

April 2004
 NYS Dairy Foods, Inc
 201 S. Main St., Suite 302
 N. Syracuse, NY 13212-2166
 Bruce W. Krupke, Editor
 Leanne Ziemba, Asst. Editor
 315-452-MILK
 FAX 315-452-1643
 www.nysdfi.org



NEWSNOTES

2004 Northeast Dairy Convention June 6-9 You Are Invited!

There is still plenty of time to register to attend this year's annual convention, The Northeast Dairy Convention to be held at the beautiful and historic Gettysburg Hotel, in Gettysburg, PA.



Camelia Patey
 M.S. R.D National Dairy Council

The convention will start on Sunday evening June 6, and conclude Tuesday evening, June 8.

There is a great line up of professional and dairy industry speakers scheduled to make presentations during the general business sessions Monday morning June 7 and Tuesday morning June 8. Some of the speakers include:



Leon Graves, Dir. Of Industry Affairs, Dairy Marketing

Dr. John Lord, Professor of Marketing, St. Joseph's University; Camellia Patey, M.S. R.D, National Dairy Council; Dick Groves, Editor/Publisher, The Cheese Reporter; Dr. Ken Bailey, Penn State University; Leon Graves, Dir. Of Industry Affairs for Dairy Marketing Services and John Kaneb, CEO, H.P. Hood, Inc.



John Kaneb, CEO, H.P. Hood, Inc.



Dr. Ken Bailey, Penn State University



Abe Lincoln, 16th President

There is a fantastic social program lined up for attendees and guests including cocktail parties, tours, golf outing, banquet and MORE! You can obtain registration forms and more information by

visiting our website at www.nysdfi.org. See you there!

Record Milk Price Set for May 2004 - NY City Retail Threshold Goes Over Four Dollars For the First Time, See Page 5 for Amounts!

On Friday, April 23, the United States Department of Agriculture, Agricultural Marketing Service/Dairy Programs Federal Milk Order Number 1, Northeast Marketing Area announced the May 2004 Class I prices.

The price announced for Class I milk for the New York City area \$22.80, May 2004 is an **all time record high**. The previous record for the NY City area of \$20.68/cwt. was set in February 1999.

In the past five months prices paid for raw milk to dairy farmers have been increasing. The recent month's prices compared to the past 24 months are much above average and in fact for May 2004 is a record high. There are many reasons for the price swings, some major some minor. The bottom line is that the stars have lined up and all of the issues are working in tandem so to speak which are contributing to the record high prices.

The major reason for the higher milk prices is because of supply. (Continued on Page 5.....)

Pride of New York Grants Announced - NYS Dairy Foods to Receive Grant to Promote Milk!

Governor George E. Pataki celebrated National Agriculture Week in New York State by announcing nearly \$325,000 in grants to help farmers and agricultural based businesses promote the abundance of food and agriculture products that are grown or processed in New York State. The latest round of "Pride of New York" grants will help pay for 30 projects throughout the state that link individual advertising and promotional efforts of food and agricultural businesses with the Governor's "Pride of New York" program.

Governor Pataki made the announcement on March 16th at F. Capiello Dairy Products, Inc. in Schenectady. Under the program F. Capiello Dairy Products will receive a \$15,000 grant to expand their marketing of Capiello Mozzarella and Ricotta Cheeses in New York and select out-of-state markets.

The "Pride of New York" Cooperative Promotion grants provide up to \$15,000 in matching funds to members of the "Pride of New York" Program for costs directly associated with the development of cooperative advertising or promotion. Proposed marketing activities must promote the quality, value, or availability of New York food or agricultural products and increase the demand for such products through ...continued Pg. 6

State News

NY Farm Viability Institute Names Interim Director

R. David Smith to Initiate Operation of New Agricultural Institute

The Institute is a new initiative to deliver business assistance to farm enterprises in New York to help increase the value of farm products. The Institute is a collaboration among New York's academic and farming communities and state agricultural agencies.

"Dave Smith brings years of experience working with New York's broad agricultural industry to this new position," said John W. Lincoln, Chair of the Board of Directors of the Farm Viability Institute, when he announced the appointment. Smith is expected to serve for approximately one year. The Institute receives program direction and guidance from a board of directors. Under the leadership of Dr. Smith, the Farm Viability Institute will partner with the men and women who produce New York's agricultural bounty to help them prosper and grow.

In September 2003, the U.S. Department of Agriculture (USDA) provided New York with a \$993,000 grant to help initiate the Farm Viability Institute. Through the USDA's financial assistance and the collective administrative efforts of Cornell Cooperative Extension (CCE), the New York State Dept. of Agriculture and Markets and farm organization leaders, the NYFVI work began late last autumn with the first board of directors meeting held in Ithaca.

Agriculture in New York is a \$3 billion industry that encompasses 7.6 million acres of land and 37,000 farmers. The dairy industry is agriculture's largest sector, generating \$1.6 billion a year, followed by field crops, which generate \$1.2 billion. The horticultural industry, including nurseries, greenhouses and fruit and vegetable production, generate nearly \$1 billion annually.

*news release from NYS Dept of Ag & Mkts
April 9, 2004*

Dairy Farmers Ask For Spitzer's Help

Small operators tell attorney general that industry consolidation is hurting their ability to compete. "If competition is so good, why don't we have some?" said John Bunting, a dairy farmer from Delhi, NY, who was among more than 150 dairy farmers who gathered for the session with Attorney General, Elliot Spitzer, that was held on April 1st by the National Family Farm Coalition.

The dairy farmers, who came from throughout the Northeast and as far away as Wisconsin and California, called on Spitzer to take the national lead and begin investigating industry consolidation in New York for possible antitrust violations. Spitzer said it was clear the "small farms have an inadequate voice" in a dairy industry that is increasingly becoming dominated by corporations and giant cooperatives, such as Dairy Farmers of America, which controls about one-third of the nation's milk supply within its membership.

"We are in a final phase of the destruction of our domestic dairy industry. If government doesn't take our problems seriously, we won't have a domestic dairy supply in the near future," said Brenda Cochran of Westfield, PA, whose family milks 160 cows.

*By William Kates
www.timesunion.com April 2, 2004*

Industry News

Cappiello Dairy Prepares To Expand

F. Cappiello Dairy began shipping its gourmet Mozzarella to Costco Wholesale Corporation in Taiwan in February of this year. Targeting international markets is part of a marketing strategy for the expanding company said Julianne Cappiello, Vice President of sales and marketing. Additional markets being targeted include South Korea, Japan, Canada and Mexico. "Cappiello is thrilled and privileged to be able to export a high quality product to Taiwan," said Vincent J. Staiger, National Sales Manager.

The planned expansion is to include a physical expansion of the plant in Schenectady and the purchase of new equipment. The effort should double production capacity and is scheduled for Spring of 2004. The company will also be expanding its personnel by about 15 percent, over the next two years. Last fall Cappiello Dairy erected two new silos for milk and installed a new high speed Multivac packaging machine, additionally, they completed an electrical upgrade for energy conservation.

Today, Cappiello Dairy is owned and operated by Julio Cappiello, son of Italian immigrants Francesco and Lucia Cappiello. His daughter, Julianne runs the company's marketing and sales operations, while his son, Peter, directs plant operations.

*The Cheese Reporter
February 27, 2004*

Philly Meat Processor Acquires Ownership In Yancey's Fancy: Management Stays Intact

In a sale effective January 1, 2004, Dietz & Watson, a processor of deli meats headquartered in Philadelphia, made a strategic investment in Yancey's Fancy, Inc. The company will add Yancey's Fancy artisan cheeses to its deli and condiment varieties. Yancey's Fancy President, John Yancey stated that all management will stay as is, "enabling us to carry on the rapid growth that we've been experiencing for the past seven years." He continued by saying, "we have a major building expansion planned; we have a lot of equipment updates and market expansion plans all ready to move forward."

Dietz and Watson was founded in 1939 by Gottlieb Dietz, a young German sausage maker. It is family-owned and operated with more than 750 employees and facilities in both Philadelphia and Baltimore. "We are looking forward to a working relationship with them. They are a family-owned company—kind of a rarity in today's world," Yancey said.

Yancey's Fancy history dates back to only 1996, it was preceded and intertwined with several businesses, including Kutter's Cheese Factory, Heluva Good Cheese, Darn Good Marketing and Darn Good Foods, which ultimately became Yancey's Fancy. Today they are creating New York artisan specialty cheeses. "We have chosen techniques and manufacturing, processing and curing cheese to give an enhanced flavor profile to target a consumer looking for a strong taste sensation and unmistakable flavor," said John Yancey. A good example is their new Buffalo Wing Cheese. Yancey's Fancy was officially founded in New York State by Yancey and Mike Wimble in 1996.

(continued on page 6)

**TESTIMONY TO THE UNITED STATES SENATE JUDICIARY
COMMITTEE
REGARDING THE COMPETITIVE ENVIRONMENT
FOR DAIRY AND LIVESTOCK PRODUCERS**

JULY 23, 2003

Introduction

My name is Robert D. Wellington and I serve as Senior Vice-President for Economics, Communications and Legislative Affairs for Agri-Mark Dairy Cooperative. Agri-Mark is a farmer-owned and controlled Capper-Volstead cooperative with approximately 1450 member dairy farms located throughout New York and the six New England states. We market about three billion pounds of farm milk annually. This represents slightly less than two percent of U.S. milk production.

Agri-Mark is extremely concerned about the changes in the competitive environment for its members' milk production. A decade ago, Agri-Mark could compete to sell its milk to any or all of more than a dozen major purchasers of fresh, Class I drinking milk. This would allow its member farms to fully share in the obligations and benefits of pooling milk under a Federal Milk Marketing Order. However, most of the Class I bottling plants in New England have been bought (and in several cases subsequently closed) by one handler, Suiza Foods. It has been estimated that they have more than 70% of the Class I market in New England alone. Suiza Foods, also the largest seller of Class I fresh drinking milk in the country, subsequently merged with Dean Foods, the second largest Class I seller. The resulting mega-company retained the name Dean Foods. Dean Foods currently has a full milk supply arrangement with Dairy Farmers of America.

Dairy Farmers of America (DFA)

Dairy Farmers of America ("DFA") is the result of the mergers of a number of large cooperatives, including Dairymen, Inc., Mid-America Dairymen, the Southern Region of Associated Milk Producers, Inc. and others. These constituent groups have a pedigree of antitrust violations dating back over sixty years.¹ Despite having been sued

¹ Reported decisions and decrees include:

United States v. Borden, 1940-1943 Trade Cas. (CCH) ¶ 56,062 (N.D. Ill. 1940);

United States of America v. Associated Milk Producers, Inc., 394 F. Supp. 29 (W.D. Mo. 1975);

United States v. Mid-America Dairymen, Inc., 1977-1 Trade Cas. (CCH) ¶ 61,508 (W.D. Mo. 1977);

United States v. Dairymen, Inc., 1983-2 Trade Cas. (CCH) ¶ 65,651 (W.D. Ky. 1983);

Alexander v. National Farmers' Organization, 645 F. Supp. 1146 (W.D. Mo. 1986).

repeatedly by the Department of Justice, various state agencies and private parties, and despite being subject to numerous permanent injunctions prohibiting predatory and anti-competitive behavior, DFA has persisted in flouting these injunctions and employing predatory tactics to gain a stranglehold on dairy production and producers throughout the Mid-West. DFA is probably the most blatant antitrust recidivist in the history of this country.

The First Proposed NDH/Hood Merger

Last fall, Agri-Mark's largest remaining customer, the H.P. Hood Company, announced that it was merging with National Dairy Holdings (NDH). NDH is owned and controlled by DFA. DFA was to have a full milk supply arrangement with the new Hood/NDH company. This would have left Agri-Mark with insufficient Class I sales to meet Federal Order Class I pooling requirements throughout the year and could have lowered the annual farm income of our members by more than \$50 million dollars. Agri-Mark's average size member farm would have lost about \$30,000 annually if it was not sharing in the Federal Order pool. As has happened in the past, Agri-Mark and/or its members likely would have been forced to join or affiliate with DFA.

We protested this proposed transaction to the Department of Justice. The concern we expressed was that DFA, which is far and away the largest dairy cooperative in the United States, intended to use this transaction to increase its market share at the expense of independent dairy producers, including Agri-Mark. We described DFA's history of predatory conduct, and demonstrated that the proposed merger was merely one more step – different in scope but not in kind – in DFA's pattern of driving out competing milk cooperatives and independent producers.

We also pointed to the experience of small cooperatives and independent producers who formerly supplied plants acquired by DFA, Dean or NDH in Nashville, Somerset (Kentucky), Idaho, New England, Dairylea in New York, and St. Alban's in New England. These cooperatives were given a Hobson's choice – market through DFA to your former customer or cease dairy operations – *after* being acquired by DFA. Most recently, on May 1, 2003, DFA struck again. Its affiliate, Lone Star, displaced the independent producers who had historically supplied Mid-States Dairy in St. Louis. Mid-States "encouraged" the displaced producers to join DFA's affiliate or lose their market.

The "New And Improved" NDH/Hood/DFA Transaction

In late April of this year, we received reports that the NDH/Hood deal had been abandoned. At the same time, however, DFA announced that it intended to "restructure" the NDH/Hood transaction as an exchange in stock and CEOs (in effect, a "virtual merger") and go forward with it. On May 13, 2003, the press reported that the parties intended to consummate the deal, albeit in a slightly altered form.

The NDH/Hood/DFA Transaction May Be Different, But It's No Better

Rumors in the industry have suggested that the "new" NDH/Hood/DFA deal may have been structured to make it non-reportable for Hart-Scott-Rodino purposes. Obviously, DFA cynically believes that it can thumb its nose at the Antitrust Division and "slam" this deal through with only some cosmetic changes. *This cannot be permitted to happen.* The proposed restructuring of the deal may be a more subtle tactic than the originally-proposed merger, but it will be no less harmful to DFA's competitors. All the statements by the principals involved, including the principal architect of the transaction, Gary Hanman, CEO of DFA, indicate that they will accomplish the very same goals sought by the originally-proposed merger.

The DFA press release did not refer to any supply arrangements, as part of the transaction or otherwise, except for these two comments:

1. There was a brief and unexplained statement that Agri-Mark would not be (immediately?) displaced as a supplier to Hood; and
2. It was indicated that DFA would become the new supplier to the Hood plant at Winchester, Virginia.

However, Agri-Mark has heard in the field that Land O'Lakes ("LOL") has been offered a deal by DFA: If LOL agreed to join DMS – a marketing agency in the Northeast controlled by DFA – DFA would not take over the supply at the Hood-Winchester plant in Virginia but would permit LOL to continue its historical supply arrangement at Winchester. Otherwise, DFA would, under the "restructured" transaction, oust LOL as supplier of the Hood plant at Winchester. LOL has now agreed to market through DMS.

It is plain that the contemplated three-way federation between and among DFA, NDH and Hood is inherently and inescapably fraught with anti-competitive dangers. As a result of the transaction, Hood, which is the prize DFA is pursuing,² will be 15% owned by DFA. This will represent a substantial degree of DFA control over Hood. Moreover, Hood in turn will acquire a 30% interest in NDH, thus becoming a co-venturer with DFA in NDH. There is no ambiguity as to what is going on here: DFA, NDH and Hood will be fused into a single, coordinated economic unit. To cement the relationship, Hood's president and chief executive, John Kaneb, will become chairman and chief executive of NDH and NDH's current president, Tracy Noll, will move over to become Hood's president. In short, the proposed transaction is a "virtual merger" of DFA, NDH and

² Because DFA already controls NDH, it has no need to extend its control over NDH. We do not know the details of the transaction but we assume that Hood's "minority investment" in NDH will likely take the form of a purchase of some of DFA's interest in NDH, perhaps to help bail DFA out of the liquidity problems DFA has incurred in the course of its "buying up the world" campaign. If so, there will be no dilution of DFA's control over NDH because post-transaction DFA will own 15% of Hood's shares.

Hood. This virtual merger is consistent with DFA's pattern of predatory conduct, and should be aggressively investigated, regardless of its reportability under Hart-Scott-Rodino.

DFA's Use of Federal Order Rules to Achieve Monopoly

The anti-competitive effect of the proposed NDH/Hood/DFA transaction is magnified by DFA's history of exploiting monopoly-building opportunities under USDA's Federal Milk Order market access ("pooling") rules. A prime example of this exploitation can be seen in the recent regulatory "reform" of Milk Order rules and USDA's receptiveness to new regulatory limits on market access, limits fashioned and proposed by DFA, the largest cooperative constituent of USDA programs.

As described in the Justice Department's 1977 publication, *Milk Marketing* (a Report to the Task Group on Antitrust Immunities) at 292-393, many anti-competitive practices in the milk business are dependent upon the existence and structure of Federal Milk Marketing Orders. This continues to be true under USDA's new regulatory structure. The creation of larger federal milk markets no longer serves to preserve competition because the trend toward consolidation of processing plants and cooperatives severely limits market options for dairy farmers.

The most visible anti-competitive Milk Order practice in the 1970's was "pool loading" – use of Federal Order rules to load surplus milk onto the market of competitors for the purpose of depressing the pooled blend price to coerce non-member farmers to join the dominant cooperative. Current practices are less transparent, but no less effective, in their coercive result. Ironically, these practices are designed to "unload" milk of competitors from a pool. DFA's favored tactic has been to acquire the Class I processors in a market, thus capturing their attendant supply needs and as a result: (1) force competitors to shift to an alternative market with a lower blend price, (2) leave competitors with no access to a regulated federal market pool, or (3) require competitors to pay a market access tribute to DFA for the "service" of associating milk with a federal milk pool, reducing non-member revenue while enhancing DFA revenue. In other words, the injury to independent cooperatives and producers is not confined to the lost sales to Class I customers; it also includes the independents' loss of the ability to pool their milk on Federal Orders because sales to Class I customers are the "gateway" to Federal Order pooling.

DFA's strategy of denying access to markets has been structured around this new USDA regulatory environment. Federal Order market access is governed by pool qualification rules, which entitle dairy farmers to a revenue stream above the surplus (Class III) price in the form of a "Producer Price Differential" ("PPD"). Pool qualification entitles the dairy farmer (or his cooperative) to market milk and draw the PPD on a volume of milk equal to the volume of distributing (Class I fluid milk) plant sales, *times a multiple*. In section 1032.13 of the Central Market, for example, the

multiple is five -- i.e., for each hundredweight of milk sold to a Class I fluid milk plant, 500 pounds of milk may be pooled and draw the PPD. The right to an enhanced revenue stream to the holder of pool qualification thus has clear economic value. Market access gained by milk supply to fluid distributing plants also has, by its function of denying pooling and participation in the PPD, negative or exclusionary effects on competitors.

In the Northeast, there is currently no absolute limit, but proposals are pending and likely to be adopted (with the urging of DFA and allies) to limit pooled milk to a multiple of 5 (i.e., 80% of the milk supply may be diverted). Thus, DFA's acquisition of HP Hood or a supply contract for Hood's monthly distributing plant receipts of 60 million pounds (est. for 6 plants) will lock up 300 million pounds per month or 10 million pounds per day in pool access, and deny pooling opportunity for 300 million pounds per month of its competitors' milk.

DFA's Monopolizing of Local Milk Markets

It is crucial to dairy farmers to have regular, committed and nearby outlets for the milk they produce on their farm. Farm milk is bulky and highly perishable and is picked up at farms either every day or every other day. That milk must find a market immediately as it can not be stored in its raw form for more than a day or two; moreover the milk tanker itself is needed to pick up the next load of milk either that same day or the next. Agri-Mark members produce a 50,000-pound trailer load of milk every nine minutes of every day, 365 days a year. This includes weekends and holidays too.

In addition to its merger tactics and manipulation of the Federal Order system, DFA simply used its economic muscle to buy up market outlets for milk even though it does not have the local milk supply to service that milk. If need be, they transport milk into their new customer at great expense while local farmers struggle with what to do with their own milk. Usually, local farmers quickly recognize that they have no choice but to capitulate to and join DFA in order to have a market for their milk. DFA effectively removes both competition and choice for these producers. Instead of gaining membership through farmer choice as we and most other cooperatives do, DFA gains it by eliminating choice. We believe this is wrong for farmers, cooperatives and the marketplace.

Farmers have the opportunity to market their milk together through cooperatives under the Capper-Volstead Act. Cooperatives can also work together to jointly market milk under that Act. We strongly support the ability of farmers and cooperatives to do so and have done so ourselves. However we also believe it should be a choice for both farmers and their cooperatives to work together. It should not be forced upon them though the elimination of choice and competition as has often been the case involving DFA. Agri-Mark believes that cooperation amongst farmers and their cooperatives can benefit farmers but farmers must also have competition for their milk at the farm level. One large milk buying entity, be it cooperative or private company, invariably forces

farmers to be strictly price takers for their milk and minimizes their income. It also allows that organization, even if it is a cooperative, to ignore the local needs of their members and transfer income from those farmers to other areas of the country where they are seeking to expand their influence and economic power.

Conclusion

In summary, Agri-Mark and its farmer-members believe that the elimination of competition for farm milk supplies is bad for farmers, consumers and the marketplace. This is particularly the case when companies such as Dean Foods obtain such a huge majority of the Class I marketplace in a region and cooperatives such as DFA effectively buy a near monopoly on the ability to supply Dean Foods as well as other Class I outlets. These activities are plainly anti-competitive and the appropriate law enforcement agencies should take the appropriate steps necessary to address these issues.

	A	B	C	D	E	F	G	H	I	J	K
1											
2		2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
3	Agri-Mark	10.5	10.8	10.9	11.6	12	12.7	14.8	14.1	14	13.8
4	Dairylea	10.8	11.1	11.6	11.7	11.3	12	12.3	13	13.4	13.8
5	DFA	6.9	8.3	8.4	9.8	10.6	10.4	10.7	10.5	10.4	10.5
6	DMS Independents	2.3	3.9	9.8	9.6	9.5	10	11.6	10.9	10.4	9.1
7	LOL					11.1	10.7	10.8	10.8	10.8	10.7
8	MDVA		5.5	7.1	6.6	7	6.3	5.9	5.5	7.2	7.3
9	St. Albans	6.6	6.7	6.7	7.3	7.8	7.7	7.9	7.8	7.9	7.7
10		37.1	46.3	54.5	56.6	69.3	69.8	74	72.6	74.1	72.9
11											
12											
13		2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
14	Agri-Mark	10.5%	10.8%	10.9%	11.6%	12.0%	12.7%	14.8%	14.1%	14.0%	13.8%
15	Dairylea	10.8%	11.1%	11.6%	11.7%	11.3%	12.0%	12.3%	13.0%	13.4%	13.8%
16	DFA	6.9%	8.3%	8.4%	9.8%	10.6%	10.4%	10.7%	10.5%	10.4%	10.5%
17	DMS Independents	2.3%	3.9%	9.8%	9.6%	9.5%	10.0%	11.6%	10.9%	10.4%	9.1%
18	LOL	0.0%	0.0%	0.0%	0.0%	11.1%	10.7%	10.8%	10.8%	10.8%	10.7%
19	MDVA	0.0%	5.5%	7.1%	6.6%	7.0%	6.3%	5.9%	5.5%	7.2%	7.3%
20	St. Albans	6.6%	6.7%	6.7%	7.3%	7.8%	7.7%	7.9%	7.8%	7.9%	7.7%
21	All	37.1%	46.3%	54.5%	56.6%	69.3%	69.8%	74.0%	72.6%	74.1%	72.9%
22	DMS only	26.6%	30.0%	36.5%	38.4%	50.3%	50.8%	53.3%	53.0%	52.9%	51.8%
23											
24											
25	Adjusted for missing DMS data										
26		2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
27	Agri-Mark	10.5	10.8	10.9	11.6	12	12.7	14.8	14.1	14	13.8
28	Dairylea	10.8	11.1	11.6	11.7	11.3	12	12.3	13	13.4	13.8
29	DFA	6.9	8.3	8.4	9.8	10.6	10.4	10.7	10.5	10.4	10.5
30	DMS Independents	2.3	3.9	9.8	9.6	9.5	10	11.6	10.9	10.4	9.1
31	LOL					11.1	10.7	10.8	10.8	10.8	10.7
32	MDVA		5.5	7.1	6.6	7	6.3	5.9	5.5	7.2	7.3
33	St. Albans	6.6	6.7	6.7	7.3	7.8	7.7	7.9	7.8	7.9	7.7
34		37.1	46.3	54.5	56.6	69.3	69.8	74	72.6	74.1	72.9
35											
36											
37		2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
38	Agri-Mark	10.5%	10.8%	10.9%	11.6%	12.0%	12.7%	14.8%	14.1%	14.0%	13.8%
39	Dairylea	10.8%	11.1%	11.6%	11.7%	11.3%	12.0%	12.3%	13.0%	13.4%	13.8%
40	DFA	6.9%	8.3%	8.4%	9.8%	10.6%	10.4%	10.7%	10.5%	10.4%	10.5%
41	DMS Independents	2.3%	3.9%	9.8%	9.6%	9.5%	10.0%	11.6%	10.9%	10.4%	9.1%
42	LOL	0.0%	0.0%	0.0%	0.0%	11.1%	10.7%	10.8%	10.8%	10.8%	10.7%
43	MDVA	0.0%	5.5%	7.1%	6.6%	7.0%	6.3%	5.9%	5.5%	7.2%	7.3%
44	St. Albans	6.6%	6.7%	6.7%	7.3%	7.8%	7.7%	7.9%	7.8%	7.9%	7.7%
45	All	37.1%	46.3%	54.5%	56.6%	69.3%	69.8%	74.0%	72.6%	74.1%	72.9%
46	DMS only	26.6%	30.0%	36.5%	38.4%	50.3%	50.8%	53.3%	53.0%	52.9%	51.8%
47	DMS adjusted -10%	29.3%	33.0%	40.2%	42.2%	55.3%	55.9%	58.6%	58.3%	58.2%	57.0%
48	All (DMS adj.)	39.8%	49.3%	58.2%	60.4%	74.3%	74.9%	79.3%	77.9%	79.4%	78.1%

EXHIBIT
 Roussier 12
 6-26-13/AMM

**DECLARATION OF
GORDON RAUSSER, Ph.D.
REGARDING CLASS CERTIFICATION**

In the matter of

In RE: Northeastern Milk Antitrust Litigation
USDC, District of Vermont
Case No. 5:09-cv-00230-cr

Highly Confidential
Pursuant to Protective Order

February 1, 2011

Exhibit 18

Summary Results for SSNIP Test of the Geographic Boundary of Order 1

Year	Alternative Order	[a]	[b]	[c]	[d]
		Pounds Actually Produced in and Pooled on Order 1	Pounds Shipped to Alternative Order given 5% Price Suppression	Pounds Remaining as Supply for Order 1	% Reduction in Total Order 1 Supply
2002	30	4,447,071	0	4,447,071	0.0%
2003	30	4,289,453	0	4,289,453	0.0%
2004	30	6,282,995	0	6,282,995	0.0%
2005	30	6,451,820	0	6,451,820	0.0%
2006	30	6,265,413	0	6,265,413	0.0%
2007	30	6,022,478	0	6,022,478	0.0%
2008	30	6,377,655	0	6,377,655	0.0%
2009	30	5,551,932	0	5,551,932	0.0%
2002	32	4,447,071	0	4,447,071	0.0%
2003	32	4,289,453	0	4,289,453	0.0%
2004	32	6,282,995	0	6,282,995	0.0%
2005	32	6,451,820	0	6,451,820	0.0%
2006	32	6,265,413	0	6,265,413	0.0%
2007	32	6,022,478	0	6,022,478	0.0%
2008	32	6,377,655	0	6,377,655	0.0%
2009	32	5,551,932	0	5,551,932	0.0%
2002	33	4,447,071	83,807	4,363,264	-1.9%
2003	33	4,289,453	306,073	3,983,380	-7.1%
2004	33	6,282,995	1,037,742	5,245,253	-16.5%
2005	33	6,451,820	727,606	5,724,214	-11.3%
2006	33	6,265,413	344,091	5,921,322	-5.5%
2007	33	6,022,478	2,093,930	3,928,548	-34.8%
2008	33	6,377,655	4,752,201	1,625,454	-74.5%
2009	33	5,551,932	3,375,936	2,175,996	-60.8%
2002	126	4,447,071	0	4,447,071	0.0%
2003	126	4,289,453	0	4,289,453	0.0%
2004	126	6,282,995	0	6,282,995	0.0%
2005	126	6,451,820	0	6,451,820	0.0%
2006	126	6,265,413	0	6,265,413	0.0%
2007	126	6,022,478	0	6,022,478	0.0%
2008	126	6,377,655	0	6,377,655	0.0%
2009	126	5,551,932	0	5,551,932	0.0%

Sources: Payroll database.

Notes:

[a] Payroll Database.

[b] Assumes there is no constraint on capacity at plant locations in the Alternative Order and that capacity could be expanded to process additional milk transshipments from Order 1.

[c] Pounds actually shipped to Order 1 plants less pounds that would be shipped to plants in the Alternative Order for a 5% suppression in the price paid in Order 1.

[d] $((b) + (a) - 1) \times 100$

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

ALICE H. ALLEN AND LAURENCE E. ALLEN,)
et al.,)

Plaintiffs,)

v.)

Docket No. 5:09-cv-00230-cr

DAIRY FARMERS OF AMERICA, INC. and)
DAIRY MARKETING SERVICES, LLC.)

Defendants.)

DECLARATION OF DR. GORDON RAUSSER, Ph.D

I, Gordon Rausser, Ph.D., make this declaration based upon personal knowledge of the matters set forth herein which summarizes expert work and analysis I have conducted in this matter.

1. I am an economist and statistician retained in this action. My qualifications have previously been submitted to the Court as Exhibit A to my expert report dated July 22, 2011 (“Rausser Merits Report”).

2. This declaration addresses several matters pertinent to the class certification issues pending before the Court. It first summarizes the principal analyses I have conducted bearing on issues of impact (i.e., the “uniformity” or “common factors” study) and damages (i.e., the benchmarking study). This analysis is set forth in greater detail in the Rausser Merits Report. I also discuss in this Declaration four specific issues raised at pages 20-24 of the Court’s class certification decision dated December 9, 2011. These four issues are: 1) which form of price should be used to identify and measure suppression; 2) how price dispersion should be quantified

received through greater profits at processing plants owned and operated by their cooperatives.³⁰

In what follows, I discuss each of these four issues.

20. **Measuring Suppression in Farmer Premiums and Prices.** Both my uniformity of price analysis (which, among other things, confirms common impact) and my damages analysis were performed using Farmer Premiums. The uniformity analysis was also separately conducted using total price, with and without deductions for hauling, as well as the portion of the price that is paid for the measured components of the farmer's milk (butterfat, protein and other solids). The conclusions are the same regardless of which form of price is measured: prices are uniform, are largely explained by the model, and exhibit little unexplained variation.

21. In my June 13, 2011 Rebuttal Declaration Regarding Class Certification ("Rausser Rebuttal Declaration") I described how the suppression of over-order-premiums paid by processors was the "facilitating mechanism that results in common impact" by directly and proportionally lowering premiums and prices paid to farmers. As noted in that report, "suppression of the OOPs [over-order premiums paid by processors] will *necessarily* impact each farmer member as the available funds that will be distributed to individual farmers have been reduced."³¹ This suppression comes directly out of the premiums paid to farmers (measured as the Farmer Premium), which is part of their total price. As a result, both total prices and Farmer Premiums are necessarily suppressed whenever over-order premiums paid by processors are suppressed. Analysis of the full data set produced in discovery – through the multivariate regression and benchmarking methodologies described above – makes clear that the alleged suppression has, indeed, resulted in significant suppression of Order 1 Farmer Premiums.

³⁰ Opinion and Order Denying Without Prejudice Plaintiffs' Motion for Class Certification in *Alice H. Allen et al. v. Dairy Farmers of America et al.*, dated December 9, 2011, (the "December 9, 2011 Decision"), at pp. 20-24.

³¹ Rausser Rebuttal Declaration, at p 68.

That analysis is set forth in greater detail in my Merits Report at pages 150-162 and pages 192-219.

22. **Examination of Dispersion Relating to Total Price or the Farmer Premium.**

The December 9, 2011 Decision states: “the court remains unconvinced that the *total* price of milk is what must be examined to determine whether prices have been adversely impacted by the alleged conspiracy.”³² This concern can be resolved as follows.

23. The academic literature and economic studies make clear that evaluating total price in a uniformity analysis is a widely accepted professional methodology.³³ At a minimum, this provides a basis for comparing the level of dispersion across different industries (because such comparisons typically must be based on a comparison of total price).

24. Nevertheless, as explained above, in analyzing the variability of pricing in Order 1, I have separately examined both the total price and the Farmer Premiums (i.e., the amount by which the total price exceeds the federally regulated minimum). As appears in my Merits Report, I calculated that 76% of the variation in the Farmer Premiums can be explained by the common factors regression analysis.³⁴ An R-squared of 76% is extremely high by professional standards and the remaining unexplained variation is small by any standard benchmark.³⁵ To the extent that differences exist (e.g., some farmers ship larger volumes of milk or higher quality milk), *those differences can be, and have been, appropriately taken into account in the multivariate regression analysis.* To repeat, even when the regression analysis focuses simply on the Farmer Premium, the model has strong explanatory power.

³² December 9, 2011 Decision, at 21.

³³ Rausser Merits Report, at p. 183 and n. 472.

³⁴ Rausser Merits Report, at Exhibit 32f.

³⁵ Rausser Merits Report, at pp. 213-4, n. 527-9.

3/23/2011

Alice H. Allen v. Dairy Farmers of America Inc.

Gordon Rausser

Page 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

ALICE H. ALLEN and LAURENCE E. ALLEN,)
d/b/a AL-LENS FARM, VINCE NEVILLE,)
GARRET SITTS and RALPH SITTS,)
JONATHAN and CLAUDIA HAAR, and DONNA)
HALL on behalf of themselves and all)
others similarly situated,)

) Docket No.

Plaintiffs,)

vs.)

) 5:09-cv-00230-cr

DAIRY FARMERS OF AMERICA, INC., DAIRY)
MARKETING SERVICES, LLC, and DEAN)
FOODS COMPANY,)

) VOLUME I

Defendants.)
)

Emeryville, California

Wednesday, March 23, 2011

Videotape Deposition of GORDON RAUSSER, Ph.D.,
the witness, was called for examination by counsel for
the Defendants, pursuant to notice, commencing at 9:19
a.m., at Conference Room B, 2nd Floor, 2200 Powell
Street, Emeryville, California, before Clare Macy, CSR,
RPR, CLR in and for the State of California, were
present on behalf of the respective parties:

DIGITAL EVIDENCE GROUP

1299 Pennsylvania Avenue, NW, Suite 1130E

Washington, DC 20004

(202) 232-0646

3/23/2011

Alice H. Allen v. Dairy Farmers of America Inc.

Gordon Rausser

1 the prices paid by plants?
 2 MR. SMALL: I'll object to the form.
 3 THE WITNESS: I'm having difficulty with the
 4 form. I've tried to explain to you what is in their
 5 interest with regard to, at least during the NEMMA
 6 period, them passively going along with the suppression.
 7 And you're now asking me about direct benefits. I've
 8 tried to explain to you what the benefits are and what
 9 the incentives are for them to be involved.
 10 And by the way, let me add to what I've
 11 already explained. It's not just the stability. It's
 12 also the evidence with regard to communications among
 13 the co-ops about information with regard to what's being
 14 offered to members to switch from one co-op to another.
 15 So that, too, would benefit them. If they are
 16 serving passively during the NEMMA period the
 17 suppression, but then they're getting, you say, direct
 18 benefits, the direct benefits are the stability and the
 19 fact that they're sharing information with regard to
 20 potential poaching by one co-op vis-a-vis another co-op
 21 with respect to their existing members.
 22 MR. KUNEY: Q. If the members of NEMMA are
 Page 186

1 involved in 2000 to 2006 in a price suppressing
 2 conspiracy, would it be your expectation that that price
 3 suppressing conspiracy would have some effect on the
 4 quantity of milk purchased -- purchased and sold by the
 5 co-conspirators?
 6 A. Now you're back on my report, finally. Yes.
 7 I have specified the information that exists with regard
 8 to what would be the effect of suppressing prices. And
 9 yes, it would have an effect on the amount of milk,
 10 Grade A milk, that is produced within the order.
 11 Q. And would the reduction in the production of
 12 milk by the then-conspiring co-ops have been a benefit
 13 in any way to an Upstate Niagara that was then
 14 functioning, as you called, the competitive fringe?
 15 THE WITNESS: May I have the question back,
 16 please.
 17 (Record read by the reporter.)
 18 THE WITNESS: That would be a trade-off, and
 19 the trade-off would be that that would be an offset
 20 against the other benefits that would accrue to them.
 21 There would be some effect on volume, but a de minimus
 22 effect, as I've explained in my report.
 Page 187

1 MR. KUNEY: Q. Why do you call it an offset?
 2 Offset of what?
 3 A. An offset of their other benefits. It's a
 4 benefit-cost calculation. And if -- As in any
 5 suppression of prices, you're going to get the benefit
 6 of lower prices, but there's an offset with regard to
 7 less quantity that's going to be available to you. And
 8 as a result, there's a trade-off.
 9 Q. Have you investigated whether in the period
 10 2000 to 2006 Upstate Niagara charged the same over order
 11 premiums as the NEMMA members?
 12 A. I don't believe I have data on what over order
 13 premiums they charged.
 14 Q. That's right. You told us you only had
 15 Exhibit 12. You only had Exhibit 12, okay.
 16 Are you, Dr. Rausser, familiar with Byrne
 17 Dairy?
 18 A. Pardon?
 19 Q. Have you heard of Byrne Dairy?
 20 A. Byrne Dairy?
 21 Q. Byrne, yes.
 22 A. I thought you were saying "Byrneberry," but
 Page 188

1 now you're saying "Dairy"?
 2 Q. "Dairy."
 3 A. There is a data source with regard to pricing
 4 of some commodities that comes from Byrneberry --
 5 actually, Byrne Dairy.
 6 Q. Dairy, yes. B-Y-R-N-E, Dairy.
 7 A. Yes, I am. Its pool distributing plant is
 8 located in Syracuse, and its stated capacity is
 9 25 million pounds per month.
 10 Q. And do you know from whom Byrne Dairy gets its
 11 milk?
 12 A. No. I certainly don't recall from whom they
 13 get their milk.
 14 Q. Have you had access to any data about the
 15 prices received by the producers who ship their milk to
 16 Byrne Dairy?
 17 A. I don't recall Byrne Dairy producing any
 18 payroll data.
 19 Q. Do you --
 20 A. So as a result, I don't have the payroll data
 21 to determine what prices they pay.
 22 Q. Do you have an opinion about whether the
 Page 189

3/23/2011

Alice H. Allen v. Dairy Farmers of America Inc.

Gordon Rausser

1 alleged price suppressing conspiracy affected the prices
 2 received by the dairy farmers who ship their milk to
 3 Byrne Dairy?
 4 A. I would need more information about who those
 5 producers are. And I would need their payroll data with
 6 respect to what effect it would have had on them.
 7 Based on the evidence that I've seen, any
 8 parties that are outside of the milk controlled by the
 9 alleged co-conspirator are going to be faced with the
 10 same kind of suppression that exists for those that are
 11 inside, because if that weren't the case, you would
 12 certainly see movement in the direction of producers to
 13 those segments where there are higher prices.
 14 And I have seen no evidence with regard to
 15 Order I about relevant market scope that is consistent
 16 with some of the arguments that you have advanced in
 17 deposition testimony that there are local markets within
 18 the order.
 19 Q. For the moment, I'll represent, and I'm sure
 20 Dan will correct me, that dairy farmers who are shipping
 21 milk to Byrne Dairy are not affiliated in any way with
 22 DMS.

Page 190

1 A. With DMS?
 2 Q. They're not affiliated with DMS.
 3 A. I suspected that. Otherwise, you wouldn't
 4 have been asking me the question.
 5 Q. They are not in any of the co-ops that are
 6 affiliated with DMS, and they are not shipping as
 7 independents through DMS to Byrne Dairy.
 8 A. But they are independents?
 9 Q. They are independents. So I just wanted to be
 10 clear with that. I wanted to make sure that additional
 11 information doesn't have any impact on your answer.
 12 Is it still your view that the independent
 13 dairy farmers who are shipping their milk to Byrne Dairy
 14 are -- would be adversely impacted by the alleged price
 15 suppressing conspiracy in Order 1?
 16 MR. SMALL: Just for the record, I have no
 17 reason to doubt your representation at all, but I have
 18 no independent way to confirm it either.
 19 MR. KUNEY: If it turns out later to be wrong,
 20 the question won't mean very much, will it?
 21 MR. SMALL: Right.
 22 Go ahead.

Page 191

1 THE WITNESS: With regard to the economic
 2 impacts of the alleged conspiracy, if those independents
 3 who were supplying to Byrne Dairy were not subject to
 4 the same suppression, you should see a rush of producers
 5 in the direction of supplying to Byrne Dairy. And I've
 6 seen no evidence in the record that there is any
 7 significant movement with regard to producers switching
 8 between co-ops or from co-ops to independents.
 9 And if they were outside of the umbrella of
 10 the suppression, I would have expected to see a queuing
 11 and evidence that would exist about independents
 12 attempting to secure transactions with Byrne Dairy.
 13 MR. KUNEY: Q. Well, Dr. Rausser, at least in
 14 the parts of your report that I have reviewed, I don't
 15 see the indication that anyone has told you that Byrne
 16 Dairy is a co-conspirator. Is that your recollection?
 17 A. Certainly. I haven't seen that anywhere.
 18 Q. So we have independents not affiliated with
 19 DMS shipping to a nonconspirator Class I plant. That's
 20 our factual setting. Can we agree on that?
 21 A. Yeah, but that's not enough.
 22 Q. That wasn't going to stop. I just wanted to

Page 192

1 at least get started.
 2 A. Right.
 3 Q. Independents, not DMS, Class I plant owned and
 4 operated by a nonconspirator.
 5 A. Yes.
 6 Q. Okay. Now, what is the conduct by the alleged
 7 conspirators that in your view would have an adverse
 8 impact on those independents shipping to a
 9 nonconspirator plant?
 10 A. Well, can I not answer your question directly,
 11 instead, going to the incentives to Byrne Dairy for
 12 following the leadership of the establishment of over
 13 order premiums with regard to the scope of the relevant
 14 market first and then go to those independents? Because
 15 to get to your question, I have to go through the
 16 pricing that is offered by Byrne Dairy to their
 17 independents.
 18 Q. Okay. Why don't you try it that way.
 19 A. So clearly, there's incentive for Byrne Dairy
 20 to passively respond to the leadership of the vast
 21 majority within the relevant market Order 1 to take
 22 advantage of those suppressed over order premiums.

Page 193

Pages 190 to 193

1 And moreover, they're not going to face any
 2 loss in supply by responding to setting their over order
 3 premiums at the same level as those that are set as a
 4 result of the negotiation between GNEMMA and the various
 5 milk bottlers and/or manufacturers.
 6 And by the way, the Byrne Dairy is a pool
 7 distributing plant, so it's a bottling plant, so it's
 8 focused on Class I. And they are certainly going to
 9 benefit from the suppression of prices.
 10 And once they transfer the payment to the
 11 independents, they are not going to create any incentive
 12 for cooperative members or other independents to try to
 13 access their transactions for the raw milk that they
 14 need for bottling.
 15 So their independents are no better off than
 16 other independents or, for that matter, other
 17 cooperative members.
 18 Q. And I think I followed you up to the last two
 19 sentences. Why would they not -- Why would Byrne Dairy
 20 not have the incentive to try to create an opportunity
 21 for more dairy farmers to show up at their door by not
 22 paying the same suppressed price as the conspiring

Page 194

1 plants?
 2 A. They are. That's my point. Apparently, I
 3 didn't make myself clear.
 4 They're going to end up having the incentive
 5 to pay the same prices, and they're not going to face
 6 any exit from the independents that are currently
 7 supplying them.
 8 Q. How do you know that they wouldn't try to
 9 expand their output by paying a price above the
 10 suppressed price of the conspirators?
 11 A. I've seen no evidence in the record, once
 12 again, indicating that there's some shift that's taking
 13 place with regard to co-ops to independents. If they
 14 were offering a higher price to their independents, I
 15 would expect to see movement, systematic and significant
 16 movement in the direction of independents. In fact, I
 17 see quite the opposite, namely movements from
 18 independents to co-ops, not vice versa. And that's
 19 exactly what you should see in the context of
 20 conspiratorial conduct orchestrated by the co-ops and
 21 the bottlers for Class I milk.
 22 Q. When the conspiring Class I processors are

Page 195

1 restricting output as part of their conspiratorial
 2 conduct, wouldn't the Byrne Dairies of the world have an
 3 incentive to try to increase their output because
 4 there's been no change in the total demand for milk?
 5 A. With respect to their capacity, with regard to
 6 being outside of the conspiracy and not constrained by
 7 the coordination, if, in fact, they could take advantage
 8 of market conditions to do so, you would see some
 9 incentive in that regard, yes. Just like there's some
 10 incentive of the co-conspirators, if they could price or
 11 get the price under the umbrella of the conspiracy,
 12 there would be an incentive for them to defect from the
 13 coordination. No question about it.
 14 But now that turns on whether Byrne Dairy has
 15 the capacity to be able to take advantage of that
 16 umbrella. And what I'm telling you, at least with
 17 regard to the evidence that's available in the record,
 18 there is no evidence that suggests that the movement
 19 that you would expect to see if they were engaged in
 20 such activity, not that it wouldn't be in their interest
 21 if they had the necessary wherewithal to do it. But
 22 such activity is taking place because the flow is going

Page 196

1 in the opposite direction.
 2 Q. And is that last comment meant to reflect that
 3 you have seen in the record evidence that independent
 4 producers who used to ship their milk to Byrne Dairy
 5 have, in fact, net-net gone to become co-op members?
 6 A. No. I don't have as you -- I believe you know
 7 if you've looked at the data that's been produced, I
 8 don't have data with regard to those independents that
 9 are shipping specifically to Byrne Dairy. What I have
 10 is the payroll data that has been produced by
 11 cooperatives and DMS for the independents. And from
 12 that data, to the extent that it's representative of the
 13 class as a whole, I don't see movements from
 14 cooperatives to independents, which is what I would
 15 expect to see if somebody within Order I that has got a
 16 pooling plant would take advantage of the suppression.
 17 I don't see that. In fact, on the contrary. I see the
 18 opposite. I see flows from independents to become
 19 cooperative members.
 20 Q. So you may tell me this is the same question.
 21 That's okay.
 22 Have you analyzed the extent to which dairy

Page 197

3/23/2011

Alice H. Allen v. Dairy Farmers of America Inc.

Gordon Rausser

1 farmers in Federal Order 1 who are currently marketing
 2 through DMS could escape the effects of the alleged pay
 3 price suppressing conspiracy by shifting to, for
 4 example, shipping their milk as an independent to a
 5 nonconspiring processor?
 6 A. Yes, I have, because in my SSNIP test, I have
 7 looked at shipping to nonconspiratorial processors but
 8 outside of the order. I mean, I've looked at whether,
 9 in fact, it's profitable given the trade-off that we
 10 discussed earlier with regard to the price suppression
 11 versus the lower quantity that is going to be available
 12 in terms of raw Grade A milk and found that there, there
 13 is clearly an incentive for the alleged co-conspirators
 14 to depress over order premiums.
 15 Now, with regard to -- and there is. And
 16 moreover, if you extend the scope of that SSNIP test and
 17 include all inflows as well as the internal production,
 18 there's still incentives. Even if the elasticity of the
 19 import flow was infinite, there would still be
 20 incentives for them to do so.
 21 So I have looked at it, but not within the
 22 order. Within the order, the analysis that I've

Page 198

1 conducted suggests that at a minimum the scope of the --
 2 geographic scope of the relevant market is at least
 3 Order 1. And now, the question is within the order is
 4 there any incentive for a nonconspiratorial or
 5 non-alleged conspiratorial plant to expand their
 6 capacity by offering higher order premiums to attract
 7 more supply.
 8 And what I'm telling you is based on the
 9 evidence for the payroll data that's been produced that
 10 I don't see any such movements, or at least I don't see
 11 any systematic movements, as I've indicated many times.
 12 The flow goes in the opposite direction.
 13 Q. Is it your understanding, Dr. Rausser, that an
 14 independent dairy farmer who is shipping through DMS
 15 can, if they choose, stop shipping through DMS and try
 16 to find an alternative outlet such as a Byrne Dairy?
 17 A. An independent?
 18 Q. Yes, an independent.
 19 A. Yes.
 20 Q. Are you aware of any particular contractual or
 21 other institutional constraints that would stop an
 22 independent from shipping through DMS from -- quitting

Page 199

1 DMS and going to look for an alternative market such as
 2 Byrne Dairy?
 3 A. Any contractual -- In other words, are they
 4 locked up?
 5 Q. Are they locked in somehow?
 6 A. Not to my knowledge.
 7 Q. But what you've said a couple of times is that
 8 you don't see evidence that they're doing that. You
 9 don't see evidence of independent shippers leaving DMS
 10 and finding alternative markets such as the alternative
 11 nonconspiring processors such as the Byrne Dairies? You
 12 don't see that?
 13 A. You don't see any large significant movement
 14 in that respect, no.
 15 Q. And what is your explanation as to why you
 16 don't see a movement of independents to quit DMS in the
 17 face of the alleged price suppressing conspiracy and,
 18 instead, find an alternative market on their own to a
 19 processor who relies upon independent milk?
 20 A. My explanation is that the processors are
 21 following the leadership with regard to the suppressed
 22 over order premiums and are taking advantage of that,

Page 200

1 but not using that to offer a higher over order premium
 2 that attracts independents to expand their supply to the
 3 marketplace.
 4 Q. Have you analyzed whether there are areas
 5 within Federal Order 1 where there has been movement by
 6 dairy farmers out of DMS into finding alternative
 7 markets who purchase from independent producers?
 8 A. First of all, I don't understand your
 9 question, "finding independent markets." What do you
 10 mean independent markets? The relevant market
 11 geographic is Order -- at least Order 1. So I don't
 12 know what you mean by relative markets. I don't know
 13 what that means.
 14 Q. Let me try to be clearer. What I'm focusing
 15 on for the moment is nonconspiring market -- processors.
 16 A. Those aren't markets. Those aren't markets.
 17 Q. Terminology used in the industry would suggest
 18 otherwise, but that's fine.
 19 Okay. Have you analyzed whether there are
 20 areas within Federal Order 1 where it is more feasible
 21 for dairy farmers who want to leave DMS to find an
 22 alternative --

Page 201