27 got. I mean, this -- it goes both ways, right? So it's a  
28 24-month cycle. That 24 months could have more ups than



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

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

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

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

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

20 A. It can go --

21 Q. -- it could get better or worse?

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



1 something.

2 Q. No. I'm just trying to make sure I understand why  
3 you said it doesn't bother you. Because as I understood  
4 it, you were saying that -- that it is, you know, it could  
5 go either way --

6 A. Right.

7 Q. -- in positive direction or a negative direction?

8 A. Right. So it's a flip of a coin. So it's a --  
9 it's a -- to me, it's of no -- it's just the math that  
10 month. It's not -- there's no money saved or gained.  
11 It's just that's the way that we're choosing to calculate  
12 the Class I differential that month.

13 Q. Okay. And when we talk about it's the flip of the  
14 coin --

15 A. Well --

16 Q. -- I want -- well, let me just finish my  
17 question -- the flip of the coin is, today's prices under  
18 the proposal that you are supporting is based on current  
19 average-of prices between Class III and IV, and then the  
20 mover is the average of a period 36 to 18 months or -- I'm  
21 sorry, the last --

22 A. 36 to 12?

23 Q. -- 36 to 12 months of the time period prior?

24 A. Yeah, maybe 36 to 13. I'm not sure. But in any  
25 event, yeah.

26 Q. Okay. And that's the flip of the coin, is how  
27 reflective that 24-month period is as compared to today's  
28 higher-of calculation.





1           A.     Well, yeah, except that the higher-of is just a  
2 benchmark that we're thinking about in our minds, it's not  
3 a -- it's not a real thing. So we can -- you know, so,  
4 yeah, you can -- I guess you can do that arithmetic  
5 anytime and come up with a different answer, if that's the  
6 question.

7           Q.     Yeah. And you do it every month, right?

8           A.     You could. I mean, if, you know, I -- and I hope  
9 producers aren't doing that math for the next five or  
10 ten years, but they might be.

11          Q.     And you would agree with me that the producers  
12 that you know and that you have worked with -- with -- you  
13 said you have three generations?

14          A.     About three.

15          Q.     -- three generations of an overlap, you would  
16 agree with me that over the last few years they have been  
17 doing that calculation, haven't they?

18          A.     They have been reading about it. I don't know  
19 that they have been doing that calculation, no.

20          Q.     Those dairy farmers that you are working with, did  
21 they have an opinion on the higher-of?

22          A.     I'm sure they are influenced by what they read,  
23 but I think if they knew they were being made whole going  
24 forward, they would be satisfied with that.

25          Q.     And have you been able to convince them of that?

26          A.     No.

27                 MS. HANCOCK: I have no further questions. Thank  
28 you.



1 THE WITNESS: You said everyone, but you didn't  
2 say anyone could go twice, did you?

3 THE COURT: He's taller than everyone else.

4 DR. BOZIC: It goes by height.

5 CROSS-EXAMINATION

6 BY DR. BOZIC:

7 Q. Marin Bozic, Edge Dairy Farmer Cooperative.

8 Chuck, when you invest in your plant, let's say  
9 that you modernize, build new equipment or sell, do you  
10 charge your dairy producers any deductions to fund that  
11 investment?

12 A. No. Never.

13 Q. Do you temporarily reduce premiums to fund that  
14 investment?

15 A. No.

16 Q. And if you were to do that, if -- if somebody were  
17 to charge their current patrons an assessment or a retain,  
18 would it be fair to say that those same patrons might not  
19 be in the business by the time the investment in the plant  
20 is done and over the life of that plant?

21 A. So if I were to charge them, they might not be  
22 there to --

23 Q. Right.

24 A. -- pay it back. Yeah.

25 Q. Right. Okay.

26 DR. BOZIC: No further questions. Thank you much.

27 THE WITNESS: Thank you.

28 Did I mess something up?



1 MR. ENGLISH: No, you didn't at all.

2 Chip English --

3 THE COURT: You do wonder why they were looking at  
4 their watches, don't you?

5 MR. ENGLISH: Well, the question is whether a  
6 break -- but I don't think -- it's up to you whether  
7 you -- okay.

8 CROSS-EXAMINATION

9 BY MR. ENGLISH:

10 Q. So with National Milk Producers' attorney we  
11 wandered into the Pennsylvania Milk Marketing Board,  
12 correct?

13 A. We did.

14 Q. Yes. Okay.

15 And so whether I'm forestalling some questions you  
16 might otherwise get, or maybe make it worse, you and I  
17 have had a number of experiences together involving  
18 Pennsylvania, correct?

19 A. Correct.

20 Q. Okay. So these are really just clarifying  
21 questions --

22 A. Okay.

23 Q. -- because the issue of the Pennsylvania Milk  
24 Marketing Board is not yet -- or at least it wasn't until  
25 a few minutes ago -- in the record.

26 So with Ms. Hancock you discussed Pennsylvania's  
27 over-order premium, correct?

28 A. Yes.



1 Q. Now, that premium is calculated on Pennsylvania  
2 produced, Pennsylvania processed, and Pennsylvania sold  
3 milk, correct?

4 A. Right. That's -- they -- the Commonwealth can  
5 only regulate transactions that happen in the  
6 Commonwealth.

7 Q. So to the extent you had response to questions  
8 from Mr. Miltner, you noted that you have sales in Ohio?

9 A. I did.

10 Q. That the plant -- your own calculation on the  
11 over-order premium would not include those sales outside  
12 of Pennsylvania, correct, because they are not  
13 Pennsylvania sales?

14 A. When you say my "own calculation," you mean the  
15 Milk Marketing Board's calculation --

16 Q. Calculation --

17 A. -- calculation of our numbers would not.

18 Q. Correct. Is that correct?

19 A. In the privacy of our own office we can calculate  
20 it --

21 Q. I --

22 A. -- however we want.

23 Q. -- understand. I'm sorry. I --

24 (Court Reporter clarification.)

25 BY MR. ENGLISH:

26 Q. I did not mean to imply what you don't calculate.

27 But the obligation that Pennsylvania enforces, and  
28 calculated on your behalf by Pennsylvania, would not



1 include sales outside of the Commonwealth of Pennsylvania?

2 A. That is correct.

3 Q. Whether in West Virginia or Ohio, correct?

4 A. Correct.

5 Q. And similarly, you mentioned some milk supplies  
6 from Ohio in terms of the farmer side.

7 That would also be excluded from the calculation  
8 because it's not Pennsylvania produced milk, correct?

9 A. It's more complicated, but, yes.

10 Q. Okay.

11 A. Complications don't matter here.

12 Q. Right.

13 And also, unlike the Federal Milk Order system, to  
14 the extent Pennsylvania produced, Pennsylvania processed,  
15 Pennsylvania sold milk, is subject to a Pennsylvania  
16 over-order premium, that premium is not pooled among  
17 Pennsylvania farmers, correct?

18 A. It is not.

19 MR. ENGLISH: That's all I have. Thank you.

20 THE COURT: Before I turn to Agricultural  
21 Marketing Service, are there any other questions?

22 I ask -- oh, you're coming. Good.

23 CROSS-EXAMINATION

24 BY MR. SJOSTROM:

25 Q. Lucas Sjostrom, Edge Dairy Farmer Cooperative.

26 Chuck, you compelled me to come forward.

27 Following up on some of the questioning that's just  
28 happened, I just want to be clear.



1           When one of your supplying farmers, Mr. Turner,  
2 goes out of business, do you buy their cows?

3           A.    No.

4           Q.    Do you buy their real estate?

5           A.    No.

6           Q.    Do you have a contractor to take ahold of any of  
7 the assets for the farms that supply you?

8           A.    No.

9           Q.    So would it be fair to say that there may be many  
10 other factors than the monthly milk price that you are  
11 paying, whether there's looking back, looking forward, for  
12 them to go out of business?

13           I can restate it if you would like.

14           A.    It might help.

15           Q.    Are there many other factors, besides the monthly  
16 milk price, that would cause a farm that supplies you to  
17 go out of business?

18           A.    Sure.

19           Q.    And so would it be fair to say that whether  
20 there's a rolling adjuster or a higher-of type scenario,  
21 both situations would have unfairness when you are looking  
22 at milk price?  However, there would be -- it would be --  
23 the decision would be up to the farmer supplier on -- on  
24 whether they believe they could continue to compete in the  
25 market?

26           A.    I might disagree and say that neither is unfair.

27           MR. SJOSTROM:  Thank you very much.

28           THE COURT:  And before Agricultural Marketing



1 Service asks you questions, we'll take a ten-minute break.

2 You are free to roam.

3 Come back, please, at 2:43.

4 (Whereupon, a break was taken.)

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

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

8 CROSS-EXAMINATION

9 BY MS. TAYLOR:

10 Q. Good afternoon.

11 A. Good afternoon.

12 Q. Thanks for joining us today.

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

16 A. All right.

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

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

25 A. Not to bring up the idea of a handler pool, but we  
26 basically -- that calculation is done on a  
27 handler-by-handler basis, so whatever Class I we --  
28 whatever Class I sales in our own plant are -- I want to



1 make sure I say this right.

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

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

12       A.    Right.

13       Q.    -- because of those --

14       A.    Yeah.

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

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

20       Q.    Got you. Thank you so much.

21       A.    Sure thing.

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

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

27       A.    You would be right.

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





1 questions were answered, so bear with me.

2 Okay. On the bottom of page 3, into the page 4,  
3 you talk about how the MIG proposal would protect dairy  
4 farmers from future unintended and unanticipated losses.  
5 And I think there was some discussion on what you meant  
6 there.

7 Essentially the proposal, because of the way it  
8 does the rolling average, kind of makes things a little  
9 more stable than if you were up and down all the time?

10 A. I think also the -- and I can't remember what  
11 Dr. Bozic called it, but there's an unbalanced risk. So  
12 there was that \$0.74 kind of had --

13 Q. Asymmetric, is that the word?

14 A. Asymmetric, right. Yeah.

15 Q. Got you.

16 And so in your opinion --

17 A. This does not --

18 Q. -- the rolling adjuster, it eliminates the  
19 asymmetric risk?

20 A. All the ups and all the downs are going to be  
21 captured.

22 Q. Okay. And then the second part of that sentence  
23 says, "While maintaining the benefits of that formula for  
24 processing."

25 And I wondered if you just could expand on that  
26 piece.

27 A. Yeah. That -- that would get to -- and it's --  
28 some of my writing might not be clear, but I really do



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

3 You know, there's been quite a lot of talk about  
4 the USDA Food Box program and, you know, what was lost.  
5 But I -- I cannot imagine if Class I prices followed that  
6 \$3 cheese price through the roof in the second half of  
7 2020, and, you know, we're sitting there without all of  
8 our foodservice business and trying to make boxes, and  
9 it -- and, you know, consumers not having any certainty of  
10 how much money they had in the bank, it would have just --  
11 it would have been devastating to -- to our whole  
12 industry, not just the -- but processors included.

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

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

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

22 A. Yeah.

23 Q. -- dipping your toe in it?

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

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

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



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

6 Q. Certainly. I would hope not.

7 A. Yeah. So --

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

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

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

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

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

25 And so when you do talk about how you have had to  
26 raise your prices to cover costs, at the -- towards the  
27 end of this page, because there would be a spike in butter  
28 or spike in cheese, and so it would eventually show up in



1 the Class I price. And you would say, "We were left  
2 having to raise our prices to cover cost, but with no  
3 reasonable or market-based explanation to offer our  
4 customers."

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

9 Is that kind of what you are getting at?

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

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

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

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

27 A. Yeah. Yes. And I think it gets to what Mike was  
28 saying earlier, that, you know, retailers don't raise



1 their price in lockstep with our increases. And maybe  
2 what's worse on fluid milk, is once they get it up, like  
3 if -- you know, if it goes down, we -- we announce a price  
4 decrease, they don't always go down. Right? So that --  
5 that's where we get hurt, those spikes hurt us.

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

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

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

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

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

28 A. Yes. Right. No.



1 Q. Okay.

2 A. Forgive me for saying no, I didn't mean no.

3 Q. On page 6, below your bullet points --

4 A. Uh-huh.

5 Q. -- the end sentence of that paragraph: The key to  
6 all of the above, of course, is the Federal Order system,  
7 where all dairy farmers in the order get the exact same  
8 price for their milk, regardless of what is used -- what  
9 it is used for or how it is marketed.

10 And I -- I -- I drew up a question because I  
11 wasn't sure what you meant by "key to all of the above."

12 A. Yeah. So that -- this is a little bit of my pet  
13 peeves with our industry, but every -- we all want to act  
14 like all milk is the same, you know. I have been through  
15 issues where Pennsylvania used to have a AA standard, and  
16 the milk -- you know, the IMS kind of forced it to go away  
17 because you couldn't say AA -- you know, AA was better  
18 than A. And, you know, just all the things that press  
19 everything together, and we want to just say it's milk and  
20 leave it alone, it's the same.

21 And I think that all starts with the idea why  
22 everybody gets the same price. So how do you tell a  
23 farmer that -- or how do you talk with your -- you know,  
24 you don't tell a farmer anything actually, right?

25 How do you work with a group of farmers to say,  
26 hey, here's what we want to do, here's the market, you  
27 know. So in our -- in our case, it happens to be quality.  
28 You know, it could be, you know, what they eat. It could



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

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

8 A. Right.

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

10 THE WITNESS: Thank you.

11 THE COURT: Redirect?

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

14 THE COURT: Is there any objection to the  
15 admission into evidence of these two exhibits, 271 and  
16 272?

17 There is none. Exhibit 271 is admitted into  
18 evidence.

19 (Exhibit Number 271 was received into  
20 evidence.)

21 THE COURT: Exhibit 272 is admitted into evidence.

22 (Exhibit Number 272 was received into  
23 evidence.)

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

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



1 If you do leave the room, don't go very far.

2 Please be back at 3:02.

3 MS. VULIN: Thank you, your Honor.

4 (Whereupon, a break was taken.)

5 THE COURT: Let's go on record.

6 We're back on record at 3:02 p.m.

7 I'd like the witness to state and spell your name,  
8 please.

9 THE WITNESS: Tim Doelman. Tim, T-I-M; Doelman,  
10 D-O-E-L-M-A-N.

11 THE COURT: D-O-E-L.

12 THE WITNESS: That's correct, M-A-N.

13 THE COURT: Thank you.

14 Have you previously testified in this proceeding?

15 THE WITNESS: I have not.

16 THE COURT: I would like to swear you in.

17 TIM DOELMAN,

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

20 DIRECT EXAMINATION

21 BY MS. VULIN:

22 Q. Good afternoon, Mr. Doelman.

23 A. Good afternoon.

24 Q. And just a friendly reminder for all of us, we  
25 have got our court reporter over here taking everything  
26 down, so you will want to speak almost artificially  
27 slowly.

28 A. Okay.





1 Q. Can you tell us your business address, please?

2 A. 1001 West Adams Street, Chicago, Illinois, 60607.

3 Q. And you have a document in front of you entitled  
4 Testimony of Fairlife, LLC, Part I.

5 Do you see that?

6 A. Yes.

7 Q. And is this your written testimony for this  
8 proceeding today?

9 A. Yes, it is.

10 MS. VULIN: I'd ask, your Honor, that this  
11 document be marked as Exhibit 273.

12 THE COURT: It will be. Thank you.

13 (Exhibit Number 273 was marked for  
14 identification.)

15 BY MS. VULIN:

16 Q. And you have another document in front of you, a  
17 copy of your PowerPoint with Fairlife's logo on the front.

18 Do you see that?

19 A. Yes.

20 MS. VULIN: And I would ask that this document be  
21 marked as Exhibit 274.

22 THE COURT: It will be.

23 (Exhibit Number 274 was marked for  
24 identification.)

25 MS. VULIN: Thank you, your Honor.

26 BY MS. VULIN:

27 Q. And I think I have you have a copy of the  
28 PowerPoint pulled up?



1 A. I do.

2 Q. Great. There you go.

3 So to start us off, why don't you tell us how you  
4 got into the dairy industry.

5 A. Born in the industry. Parents dairy farmed in  
6 Washington State. Father, part of Darigold's Board of  
7 Directors for, I don't know, up to 40 years. A very  
8 active member at National Milk for probably at least 20 of  
9 those years. So been in the industry from the very  
10 beginning. Most of my family and relatives were also in  
11 the industry.

12 I have a degree in dairy science from Cal Poly San  
13 Luis Obispo. Spent years after school at Dreyer's Ice  
14 Cream before venturing out in the innovation company that  
15 was initially called the Good Cow Company, which then  
16 later became Fairlife.

17 So I have been in the industry my entire life.

18 Q. Tell us, what's your education post-high school?

19 A. Bachelor of science in dairy science.

20 Q. And when did you start at Fairlife? Can you just  
21 tell us a little bit about that?

22 A. Sure. I'm one of the founders of Fairlife from --  
23 we started in 1998, believe it or not, again, as what I  
24 would call the Good Cow Company. And then over the years  
25 as we toiled in the wilderness to create an innovative  
26 kind of product in the space of fluid milk, we ultimately  
27 re-branded ourselves later on when we formed a JV with the  
28 Coca-Cola Company in -- I believe it was in 2012.



1           So I have been a key member of the Fairlife group  
2 from the very beginning.

3           Q.    And what's your current title at Fairlife?

4           A.    The CEO.

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

6                    Could you tell us a little bit about the fluid  
7 products that Fairlife offers?

8           A.    Yes. I put two pictures up here. On the  
9 left-hand side you can see our -- what most people think  
10 of when they first hear about Fairlife, which is our  
11 ultrafiltered milk. And you can see a variety of  
12 different package sizes there. We have the 52-ounce in  
13 the front, with a variety of different fat levels, as well  
14 as flavored UFM milk. Then you see some smaller bottles  
15 where we'll have some flavored -- or some non-flavored  
16 white milk as well as some flavored milks in that  
17 category.

18                   And to the right of that you will see that we have  
19 some other products that are what we -- fall into  
20 currently the Class II kind of space, which we call the  
21 kind of the high-protein, sports recovery type of  
22 products, or meal replacement type of products, all made  
23 from fresh milk.

24           Q.    Thank you.

25                   THE COURT: I didn't catch that last phrase.  
26 "Sports recovery" or what?

27                   THE WITNESS: Sports recovery would be one  
28 category. You see the Core Power on the picture.



1           And then the other products you see on the back  
2 right is Fairlife Protein, which we would call kind of  
3 meal replacement, weight management category.

4 BY MS. VULIN:

5           Q.   And you talked about toiling in the wilderness of  
6 innovation.

7                   Tell us a little bit about that. What innovation  
8 did Fairlife bring to the market?

9           A.   Yes. Fairlife really developed a filtration  
10 process on fresh raw milk to essentially split apart the  
11 many components of milk, and then figure out a way to  
12 recombine them into a product that consumers want and --  
13 and works for them, and has attributes that they desire  
14 and are willing to pay for.

15                   And so that was quite a journey to figure out,  
16 one, how to do the process; two, to figure out how to  
17 actually market it and sell it to the end consumer; and  
18 then, three, do it in a way where you actually make money.

19                   When we started, I still remember kicking the  
20 business off, people would say, you are going to sell a  
21 gallon of milk with 1.6 gallons of milk in it? Good luck.

22                   So, yes, it was quite a challenge to figure out  
23 how to create value out of raw milk, and that was our  
24 journey.

25           Q.   And tell me about your processing facilities,  
26 please.

27           A.   Sure. We have a facility in Coopersville,  
28 Michigan, where we have these products being manufactured,



1 of which fall into Class I, Class II, and Class IV.

2 We have a small yogurt plant in Indiana, which  
3 only makes Class II yogurt.

4 And I want to make a clarity real quick here. I  
5 think in the written testimony that I have here, I think I  
6 state that all of our plants are Class I, II, and IV, and  
7 this plant -- that was a mistake on my side -- only does  
8 Class II, just for clarity.

9 Q. And when you say "this plant," remind us which  
10 one?

11 A. The Indiana facility.

12 Q. And that Indiana facility does which classes?

13 A. Just Class II.

14 Q. Just II?

15 A. We make a yogurt there.

16 Q. Great. Thank you.

17 A. Yep.

18 And then we have a facility in Goodyear, Arizona.  
19 That, again, manufactures all of these products that you  
20 see.

21 And then we have another plant in New Mexico,  
22 where we learned a lot of these tricks and technologies on  
23 how to do filtration, and it just does the filtration  
24 portion of the business for us.

25 Q. And so the milk you purchase is regulated on which  
26 orders?

27 A. So --

28 Q. I believe it's on page 2 of your written



1 testimony.

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

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

7 Q. Thank you.

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

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

12 A. Sure.

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

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

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



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

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

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

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

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

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

26           What I don't show here is, you know, quite  
27 honestly, some of the failures that we have had along the  
28 way. We have had some. And we continue to innovate as



1 kind of a backbone of our business. And so we'll always  
2 try things.

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

12 Q. Congratulations.

13 A. Thank you.

14 Q. How many employees does Fairlife have?

15 A. We have around 850 employees.

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

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

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

26 So what -- what is hedging?

27 A. Hedging really is simply a tool or a method that  
28 allows us to secure a price in the future, today. It





1 allows us to know what the price will be that we're going  
2 to pay for the milk.

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

5 What's a futures contract?

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

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

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

19 Q. And then I see options.

20 What is an options contract?

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

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



1 an options contract in the dairy industry, where do I go  
2 to do that?

3 A. The CME.

4 Q. And can you hire consultants or get advice from  
5 banks? Where do I find information about how to do this?

6 A. There's a variety of industry folks that will do  
7 your transactions for you on the CME, give you advice. It  
8 is, what we found, the best vehicle for transparency and  
9 price.

10 When you go to banks -- and not that we're against  
11 some of the over-the-counter potential approaches that you  
12 go do with a bank -- but you don't have as much of a  
13 marketplace. There's not as much liquidity in that.  
14 That's more of a one-on-one transaction on, do you agree  
15 on a price, do I agree on a price?

16 When you go to the marketplace, the CME, you get  
17 everyone's visibility on what that price is going to be.  
18 So I can put out a price, and I can have speculators buy  
19 it, I can have a farmer buy it, or basically sell his milk  
20 to me at that time from -- it doesn't matter where he is  
21 in the country. So it allows a large people to  
22 participate in the marketplace.

23 Q. And you say "the marketplace."

24 So when we talk about a futures contract or an  
25 options contract, someone has to be on the other side of  
26 that contract, correct?

27 A. Yes.

28 Q. And so to the extent that what you are asking for



1 or offering in that contract is highly speculative, very,  
2 very likely to happen or very, very unlikely to happen,  
3 that can impact how many people may be interested in  
4 purchasing the other side of that contract, correct?

5 A. I don't know if I totally followed that question.

6 Q. What -- there has to be someone else on the other  
7 side the futures or options contract, correct?

8 A. Yes.

9 Q. What would make someone more likely or less likely  
10 to want to buy the other side of that contract?

11 A. It depends on their financial, you know,  
12 disposition on what they are trying to achieve. It could  
13 be a speculator who is deciding that I'm offering too much  
14 money for the -- for that milk at a time in the future, so  
15 therefore they may buy it because they know they are going  
16 to be able to sell it at a price that profits them.

17 Another buyer, for instance, could be a farmer --  
18 or I should say he would sell his milk to me, and it would  
19 allow him to potentially de-risk his business. So, again,  
20 if my price is high enough in the futures world, then that  
21 farmer would be incentivized to potentially sell his milk  
22 to me, which allows him to have clarity on what his price  
23 is going to be -- or him or her -- and I will have clarity  
24 on what my price is going to be in the future.

25 On my side, I can now have confidence in what I do  
26 with that price of milk in determining my marketing plans  
27 and my sales plans and my capital plans, and vice versa,  
28 the farmer on the other end can have confidence when he



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

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

9 Q. We have heard this word "liquidity."

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

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

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



1 Q. And I see here you say, hedging is "not gambling,"  
2 it "cannot be a guess."

3 Tell us a little bit more about that, please.

4 A. Yeah. It was -- I believe Mike shared this  
5 earlier, it's really an insurance policy is what it is for  
6 us on our side. So for a processor as -- if we were to  
7 call ourselves a processor -- yeah, it's a way for us to  
8 de-risk the potential price volatility associated with the  
9 commodity that we're using. So it can be a gamble if you  
10 speculate, but we're not in the business of speculating.

11 It's helpful to have speculators in the  
12 marketplace. This is why it's nice to be in a CME kind of  
13 a category, because it -- it helps create an accurate view  
14 of price in the future. And so the more participants, the  
15 better price discovery the tool is. And that's just why I  
16 believe we should, as an industry, do everything we can to  
17 facilitate hedging in all classes.

18 Q. And you say "price discovery."

19 Again, tell me if I have this right. Does that  
20 mean the more people out there offering a futures contract  
21 for Class III at \$15 a hundredweight six months from now,  
22 as you start to see those stack up, that gives you some  
23 insight as to what everyone else in the marketplace is  
24 thinking will happen to the Class III price; is that  
25 right?

26 A. That's perfect.

27 Q. I studied very hard for that one.

28 And then you say, hedging is "not free."



1 Tell us a little bit about the costs of hedging.

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

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

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

21 Q. Uh-huh.

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

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



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

4 Q. And does Fairlife hedge its Class I products?

5 A. We do.

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

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

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

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



1 oil market, or a gold market.

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

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

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

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

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

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

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

27 Has Fairlife ever utilized one of those types of  
28 hedges?





1 A. Not with any significance as of yet.

2 Q. And you discussed this problem of figuring out  
3 which class to hedge under the higher-of.

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

5 So I have -- again, as a -- as a top-of-my-class  
6 high school sophomore -- walk us through an example of how  
7 you place a hedge to hedge your Class I milk.

8 A. Sure.

9 So in the current formula since 2019, we take an  
10 average-of Class III and Class IV. And I'm going to, for  
11 now, just for simplicity, limit it to the skim portion of  
12 the milk. And so knowing that it's a blend, or a 50/50  
13 blend of each Class III and Class IV components --

14 Q. Sorry. I'll stop you there.

15 So it's 50/50 blend because the price -- the skim  
16 milk price, the base Class I skim milk price, is  
17 calculated as an average. So 50% of that value is coming  
18 from III and 50% of that value is coming from IV, correct?

19 A. That is correct.

20 Q. And that's what we see here in the images of the  
21 cheese wedge and the powder with the Roman numeral IV  
22 above it; is that right?

23 A. The powder design is suspect. But, yes.

24 Q. I'll speak with your counsel about that one.

25 And then just tell us just so we can kind of track  
26 what we have got here. What is below in the red circle  
27 there?

28 A. That is essentially saying, can I go forward and



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

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

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

16 A. That is correct.

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

19 What happens next?

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

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

28 A. That's correct.



1 Q. Okay.

2 A. And I will know exactly what the impact to our  
3 business is and act accordingly.

4 Q. Thank you.

5 So let's head to the next slide and let's see what  
6 happens with your hedge.

7 A. So this is, again, using the average-of formula.  
8 The actual price of Class III here unfortunately went  
9 down -- I say unfortunately because I have a farmer bent  
10 to things, too -- so it went down to \$12, and -- but I  
11 hedged it at 16. So that means on my hedge, I lost \$4,  
12 because I bought it at 16, so I have lost \$4, essentially.

13 Q. And that's over --

14 A. Rather -- I'm sorry.

15 Q. I'm sorry to interrupt. I just wanted to point  
16 out the math.

17 And that's where the \$16, where you placed your  
18 hedge, right? And your \$12, the difference of that is \$4?

19 A. Correct.

20 Q. And that's what we see under the hedge gain/loss  
21 column.

22 A. Yes. You will see I lost \$4.

23 Now, you will see in red that essentially against  
24 the volume of milk that I hedged, I'm only going to use \$2  
25 because it only represents 50% of the cost.

26 Does that make sense for folks?

27 Q. Yeah.

28 A. Okay. All right. So on the next -- the next area



1 in Class IV, relative to the Class IV price, I -- again,  
2 my hedge position was \$14, the actual price came in at  
3 \$18, so I actually made \$4 on the hedge itself on the  
4 future, on the position. Again, it only represents 50% of  
5 the volume that we have committed -- or, you know, that I  
6 have sold. So when you net the loss of \$2 of \$0.50 [sic],  
7 and the gain of the \$2 from the Class IV hedge, I  
8 ultimately end up with a zero difference in my -- in my  
9 price that I have paid. So I end up with my average still  
10 being the \$15, which is 50% of the original 16, and 50% of  
11 the original 14.

12 Q. And so in this case, even though the market has  
13 gone in different directions, you have been able to lock  
14 in your price?

15 A. That's correct. I have -- from the very  
16 beginning, I knew that 50% of the \$16 hedge, and 50% of  
17 the \$14 hedge was going to give me that base class price  
18 of \$15. And as time went on, and I sold or, you know,  
19 realized the value of those futures I purchased, I have  
20 recognized equal offsets to those changes to where my net  
21 price is still \$15.

22 Q. Right.

23 So if we can go to the next slide then, please.

24 A. Yep.

25 Q. Oh, sorry.

26 A. I want to make sure people understand this slide.

27 Again, maybe stated even easier, just conceptually  
28 for people to understand, when I purchase a contract out



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

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

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

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

14 Q. Right. Thank you.

15 So let's head to the next slide.

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

17 A. Correct.

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

20 A. That is correct.

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

24 A. That is correct.

25 Q. And so walk us through that, please.

26 A. So in this circumstance, again, I bought an equal  
27 amount of contracts of Class III and Class IV. I bought  
28 III at 16; I bought Class IV at \$14. You can see that in



1 the higher-of the Class III becomes irrelevant to me. So  
2 the gain associated with it winds up being negated. It's  
3 not there.

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

8 Q. Thank you.

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

11 A. That's correct.

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

14 A. Correct.

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

17 A. Correct.

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

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

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

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

25 Q. \$2 benefit from that hedge?

26 A. Yes.

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

28 When we're looking at the base Class I skim price,



1 that \$18, should it be minus the \$2 from the hedge equals  
2 16?

3 A. Yes. Yes.

4 Q. Thank you.

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

7 THE COURT: Yes.

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

11 THE WITNESS: Correct.

12 BY MS. VULIN:

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

15 A. Correct.

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

17 A. That's correct.

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

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

28 Q. Is it similar to the concept of throwing good



1 money after bad, that you would just be taking money you  
2 otherwise could use to grow your brand, to invest, and  
3 putting it in something that you just have no idea if it  
4 will work or not?

5 A. That is correct.

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

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

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

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

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

13 MS. VULIN: Thank you, your Honor.

14 BY MS. VULIN:

15 Q. And so appreciate you walking us through -- now,  
16 this is a simplified example of hedging, correct?

17 A. Correct.

18 Q. There will be more moving parts to this likely?

19 A. Yes.

20 Q. But does the general principle or concept of why  
21 hedging under the higher-of still hold even when you add  
22 in the complexities of the industry and how to construct a  
23 hedge?

24 A. Yes. Everything holds. The ability to hedge,  
25 you -- it's -- it's almost -- I guess analogous would be,  
26 you wouldn't hedge copper to -- to lock in a price for  
27 gold. And -- and that's what this would be akin to. You  
28 don't lock in a cheese price when you are buying powder.





1 In other words, you don't know which one is going to be  
2 the commodity to base things on, unless it's an  
3 average-of. Then you definitively know what you are  
4 buying. A higher-of doesn't work. I don't know what  
5 commodity I'm buying.

6 Q. Thank you.

7 Now, if we could go to the next slide, please.

8 We have heard some discussion about the adjuster  
9 that MIG has in its Proposal 15, correct?

10 A. Correct.

11 Q. And I know the explanation here of how it works,  
12 and we have had some of that, but I'm hoping you can just  
13 tell us why the adjuster with the one-year lag, what about  
14 that design is critical to support risk management?

15 A. Yes. So I'm going to back up just a bit in  
16 regards to the desires here.

17 The desires here is to come up with a solution  
18 that we can hedge and the dairyman still gets the benefit  
19 of having the higher-of.

20 So as a buyer, we're not -- you know, we're not  
21 trying to change the system. We're -- we're basically  
22 looking for the solutions for the industry.

23 So with that said, again, I just mentioned the  
24 higher-of doesn't work for us because I don't know what  
25 commodity to buy. Am I buying gold or copper? Am I  
26 buying Class III or Class IV? The 24-month rolling  
27 adjuster and a 12-month lag, someone might understand, why  
28 do you need all of that?



1 I'm going to first address the 12-month lag. The  
2 12-month lag is because I need to be able to go out and  
3 buy today, 12 months into the future. So it's -- from a  
4 continuum -- time continuum perspective, that 12-month lag  
5 is taking into consideration that I'm going to be buying  
6 futures 12 months into the future from today.

7 Then the 24-month average is, what has been that  
8 differential between the Class III and Class IV? What has  
9 that higher-of been averaging? And so putting them  
10 together allows us to know what that premium structure is  
11 going to look like associated with the adjuster,  
12 definitively 12 months going into the future. And -- and  
13 that's why you need the 12-month lag combined with the  
14 24-month average.

15 Q. And this idea of a delay in payment, a farmer is  
16 still going to receive the full base Class I skim price at  
17 the time it's calculated, correct?

18 A. He will, or she will, absolutely get the whole  
19 price.

20 Q. There's no pile of money that's held for 36 months  
21 and paid out late?

22 A. Not at all.

23 Q. And this issue of looking at this time period, the  
24 driver there was more to find a way to mimic the higher-of  
25 formula, correct?

26 A. That is correct.

27 Q. And so really, the payment price of this base  
28 Class I skim formula is intended to more or less be the



1 same on the day it's paid as what the higher-of would have  
2 offered?

3 A. That is correct.

4 Q. And this idea of a dynamic adjuster, why do you  
5 think it is more accurate, better, important to have an  
6 adjuster that changes with the marketplace as opposed to  
7 something that is fixed? Because seemingly, that would be  
8 easier to hedge.

9 A. The -- it is easier to hedge. A fixed system is  
10 easier to hedge. And I think everyone knows we have a  
11 \$0.74 fixed system right now.

12 But there's potential aberrations that can occur  
13 in a market, and we just witnessed that with COVID. We  
14 had very volatile pricing that resulted in a spread that  
15 was greater than the \$0.74. And, you know, from the farm  
16 perspective, they feel like they were getting -- you know,  
17 not getting what they deserved in the higher-of.

18 So the downside with having a fixed \$0.74 is it  
19 doesn't change depending upon what happens in the  
20 marketplace. So the dynamic adjuster is going to -- going  
21 to take that into consideration. So if there are some,  
22 you know, significant market changes that occur, such as a  
23 one-time, you know, significant event like COVID, or maybe  
24 there's an underlying industry change that's occurring  
25 that causes one of them to be significantly -- one of the  
26 classes to be significantly higher than the other, this  
27 rolling adjuster will take that into consideration. And  
28 it will be an ongoing solution for both the farmer, from



1 what he receives, he's going to still get -- he or she, is  
2 still going to get the higher-of, and -- and from a  
3 processing side, we'll be able to participate in hedging  
4 effectively.

5 Without this kind of ability to know, again, as I  
6 mentioned, I need to know what we're going to hedge,  
7 and -- and -- and the average-of allows that. The  
8 adjuster allows the farmer to get the higher-of.

9 So I believe this is, to me, a very -- a very good  
10 compromise or a good approach that works for all parties.

11 Q. And if we could go to the next slide.

12 I am not sure there has ever been an FMMO hearing  
13 that talked about hedging anywhere near as much as this  
14 one, at least none I know about, and so why is it so  
15 critical for Class I processors, and Fairlife in  
16 particular, why are you here fighting for this? Why is it  
17 so important to you?

18 A. Again, if you go back from a history perspective,  
19 innovation is super key for what we do. We believe we're  
20 looking for ways to improve the industry and how we market  
21 products. But then also, again, around this kind of price  
22 discovery side of it, it -- it -- having certainty in  
23 price and consistency in price allows us to market our  
24 innovations that much more effectively.

25 Again, I think it's heard in other testimony,  
26 certainly in ESL, or what I will call value-added dairy  
27 products, whether or not it's a dairy product -- and,  
28 again, forgive me for saying this, but even the non-plant



1 stuff is in the category value-added dairy -- having price  
2 consistency matters. It matters to the customer. It  
3 matters to the seller. It allows them to put marketing  
4 programs around it, pricing programs around it, to promote  
5 that particular product. And so having a consistent price  
6 matters ultimately to, I think, everyone involved,  
7 customers and consumers, the -- and -- and certainly from  
8 the processor side.

9 And I believe at the end of the day, anything that  
10 helps get consistency or certainty on future pricing for  
11 the farmer is just as important.

12 Q. So you say what we think of as hedging or risk  
13 management on the processor side translates on the  
14 consumer side, both the retailer and the consumer, to  
15 price stability.

16 Is that what your -- is that a fair summary?

17 A. Yes.

18 Q. And here your heading, "where should our industry  
19 focus," is it that consumer, getting that milk to the  
20 consumer?

21 A. Anything we can do to facilitate marketing our  
22 product successfully to the end consumer will help the  
23 industry in large.

24 Q. And consistent with this idea that hedging might  
25 be something new, at least for Class I processors, and new  
26 to the consideration of what we're talking about here, I  
27 know we received some questions about how does -- how is  
28 this consistent with the AMAA?



1           And I'm just wondering if you can speak a little  
2 bit to how you think processors' ability to hedge supports  
3 the goals of --of orderly marketing.

4           A.    Yeah. From what I understand, and I'm not an  
5 expert, but I have read some -- some of the passages  
6 around the AMAA. You know, a core functionality is to  
7 make sure we're doing things that help -- help the  
8 consumer side of it, as well as help stabilize pricing.  
9 And, again, I believe the -- a futures market, an actively  
10 participated-in futures market, is the best market-driven  
11 approach to create price stability.

12           Again, you look at other -- and it's why us as an  
13 industry over the last, call it 20 years has put a lot of  
14 money and time and energy to develop the CME to where it's  
15 at, and it's been an evolution. I believe that allows us  
16 to have the appropriate tools on all sides of the coin to  
17 bring and create stable products for the consumer, so --

18           Q.    And when you -- this word "tools." I liked that.

19           So in thinking about the tools that that AMAA  
20 maybe allows for in order to encourage orderly marketing,  
21 could one of those be Make Allowances?

22           A.    I don't know how Make Allowance necessitates any  
23 kind of futures stability around price, so I --

24           Q.    Could it be -- is that part of the formulas USDA  
25 uses to create an overall program that they -- that leads  
26 to orderly marketing?

27           A.    I mean, I assume it can be. But I mean, to me,  
28 again, it is -- it's more about deciding upon what a



1 future price will look like through a futures tool. So to  
2 me, it's not necessarily the tool that's going to allow us  
3 to have steadier prices.

4 Q. Maybe if I can phrase it a little better.

5 Do you think it should be part of the number of  
6 considerations that USDA takes into account when crafting  
7 policy that meets this kind of more general goal of  
8 orderly marketing?

9 A. If -- if the goal is for, again, the AMS or USDA  
10 to kind of help facilitate determining an appropriate  
11 price in the marketplace, it can be a tool that gets used  
12 for that.

13 Q. And we know that Fairlife has seen a lot of  
14 success in recent years, and congratulations on that.

15 Is it your belief that it's important for Fairlife  
16 to continue to have this risk management tool in order to  
17 facilitate future success?

18 A. Yes.

19 Q. Thank you.

20 MS. VULIN: No further questions, your Honor.

21 THE COURT: This is probably beyond the scope of  
22 this hearing, but how did you choose what numbers for your  
23 hedge? What did you look at? Did you just look at that  
24 three -- that two years lookback and you're rolling  
25 forward one year?

26 THE WITNESS: Yeah. This -- this is an example.  
27 It doesn't even -- there's elements to this that would  
28 make this more sophisticated or complicated, but let's



1 just say this is six months out.

2 So we look at a price six months out, and then we  
3 decide whether or not we should purchase at that price.  
4 And -- and this is an example of us buying an equal amount  
5 of Class III and an equal amount of Class IV contracts.  
6 And so this is a relatively simple way of explaining, you  
7 know, what we do every day.

8 Now, we might buy six months out. We'll buy one  
9 month out. We'll buy nine months out. It depends what  
10 our -- our kind of goals are. Ultimately we're trying to  
11 basically de-risk anything associated with the milk price  
12 for us. So it could have been three months out or five  
13 months out or any one of those.

14 THE COURT: Thank you. All right. I'm sure there  
15 are lots of questions.

16 Who would like to begin cross-examination?

17 Dr. Cryan.

18 CROSS-EXAMINATION

19 BY DR. CRYAN:

20 Q. Thank you. Roger Cryan with the American Farm  
21 Bureau Federation. We met a little while ago. Thanks for  
22 coming. I think you make a great product. You took the  
23 only flaw in milk and turned into an advantage.

24 And I -- what I understand from your testimony,  
25 your primary concern is, at least in the discussion today,  
26 is the ability to hedge Class I milk; is that correct?

27 A. Correct.

28 Q. The CME Group sent a representative to testify





1 earlier in the hearing, and they said they are open to  
2 considering a Class I futures and options complex.

3 Would a Class I futures contract meet and op- --  
4 Class I futures and options meet your needs?

5 A. It would if I knew the instruments kind of behind  
6 it.

7 Q. If there was sufficient liquidity and it settled  
8 against the Class I prices that you were --

9 A. Yes.

10 Q. Very good.

11 You -- you talked about how you turn a gallon and  
12 half of milk into a gallon of milk. I presume that that  
13 other half gallon is -- you hedge that as well, Class IV  
14 contracts to hedge that fortification?

15 A. That is correct.

16 Q. Okay. I think that's it.

17 DR. CRYAN: Thanks very much.

18 CROSS-EXAMINATION

19 BY DR. BOZIC:

20 Q. Marin Bozic for Edge Dairy Farmer Cooperative.

21 Good afternoon, Mr. Doelman.

22 Do you do hedge accounting?

23 A. As a company?

24 Q. Yes.

25 A. Yes.

26 Q. How long -- can you describe in a few sentences?  
27 Like what was the process like to get a hedge accounting  
28 status for your hedging program in dairy?



1           A.     First off, I'll say I'm not the expert within our  
2 company. I have someone in charge of our hedging process,  
3 so -- but I will share what I know.

4                     We essentially have, I think a couple different  
5 options of different groups that we use that participate  
6 on the CME for the hedging process, and they will -- you  
7 know, we're set up with them. I think they have got all  
8 the licenses. And then we ask them on our behalf to  
9 transact.

10          Q.     Those would be brokers, right?

11          A.     That's correct.

12          Q.     Okay. And then do you have to do a certain kind  
13 of reporting to show that your hedges were effective?

14          A.     That is correct.

15          Q.     If perhaps you had a conversation with your  
16 in-house expert, would they be able to achieve hedge  
17 accounting status if we were to return to the higher-of  
18 regime?

19          A.     I don't even know how we would do it, because  
20 we're not sure how to hedge that against a specific  
21 quantity of milk that we would be purchasing. So it would  
22 almost be more speculative at the point. So I'm not sure  
23 how the accounting would work.

24          Q.     You don't think that the OTC contracts could do  
25 the trick?

26          A.     OTC for us is a risk from a transparency  
27 perspective. We do not believe we have the same level of  
28 transparency in the marketplace.



1 Q. And how does your ability to -- currently -- how  
2 does your current ability to hedge affect what Coca-Cola  
3 would like to do with your company long-term? Do they see  
4 that as a benefit?

5 A. Absolutely. Coca-Cola is 130-year-old business  
6 that, from a commodity perspective, is probably hedged out  
7 on 80% of what they sell.

8 Q. Would it be fair to say that they would be less  
9 keen to invest in further potential plant investments if  
10 the ability to hedge were to go away?

11 A. Absolutely.

12 Q. Do you have any HTST business or is it all ESL  
13 aseptic?

14 A. We do not have HTST business.

15 Q. And you mentioned before, in the context of your  
16 examples, that a problem with hedging under the higher-of  
17 regime is that the mover class changes, you thought what  
18 was going to be Class III ends up being Class IV.

19 Would you venture a guess, over the last decade or  
20 so, how often does the mover class change, expected versus  
21 actual?

22 A. I have seen it recent -- well, you see it today,  
23 right?

24 Q. Right.

25 A. Today Class IV is significantly higher than  
26 Class III. Maybe to answer that, every -- every other  
27 year, every year or so there's a flip-flop essentially.

28 Q. Would it surprise you to learn that it's about



1 one-third of the time, almost every third month? Not --  
2 not -- nothing -- not a switch, but like when you count  
3 all the months, it's about one-third of the months that --

4 A. Yeah. I'm surprised it's even that frequent.

5 But, yeah, that's I would have guessed, once a year or so  
6 where it kind of changes and flips from one to the other.

7 Q. I would like to read a paragraph from the  
8 Agricultural Marketing Act, just in case you have  
9 insomnia. It's from the -- apologize for the joke -- it's  
10 from the -- from the very beginning of the Act,  
11 declaration of policy. This is the section of the Act  
12 when they are saying this is why we are doing this. This  
13 is why the policy is implemented.

14 And this is the paragraph 4. I understand you  
15 don't have in front of you, so I won't ask you to validate  
16 the language, just to comment upon, you know, as you hear  
17 it.

18 And the paragraph says: Through the exercise of  
19 the power conferred upon the Secretary of Agriculture  
20 under this title, to establish and maintain such orderly  
21 marketing conditions for any agricultural commodity  
22 enumerated in section 608c(2) as we will provide. In the  
23 interest of producers and consumers, an orderly flow of  
24 the supply thereof to market throughout its normal  
25 marketing season -- and then I will emphasize the last  
26 phrase -- to avoid unreasonable fluctuations in supplies  
27 and prices.

28 Do you believe that the reversal from average-of



1 to higher-of would be in line with the stated objective to  
2 avoid unreasonable fluctuations in prices?

3 A. I believe that it detracts from our ability to  
4 hedge, which then actually makes the hedging markets that  
5 much less liquid, so I would say it does not help.

6 Q. So maybe they didn't call it risk management in  
7 1937, but they did keep in -- they were very much  
8 concerned with fluctuations of cost to producers?

9 THE COURT: That's a bit of a stretch, Doctor.

10 DR. BOZIC: I object.

11 THE COURT: You may rephrase. I guess leave out  
12 the part, "perhaps they didn't call it a hedge," but just  
13 go to the kernel of your thought.

14 DR. BOZIC: Thank you, your Honor.

15 BY DR. BOZIC:

16 Q. Do you believe, in your opinion, would the  
17 creators of the Act prefer stability of prices to  
18 consumers or higher amplitude in fluctuations of prices to  
19 consumers?

20 A. I think the consumer wants a steadier price in the  
21 marketplace.

22 Q. Based on what you heard from the Act, is it your  
23 understanding that that's a policy objective as well?

24 A. Yes.

25 DR. BOZIC: Thank you very much.

26 CROSS-EXAMINATION

27 BY MS. HANCOCK:

28 Q. Good afternoon.



1 A. Good afternoon.

2 Q. I'm Nicole Hancock with National Milk.

3 Can you remind me again what year you said you  
4 launched Fairlife?

5 A. 2014, I believe, is when the UFM Fairlife product  
6 was in the market.

7 Q. That was the initial product?

8 A. Yes.

9 Q. And it's patented technology?

10 A. Yes.

11 Q. And the kind of branded premium market value is  
12 derived from the lower sugar content and the higher  
13 protein content.

14 Is that a fair characterization?

15 A. Yes.

16 Q. And -- and that's a -- those are value-adds that  
17 are used to market and sell the product to consumers.

18 A. Correct.

19 Q. And for that, and for all of the investment in R&D  
20 that you had to -- that you had to put into this to obtain  
21 that patent and those value-adds, you get a premium price  
22 for your milk?

23 A. We get a premium price for the milk because the  
24 consumer is willing to pay for the product.

25 Q. Okay. And that's for those lower sugar, higher  
26 protein attributes?

27 A. Some of those attributes, as well as other  
28 attributes.



1 Q. Okay. Do you want to tell me what they are?

2 A. Packaging is significant. The price point  
3 matters. Availability, distribution. All significant  
4 factors. The -- the brand image.

5 Q. And the shelf life?

6 A. That's another one. Thank you.

7 Q. You're welcome.

8 A. And actually, probably the most important one is  
9 the flavor they get.

10 Q. And I think that you said that -- well, let me  
11 strike that. Let me say this.

12 What -- what are the volumes that you are hedging  
13 today? Would you be willing to share that?

14 A. Not precisely. But as I shared, I think, earlier  
15 when we started, it might have been 5 or 10% of our volume  
16 initially. We have steadily increased it.

17 From our perspective going into this next year, we  
18 would want it as much as 80%. Whether or not we'll be  
19 able to achieve it, we don't know. But I'm kind of  
20 sharing with you because of the significance of the  
21 program for us.

22 Q. Okay. And so what is it -- what's the percent?  
23 If you want to get to 80% going into the next year --

24 A. Yeah.

25 Q. -- what is it for 2023?

26 A. We're more than -- if I started at 10, and I  
27 needed to get to 80, we're more than halfway there.

28 Q. Okay. So you are over 40% today?



1 A. Yes.

2 Q. Okay. And when you started at 5 to 10%, what year  
3 was that?

4 A. Right -- 2019 timeframe.

5 Q. Okay. So 40% today, and 5 to 10% in 2019; before  
6 that you didn't hedge at all?

7 A. I do not believe we hedged at all. We may have  
8 hedged a little Class II potentially because that's a  
9 known product that we could have hedged against.

10 Q. Okay. And then in addition to the percentages of  
11 the total volume that you purchase, has your total volume  
12 that you purchase also increased?

13 A. Yes.

14 Q. So we're not just comparing 40% of 2019 volume.  
15 It's 40% today of your total volume?

16 A. That's correct.

17 Q. Okay. And so a considerable amount more that you  
18 are hedging today than even last year, just based on both  
19 your percentage increase and your volume increase?

20 A. That's correct.

21 Q. And it's fair to say that Fairlife has been very  
22 successful; would you agree?

23 A. Yes, I do.

24 Q. I think you said -- what did you say, you just hit  
25 a billion dollars?

26 A. In 2021, we finished the year of a billion dollars  
27 in Nielsen sales.

28 Q. Okay.





1 A. So which was the billion dollar brand, so...

2 Q. And did you also listen to the witness from Nestle  
3 who testified about their hedging activity on their  
4 Class I sales?

5 A. I did not.

6 Q. Okay. And I will represent to you that she told  
7 me that she did not hedge anything before 2019, but now,  
8 today, they hedge all of their Class I sales.

9 And you would agree with me that -- well, I  
10 guess -- you're familiar with Nestle; is that fair?

11 A. Yes. I think I mentioned, I opened I was working  
12 with them.

13 Q. And she said that they are the biggest purchaser  
14 of Class I in the entire world.

15 Is that consistent with what you know about them  
16 as well?

17 A. I don't -- well, as a purchaser of milk? Perhaps.  
18 I'm not sure. From a worldwide perspective, I don't --  
19 Class I, I only believe is in the U.S., so I'm not 100%  
20 sure how to answer that.

21 Q. So is it fair to say, at least based on your use  
22 of hedging for Fairlife and Nestle's use of hedging, that  
23 between the two of your organizations, that there is a lot  
24 more buying power of the Class I products today than there  
25 was in 2018?

26 A. Yeah. For sure. Absolutely. Sounds that way.  
27 Sounds like we both are actively using it, if what you  
28 shared is correct.



1 Q. And even if we go back to a higher-of mover for  
2 Class I milk, that means that there's a lot more customers  
3 on the market for hedging that milk today than there were  
4 in 2018; is that fair?

5 A. Could you repeat that? I want to make sure I  
6 followed that question correctly.

7 Q. Yeah.

8 Now -- you talked about the additional liquidity  
9 in the market and how that means there is more people  
10 willing to buy and sell products today than there were  
11 previously in 2018.

12 A. In regards to Class III futures or instruments or  
13 the Class IV instruments? Is that what you are referring  
14 to?

15 Q. I think your liquidity example talked about  
16 Class III and IV.

17 A. Yes.

18 Q. But you would agree --

19 A. There are more people in it. Absolutely. The  
20 industry has done a good job gaining more people in those  
21 categories, yes.

22 Q. And that's not just people in the industry, but as  
23 you described it, the speculators, who are people who see  
24 an opportunity to profit from those willing to buy and  
25 sell in those class of products.

26 A. That is correct.

27 Q. And so today, now that there has been a market  
28 that has evolved in the Class I market, there's even a



1 greater need for a Class I product to be sold on the CME  
2 than there was in 2018?

3 A. If -- if you are trying to create another  
4 commodity in the marketplace for just Class I, I would say  
5 it potentially is -- again, I don't know what the proposal  
6 is, but I -- it can't be -- based upon the kind of the  
7 formulations around milk and the alternative uses for  
8 milk, I do not believe it can be detached from the  
9 Class III and the Class IV either.

10 So I would -- I don't know what you are proposing,  
11 but I would say in a marketplace that has been shrinking,  
12 Class I as a category, I would be a little bit concerned  
13 about the future of that participation of people in the  
14 Class I instrument if it were created.

15 For us, we like the fact that it's -- well, I  
16 think anyone in the industry likes the fact that we're  
17 rooted in the core of our industry, which is cheese and  
18 butter powder. And so for us, being based on that core, I  
19 think fundamentally is correct in deciding the value of  
20 the milk.

21 Q. And between 2014 and 2019, how did you protect  
22 your risks?

23 A. Couldn't.

24 Q. You didn't protect it at all?

25 A. No. There was -- there was not a mechanism to do  
26 it.

27 Q. And you were still able to grow your product  
28 sales?



1           A.     We took lots of risks.  And -- and -- and there  
2     were years you were not making any money, that's for sure.  
3     You're losing a lot of money.  So we feel very fortunate  
4     to be able to get into a position where we, you know, have  
5     some ability to sell our product, and we have instruments  
6     we can use now to help kind of guarantee what that price  
7     is going to be for us when we purchase.

8           Q.     And you are not saying if you lost money, that it  
9     was attributed to average -- or having the higher-of mover  
10    in milk, are you?

11          A.     I am not necessarily saying it by itself was a  
12    reason we would either make or lose money, but it is a  
13    part of the overall package of what we market and bring to  
14    the marketplace.

15                MS. HANCOCK:  Thank you so much for your time.

16                THE WITNESS:  Thank you.

17                MS. TAYLOR:  Your Honor, I'm sorry, my mic didn't  
18    turn on very fast.  I think we might need to take a  
19    five-minute stretch break.

20                THE COURT:  I think we should take ten.

21                MS. TAYLOR:  Even better.

22                THE COURT:  Let's take ten minutes.

23                Be back at 4:23.  We go off record at 4:13.

24                        (Whereupon, a break was taken.)

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

26                We're back on record at 4:23.

27                You may proceed.

28                MR. SJOSTROM:  Your Honor, I think the witness



1 would like to mention something first.

2 THE COURT: Oh.

3 THE WITNESS: I would like to make an adjustment  
4 to the notes.

5 THE COURT: Yes.

6 THE WITNESS: Referring back to the higher-of  
7 slide, I don't know if it's -- if we're able to pull it  
8 back up.

9 THE COURT: Is this page 7? Yes.

10 THE WITNESS: This was incorrectly changed. It is  
11 accurate as it states. I apologize. But it was -- again,  
12 I'll state it clearer this time.

13 The X out doesn't mean I didn't lose the \$2 on the  
14 contract. And that's -- you guys probably all figured  
15 this out already. Thank you.

16 The circle on the 18, I made my \$2, but the net of  
17 those is zero, so I don't have any change. And my base  
18 price that I thought I would hope to try to lock in at  
19 \$15, actually is now the \$18 price.

20 Could have said that much clearer the first time.  
21 Thank you.

22 MS. VULIN: This is Ashley Vulin with the Milk  
23 Innovation Group. I give myself a B minus in my hedging  
24 class.

25 THE COURT: Very generous.

26 MS. VULIN: But I do -- but I do have a clean  
27 copy, and I'll make sure that the record has the correct  
28 copy that Mr. Doelman had drafted.



1 THE COURT: Okay. I am sorry. I still need you  
2 to explain to me. I was listening.

3 THE WITNESS: Good.

4 THE COURT: But -- all right. So on your -- on  
5 your cheese trade, we know that you lost money.

6 THE WITNESS: On the cheese trade I actually made  
7 money, because the price went down to \$12. Again, I  
8 hedged -- I hedged 50% of 16, so --

9 THE COURT: Oh, so you get the 16?

10 THE WITNESS: No, I'm sorry, I apologize. The  
11 cheese trade is -- is -- I stated that wrong.

12 I lose \$2 on the cheese price, the minus 2. I  
13 apologize. So you are correct. It dropped. I lost \$2.  
14 I paid too much for the cheese, essentially. I paid \$16  
15 for it, but it ended up only being worth \$12, so I lost  
16 \$4. But it's only representing 50% of the volume, so I  
17 lost \$2.

18 THE COURT: Yes.

19 And then you made money on your powder?

20 THE WITNESS: Correct.

21 THE COURT: You made \$4 on your powder, but you  
22 get credit for only half of that?

23 THE WITNESS: That's correct.

24 THE COURT: I see how it works.

25 THE WITNESS: So they counteract each other. I  
26 made \$2 on the powder, and I lost \$2 on the cheese, so I  
27 net out having no difference. I don't gain any more money  
28 in my pocket in this hedging program. So I -- that's why



1 it's a zero.

2 On the math below that, that shows the actual  
3 comes in for the powder at \$18, and since it's the  
4 higher-of, 18 versus 12, it winds up going into the  
5 formula. So it's 18 minus the zero for my hedge program,  
6 so my net base Class I skim price is the \$18.

7 I was thinking I was hedging it around the \$15.  
8 But because it's the higher-of, I'm incorrect. So I have  
9 missed it by \$3.

10 THE COURT: So you did this as a warning to start  
11 with just 5% of your volume in your hedging program until  
12 you get the knack of it?

13 THE WITNESS: Yeah. I did explain it to you  
14 correctly the first time. But trust us, we did hedge the  
15 5%, we did it correctly.

16 THE COURT: Very good.

17 THE WITNESS: Thank you.

18 THE COURT: So I like your solution to just --  
19 well, except there are lots of copies that the  
20 Agricultural Marketing Service tucks in its envelope.

21 Do you have enough for all their record copies?

22 MS. VULIN: Yes. I'll make sure she has enough.

23 THE COURT: Great. All right. We're going to  
24 substitute clean copies as were originally presented, and  
25 I strike all those instructions to change page 7 of  
26 Exhibit 274, because we did not need to change page 7. It  
27 was fine the way it was. All right. Good.

28 Now you may identify yourself and proceed.



1 MR. SJOSTROM: Thank you, your Honor. Lucas  
2 Sjostrom, Edge Dairy Farmer Cooperative.

3 CROSS-EXAMINATION

4 BY MR. SJOSTROM:

5 Q. Thank you so much for being here, Mr. Doelman.  
6 Just a few questions on dairy farmer priorities.

7 Are you familiar with Dairy Management, Inc.?

8 A. Yes.

9 Q. Are you familiar with dairy farmers who serve on  
10 the board at Dairy Management, Inc.? Have you had  
11 conversations over the years with dairy farmers?

12 A. Yes.

13 Q. Would you say -- what would you say is the purpose  
14 of Dairy Management, Inc., or Dairy Checkoff, if we want  
15 to use a different term?

16 A. The way I understand it is to promote, you know,  
17 milk demand, essentially.

18 Q. Thank you.

19 And where would you say fluid milk innovation  
20 ranks on their list of things they want accomplished  
21 through their promotion of sales and their trust  
22 increasing?

23 A. I don't know exactly where it rates.

24 Q. Have you had conversations with farmers there  
25 about fluid milk innovation?

26 A. Recently or in the past?

27 Q. Ever.

28 A. Oh, no, DMI was very influential in our business





1 getting up and running. They were an active party in us.  
2 They contributed some dollars in our business as we were  
3 starting up. And it was a very helpful kind of backing to  
4 have as a startup.

5 Q. So what -- where I was getting to, would it be  
6 fair to say in your background growing up on a farm,  
7 knowing farmers, knowing our top promotion organization in  
8 the country, would you say that dairy innovation in the  
9 fluid category is a high priority for the dairy farmers  
10 you have talked to over the years?

11 A. I mean, against which priorities, I'm not sure. I  
12 think it is important to them. I think they would all  
13 love to see fluid milk do better in the U.S.

14 Q. Okay.

15 MR. SJOSTROM: No further questions. Thank you.

16 THE WITNESS: Thank you.

17 THE COURT: Are there other questions of this  
18 witness before -- yes, Mr. Miltner.

19 CROSS-EXAMINATION

20 BY MR. MILTNER:

21 Q. Good afternoon, Mr. Doelman.

22 So this is a little different. From the time that  
23 Fairlife launched its Class I product in 2014 up to 2019,  
24 was Fairlife offering a fixed price to its customers for  
25 that product?

26 A. When you say "fixed price," could you elaborate  
27 upon what you mean?

28 Q. Sure. If I -- if I recall correctly, you



1 testified that it's your goal to offer those products to  
2 your customers on a price that's fixed or stable for a  
3 six- to 12-month period; is that correct?

4 A. I would use the word stable. Our desire is to  
5 have stable pricing for our product.

6 Q. Were you able to offer that stable pricing from,  
7 say, 2014 through 2019?

8 A. We offered stable pricing the best we could during  
9 that period of time.

10 Q. Have you been able to further stabilize your price  
11 from 2019 through now?

12 A. Yes.

13 Q. Okay. Now, you mentioned that -- when I say  
14 Fairlife milk, I'm talking about the Class I, 52-ounce  
15 product.

16 You say there's 1.6 gallons of milk in a gallon of  
17 that product, correct?

18 A. Roughly.

19 Q. Roughly.

20 Is it that -- about the .6 gallons, is that the  
21 Class IV fortification amount?

22 A. Roughly.

23 Q. Okay. Of the gallon that would, I suspect, be  
24 Class I, it seems to me on average about 40% of that price  
25 is butterfat at, say, 2% fat.

26 Does that sound about right?

27 A. It could be in that range.

28 Q. Okay. Are you able to effectively hedge the



1 butterfat and the Class IV portion of your flagship  
2 product even under a higher-of pricing mechanism?

3 A. Yes. But it represents a smaller portion of  
4 our -- like, butterfat doesn't matter, right? On the  
5 higher-of. I believe it's equally used in either formula  
6 for cheese and for powder. And, again, I'm going off of  
7 memory here.

8 So, yeah, I think your statement would be accurate  
9 in regards to the butterfat portion in influence in either  
10 one of those commodities.

11 Q. And the same would go for the fortification  
12 amount, the Class IV portion, Fairlife, or any handler,  
13 could hedge that regardless of what the mover is, correct?

14 A. In regards to -- are you still on butterfat or are  
15 you on something else now?

16 Q. I'm only talking about the volume of milk that's  
17 used and classified as fortification.

18 A. Okay. Yeah. So no butterfat is in the  
19 fortification portion at all, so it would just be the skim  
20 solid side of it.

21 Q. And for those skim solids, are you able to  
22 effectively hedge those?

23 A. Yes, you can.

24 Q. Okay. So really what -- what your -- for your  
25 flagship Fairlife milk, it's the skim solids classified as  
26 Class I that poses a hedging problem under a higher-of?

27 A. As well as the fat portion with it. Well, you are  
28 correct, on the higher-of, but from a formula perspective,



1 it should flow through. So it should be the skim side,  
2 yes.

3 Q. Great.

4 There's been some testimony --

5 A. And real quick, I just want to say, I think that's  
6 correct, but I don't have the formulas in front of me to  
7 know exactly how they carry through.

8 Q. I'll take it with that caveat.

9 So the main -- from Fairlife's perspective, I  
10 understand your support for MIG's proposal is really tied  
11 to hedging, and that is -- that is the main benefit to  
12 Fairlife of that over the higher-of; is that correct?

13 A. That is correct.

14 Q. So I want you to think to your producer world and  
15 that part of your life. And a producer that is trying to  
16 hedge their milk income, and they're in an order where  
17 essentially it's 50% Class III and 50% Class IV. Okay?

18 A. No Class I?

19 Q. Well, let's assume that Class I -- we have  
20 incorporated the Class I components in III and IV, so III  
21 and IV are there drivers. Okay?

22 A. Okay.

23 Q. And then depooling occurs after they have hedged,  
24 and those producers don't get the benefit of what they  
25 thought they hedged. At least that's testimony we have  
26 heard in this hearing, that that has occurred.

27 We have also heard testimony that the higher-of  
28 helps to mitigate that for producers to get them a better



1 benefit of their hedging efforts.

2 And I wondered if you had an opinion as to whether  
3 USDA should be more concerned with a handler's ability to  
4 get the benefit of their hedge or the producer's ability  
5 to get the benefit of their hedge?

6 A. I would love both people to get the benefit of the  
7 hedge. I would kind of go back to your question around  
8 the pooling side of it. If -- if people can just decide  
9 to be in and out of the pool, it feels like it's defeating  
10 the purpose of the pool from a farmer perspective.

11 But, again, I'm -- from a farmer perspective, if I  
12 knew my guy down the street was jumping in and out of the  
13 pool to benefit him, and I only get the benefit half the  
14 time, I would be frustrated. So I guess that's where I  
15 would start.

16 Q. So American Farm Bureau Federation and Edge  
17 Cooperative have a proposal to get rid of advanced  
18 pricing, which would, at least in my estimation, all but  
19 eliminate opportunistic depooling.

20 Would that be a -- would that be something  
21 Fairlife could live with?

22 A. Not fully understanding the proposal, but as you  
23 share it with me, that sounds very interesting. If that  
24 eliminates this issue where the dollars in the pool  
25 dis- -- don't disappear all of a sudden when it's  
26 beneficial for one party, I think that makes a lot of  
27 sense.

28 So, at a high level, from my perspective.



1 Q. And that would mean that your milk would be priced  
2 after the fact?

3 A. Understood.

4 And this is where the hedging, I believe, comes in  
5 so importantly. And, again, I would be -- from our  
6 perspective, you know, that much even more vested in this.  
7 I -- from a -- in our business, again, we use the hedging  
8 to help have price certainty as we go into the months as  
9 opposed to just waiting for it to be declared.

10 Q. And then so --

11 MR. MILTNER: Well, I think that's all I have  
12 then. Thanks very much, Tim.

13 THE WITNESS: Thanks, Ryan.

14 THE COURT: Are there other questions before I  
15 call on the Agricultural Marketing Service questions?

16 None.

17 Thank you, Agricultural Marketing Service.

18 MS. TAYLOR: Thank you.

19 CROSS-EXAMINATION

20 BY MS. TAYLOR:

21 Q. Good afternoon.

22 A. Good afternoon.

23 Q. You might have hopes of getting out of here today.

24 A. Thank you.

25 Q. I'll try to keep this to less than 22 minutes.

26 Thanks for coming to testify today.

27 I wanted to turn first to your PowerPoint,

28 Exhibit 273, and --



1 THE COURT: The PowerPoint is 274.

2 MS. TAYLOR: Okay. Sure. Yes. Thank you, Judge.

3 BY MS. TAYLOR:

4 Q. 274, slide 6. And page 6.

5 I wanted to first ask, you know, in your -- I  
6 do -- I appreciate the simple examples. And in your  
7 example, the change and the difference between your hedge  
8 position and your actual position was an offset, an even  
9 trade.

10 What happens if it's not an even offset?

11 A. Then we don't have an even offset. I don't know  
12 how to --

13 Q. So I guess my question is, I mean, does that make  
14 it not as an effective hedge? Like, in this example one  
15 goes down by 4 and the other goes up by 4. What if one  
16 goes down by 5 and the other one goes up by 6?

17 A. It would -- it really doesn't matter on the price,  
18 on the \$16 going to 12, or the 14 going to 18. What  
19 matters is whether or not we have the 50% kind of 50/50  
20 split correct.

21 If we have that wrong, then the base class price,  
22 I will not have an appropriate offset associated with it.

23 Q. So I did -- I took your example, but I did, what  
24 if the Class III price went down to \$10. Okay?

25 A. Okay.

26 Q. So then I did your math that you did in the hedge  
27 gain/loss column. It went down by 10, so I lost 6; at  
28 50%, that means I really lost 3.



1 A. Yep.

2 Q. Okay. So in this case I gained 2 on my Class IV  
3 position, because it went up to 18, but I lost 3 on my  
4 Class III position.

5 A. And you left Class IV at \$18?

6 Q. Yeah.

7 A. Okay. All right.

8 Q. I just wanted to create one example where the  
9 differences did not equal each other.

10 A. Okay.

11 Q. So I lost 3 and I gained 2, so somewhere I lost 1.  
12 How does that affect my hedge position?

13 It seems to be worse off for you, but I need you  
14 to tell me why that would be, where that is.

15 A. If I take your 10 for Class III and your 18 for  
16 Class IV, the actual price is \$14, correct?

17 Q. Yes.

18 A. But you lost 3 and you gained 2 -- yeah,  
19 something's wrong. It should be a plus 1 so that it  
20 equals the 15.

21 You lost 3, you gained 2, minus 1 -- no. No. I'm  
22 sorry, we changed the wrong -- did I take -- you still  
23 have the hedge position at 16 and 14, correct? At the  
24 beginning?

25 Q. Yeah. The original hedge positions didn't change.  
26 And so as I look at that, you came to an average base  
27 Class I skim price is \$15. So that's what you --

28 A. Yes.





1 Q. And the way you have been describing it, that's  
2 then what you --

3 A. That's my --

4 Q. -- set your price to your company at --

5 A. Yeah.

6 Q. -- 15, okay.

7 So then I wanted to move to what actually  
8 happened, and I wanted to do something where the change  
9 wasn't -- didn't equal out --

10 A. Sure, sure, sure.

11 Q. -- to see how that affected your hedge.

12 And so I need you to walk me through that.

13 A. Let's do it together then.

14 Q. Okay.

15 A. Because -- and hopefully -- and feel free to  
16 someone correct me if I do it wrong, but hopefully I'll  
17 get it right here.

18 So the 16 winds up dropping to 10.

19 Q. Uh-huh.

20 A. So I essentially lose \$6 of 50%, so I'm saying I  
21 have a minus 3.

22 Q. That's where I was.

23 A. Okay. On the Class IV, I have it positioned at  
24 14.

25 It says at 18 we're saying?

26 Q. Yes.

27 A. Okay. So it's -- it should, the exact same  
28 numbers, right? I have a gain of 2.



1           What am I missing here? I did something wrong  
2 here.

3           I'm sorry?

4           Yeah, but something's not right.

5           THE COURT: Ms. Vulin --

6           THE WITNESS: Well, 15 -- real quick -- I'm not  
7 saying it quite right.

8           So the -- the -- what's -- hold on. Let's see  
9 here. 3 and 3 should be 15 minus 1 is \$14.

10          THE COURT: Ms. Vulin?

11          THE WITNESS: What am I missing here? Someone  
12 needs to clarify this.

13          THE COURT: You may come to the podium and help  
14 us.

15          Please, Dr. Bozic.

16          DR. BOZIC: Marin Bozic, Edge Dairy Farmer  
17 Cooperative.

18          So let me just first confirm the numbers. So we  
19 are looking at the average-of example?

20          MS. TAYLOR: Yes, on page 6 of 10.

21          DR. BOZIC: Okay. So we're at \$16 for Class III?  
22 We went down to \$10?

23          MS. TAYLOR: Yes.

24          DR. BOZIC: So we bought at 16, we sold at 10, and  
25 we lost \$6 per hundredweight hedged. We hedged only 50%  
26 of milk, so we really lost \$3 there.

27          MS. TAYLOR: I'm with you.

28          DR. BOZIC: On the Class IV, we were at \$14. Went



1 up to \$18, right?

2 MS. TAYLOR: Yes.

3 DR. BOZIC: So we gained \$4 per hundredweight  
4 hedged, we only hedged half of it, so we only won 2. So  
5 on our total hedge portfolio we lost \$1.

6 MS. TAYLOR: Right.

7 DR. BOZIC: Okay. Now we wanted to hedge 15. 10  
8 plus 18 is 28, divided by two is \$14.

9 MS. TAYLOR: Hold on.

10 Yes, the average is -- okay. I'm with you.

11 DR. BOZIC: Yeah. So on our cash side we are --  
12 we have -- we are better off than expected by \$1, so the  
13 gains in the cash are offset by the losses on the hedging  
14 exactly.

15 MS. TAYLOR: Okay.

16 DR. BOZIC: You're very welcome.

17 MS. TAYLOR: Thank you for that --

18 THE WITNESS: And thank you.

19 MS. TAYLOR: Thank you, Judge, for allowing that  
20 little bit of a lesson.

21 THE COURT: Well, you know, until you practice at  
22 this, it doesn't seem easy to me. But I'm sure if you  
23 practice, you -- you know, you do your homework, you can  
24 do it.

25 MS. TAYLOR: I will second Ms. Vulin's comment  
26 earlier that this has been a six-week lesson in risk  
27 management, and I'm still on 101.

28 THE WITNESS: Yeah.



1 BY MS. TAYLOR:

2 Q. So that's helpful.

3 A. Yeah. I apologize missing the 10 plus the 18  
4 divided by two for the 14. Apologize.

5 Q. I think even simple examples are complicated.

6 A. Yep. Thank you.

7 Q. Okay. So that's helpful.

8 I did want to ask, how does the adjuster enter  
9 into this equation, for you as a processor? I understand  
10 how you're hedging 50/50 on III and IV, so you get that --  
11 that helps you hedge your base price. So -- how I just  
12 want to know from -- what happens on that adjuster for  
13 you.

14 A. The way we have proposed it?

15 Q. Yeah.

16 A. Or -- o the --

17 Q. I understand how operational for how it worked in  
18 the pricing of the Federal Order scheme.

19 But how would you account for that in your hedging  
20 program?

21 A. It's a -- it's a known adder to whatever this base  
22 is. It's just like a premium for our milk we know we're  
23 going to pay.

24 Q. And so do you add that on to what you charge your  
25 customer?

26 A. So, for instance, this -- this mathematics to  
27 determine this base Class I skim, you add an adjuster to  
28 it of \$0.74 or \$1 or whatever. As long as I know what it



1 is going to be, I'll know how to transfer that price  
2 ultimately to the customer effectively.

3 Q. So it doesn't matter to you if it's a -- I know  
4 you support the rolling average, but --

5 A. Yes.

6 Q. -- it doesn't matter necessarily if it's a rolling  
7 average or it's set for a year, as long as you know in --  
8 know in enough -- in advance enough to set your price you  
9 can do that?

10 A. Precisely.

11 Q. And from what I gather right now, you are hedging  
12 out about six months, but you hope to get to the 12-month?

13 A. We -- we are active even nine, ten months out, but  
14 it is less liquid. So the desire is to -- whatever  
15 program we place, it's where we're going, not limiting us  
16 to ever be able to get there.

17 And so, yes, we're more effective in the six-month  
18 window because of the liquidity of the market, but we're  
19 active in nine, ten months.

20 Unfortunately, like I shared, it winds up making  
21 us market makers sometime, and we're hoping to be able to  
22 develop that so that we have better price discovery out,  
23 you know, 12 months in advance. So you're precisely  
24 correct.

25 You could change it on an annual basis also. We  
26 like the idea of having gradual changes so that the end  
27 customer and the end consumer get to see gradual changes,  
28 you know, kind of predicted in the price.



1 Q. So, with that thought, then, would you say, I  
2 guess perhaps a fixed adjuster might lead to more of a  
3 sudden change?

4 A. Yes.

5 Q. Right. Okay.

6 A. And potentially it occurs -- and I don't know that  
7 there's necessarily cycles for selling. We talked about  
8 fluid milk at the school earlier today, you know, spring  
9 time or whatever. There are some natural kind of windows  
10 of selling, if it doesn't hit quite right timing-wise or,  
11 say -- say, the industry makes -- the purchasing industry  
12 makes a slight change on when they are purchasing, those  
13 kinds of changes on the annual basis might be difficult  
14 from a selling perspective, so depending upon which  
15 customer you are selling to, which channel you are selling  
16 to.

17 Q. Okay. Okay. If we could turn to the next slide.

18 I do -- I followed the math. I'm not going to ask  
19 us to redo math on this. But I think one piece might have  
20 been lost when you talked about it earlier. Your hedge  
21 positions offset each other.

22 A. Correct.

23 Q. But under this part you still -- am I correct in  
24 assuming, you still price the milk to your customer at 15,  
25 so it's led you to a \$3 loss?

26 A. That's correct.

27 Q. I don't know if that was clear in the earlier  
28 discussion. I want to make sure that was clear.



1 A. Yes, you are correct.

2 Q. Okay. That's it on the slides.

3 A. Thank you, Erin.

4 Q. I want to turn to page 3 of your statement.

5 Under the list number 3, when you are talking  
6 about how hedging is important for everyone. And here you  
7 are talking about farmers and the benefits to them. But  
8 you are not talking -- or are you talking about the  
9 benefits to them of the fact that you can hedge Class I or  
10 just the benefits to them that they can hedge however they  
11 choose to hedge in the market?

12 A. Yeah. Not necessarily Class I. But, again, the  
13 main instruments for our industry are III and IV, or  
14 cheese and powder, however you want to look at it, and  
15 then butter. So the fact that there's more activity in  
16 any all of those I think helps the farmer.

17 Q. Okay. And then later on you talked about the  
18 importance of price stability and price uncertainty does  
19 allow -- does not allow us to set prices for that long --  
20 fluid -- for that long, and fluid processors risk losing  
21 shelf space to plant-based or other alternative beverage  
22 products.

23 Have you experienced that? I'm just -- lots of  
24 people talk about that, and I'd like to get some firsthand  
25 experience of has that happened.

26 A. As kind of Ryan was asking earlier, we have been  
27 pretty conscientious to try to keep the price steady,  
28 whether or not we make money or lose money. And so we



1 were very dedicated to that early on in the business, and  
2 we continue to be, but now with tools to be able to  
3 appropriately hedge. So I think we toughed it out, you  
4 could say, either way, to make sure we didn't lose to the  
5 plant-based products.

6 But to have the tool is -- allows us to be much  
7 more effective in being able to control that price much  
8 more effectively.

9 Q. You touched on this earlier. I want to make sure  
10 it's clear though.

11 Your pricing strategy, kind of pre or post 2019,  
12 that hasn't really changed. It's just that now maybe you  
13 are more in the black and less in the red?

14 A. It allows us to be more thorough and get a better  
15 understanding of what the total portfolio will look like  
16 from a margin perspective. That's correct.

17 Q. On page 5 in the first full paragraph, you wrote,  
18 "The historical difference" -- and here you are talking  
19 about the \$0.74 -- "won't capture the shift in the way the  
20 higher-of difference could have."

21 I just want you to be -- make clear for the record  
22 what you mean with the higher-of difference. Are you  
23 talking about MIG's Proposal 15 there?

24 A. Which sentence specifically so I can look at it?

25 Q. Yep. I am in that first full paragraph.

26 A. Yep.

27 Q. And it's the sentence -- it's the third sentence,  
28 starts "if there are underlying shifts"?





1           A.     Got it. I see it, the last -- the last clause,  
2     "the historical difference won't capture."

3                     I'm basically in that sentence stating I'm  
4     sympathetic to the farmer they are not going to get  
5     higher-of with a fixed \$0.74 that isn't changing. So  
6     that's what I call static.

7           Q.     Uh-huh.

8           A.     They won't get the higher-of. They are going to  
9     get whatever \$0.74 is.

10                    And historically over the 19 years or whatever  
11     they looked at when they went back and did the math on the  
12     \$0.74, that represented an average of those 19 years and  
13     what happens between those price differences. So I'm  
14     sympathetic to that. So this is why I'm offering up a  
15     more dynamic way to deal with that, so that they can have  
16     a mechanism that gives them the higher-of.

17           Q.     So then on the next page, page 6, in the first  
18     paragraph there -- and I think this goes to your earlier  
19     point -- the end of that first sentence states, "ensure  
20     the" -- basically the MIG proposal -- "ensures that  
21     Class I prices maintains more consistency month to month,  
22     but takes into account the pricing in other classes."

23                    Is that what you are talking about there, takes  
24     into account more of the current III and IV market because  
25     it's dynamic?

26           A.     The -- yes. Exactly correct. It takes into  
27     consideration what III and IV -- what the spread is.

28           Q.     In the next sentence when you talk about how the



1 spikes -- the MIG proposal essentially "would have raised  
2 the base Class I skim price in a more gradual way, but  
3 also with a longer-term impact than if the price skewed in  
4 immediate reaction to those changes."

5 And here you are talking about what happened  
6 during the pandemic?

7 A. Correct.

8 Q. I just wanted to know if you could just expand on  
9 what you mean there by as a "longer-term impact."

10 A. I was kind of being asked earlier to check on  
11 this. The price could -- the higher-of impact, the \$0.74,  
12 for instance, if the -- if the price were to go up, if you  
13 had a higher-of formula, and we weren't -- and we didn't  
14 have an average-of, you know, it's good for a month, and  
15 then the next month, it -- you know, depending upon which  
16 one's there, you know, maybe it comes and falls down  
17 beneath the \$0.74, and it's actually a lower price then,  
18 because it's in the \$0.74 kind of window.

19 By having a 24-month rolling average, whatever  
20 the -- whatever it's capturing is a steadier price. And  
21 so over time, you know, the farmer is going to see a more  
22 gradual change to those differences between the higher-of.  
23 That's what I'm referring to there.

24 Q. And so -- and we talked -- you talk -- most people  
25 are talking about the benefit of getting higher prices  
26 over a longer time. But you can extend that to the flip  
27 side, it would get the cost of the lower prices for --

28 A. That's correct.



1 (Court Reporter clarification.)

2 MS. TAYLOR: -- for an extended period of time?

3 BY MS. TAYLOR:

4 Q. My last question is on page 7, you mention, "The  
5 Make Allowances and MIG's Proposal 20," so --

6 A. Which -- which sentence are you on? Which page?

7 Q. The middle -- I'm on page 7.

8 A. Okay.

9 Q. And you said, "Similarly, updating Make Allowance  
10 and MIG's Proposal 20 to remove the non-applicable  
11 premiums are examples of updating milk value  
12 calculations."

13 And since you're a member of MIG, I'm assuming you  
14 were supporting at least Proposal 20 that MIG has put  
15 forward. And I just wanted -- but your statement doesn't  
16 really go into that.

17 So I was just wondering if you had any additional  
18 thoughts you wanted to add on that, those particular  
19 topics, both Make Allowances and Proposal 20, since you  
20 mentioned it?

21 A. Yeah. Specific to the make orders, I realize the  
22 industry wants to make some changes with it. So from my  
23 perspective, we support it. If -- if that's what the  
24 industry wants to do, we support that, so...

25 The other kind of, you know, non-applicable  
26 premiums, updating, yeah, there's probably numerous  
27 potential examples, that -- well, there's nothing else I  
28 don't really -- there isn't anything being proposed right



1 now, but I could see other structures -- actually there  
2 are, later on the class differentials and stuff of that  
3 nature. But I will come back to address those at the  
4 time.

5 MS. VULIN: That's what I meant to jump up to say.

6 MS. TAYLOR: Perfect. I never want to lose my  
7 opportunity. I don't know when people come in and out of  
8 this room.

9 THE WITNESS: No. I will come back for everything  
10 kind of non-hedge based or whatever to discuss.

11 MS. TAYLOR: That's it from AMS, and I beat myself  
12 by two minutes.

13 THE COURT: Redirect.

14 MS. VULIN: Thank you, your Honor.

15 REDIRECT EXAMINATION

16 BY MS. VULIN:

17 Q. So just a couple quick questions.

18 The talk about support, your support for  
19 Proposal 15 and the hedging, I know in response -- you  
20 said you believe hedging supports consumers and producers  
21 because it allows Class I to grow and to hopefully capture  
22 more market share there.

23 But the other side of just general price  
24 stability, do you believe that brings any value to  
25 producers, retailers, and consumers as well, to totally  
26 setting aside the ability of Class I to hedge?

27 A. Yeah. I think in general, the more stable the  
28 price, again, the better it is for the consumer and the



1 customers who are buying these products. So by that  
2 nature, I think if it means that they will do a better job  
3 promoting the product, there will be more promotion  
4 activity around it. I think that will ultimately be  
5 better for the producers also because it will drive more  
6 demand for that product.

7 Q. And I know you received some questions from  
8 Mr. Miltner on advanced pricing, and you said that could  
9 be potentially something you would think about.

10 Is the reason why that's something you could  
11 consider because you have such a robust hedging program?

12 A. It would be the only reason. If I -- if I were an  
13 HTST operator, which I am not, I would probably be very  
14 concerned about how the pricing mechanism works, unless I  
15 had a robust system in here around Class I and -- and  
16 hedging.

17 So, again, depending upon where they are in their  
18 journey -- I kind of shared with you, we're probably five  
19 years into it, four and a half years into it. It takes  
20 time to develop it. So it would probably not be something  
21 I'd want to jump to right away, but certainly from a  
22 principle perspective, I -- from my -- and, again, I'm not  
23 an expert in this -- this pool methodology at all, but it  
24 is -- I think there should be some kind of mechanism that  
25 prevents people jumping in and out of pools. But again, I  
26 am not an expert on that. That's speaking from a farmer  
27 perspective.

28 Q. And so you would agree, given the lack of



1 widespread adoption of hedging in the HTST marketplace, it  
2 indicates we're probably not ready to get rid of --

3 A. That would --

4 Q. -- the advanced pricing?

5 A. Yes, I would -- said another way, yes.

6 Q. Okay. Great.

7 THE COURT: Would you state your sentence again?

8 MS. VULIN: Yes.

9 BY MS. VULIN:

10 Q. And just give me one moment to finish the  
11 question.

12 So given the lack of broad adoption of hedging in  
13 the HTST marketplace, you would agree with me that it  
14 would not be a good idea right now get rid of advanced  
15 pricing?

16 A. I would agree with that.

17 Q. Yeah.

18 MS. VULIN: Thank you. Nothing further.

19 THE COURT: That sparked an interest.

20 RECROSS-EXAMINATION

21 BY MR. MILTNER:

22 Q. This will take less than 60 seconds, depending on  
23 you, Mr. Doelman.

24 Based on how Fairlife has constructed its hedges  
25 for its Class I skim, do you think that -- do you think  
26 that an HTST processor would have -- would develop a  
27 program significantly different from yours?

28 A. I would think they would develop something that's



1 very similar to ours.

2 MR. MILTNER: Thank you. That's all.

3 REDIRECT EXAMINATION

4 BY MS. VULIN:

5 Q. In order to develop that program, the HTST plants'  
6 customers would also have to be on board, correct?

7 A. Correct. I think there's timing associated with  
8 all of that to be able to make that happen if it is the  
9 right idea. Again, very conceptual.

10 MS. VULIN: Thank you.

11 THE COURT: All right. Let's deal with the  
12 exhibits. So I want to identify them a little more fully.

13 I want to say that the exhibit that's marked as  
14 273, up at the right upper corner says MIG-Fairlife-10,  
15 and the exhibit that's been marked 274 has been identified  
16 as MIG-Fairlife-10A.

17 MS. VULIN: Your Honor --

18 THE COURT: Your request.

19 MS. VULIN: I would request that those be admitted  
20 intoed record, please.

21 THE COURT: Is there any objection?

22 There is none. Exhibit 273 is admitted into  
23 evidence.

24 (Exhibit Number 273 was received into  
25 evidence.)

26 THE COURT: Exhibit 274 is admitted into evidence.

27 (Exhibit Number 274 was received into  
28 evidence.)



1 MS. VULIN: Nothing further from the Milk  
2 Innovation Group today, your Honor. Thank you.

3 THE COURT: Thank you.

4 Now, let's talk about tomorrow.

5 Mr. Rosenbaum, I bet you are hoping your two  
6 witnesses start tomorrow?

7 MR. ROSENBAUM: Well, I just have one witness,  
8 your Honor, which is Mike Brown. But I'm -- I think the  
9 plan is that he will be the first witness.

10 THE COURT: Is that -- does that work that he goes  
11 on at 8:00?

12 MS. TAYLOR: Yes. So on -- on the list I have  
13 Mike Brown to go first tomorrow. And should we finish  
14 with him before 11:00, then Dr. Bozic will go on as next  
15 on the list. And I guarantee we won't finish those two in  
16 three hours.

17 THE COURT: You guarantee that we --

18 MS. TAYLOR: We will not. If I was a betting  
19 woman, I would not take that bet.

20 THE COURT: Which one of those is the longer one,  
21 do you suppose?

22 MS. TAYLOR: Well, that's a good question. We  
23 should bet on that.

24 THE COURT: Now, you also promised me that the way  
25 we do Friday is we stop at 11:00 for lunch, and at 12 noon  
26 we have three hours of farmers?

27 MS. TAYLOR: Yes. And I wanted to -- it's virtual  
28 testimony. And I just had the list if you give me one





1 second, I was trying to find the list for everybody.

2 Okay. So tomorrow we have nine farmers signed up  
3 to do virtual testimony starting at noon. And my  
4 apologies in advance for any mispronunciation.

5 We have Joe Borgerding from Minnesota; Perry  
6 Tjaarda from California; Clara Ayer from Vermont; Jennifer  
7 Lawrence from Pennsylvania; Heidi Fischer from Wisconsin;  
8 Spencer Frost from Wisconsin; Simon Vander Woude from  
9 California; Brenda Cochran from Pennsylvania; and Sarah  
10 Lloyd from Wisconsin.

11 MS. HANCOCK: What was the first one again?

12 MS. TAYLOR: Joe, and I'm going to spell the last  
13 name, B-O-R-G-E-R-D-I-N-G.

14 I am not sure this is the order they will be  
15 coming in, but that's the list for tomorrow. We'll start  
16 at noon. And my guess is that will take up pretty close  
17 to all three hours has been our experience, and then plan  
18 to end the day at 3:00 p.m.

19 THE COURT: Good. Thank you. I will see you all  
20 tomorrow morning at 8:00. And we now go off record at  
21 5:06 p.m.

22 (Whereupon, the proceedings concluded.)

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1 STATE OF CALIFORNIA )  
 ) SS  
 2 COUNTY OF FRESNO )

3

4 I, MYRA A. PISH, Certified Shorthand Reporter, do  
 5 hereby certify that the foregoing pages comprise a full,  
 6 true and correct transcript of my shorthand notes, and a  
 7 full, true and correct statement of the proceedings held  
 8 at the time and place heretofore stated.

9

10 DATED: November 15, 2023

11 FRESNO, CALIFORNIA

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16 MYRA A. PISH, RPR CSR  
 17 Certificate No. 11613

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