

The

SPECIAL DAIRY ANTITRUST ISSUE

Milkweed



Dairy's best information and insights

Issue No. 371, June 2010

How Did Dairy End Up in this Crooked Mess???

by Pete Hardin

Do dairy farmers deserve public protection from mafia-like tactics in the sale of their milk? Do consumers merit fair, honest prices for milk and cheese they purchase? Why, over the past 15 years (or more), have federal agencies failed to enforce competition and honest pricing in the U.S. dairy industry?

Dairy "competition" has devolved something like a basketball game in which the referees are intentionally blind to the blatant fouls and dirty tactics employed by the biggest players. Dairy's dirty doings are directly attributable to the historic failure by the Antitrust Division of the U.S. Department of Justice (DOJ) to enforce laws. But don't blame all the professional Antitrust Division staffers. In late August 2006, a two-year dairy antitrust task force recommended indictments against three of dairy's biggest players. But White House political connections overrode those recommended indictments. The lead investigator for that two-year, dairy antitrust investigation was forced out of his job, and threatened with loss of his federal pension covering more than 30 years in government service!

Today, antitrust issues in dairy are a hot topic. Numerous private lawsuits charging dairy price-fixing and antitrust misbehaviors clog federal court dockets, charging a variety of wrong-doings. The Obama administration has promised renewed vigor to federal antitrust oversight. But competitive misdeeds continue in dairy, despite the rookie cop on the federal antitrust beat.

Two of dairy's giants have severely abused competition. Dean Foods is the nation's largest fluid milk processor – by far – with about \$12 billion in annual sales in the U.S. Dean Foods operates nearly 100 dairy plants in this country, and enjoys mammoth shares of fluid milk distribution in numerous states and regions.

Meanwhile, Dairy Farmers of America (DFA) is the nation's leading milk producers' cooperative, operating coast-to-coast. DFA has a long, long history of anti-competitive moves. A lawsuit filed in early 2010 referred to DFA as "... a serial antitrust defendant." Amen. DFA's tactics are akin to the way Jimmy Hoffa, Sr. ran the Teamsters Union – extortion, intimidation, and downright thievery.

Worse yet: DFA and Dean Foods (and their predecessor organizations) have operated for more than the past decade in tandem, repeatedly cutting off access to farmers for independent milk markets and other dirty shenanigans. At its core, dairy's past decade-plus has witnessed the nation's largest producers' cooperative and the biggest fluid milk processor have operated in tandem to destroy competi-

"Dairy Antitrust Workshop: 6/25 in Madison

On June 25, 2010, the U.S. Attorney General and the U.S. Secretary of Agriculture will hold an "Antitrust Workshop" for the U.S. dairy industry in Madison, Wisconsin. This workshop is the third in an unprecedented series of commodity-focused, antitrust seminars, conducted by the U.S. Department of Justice (DOJ) and USDA. Are these competition workshops serious endeavors, or just "dog and pony shows" to defuse critics? Viewed from outside: DOJ's Antitrust Division seems serious. But this joint agency effort seems hampered by USDA's efforts to protect the status quo – agriculture's deeply vested interests that don't want any review of the demised competition in this nation's food and agriculture systems.

The dairy antitrust workshop will start at 9:00 a.m. in the theater at the UW Memorial Union: Wisconsin Union Theater, 800 Langdon St., Madison, WI. Attendees are invited to preregister via the internet at:

www.surveymonkey.com/s/V3FHXPY

Late arrivals could face a parking squeeze, particularly if they're not familiar with the campus area of downtown Madison.

tion. Anti-competitive deeds by DFA and Dean Foods have disrupted normal dairy competition, from pricing and procurement of farm milk ... all the way through to costs of packaged milk distribute to supermarkets, schools and restaurants.

Dean Foods: "King Kong" of the U.S. fluid milk industry

IMAGINE: You're flying over southeastern Michigan on a clear, sunny day. Look down at all those houses, schools, restaurants and institutions. Ninety percent of all Michigan residents must buy milk distributed by Dean Foods. There are virtually no other choice. Imagine: one firm controlling 90% of distribution of such a basic product as milk throughout a whole state. By repeatedly approving acquisitions, DOJ sanctioned Dean Foods' 90% share.

IMAGINE: The Chief Executive Officer of a major food processor rakes in FIVE TIMES AS MUCH COMPENSATION in a single year (2007) as the next-highest-paid executive in the nation's entire food industry! Meet Dean Foods' CEO Gregg Engle\$, an overpaid, money-grubbing yuppie. During the past year, Engle\$ has twice publicly bragged that his firm controls more sales of fluid milk

in the U.S. than the combined volumes of the next five leading competitors. Following two acquisitions in April 2009 of Wisconsin- and California-based competitors, *The Milkweed* estimates that Dean Foods' enjoys a 40% market share of all packaged, fluid milk sold in the United States. (*The Milkweed* spells Engle\$ name using the dollar sign instead of an "s" for the last letter, out of respect for Engle\$' \$66 million compensation package from Dean Foods in 2007 – a figure that eclipsed the next highest-paid food industry CEO by a multiple of 5X.) See analysis of Engle\$' 2007 moo-la, page 4.

Continued on page 2

Dairy: "Most Corrupt" Sector in Food/Agriculture

Within DOJ's Antitrust Division, dairy is regarded as THE most corrupt sector in the nation's food/agriculture industry. That opinion is "unofficially" seconded by all the private antitrust and price-fixing lawsuits currently in the federal legal system against Dean Foods and DFA. Both in tandem and separately, Dean Foods and DFA have murdered dairy competition.

In the bigger picture, the demised competition in dairy represents a long-running failure by same federal agencies hosting the June 25, 2010 workshop in Madison – DOJ and USDA. Due to political considerations, DOJ's Antitrust Division has failed for the past 15 years to enforce honest competition in dairy. In truth: the worst antitrust "offender" in dairy for the past decade and a half has been DOJ's Antitrust Division – for its failure to protect the public interest that's served by honest farm milk prices and honest consumer costs for dairy products.

Even though White House politics intervened to spare Dean Foods and DFA from antitrust indictments in 2006-2007, that pair has not reformed.

The Obama administration came to the White House amid campaign promises of "Change." Initial noises from the long-somnambulant DOJ Antitrust Division caused a ruckus within some parts of the Obama administration, and outside the administration. Responding to the potential antitrust crackdown on "business as usual," agricultural cooperatives are mounting a noisy defense against perceived threats to amend

the federal Capper-Volstead Act. Capper-Volstead is a 1922 federal law that grants agricultural cooperatives certain exemptions from activities that might otherwise violate the Sherman Antitrust Act. The National Council of Farmer Cooperatives (NCFC) is banging the drum, warning that the new head of DOJ's Antitrust Division – Christine A. Varney – wants to get rid of Capper-Volstead.

Some presumed Capper-Volstead exemptions that agricultural cooperatives take for granted do in fact require careful scrutiny for their continued relevance in the modern era. Modern agriculture co-ops count billions of dollars in annual sales – and many rank among the "Fortune 500" list of the biggest U.S. firms. Today's complex U.S. food and agricultural industries are a far-distant cousin, compared to when the Capper-Volstead Act was crafted in the early 1920s – when the horse and buggy still reigned as the main mode for transporting farm products to market.

Antitrust exemptions for agricultural cooperatives, created nearly 90 years ago, must be reviewed in a modern light ... particularly so in view of some of the outrageous, anti-competitive behaviors which have plagued the dairy industry in recent years. (In the analysis of *The Milkweed*, one healthy change in Capper-Volstead would be to tighten exemptions only to include the original procurement, transportation and marketing of the raw agricultural products. Any other cooperative functions should be relegated to normal – i.e., non-cooperative – activities.)

The Milkweed

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How Did Dairy End Up in this Crooked Mess???, con't

Continued from page 1

Dean Foods' 90% market share of fluid milk distributed in Michigan is, in the best estimate of *The Milkweed*, the company's highest market share for any state or region. But in many other selected states/regions, Dean Foods' share of total fluid milk sales ranges startlingly high – upwards of 70%, or more. *The Milkweed* estimates that Dean Foods holds the following market shares of milk competitively distributed to retailers in key states/regions of the United States:

- * Michigan (90% or more)
- * Southern New England (80%)
- * Northern New Jersey (75%)
- * Eastern Pennsylvania (75-80%)

Such market power gives Dean Foods the power to disregard normal market forces. The first half of 2009 provided a textbook example of Dean Foods' ability to ignore normal competitive events. In the first half of 2009, Dean Foods recorded astronomical operating profits – \$140 million. That's because the firm's market clout (and lack of competition) permitted the firm to “hold the line” (mostly) on costs charged to retailers buying packaged milk. Dean Foods' prices to milk buyers did not generally reflect the dramatic collapse of farm milk prices. Simply stated: Dean Foods' immensity in the fluid milk processing sector allowed the firm to enjoy higher profits because not enough competition existed to compel Dean Foods to pass through those lower farm milk costs as savings to retailers ... and, ultimately, consumers. Clearly, this situation evidences an overall lack of competition in the nation's fluid milk business, in numerous states and regions.

But sometime towards the end of 2009's second quarter, Dean Foods' financial bubble started losing air, fast. By late spring and early summer, dairy state politicians took critical notice of Dean Foods' anti-competitive antics. Vermont's feisty, independent U.S. Senator – Bernie Sanders – attacked Gregg Engle's head-on, challenging Dean Foods' high profits that resulted, in great part, from failure to pass along lower raw milk to retailers and consumers.

Three U.S. Senators demand DOJ investigate

Those lofty profits – deemed to come at the expense of dairy farmers, who were suffering from rock-bottom milk prices – drew the scorn of three U.S. Senators. Bernie Sanders (I-VT), Russell Feingold (D-WI) and Charles Schumer (D-NY) jointly wrote a letter to the Antitrust Division of the U.S. Department of Justice on August 6, 2009. That letter requested an investigation of alleged anti-competitive actions by Dean Foods.

The letter from the three senators lumped together three recent dairy events: low farm milk prices, apparent high consumer costs for retail dairy products, and two quarters of record profits by Dean Foods in the first half of 2009:

“The beneficiaries of this situation are increasingly consolidated corporate entities that exist between farmers and consumers. Dean Food, the nation's largest processor, reported \$76.2 million in profits for the first quarter of 2009, up 147.4% from its \$30.8 million in the first quarter of 2008. Since its merger with Suiza Foods in 2001, Dean Foods has seen its profits skyrocket, enough that over the last five years it has paid its CEO Gregg Engles \$116.38 million. Based on our research and conversations with agricultural economists, we believe that one reason for Dean Foods' recent profits may be its ability to exercise monopoly pricing power in many parts of the country.

The senators' letter concluded: “While we do all that we can to ensure that dairy farmers receive a fair price for their product, we hope your department will create a competitive market for them so that they will be able to sell their product at a price they deserve.”

After mid-2009, Dean Foods' profits constricted

In mid-spring 2010, following a very disappointing earnings report for 2010's first quarter, Dean Foods' stock price has dropped into the \$10 per share range – less than one-third where it stood in early April 2007. In earlier years, Dean Foods' CEO Engle's had offered the “wisdom” that modern investors were

not interested in stock dividends, but instead wanted stocks that appreciate in value. Today, with Dean Foods' stock hovering at less than one-third of its value three years ago, Dean Foods' disgruntled stockholders suffer both depressed stock values and zero dividends.

In fact, Dean Foods' deteriorated profits and stock values will force the company to refinance some of its package of loans earlier than intended. Dean Foods' heavy dependence on borrowed capital is forcing a corporate rethinking of key options, such as perhaps buying out stockholders, say for \$14-15 per share,

DOJ's Historic FAILURE to Enforce Antitrust Rules in Dairy

Reviewing federal antitrust oversight of dairy, during the past 15+ years (prior to the Obama administration), finds, with one small exception, zero actions protecting the public interest from anti-competitive behaviors.

That small exception: fairly early in the Bush administration, DOJ successfully overturned the purchase by DFA's subsidiary – National Dairy Holdings – of a small fluid milk processing business in south central Kentucky, Southern Belle Dairy (Somerset, Kentucky).

The Obama administration, at long last, owes the public – dairy farmers, consumers, and firms competing with Dairy Farmers of America (DFA) and Dean Foods – a thorough clean-up of dairy's anti-competitive antics. Unfortunately, failed federal oversight in dairy competition basically mirrors the far wider failure to maintain honest competition in many industries in the U.S. Dairy's misdeeds are only a microcosm of widespread federal to oversee honest competition.

Where did federal antitrust enforcement go wrong? New York farmer/writer John Bunting wisely turns back the clock to the early 1980s, when President Ronald Reagan submitted his first budget to Congress. Reagan's initial budget removed seven-eighths of the operating revenue for DOJ's antitrust unit. That budget cut, along with many other “free-market” signals from the Reagan administration, signaled the end of effective federal antitrust oversight. The following decades have witnessed tremendous shifts in corporate earnings and wealth transfer to the top-tier of America's economic elite.

For more than a decade, DOJ Antitrust officials watched as Dean Foods assembled a dangerously large percentage of U.S. fluid milk sales. Meanwhile, DFA has broken nearly every law in the antitrust book over the past 15 years.

The time has come for DOJ's Antitrust Division to stop watching these events and, finally, take action to protect dairy farmers, the remaining cooperatives, small milk processors ... and consumers.

and restructuring the company NOT as a stockholder-owned, publicly-traded firm.

One too many? Dean Foods/Foremost deal ignites Feingold

Dean Foods' April 1, 2009 purchase of the consumer products division of Foremost Farms (a Wisconsin-based dairy producers' cooperative) ignited long-smoldering dairy antitrust embers underneath U.S. Senator Russell Feingold (D-Wisconsin). Feingold is a key member of the Senate Judiciary Committee. For most of his three terms, Feingold's dairy and agriculture antitrust concerns had been thwarted, because his party did not control the Senate and/or the White House.

Dean Foods' purchase of Foremost Farms' consumer product lines stunned old-timers in the Wisconsin dairy industry: combining the state's two largest fluid milk processors/distributors eliminated virtually all competition for school milk in the eastern half of Wisconsin. Foremost's “Golden Guernsey” and “Morning Glory” brands were the sole competitors for school milk contracts in eastern Wisconsin. [The next largest fluid milk processor – Marigold (Kemps) – processed virtually no half-pints of milk at its plant in Cedarburg, Wisconsin and held only a 12% market share of fluid milk distribution in the state.]

DOJ's Antitrust Division filed a lawsuit on January 22, 2010, aiming to dismember, after the fact, Dean Foods' purchase of Foremost Farm's consumer product lines. The \$35 million price Dean Foods paid to Foremost fell under federal antitrust's \$60 million guidelines for requisite, pre-purchase notice.

Timing of Dean Foods' Foremost Farms deal was all bad. Only six weeks prior, Sen. Feingold had detailed his deep-set dairy antitrust concerns to Christine A. Varney – the incoming Obama administration's nominee for DOJ Assistant Attorney General for Antitrust. As Feingold later publicly explained, his introductory conversation with Ms. Varney started by noting Feingold had a thousand antitrust issues to discuss. But he would focus on only one: dairy. At their initial meeting, Varney promised Feingold that she would devote particular attention to dairy competition issues, if confirmed as the top federal antitrust enforcer. She agreed to create a stand-alone, food/agriculture unit at the Antitrust Division.

By the time the U.S. Senate confirmed Varney's nomination on April 20, 2009, Feingold had already officially detailed his antitrust concerns about the “marriage” of Wisconsin's two largest fluid milk processors. The complaint filed by DOJ's Antitrust Division in January 2010 against Dean Foods shows tremendous research and digging by Antitrust Division staff attorneys. That complaint, filed in Federal District Court for the Eastern District of Wisconsin, detailed elaborate fluid milk market share data within the region – ranging from 85% in Michigan's Upper Peninsula to 60% in Chicago and suburbs in north-eastern Illinois. Attorneys General for the states of Wisconsin, Michigan and Illinois joined federal Antitrust officials in the filing against Dean Foods. The presiding judge has thrown aside Dean Foods' moves to dismiss the case and divide the matter into separate legal issues.

The DOJ filing vs. Dean Foods contained key internal company documents detailing the firm's concerns about how to handle “irrational competitors” (such as Foremost Farms) that were under-pricing packaged milk, to gain market share. Those internal Dean Foods documents cited in DOJ's filing were quite damning.

Dean Foods: bigger migraine from analysts than Antitrust

Today ... Dean Foods' management is humbled by a far more terrible, swifter sword than government or private antitrust legal challenges. Wall Street

Continued on page 3

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The Milkweed

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Continued from page 2

investors are taking far closer looks at Dean Foods' operations, "assets," indebtedness, and potential liabilities. Wall Street doesn't like what it sees at Dean Foods – diminished profits, piles of costly-to-defend antitrust lawsuits (regardless of outcome), "Goodwill" of more than \$3 billion listed on the books of a corporation with \$12 billion in annual sales, and diminished economic performance that, by covenants with lenders, is forcing the company to restructure indebtedness earlier than anticipated.

Through a combination of political influence and overpayment for many dairy businesses, the empire of roughly 100 dairy processing plants owned by Dean Foods (and subsidiaries) throughout the U.S. faces some very difficult challenges ahead ... antitrust issues are only one of those challenges.

The "new era" of Wall Street financial analysis of corporations is thumbs-down on Dean Foods' business structure that features high indebtedness, declining profit margins, and bloated "Goodwill." Dean Foods' CEO Gregg Engle\$ can comfortably schmooze with the biggest Wall Street money boys. Engle\$ deal-cutting is top-notch. But Engle\$ and the Dean Foods' management team have demonstrated no ability to run their agglomeration of dairy and food processing businesses, particularly when the chips are down. Presently, Dean Foods is top-heavy in management drawn from the soft drink industry (*aka* "The Pepsi Generation"). Starting with raw product costs (relative to final price), soda is a poor training ground for the tight margins in fluid milk processing.

Bid-rigging made school milk dairy's competition index

The federal courts hold a rich legacy of dairy-related cases involving competition. Fluid milk processing, in particular, features both high-cash flows and low net margins: a combination of factors that has inspired dirty, bare-knuckled antics by some.

One sector in dairy – school milk – merits special antitrust attention.

What is school milk bid-rigging? Very simply: school milk bid-rigging means two or more fluid milk processors conspire to fix the outcome of school milk contracts. School districts (sometimes county-wide) bid out their upcoming school year's contracts to supply half-pint containers of milk and juice products. Low bidders win. School milk is a significant share of the overall market – totaling seven percent of total beverage milk sales in the nation. When bid competitively among processors, school milk contracts tend to be high-volume, low-margin. When anti-competitive antics take place – either through collusion among processors, or simply due to lack of competitors within a region – school milk contracts may become very lucrative.

In the mid-1980s, school milk bid-rigging conspiracy in Florida rolled across the border into Georgia, becoming a federal matter. In the following

Dean Foods' School Milk Games

During the past decade, Dean Foods has engaged in multiple school milk contract scams – without earning any time in the penalty box from federal authorities.

"Silent rebate" in Southeast, starting in 2003

In March 2003, when the Southern Marketing Agency (SMA) was formed, Dean Foods received a "silent rebate" credited by the regional milk pricing agency. That rebate totaled \$.11 per cwt. The rebate was paid back to Dean Foods three months after the end of a particular month. No other fluid milk processors buying milk from SMA received a similar price break.

Why is this silent rebate considered a "school milk scam?" That's because most school milk contracts (as well as those for institutions and military) in the Southeast add on the monthly Class I surcharges imposed by the regional superpool, in calculating the monthly contract price. A "silent rebate" from the superpool would likely not show up in Dean Foods' raw milk costs. Thus, it's likely that Dean Foods "pocketed" an amount equal to the rebate. On one hand, 11 cents per cwt. (spread over 186 half-pints per cwt. of Class I milk) becomes a significant volume. School milk is about seven percent of all Class I sales. In the Southeast, additional volumes of milk sold to various institutions and military bases boost such contracted volumes to a significant minority percentage of overall fluid milk sales.

No competition in West Texas? Big price hike by Dean Foods.

What does Dean Foods do when competing school milk suppliers disappear? Raise prices, of course! In west Texas in the summer of 2007, Dean Foods' sole competitor for local school milk contracts ceased local distribution of fluid milk, and thus stopped bidding on school milk contracts.

Why? The competitor processes fluid milk for distant use, but not for local markets. Unleashed from local competitors, Dean Foods' local subsidiary – Prices' Creameries of El Paso – boosted its bid for chocolate half-pints (the most popular seller) to the El Paso Independent School district by \$11.93 cents per unit. That price hike represented an increase of chocolate half-pint costs for the school district of \$22 per cwt. – atop any other cost differences in the federal milk order prices! Local school officials griped, but had no choice.

Local sources observe that during the 2007-2008 school year, Dean Foods failed to pass through lower raw milk costs, as per the "Escalation Clause" with that aforementioned school district. That failure to pass through lower raw milk costs netted an amount of \$71,473 for the local Dean Foods subsidiary.

One year later, a surprise school milk contract competitor (Sarah Farms) appeared and won the El Paso Independent School contract. Dean Foods' bid per unit dropped dramatically, in an attempt to gain local business.

One must wonder: what other shenanigans go on in school milk bidding these days???

decade, federal and state antitrust investigators – operating in tandem – "rolled" fluid milk conspirators and witnesses across state borders for a total of nearly 100 guilty pleas and convictions in two dozen states! That sordid history compelled federal antitrust overseers to use regional patterns of school milk contract bidding as THE primary measure of competition, when reviewing proposed fluid milk processors acquisitions and mergers ... for a while.

Trouble was: by the late 1990s, during the Clinton administration, those school milk guidelines were generally forgotten, except in the Southern Belle matter. Starting in the late 1990s, Suiza Foods (the predecessor corporation of the modern Dean Foods) started an aggressive run of acquisitions. By the time Clinton departed office, Suiza Foods had strung together enough acquisitions of New England fluid milk processors, for example, that Massachusetts' top food/agriculture official, Jonathan Healy, warned that Suiza controlled 80% of fluid milk processing and distribution in Massachusetts.

Proof? On July 11, 2000, at a meeting with the multi-agency procurement team at the Massachusetts Department of Corrections, James Walsh, Garelick Farms (Suiza) manager of pricing and analysis, informed state officials that his firm already controlled 80% of the Massachusetts school business. Consequently, Walsh stated his firm had no interest bidding on a state-wide "master contract" that included institutions (such as prisons) and many of the remaining school districts that Suiza did not already serve.

White House blesses Suiza/Dean merger: #1 + #2

Suiza Foods emerged, literally from nowhere in the mid-1990s, as challenger for crowing rights as the nation's biggest fluid processor by 1999-2000. Suiza Foods' dramatic growth – through acquisitions – challenged the old-line, leading fluid milk processor – Dean Foods. Suiza's dramatic array of fluid milk processor acquisitions in the late 1990s forced its leading competitor, Dean Foods, into copy-cat behavior. But Dean Foods, in 1998-2000, collected an array of (mostly) ill-advised dairy acquisitions ... including a few real dogs like Barber's Dairy (Alabama) and Maplehurst (Indiana).

Arrival of the George W. Bush administration in January 2001 further deteriorated federal antitrust oversight in Washington, D.C., making dairy an anti-competitive farce. Early in the Bush administration, a high-level DOJ antitrust career official – Joan Huggler – told a Vermont dairy farmer, in a telephone conversation, that the antitrust division "couldn't touch Dean Foods." That unfortunate statement set the format for Antitrust's scrutiny of the dairy during the Bush years.

In March 2001 – two months after George W. Bush's arrival at 1600 Pennsylvania Avenue, the proposed marriage of the nation's two biggest fluid milk processors – Suiza Foods and Dean Foods – was announced. Combined, the two firms' estimated market share was about 30% of all fluid milk packaged and or distributed in the U.S. Bush antitrust officials approved the Suiza/Dean merger in rapid order – just a few days before Christmas 2001. Technically, upstart Suiza Foods acquired the old-line competitor, Dean Foods. But the successor company adopted the better-recognized "Dean Foods" name.

In dairy's biggest acquisition, Suiza Foods borrowed \$2 billion to gain Dean Foods. Tellingly, \$1.8 billion (90% of the purchase price) was written off as "Goodwill" by Dean Foods. When that fact was revealed, Moody's Investors Services severely downgraded the firm's credit rating – to "junk bond" status.

G.W. Bush & Dean Foods' money bags: old Texas friends

To understand the special relationship between Suiza Foods and the George W. Bush administration, one must follow the path of BIG Texas money. Dating back to the mid-1990s, John Muse has sat on Suiza Food's board. At that time, Muse was the second man on the totem pole at the mega-Texas investment firm of Hicks, Muse, Tate & Furst Incorporated. (The firm currently operates as HM Capital Partners and controls investment capital totaling several hundred billion dollars.)

Tom Hicks – the main figure at the investment firm – is widely-known as one of the nation's most brazen investors. Hicks' ties to George W. Bush go back to when Bush was a minority owner of the Texas Rangers baseball team. Bush made a limited investment of several hundred thousand dollars (mostly borrowed) in the team. When Hicks' group of investors bought out Rangers from Bush and his co-investors in the early 1990s, Bush received a special pay-out of about \$12 million dollars for the great job he'd done for the Rangers. That money constituted the foundation for the previously bereft George W. Bush's financial nest egg.

What did Bush accomplish with the Rangers? Simply stated: Bush practiced "good ol' boy Texas politics." He finagled government powers of eminent domain to condemn and appropriate choice private real estate parcels purchased with public funds. Then, Bush politicked to use more taxpayer funds to build a new baseball stadium on that property. In his final grand move, George W. Bush helped engineer the turnover of that publicly stadium and adjoining property to the private owners of the Rangers' baseball team! "Crony crapitalism" – Texas-style. (Editor's note: The Texas Rangers baseball team is currently in bankruptcy as owner Tom Hicks fights to avoid responsibility for hundreds of millions of dollars in related debt.)

Bush rode that "success" helping operate the Texas Rangers baseball team into the Texas governor's mansion. And George W. Bush's success as governor of Texas qualified him for even loftier public office ... for better or worse.

This modern-day "Tale of the Texas Rangers" explains why the George W. Bush administration chose to "hear no evil," and "see no evil" during the proposed Suiza Foods/Dean Foods merger in 2001 ... and ever after. The Texas "big-money boys" behind Dean Foods were the same "pardners" who'd helped to make George W. Bush a rich man.

On June 14, 2002, William Kolasky, then-chief economist for the DOJ Antitrust Division, delivered a speech in New York City in which he detailed the Suiza/Dean Foods merger as a "model" of modern antitrust review. Kolasky

Continued on page 4

Continued from page 3

cited pre-merger sell-off of 11 dairy plants in nine states. Kolasky also noted that the fact that Dean Foods procured its own milk supply from independent producers. (Note: those 11 dairy plants sold off as a pre-merger requirement were specifically suggested to DOJ by the merging firms. In January 2003, Dean Foods “dumped” its 2,500 independent producers into the waiting clutches of DFA.)

During the Bush administration, Dean Foods kept gobbling up fluid milk processors at a rapid clip. Federal Antitrust enforcers offered no roadblocks.

During the George W. Bush administration, the Antitrust Division personnel took very few enforcement actions, anywhere. DOJ filed papers to block one merger during “W’s” tenure – proposed merger of two daily newspapers in West Virginia.

DFA enjoyed “Antitrust Insurance” under Clinton & Bush

Starting in the mid-1990s, an increased din of complaints alleging anti-competitive antics by DFA arose from the dairy industry. Several times, federal antitrust employees nosed around these allegations. But DOJ never took further action. Dairy’s biggest fluid processor and biggest farmer cooperative acted as if they were beyond any restraint from federal antitrust laws.

DFA (and Mid-Am, prior) leaders imagined they enjoyed “antitrust insurance” during much of the Clinton and Bush administrations. One year into Bill Clinton’s first term, a political scandal swirled up involving Webster Hubbell – the former law partner of Hillary Clinton and close family friend. At the time, Hubbell – described by as President Clinton’s “best friend” – had been appointed as the third highest-ranking official of the U.S. Department of Justice. Prior to going to DOJ, while a partner in the Little Rock, Arkansas-based Rose Law Firm, Hubbell stole about half a million dollars from the firm’s coffers. That theft was discovered after Hubbell had moved on to Washington, D.C. Hubbell was forced to immediately resign his post at DOJ.

Suddenly destitute, Hubbell posed a political risk for the Clintons ... if he started spilling the beans. But Hubbell’s personal fortunes enjoyed a miraculous surge, when about a dozen firms – including Mid-America Dairymen (DFA’s largest predecessor co-op) – suddenly paid Hubbell advance fees for unspecified “consulting” services. According to an article that later appeared in the *Los Angeles Times*, Mid-Am CEO Gary Hanman personally paid Hubbell \$25,000 in a Washington, D.C. hotel room. That gesture apparently bought Mid-Am antitrust “protection” from DOJ during the Clinton years. DFA was formed by merger of four cooperatives during 1997 and began operating as DFA on January 1, 1998. Post-merger, DFA blatantly violated antitrust rules and guidelines ... but DOJ employees did not intervene.

And when the George W. Bush administration arrived in Washington, D.C., DFA’s “antitrust insurance” at DOJ turned into a platinum policy: DFA CEO Gary Hanman was a close personal friend of newly-appointed, fellow Missourian U.S. – Attorney General John Ashcroft! Hanman had hosted numerous political fund-raisers for Ashcroft over the years. Some of those Ashcroft fund-raisers were held in Hanman’s home.

Word in the dairy industry was that Hanman’s frequent trips to Washington, D.C. would often find him socializing with the U.S. Attorney General.

Throughout the 2001 merger review of Suiza/Dean Foods and widespread competitive abuses against dairy farmers and small marketing co-ops, the U.S. Department of Justice never formally took any action against DFA or Dean Foods until mid-2004. At that time, John Ashcroft, while still serving as U.S. AG, had been basically incapacitated from performing his daily responsibilities by medical conditions. Perhaps Ashcroft’s absence from day-to-day details at that time allowed start-up of the 2004-2004 DOJ dairy antitrust investigation.

Credit for continued DOJ refusal to address dairy antitrust issues must also be extended to Ashcroft’s successor, Alberto Gonzales. Gonzales hailed from - where else - Texas.

Melody Farms (Michigan):

DOJ’s worst mishandling of Dean purchase in Bush Era

One particular milk processor acquisition by Dean Foods during the “George W.” administration stands out for blatant mishandling by Antitrust Division personnel. In March 2003, Dean Foods already held at least 80-85% of fluid milk distribution in Michigan. And the (few remaining) fluid milk processors in Michigan were asked by federal Antitrust officials to comment on the possible acquisition of Melody Farms by DFA. At that time, DFA held a “40-something” (percent) share of Melody Farms. Since DFA neither owned nor operated any other fluid milk processors in Michigan, few, if any, competitive concerns were voiced to the feds about a DFA purchase of Melody Farms.

BUT ... in May 2003, when the sale of Melody Farms was officially announced, DFA was NOT the buyer. Rather, Dean Foods acquired Melody Farms. At that time, Dean Foods held at least an 80-85% market share of fluid milk distributed in Michigan. DOJ antitrust oversight on that acquisition failed to even specify to competitors (whose comments were sought) that Dean Foods would be the buyer! Later in the Bush years, Dean Foods acquired yet another fluid milk processor – Jilbert’s Dairy, Inc., located Marquette, Michigan. Jilbert’s Dairy – then a feisty, small competitor located in Michigan’s Upper Peninsula – provided stiff competition for Dean Foods’ attempted sales to Wal-Mart stores and Sam’s Clubs in the UP and northern Wisconsin.

“Dairy Marketing Services” used to corral independent producers

As a ruse to make independent dairy farmers mistakenly believe they weren’t being controlled by DFA, in fall 1999 DFA and Dairylea Co-op (based in East Syracuse, New York) created a new milk-marketing entity, “Dairy Marketing Services” (DMS). DMS was originally created to coordinate those coop-

eratives’ assembly, transportation and marketing of raw milk in the Northeast. But DMS’ true stripes quickly showed as, starting in 2000, DFA began coercing a wide range of Northeast fluid milk processors to turn over the marketing of their independent producers’ milk to DMS. By that time, Suiza Foods had acquired a large number of independent producers shipping to its plants in New England, New York, New Jersey and Pennsylvania.

DMS’ grab to control independent dairy producers in the Northeast was not a hands-off move. DFA owned and controlled DMS. DFA owned a one-third interest in a fluid milk processing joint venture with Suiza Foods – GTL.

As a one-third owner in the region’s largest fluid processing firm (GTL), DFA netted one-third of the savings accrued by undervaluing farmers’ raw milk and also overcharging farmers for marketing costs for sale of their raw milk (such as milk hauling). In a September 18, 2000 audio tape distributed by DFA, the co-op’s President/CEO – Gary Hanman described how federal antitrust oversight was preventing DFA from forcing non-member producers in the Northeast into joining the co-op. Hanman stated, in part:

“We’ve got some stress going on in New York and in New England. One of our joint ventures is in the country trying to maintain a non-member milk supply that they’ve had. And yet our leadership up there says, “I thought we had an understanding that ... these producers would become DFA members.”

“... (W)e’ve pretty got the rest of it where the milk supply is coming from DFA members, but we haven’t integrated fully the milk supply function for these affiliates, primarily Suiza and affiliates, there in the Northeast and the Mid-East Council.

“We will get that done, given time. This fall is probably not the time to put pressure on this membership. But we will get that done over time ... plus the oversight of Justice today, which is very, very significant ... And we do have a lot of government oversight over what we ... and our joint ventures are doing, just because of our size. And so, what we could do as an individual co-op, a small cooperative, we cannot do as DFA, the size that we are today.”

Summary of that damning audiotape: DFA’s “great leader” admitted:

1) The co-op had struck a deal with a joint venture partner (Suiza) to force that processor’s independent milk producers into joining DFA.

2) DOJ antitrust oversight over DFA was “very, very significant” at that time, but Hanman promised, “We will get that done over time ...”

DFA put extortion threats vs. Florida co-op on paper

In early 2003, DFA was riding high, too high. The co-op had just cut a deal with Dean Foods to take over marketing of milk from the 2500 (or so) independent producers who shipped their milk directly to Dean Foods. Besides the Dean Foods’ producers, in 2003 DFA was busy lassoing numerous dairy farmers shipping milk to the milk plants owned by National Dairy Holdings (owned by DFA). At the time of the Suiza/Dean Foods merger in December 2001, DOJ had prohibited DFA from requiring those farmers’ milk sales to be controlled by DFA.

In late January 2003, DFA employee John Collins blundered seriously. Collins headed up DFA’s operations in the Southeast. Collins, a thug, sent a letter chockfull of extortionate threats a Florida-based dairy co-op, Southeast Milk, Inc. (SMI). From that point forward, SMI engaged lawyers who brought both federal and state Attorneys General offices up to speed on DFA’s blatant, anti-competitive threats.

For more than a year following John Collins’ threatening letter to (the Florida co-op, SMI-hired lawyers tried to bring the focus of DFA’s anti-competitive antics to DOJ officials ... without success. On April 1, 2004, New York farmer/writer John Bunting (with *The Milkweed* and the National Family Farm Coalition) sponsored a day-long dairy antitrust conference in Syracuse, New York. The event drew 250 attendees from around the nation. The keynote speaker was then-New York State Attorney General Eliot Spitzer. Spitzer had sharpened his teeth as an enforcer of competition in New York State, and was well aware of dairy shenanigans. (Note: Spitzer was warned by Dairylea Co-op president Clyde Rutherford not to speak at the meeting, because the hosts had

Continued on page 5

Gregg Engle\$: How Much Moo-la is Enough?

Is greed rational? How much money does one individual need out of a giant corporation’s coffers? Dean Foods looks like Gregg Engle\$’ personal cash-flow machine.

In 2007, Dean Foods’ CEO Gregg Engle\$ received total compensation of \$66,080,000 from the company. That figure placed Engle\$ five times higher than the next most highly compensated CEO in the U.S. food business.

The following data tidbits offer a look at how Engle\$’ 2007 salary and compensation stacked up internally:

* Engle\$’ \$66,080,000 total compensation represented one out of every \$170 dollars of gross revenue registered by Dean Foods in 2007.

* Engle\$’ \$66,080,000 salary equaled 50.3% of Dean Foods’ entire 2007 profits. In 2007, Dean Foods reported profits totaling \$131.4 million. Engle\$’ salary/compensation was just a bit higher than 50% of company profits.

* Engle\$’ \$39,600,000 stock bonus equaled two percent of the \$1.94 billion dollars borrowed by Dean Foods to pay out the one-time, \$15/share stockholder bonus in early spring 2007.

* Engle\$’ 2007 salary/compensation equaled roughly \$8500 for each dairy farmer that supplied milk to Dean Foods in 2007.

Is greed rational? Decidedly not! Why? Because greed is insatiable.

“no credibility.”)

In June 2004, at the annual gathering of American Antitrust Institute (AAI), dairy competition issues were front and center. Heat was building. Officials from SMI, while in Washington, D.C. attending the AAI meeting, also met privately with DOJ antitrust officials and were assured that a federal dairy antitrust probe was starting soon. Finally!

8/5/04: DOJ Announces dairy antitrust investigation

On August 5, 2004 at the dairy farm home of Brent and Laurie Duncan near Franklinton, Louisiana, DOJ senior trial attorney Allee Ramadahn announced to a selected group of dairy farmers that DOJ had started a dairy antitrust investigation. Carole Knight attended, packing a tape recorder to preserve Ramadahn's historic remarks. Ms. Knight, with her husband, “Dinky,” had won a \$600,000+ damages lawsuit against DFA's predecessor co-op (Mid-Am) when the co-op kicked their farm out because Mid-Am claimed that she – as a local director – asked too many questions and wouldn't sit in her seat at board meetings.

Here's a sampler of Ramadahn's comments from that August 5, 2004 meeting with Louisiana dairy farmers:

“On its face, it doesn't appear that the producers joined (DFA) because they can do better in DFA rather than out. It is usually after the loss, or threatened loss, of their markets and ability to market their milk, and the choice is to be able to market their milk or not.”

“We need to follow the money and we need your help about where to look.”

Ramadahn, a black man who converted to the Muslim faith, at first glance might have seemed a bit out of his element with those Louisiana dairy farmers. Ramadahn regaled his hosts with hunting stories, as they ate catfish and drank beer 'til the wee hours of the next morning. Ramadahn, an ardent hunter, told how he'd killed seven deer with his bow and arrow, the prior fall. Ramadahn explained his philosophy of hunting (and seemingly, antitrust investigation): first know your prey. When Ramadahn departed, the Louisiana dairy farmers firmly believed they had met someone from DOJ's Antitrust Division who took their plight seriously.

The DOJ task force eventually swelled to include representatives from a dozen and a half states' Attorneys General offices. Wide-ranging interviews and depositions were conducted with over 150 witnesses, many of whom told tales of crooked dealings by DFA and Dean Foods. Early in the investigation, the antitrust task force found evidence that DFA had been stealing money from dairy farmers in Louisiana and Mississippi by crediting the farmers with unduly low tests for milk fat content in their milk, and then selling that cream “off the books.”

DOJ reduces funding for dairy antitrust investigation

As the task force gained momentum and diligently conducted its affairs, top-level roadblocks suddenly appeared. From sometime in late November 2005 through late March 2006, reports reaching *The Milkweed* indicated that virtually no movement was taking place at DOJ regarding the dairy investigation. No depositions, nothing. DOJ reduced funding for dairy antitrust investigations,

effective October 1. Higher-ups at DOJ had invoked a “stall” on the task force's efforts. Big, politically-sensitive toes were being encroached upon.

In late March 2006, help intervened to resuscitate the federal/state antitrust probe. A group of dairy farmers from Pennsylvania (some of whose milk markets had been “pirated” by DFA), paid a personal visit to the Washington, D.C. office of Pennsylvania's U.S. Senator Arlen Specter (then a Republican), chairman of the U.S. Senate Judiciary Committee. Specter's jolt helped restart the stalled dairy antitrust investigation.

In late August 2006, Allee Ramadahn submitted formal findings to his superiors at the Antitrust Division of the U.S. Department of Justice. Ramadahn's task force recommended indictments against the following firms for violations of the Sherman Antitrust Act:

- * Dean Foods
- * Dairy Farmers of America
- * National Dairy Holdings (owned by DFA)

Ramadahn's superiors at DOJ sat on the recommended indictments, doing nothing ... and nothing ... and nothing. In both spring 2007 and spring 2008, answering questions from members of the U.S. Senate Judiciary Committee's antitrust subcommittee, Antitrust Division personnel, refused to comment on the failed indictments, stating only that the dairy antitrust investigation was still an open investigation.

(Timeout: These matters – the recommended indictments and senior DOJ officials' refusal to follow up – were reported contemporaneously only in *The Milkweed*. How could a relatively obscure, monthly dairy publication in Wisconsin reveal closed-door matters such as recommended federal indictments of leading industry firms following two years of investigation by a joint federal-state task force? Excellent question. From the git-go – the August 5, 2004 meeting with dairy farmers in Louisiana – the lead investigator tried to maintain a public profile for the investigation. Ramadahn probably suspected that the investigation would lead to sensitive portions of Big Republicans' anatomies. Along the way, word got out, purposefully. And with a dozen and a half state Attorneys General offices involved, there was ample room for a few tidbits spilling out. By the time the recommended indictments were handed over during the last week of August 2006, Mr. Ramadahn knew full well he had lit a fuse connected to a very large bundle of political dynamite.)

Allee Ramadahn's career of 30+ years as a highly-regarded federal attorney ended abruptly in late 2007 or early 2008. Highest-level DOJ officials threatened Ramadahn with being fired and loss of his federal pension rights accumulated over 30 years. Ramadahn was able to retain his federal pension, upon his abrupt and inglorious retirement from DOJ.

(In early 2010, at a meeting of the National Family Farm Coalition in Washington, D.C., DOJ Antitrust attorney Mark Tobey was asked about the status of the Dean Foods/DFA investigation. Tobey replied that the investigation was still open. What, if anything, has the Obama Antitrust Division done to further pursue those recommended indictments, which are seemingly served up on a silver platter ... ready to go. Like many other issues, the Obama administration can no longer blame predecessors for failure to act.) If anything, escaping federal indictment (so far) emboldened Dean Foods and DFA – furthering the pair's self-perceived, apparent invincibility to federal antitrust enforcement. Why not?

Dairy Farmers of America – Repeat Antitrust Abuser

by Pete Hardin

Where to start???

Dairy Farmers of America (DFA), the nation's largest milk producers cooperative, was described in a private antitrust lawsuit filed in early April 2010, as “... a serial antitrust defendant.” Four more accurate words have never been strung together describing DFA's long history of mafia-like price manipulations, thievery, and attacks on competitors in dairy markets from Maine to California.

Long before DFA was formed in late 1997 by merger of four dairy cooperatives, the predecessor co-op – Mid-America Dairymen, Inc. (Mid-Am) of Springfield, Missouri – had generated an ugly history in federal courts for anti-competitive acts. DFA, and Mid-Am before it, were headed for 30+ years by Gary Hanman.

DFA: “Hanman's Baby,” serial antitrust violator

Hanman became Mid-Am's manager in 1974, and transformed a regional butter-powder co-op operating in the Plains and Upper Midwest into THE national dairy co-op powerhouse. Hanman's throaty Missouri drawl was replete with ruralisms. He captivated farmers at co-op meetings with amazing attention to intricate dairy details. Few persons ever worked their dairy audiences better. The short, stubby Hanman featured trademark red suspenders adorned boldly with the name of the co-op.

Few corporations in modern U.S. history have been cast more exactly in their CEO's mold. Mid-Am and DFA were truly “Hanman's babies.” More accurately: DFA became cult of personality, akin to Jimmy Hoffa, Sr.'s domination of the Teamsters Union. Despite sweaty rhetoric about how hard Hanman's co-ops were working for dairy farmers, overt thievery from farmers' milk checks lined the pockets of Hanman and his close cadre of senior executives and directors.

Hanman's co-ops have plugged the federal court dockets with antitrust cases over the past three decades. In the late 1960s and very early 1970s, private litigation pitted DFA and several other dairy co-ops versus fledgling raw milk sales efforts by the National Farmers Organization (NFO). The so-called “NFO Case” slowly wound through the federal court system all the way to the U.S. Supreme Court, where NFO finally prevailed. That case, when concluded, was the longest-running, most voluminous private antitrust case in the history of this nation's federal court system. Mid-Am *et al.* lost.

Those same matters – relating to illegal efforts to block NFO's raw milk sales to fluid milk processors in the Central Plains and Chicago markets – earned Mid-Am (and its successor organization) a still-binding Consent Decree with the Antitrust Division of the U.S. Department of Justice (DOJ). That Consent Decree – formalized in May 1977 and on file at the U.S. District Court for the Western District of Missouri, specifies prohibited actions by Mid-Am and any successor organizations – such as DFA. The DOJ Consent Decree specifically disallows coercion, and mandates a one-year, grace period for non-member producers shipping to fluid milk plants acquired by the cooperative, before DFA may force such producers into co-op membership.

DFA (and Mid-Am before it) REPEATEDLY violated those provisions of the 1977 Consent Decree. These repeated violations were brought to the attention of DOJ Antitrust personnel, and DOJ did nothing. Repeated violations of a Consent Decree's provisions are serious legal matters. The Consent Decree applies to all DFA subsidiaries, joint ventures, and organizations with which DFA is formally involved in marketing milk.

Today, DFA is the defendant in a wide array of private antitrust lawsuits. Some of those lawsuits allege undue coercion of dairy producers' milk markets. Other lawsuits target DFA's blatant manipulation of dairy commodity prices – particularly Cheddar – at the industry's cash market bourse, the Chicago Mercantile Exchange. DFA's dairy commodity manipulations did great financial harm to many parties – dairy farmers, cheese manufacturers ... and also consumers.

Louisiana 1993-1995: Practice run for intimidating producers

Starting about 1993, Mid-Am commenced a two to three year set of acquisitions and mergers ending with the co-op controlling 98.5% of all dairy producers in Louisiana. One small fluid milk processor – Kleinpeter Dairy – remained as the sole alternate market, buying milk from 12 local dairy farmers. Back then, Louisiana featured a wonderfully vigorous dairy farming community in Washington and Tangipahoa Parishes – the northeastern “toe” of the state. Over decades, that area (including adjoining counties in Mississippi) sported several hundred family dairy farms, an amazing density of dairy farms for the Southeast. Louisiana dairy farmers enjoyed positive benefits of a local cooperative – the Gulf Dairy Association, which shared ample profits with members. But Mid-Am swooped

Continued on page 6

Continued from page 5

in and gobbled up all the producers and their access to markets in 1993-95.

Almost immediately after Mid-Am took control, Louisiana dairy farmers started seeing huge “reblends” (i.e., a technical term for milk check deducts a co-op may take from farmers, below the minimum federal order blend price). Those reblends climbed as high as \$1.00-\$1.20 per hundredweight of milk. Mid-Am’s milk fat tests – which measure the cream content of farmers’ milk, a key value – dropped like a rock. The co-op’s management and directors refused to answer questions about the marketing losses deducted from local producers’ checks.

Rebellion erupted. Protests at the Mid-Am milk plant at Franklinton, Louisiana drew at least a couple hundred very angry farmers. These emotional protests were broadcast on all three New Orleans television stations.

Locals elect neighbor to board; she asked too many questions

Next move: angry local dairy farmers voted on to the local Mid-Am board a handful of neighbors who vowed to get answers. One such neighbor – Carole Knight – was a full-time business reporter for a daily newspaper, in addition to part-time dairy farming chores on the family farm that she and her husband (and attorney) “Dinky” Knight owned. Once installed on that local board, Carole Knight persistently asked questions ... which co-op officials ignored. After she had attended two board meetings, Mid-Am corporate officials moved to cancel the Knights’ membership contract in mid-term. The charges against Carole? At board meetings: she asked too many questions, took notes, and wouldn’t sit down. (Ms. Knight suffered from a sciatic nerve condition.)

The co-op corporate board convened a “kangaroo court” that tried the Knights and kicked them out of the co-op. During their “kangaroo court” proceeding, a Mid-Am official referred to the Knights’ “file.” Carole demanded to see that file – a three-inch thick wad of papers, which included a document generated by Mid-Am’s in-house counsel that spotlighted Carole Knight as a potential trouble maker and proposed ways to excise the Knights from the co-op ... six months before she had decided to run for a director’s spot.

With no other local alternative market for their milk, the Knights’ beloved herd of Jersey and Holstein dairy cows was sold at auction. Carole had named, hand-fed and raised every one of those animals as calves. The message from Mid-Am to other producers was clear: ask too many questions and other producers would get treated like the Knights. In fact, one dairy farm woman in Texas, whose milk market was taken over by Mid-Am, was warned by a co-op employee that if she didn’t stop writing a newsletter critical of Mid-Am, she would get “the Carole Knight treatment.”

The Knights sued DFA for damages and injuries, and recovered a court ordered payment of more than \$600,000 (including legal fees). But nothing could heal the damages of being forced to sell their beloved dairy animals due to the Stalin-like tactics of the monolithic co-op. Such actions by Mid-Am were merely a practice-run for DFA.

1997: Mid-Am & three other co-ops merge, becoming DFA

In spring 1997, Mid-Am and three other dairy co-ops revealed plans to merge, effective January 1, 1998, forming the nation’s largest dairy cooperative: Dairy Farmers of America. Rich rhetoric flowed about “power in the market place” and savings/efficiencies gained through consolidated operations. The four cooperatives were: Mid-Am; AMPI Southern Region of San Antonio, Texas; Western Dairymen’s Co-op, Inc. (WDCI) of Thornton, Colorado; and Milk Marketing, Inc. (MMI) of Strongsville, Ohio.

Both Mid-Am and WDCI were extraordinarily burdened with debt. AMPI Southern Region was in a “negative equity position” – its liabilities exceeded assets. MMI, with fairly solid equities, was requisite to the merger – the only party bringing solid assets into the merger. MMI was “bought off” with promise of the DFA board chairmanship for MMI president Herman Brubaker. Brubaker was an arrogant, self-serving dairy leader. It was later discovered that in 2001, Brubaker was paid an illegal, secret \$1 million payoff by Hanman, funneled through the books of DFA’s fluid milk subsidiary, National Dairy Holdings.

Tit for tat? Hanman was awarded a \$6 million bonus by DFA’s corporate board about the same time Brubaker received his \$1 million under the table.

From the git-go in January-February 1998, the newly-created, nation’s biggest dairy cooperative struck hard and dirty. DFA’s moves against smaller dairy co-operatives constituted multiple, repeated obvious violations of the binding 1977 Consent Decree. When these matters were brought to the attention of DOJ Antitrust Division personnel, no corrective measures were taken against DFA. Examples:

*** Independent Borden producers coerced into DFA membership.** In September 1997, DFA’s wholly-owned subsidiary, Southern Foods Group, bought the remaining dozen and a half (or so) fluid milk plants from Borden. Those plants were located primarily in the Southwest and Intermountain regions. (Remember: the 1977 Consent Decree prohibited the co-op from coercing non-members into co-op membership for one year after such plant acquisitions.) Bleep the Consent Decree!

In late January and early February 1998, DFA leaders started “visiting” independent Borden producers in the Mountain States, dictating that non-members had to join DFA immediately, or lose their milk markets. Dairy producers in Colorado, Utah and Idaho were so coerced. In Utah, DFA was blatantly impolitic. “Dixie” Leavitt, father of Governor Mike Leavitt, was so coerced, as were several other highly-placed Utah Republican lawmakers who also were dairy farmers. An investigation was started by the state’s Attorney General, but results of that probe were not available to outsiders. DOJ did nothing.

*** Turner’s Dairies producers/co-ops coerced.** In December 1997, AMPI, despite a negative net worth, acquired half-interest in Turner Dairies, a fluid milk processor with plants in Kentucky and Tennessee. DFA inherited that

interest (Turner Holdings) at merger on January 1, 1998. In early 1998, DFA kicked out one small, but troublesome, local milk supply co-op (Dairymen’s Marketing Co-op, Inc.) from Turner Holdings plant. A second co-op – Vanguard Milk Producers – was instructed to join DFA or lose its ability to sell raw milk to Turner Holdings plants. For added pressure, DFA withheld timely payments for milk that Vanguard had sold to Turner Holdings. DOJ did nothing.

*** California Gold Co-op loses markets, forced into DFA;** By summer 1999, the Petaluma, California-based California Gold Dairy Co-op (Cal Gold) was just starting to come out of a long-term financial funk, through restructuring and new management, when DFA advised that co-op’s leaders that they had to join DFA within a few months, because DFA had taken over most of Cal Gold’s major milk supply contracts and Cal Gold would have no place to sell members’ milk. Despite spirited debate among members, Cal Gold’s directors saw no good alternative and the members were forced to become DFA members. DOJ did nothing.

Such anti-competitive misdeeds continued, in many areas of the country, year after year. Federal antitrust officials did nothing at all, under both the Clinton and Bush administrations.

DFA Uses Farmers’ Milk Checks as Loan Collateral

What are the motives behind DFA’s predatory attacks against independent dairy farmers and their smaller cooperatives? Why has DFA so aggressively attacked competing raw milk sellers across the nation, forcing those producers to sell their milk to DFA or DMS? Obviously, no single answer exists.

Stated simply: DFA uses the unpaid receipts from sale of farmers’ milk as collateral to help cover the cooperatives’ massive indebtedness. The more milk DFA controls – either members of non-members – the more collateral DFA can show its creditors! That fact is sustained by statements regarding DFA’s creditworthiness by Moody’s Investors Services (see below).

A good place to start explaining this milk check extortion racket is with DFA’s membership contracts, Articles of Incorporation, and by-laws.

Article III of DFA’s carefully-crafted Articles of Incorporation, notes: “Purposes of the Association.”

“(b) to distribute on a uniform basis the marketing proceeds after paying the expenses and matured liabilities of the Association ...”

In other words, DFA’s creditors stand ahead of DFA’s farmer-members for payments, in the event that the co-op fails financially.

DFA has more than a dozen different contracts that membership has signed over the years. These membership agreements generally lock-in the seller (the producer) and the buyer (DFA) for one year, during which the producer must sell milk to DFA. But amid the legal mumbo-jumbo, one finds phrases, which when closely scrutinized, reveal that DFA is a huge extortion racket. The farmer agrees to comply with by-laws. And the by-laws specify that the purpose of the association is to pay all of the current obligations of the cooperative, before the farmer is paid for his monthly milk.

On March 4, 2001, Moody’s Investors Service advised the financial community that there were few worries about DFA’s creditworthiness, because virtually all the assets of the cooperatives, including milk checks due for payment to members, were secured as collateral. Moody’s listed DFA’s Long and Short Term Ratings as “Stable.” The fine print of that press release explained why lenders could take comfort extending credit to DFA:

“Co-op members supply most of the milk purchased by DFA. By the by-laws of the coop and the market agreements signed by the members, payments to third-party creditors, including debt service, have seniority over payments to members for milk. As a result, the pool of funds available to service obligations is close to revenue, providing very comfortable coverage. Moody’s anticipates that coverage of debt and preferred stock obligations should remain high in the medium term.”

Despite such information, DFA personnel continued to deny to co-op members that their outstanding milk checks were beholden to bankers to cover the co-op’s debt.

Worse yet: DFA takes advantage of the long lag time between when dairy farmers’ milk is trucked from the farm to a processor until, nearly 30 days later on average, when the farmer is finally paid for the milk. During the interim “float” – between when the milk is hauled from the farm and when the farmer is finally paid – members’ milk is listed the cooperative’s books as a “receivable.” And DFA then borrows against the aggregate receivables for members’ unpaid milk marketings. That’s one of DFA’s biggest scams: perpetually borrowing against nearly a month’s unpaid milk deliveries for members’ milk. Therefore: when DFA attracts more “members” – by hook or by crook, the additional monthly milk sales provide more short-term borrowing capacity for the cooperative.

DFA’s using milk checks as collateral for the co-op’s indebtedness may not be limited solely to DFA’s members. In February 2003, one month after the announced takeover of the 2,500 (or so) Dean Foods independent producers by DMS, *The Milkweed* reproduced, side-by-side, copies of milk checks written to two Northeast dairy farmers: a DFA member in New York State and a Garelick independent in New England. (See photo on page 17.) The first check was from “Dairy Farmers of America” and the second check was from “Garelick Farms.” But both checks were drawn from the exact same account at the UMB Bank in Morrisonville, Illinois. Thus, *The Milkweed* concluded seven and a half years ago, DFA was probably collateralizing the milk checks of non-member producers whose milk DFA/DMS marketed. Creditors collateralize bank accounts, not portions of bank accounts.

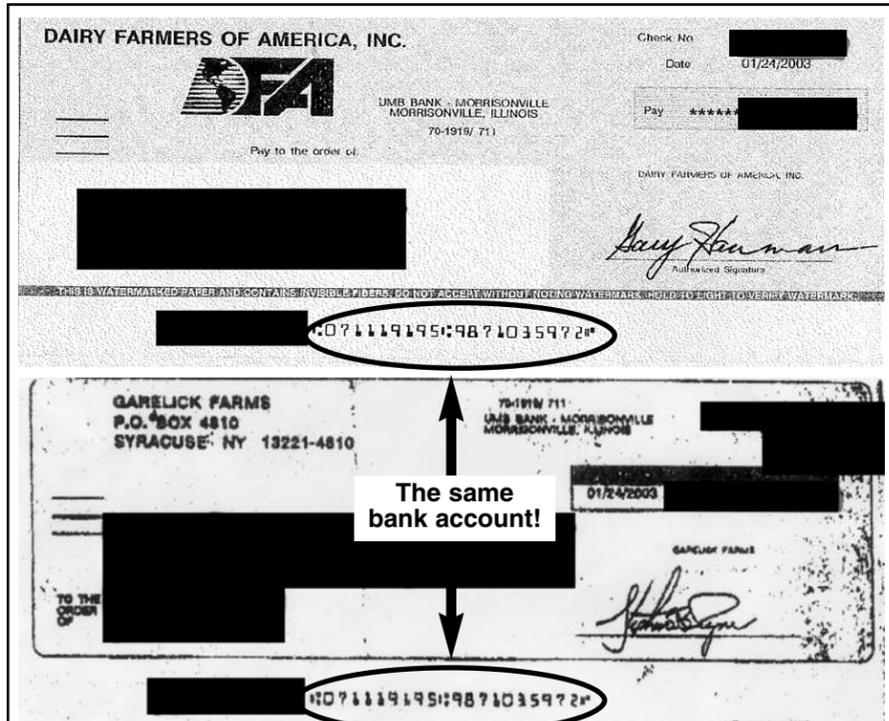
Dairy Farmers of America – Repeat Antitrust Abuser, con't

Continued from page 6

Fall 2001: NH Ag Commissioner is told: “DMS is DFA”

In mid-summer 2001, New Hampshire Agriculture Commissioner Steve Taylor received notice that the couple dozen independent producers in his state selling their milk to Garelick Farms (Suiza Foods) would have their milk marketing shifted to Dairy Marketing Services (DMS). New Hampshire oversees a milk producer security program for its dairy farmers. Taylor kicked into gear the process to transition DMS as the responsible party for securing payments of those producers' milk. But when the completed documents came back, with a check to cover DMS' security bond, Taylor noticed that the check was from “Dairy Farmers of America,” not “Dairy Marketing Services.” Curious, Taylor contacted DMS for clarification. And that exchange of correspondence revealed more details regarding the relationship between DFA and DMS.

On November 7, 2001, DMS official Brad Keating wrote the New Hampshire commissioner, explaining: “In terms of the Garelick independents, from a technical/legal standpoint, Dairy Farmers of America is purchasing the milk from Garelick independent farms. That is why we had the bond furnished by Dairy Farmers of America.”



Milk checks prove: DMS IS DFA

Despite verbal and written denials, DMS is DFA. In the February 2003 issue of *The Milkweed*, this publication printed, side-by-side, two milk checks. One milk check was written by DFA to a DFA producer in New York State. The second check was written to an “independent” producer in New England, ostensibly from “Garelick Farms” (Dean Foods' subsidiary). Proof that DMS is DFA: the “bank routing numbers” at the bottoms of those two checks were identical. In other words, DFA members (paid by DFA checks) and “independent” dairy farmers (paid with Garelick Farms checks) were being paid from the same bank account!

DFA's Finances: Debt + Bogus Assets

For a dozen years, *The Milkweed* has analyzed Dairy Farmers of America's annual financial audits with intense scrutiny ... but the conclusions remain remarkably the same: DFA's collection of bogus assets virtually equals the co-op's claimed “equities.” In other words, DFA is worth close to less than nothing ... in a good year.

Let's turn to DFA's financial audit issued for the most recent fiscal year – that ended December 31, 2009. DFA's audit listed a total of \$688 million in “equities” – generally presumed to be the “owner's share” of the corporation. Sounds good, eh? But not let's look at the bogus “assets” and liabilities.

“Goodwill” – \$118.651 million. “Goodwill” is commonly described in the accounting trade as the net value of overpayments for acquisitions. “Goodwill” is an asset only in fairy tales.

“Intangible Assets” – \$236.661 million. Such assets include trademarks and other items that wouldn't bring much at a fire sale. That figure also includes a \$150.208 million value ascribed to “milk supply arrangements” with amortized lives of 29 years, plus long-term “customer relationships” worth \$12.839 million.

“Preferred equity securities” – \$150 million. Hard to see this one as an “asset,” since in 2003, DFA created \$150 million of these critters as a mechanism to borrow against members' equities.

Pension program's black hold – \$151.4 million. DFA's 2009 audit reported “unrecognized actuarial losses of \$151.4 million (\$137.8 million net of tax) ...”

Add up these specious assets and liabilities – they total \$657 million dollars – nearly the \$688 million in “equities” claimed by DFA.

Postscript: In 2009, DFA's pay price to members dropped by seven cents per hundredweight more than USDA's “All Milk Price” declined. What's seven cents spread over the co-op's volume of 63 billion pounds of milk in 2009? Just another \$45 million. DFA's financial structure has changed little over the years: high debts, curious assets.

July 2005: Farmland Dairies' Producers Grabbed by DMS

No U.S. fluid milk processor's had ever assembled a more stubborn bunch of feisty, independent-minded producers for an in-house raw milk supply than Farmland Dairies (Wallington, New Jersey). For at least six decades, Farmland had cultivated its own milk supply among Northeast dairy producers who legitimately distrusted the major dairy cooperatives in the region.

Farmland Dairies was a maverick, period. In the 1990s, Farmland Dairies single-handedly knocked down the protective walls surrounding New York City's fluid milk processors. By 2001-2002, Farmland Dairies counted 600-700 independent dairy producers. Those farms spread geographically across New York State, Pennsylvania and New Jersey.

But hard luck struck Farmland Dairies, which in the mid/late 1990s had been sold by its long-term owners, the Goldman family, to the Italian financial giant, Parmalat, S.A. In December 2003, the parent company was revealed as a colossal financial fraud and fell into bankruptcy. Farmland Dairies operated under Parmalat's North America subsidiary, and was not directly impacted by the bankruptcy. However, Farmland did file for bankruptcy protection in late February 2004, as a self-protective move.

DFA/DMS pummeled Farmland Dairies with a vicious one-two, once Parmalat's financial scandal in Europe exploded. DMS personnel warned Farmland's independent producers that they faced the potential of their handler going bankrupt if they stayed with Farmland. A couple hundred producers took that bait and quit selling milk to Farmland. Then, after that raw milk loss, Farmland was dependent upon DMS for supplemental supplies of milk and balancing Farmland's residual supplies on weekends, etc. DMS bilked Farmland, coming and going. Industry sources say that Farmland Dairies was charged exorbitantly high fees for milk purchases and was hit hard with low payments for weekend milk supplies “balanced” by DMS. In a tough business where raw milk costs can make or break a fluid processor's bottom line, Farmland Dairies was brought to its knees, competitively, due to exorbitant raw milk costs.

A financially-weakened Farmland Dairies played directly into the interests of rival Dean Foods – the biggest fluid milk distributor in northern New Jersey (and DFA's partner in crime).

Sometime in July 2005, Farmland's management agreed to turn over to DMS all milk marketing functions for its remaining producers, retroactive to July 1. Trouble was: Farmland's producers, milk haulers, and field staff didn't learn of this change until letters announcing the change-over started arriving around July 21-23. What an uproar!

To try to quell angry (ex)Farmland independent producers, DMS held meetings in areas where those producers were concentrated. Such a farce occurred on August 1, 2005 at the firehouse in Unionville, New York – a small bend on Route 284, right on the border between Orange County, New York and Sussex County, New Jersey. DMS personnel Sherad Mathur and Brent Bunce were completely uninformative, they refused to respond to serious questions from angry producers.

Bunce and Mathur refused to provide detailed financial information about DMS, when asked prudent questions by business persons who were forced to sell to a raw milk buyer not of their choice. The DMS officials refused, upon repeated questioning, to explain:

- * What was the name of the bank that would issue those farmers milk checks from DMS?
- * In the name of what business was that bank account listed?
- * Were the receivables from sale of non-members' milk by DMS used as collateral to cover indebtedness of DMS, DFA, or any other firm?
- * Was the most recent financial audit of DMS available for review by those producers.

Despite promises from DMS personnel at that August 1, 2005 meeting that “everything would remain the same” in the marketing of those Farmland producers' milk, such lies quickly evaporated. Farmland Dairies soon saw higher milk hauling costs, and reduced premiums. Later, in August 2006, at a meeting held by the New Jersey agriculture department, Wantage Township, New Jersey dairy farmer Douglas Ricker charged that he and other ex-Farmland producers had lost their premium for producing “rbGH-Free” milk when DMS took over sale of their milk. A Farmland Dairies official interrupted Ricker's testimony to note that Farmland was still being charged the “rbGH-Free” premiums by DMS. If the ex-Farmland producers were not receiving that money, it wasn't Farmland Dairies' fault, he clarified.

Lou Dobbs airs Farmland producers' plight on CNN

Doug Ricker took out his frustration with loss of his independent market in a rather unique manner. Ricker visited his across-the-fence neighbor and spilled his woes. That neighbor: CNN news anchor Lou Dobbs, who at that time headed the globally-broadcast evening news show: “Lou Dobbs Tonight.” Dobbs promised Ricker he'd immediately assign a reporter to the story.

On August 24, 2005, Dobbs' network news show aired a segment about the Farmland Dairies' producers' milk marketing woes. Reporter Bill Tucker journeyed to northeastern Pennsylvania, where he interviewed four ex-Farmland Dairies producers – Donna Hall, Hal Drick, Gordon Wood, and Bill Hart. John Bunting, New York dairy farmer/writer also appeared on the broadcast, which was taped at Drick's dairy farm. Tucker's opening comments stated:

“Tonight, the Justice Department is investigating the group that controls one-third of the dairy production in the country. The Dairy Farmers of America is a cooperative accused building its control of the milk market into an outright monopoly.” Tucker then introduced Hal Drick: “Drick, one of a fading breed,

Continued on page 16

an independent milk producer. Pressure is mounting on him to sign with Dairy Marketing Services, a company associated with Dairy Farmers of America, the nation's largest dairy cooperative with more than 14,000 member farms. Drick says that if he doesn't sign, there will be nowhere he can sell his milk."

Clearly, DFA and DMS officials did not appreciate their organizations being showcased on Lou Dobbs' television news program. In clear retribution, for their September 2005 milk shipments to DMS, three of the four producers who appeared on Lou Dobbs' CNN news report received unduly low, butter fat tests: 3.43%. In following up producers' complaints about that matter, officials of Pennsylvania's agriculture department reported that all three of those identical butterfat tests had been hand-entered by DMS personnel – overriding the automatic, computerized milk-testing system. Draw your own conclusions.

To the present ... the remaining dairy producers in Sussex County, New Jersey and Orange County, New York who once shipped to Farmland Dairies continue to be abused by DMS on issues including milk quality testing, butterfat tests, and hauling charges.

Enough! At some point, *The Milkweed* must stop chronicling the repeated abuses of dairy farmers' milk markets by DFA/DMS and move on. Suffice it to say that even after DFA/DMS and their partners in crime have taken over control of independent dairy producers' markets through DMS, that's not enough. In the Northeast, *The Milkweed* hears tales up to the present of independent producers being coerced by DFA/DMS/Dairylea Co-op to join as co-op members, or else they won't receive any "premiums" for their milk.

Is Gary Hanman 'Bugged'?

(The following short jab at Gary Hanman—DFA's President/CEO of DFA—appeared in the January 2000 issue of *The Milkweed*.)

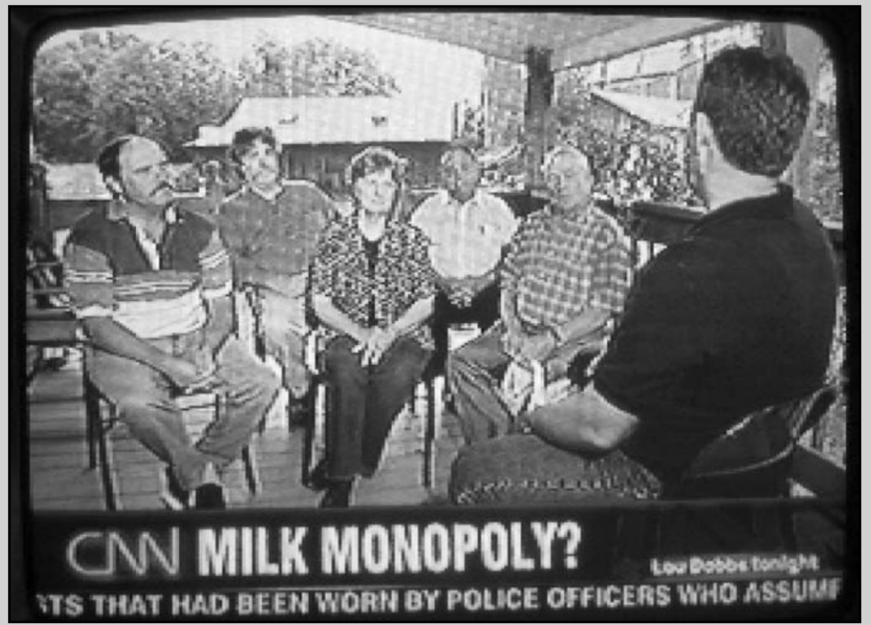
Gary Hanman, "Great Leader" of Dairy Farmers of America (DFA) is "bugged" about the accuracy of confidential financial information about the cooperative that has been disclosed in *The Milkweed*. In this case, "bugged" means Hanman thinks he is the subject of electronic surveillance.

Word is that Hanman hired a security expert to "sweep" DFA's offices and his home for electronic surveillance devices, in a fruitless attempt to find monitoring devices disclosing confidential DFA information to this publication.

Hanman has bragged in the past year that the 100+ DFA directors hadn't leaked information to the press. Wherever the info is coming from, it bothers Hanman, a control-freak. Hanman's time could be better used honestly depicting DFA's financial condition to members, in light of collapsed inventory values and milk-check receivables.

Yes, we admit it, *The Milkweed* IS "bugging" Gary Hanman. However, it's not the kid of bug that requires a security expert. Rather, Hanman's "bug" requires a proctologist.

8/24/05: Lou Dobbs "Milk Monopoly"



"Free Speech" comes at a stiff price, for dairy farmers who criticize Dairy Marketing Services (DMS).

On August 24, 2005, four angry dairy farmers whose milk markets with Farmland Dairies had been pirated by DMS, had their few minutes of fame: appearing on a televised segment of Lou Dobbs' "CNN World News Tonight." That segment, titled "Milk Monopoly" detailed how DMS had taken over those producers' milk sales against their wills and better economic judgment. The four dairy producers who appeared on the Lou Dobbs' news segment were Donna Hall, Hal Drick, Gordon Wood and Bill Hart—all from northeastern Pennsylvania. John Bunting, dairy producer, writer and activist from New York also appeared in the interview conducted at Hal Drick's farm by reporter Bill Tucker.

Clearly, DFA and DMS did not appreciate being showcased on Lou Dobbs' television news program. For their September 2005 milk shipments to DMS, three of the four Pennsylvania dairy farmers who appeared on the CNN news segment received unduly low butter fat tests. All three of those butter fat tests were identical – 3.43%. Further research, though Pennsylvania agriculture department officials, revealed that all three of those tests had been hand-entered by DMS personnel – overriding the automatic, computerized milk testing system. Coercion, anyone???

DFA: Manipulation of CME Dairy Commodities' Prices & Related Thievery

DFA has a long, sordid history of manipulating dairy commodities' cash-market prices. Through the mind-numbing complexities of USDA's milk-pricing system, DFA's manipulations of prices of Cheddar cheese have been effective tools to shake loose tens, if not hundreds, of millions of dollars from the dairy pricing system into the co-op's corrupt coffers.

Proof of DFA's overt, illegal manipulations of dairy cash commodity prices at the Chicago Mercantile Exchange can be found in the mid-December 2008 settlement between DFA and the federal Commodities Futures Trading Commission (CFTC) of a \$12.5 million penalty for illegalities that occurred in spring 2004. If anything, that \$12.5 million fine was a meek slap on the wrist, coming at the very end of the DFA-friendly George W. Bush administration. DFA acknowledged a variety of illegal activities involving Cheddar cash market manipulations and controlling an illegally large volume of Class III (cheese) milk futures positions for the period June-August 2004.

As a result of that consent agreement with CFTC, DFA paid a \$12.5 million fine. DFA's future trading activities at CME are overseen by a CFTC "monitor." DFA's former CEO/President Gary Hanman and former CFO Gerald Bos were suspended from CME trading for five years. Two lesser executives were personally fined. In a press release, current DFA CEO/President Rick Smith welcomed the settlement, saying it ended the bleeding of continued legal costs, which, according to DFA's 2009 financial audit totaled slightly over \$2 million. Internally, DFA employees and directors merrily explained away the \$12.5 million CFTC penalty as a mere cost of doing business for activities that had put hundreds of millions of dollars in farmers' pockets. Hanman, likely through his political connections with the Bush administration, escaped relatively unscathed. Word in the dairy industry is that Hanman and Bos each personally had held significant volumes of Class III (milk) futures positions during the events in question.

But Rick Smith's optimism that DFA's "bleeding" from legal costs would end with the CFTC settlement was short-lived. Private legal sharks had already smelled the blood in the water and were circling. Within the next day or two, a barrage of private lawsuits started against DFA, alleging a variety of parties had been harmed by the co-op's overt manipulations of CME cash Cheddar markets during spring 2004. Those cases have been consolidated into a single matter now being adjudicated in a federal court in Chicago.

Another related legal matter was earlier brought on behalf of a private, Minnesota-based commodity broker Mark Anderson and his business, "Killer Whale Holdings, LLC." That complaint, filed in July 2008 in federal district

court in Minneapolis, predates the CFTC settlement that DFA entered in December 2008. Anderson alleges that he and his trading business suffered about \$20 million in financial losses (including accumulated interest) due to DFA's CME cash Cheddar manipulations that disrupted normal settlement of related dairy futures-options at that time.

Long history ... manipulating dairy commodities' prices

Call it recidivism. The history of Mid-America Dairymen and DFA, under Hanman, shows that commodity price manipulation was a tool frequently over the decades ... repeat behavior.

In fall 1988, reporter Joel McNair, then working for *Agri-View* (a weekly Wisconsin farm paper), quoted Gary Hanman bragging at a Mid-Am member meeting in Wisconsin that his co-op had boosted producers' milk checks through a scheme to push up Cheddar prices at the National Cheese Exchange (NCE). (Back then, Cheddar was traded weekly at NCE, located in Green Bay, Wisconsin.) NCE officials responded to Hanman's statement by suspending Mid-Am from trading at the Green Bay site.) But such penalties didn't cure Hanman's habit of bragging about commodity price manipulation to raise dairy farmers' milk prices.

In January 2000, USDA's federal milk marketing order program shifted to a complex, commodity price survey-based formula system for determining monthly raw milk prices. Simply stated, USDA conducted weekly surveys of manufacturers' sales of Cheddar cheese, butter, nonfat dry milk and whey. Those weekly prices were averaged for to generate monthly prices, which, in turn, entered into USDA's price formulas. (Nothing in dairy is simple). USDA's new pricing system provided immediate ability for a major buyer, such as DFA, to manipulate prices. That's because cash market prices at the Chicago Mercantile Exchange (CME) tracked almost directly with USDA's weekly price survey data.

By the second and third week of January 2000, DFA was clearly manipulating Grade AA butter prices at CME. Such suspicions were confirmed by an early February audio tape DFA issued to its field staff (personnel who contact farmers for quality inspections, membership work). That tape contained a detailed explanation by Hanman of how the co-op was raising farmers' milk checks through strategic, pricing-boosting purchases of Grade AA butter at CME. Those statements were printed in the April 2000 issue of *The Milkweed*. CME overseers did nothing.

In that audiotape, Hanman explained how buying Grade AA butter at the

Continued from page 16

CME would effectively drive up farm milk prices. He strategized that buying butter in the first two weeks of the month would most effectively boost farm milk income:

“We’re gonna need butter ... (I) f we need to build inventories, we’ll do that during the first two weeks of the month. Remember, the first two weeks of the month sets the basis for the commodity markets. If we have to adjust inventories, we may have to sell some. Let’s do that the last part of the month. So let’s TIME how we manage our inventory.”

Dairy farmers’ fortunes were scraping bottom by summer 2000.

August-September 2000: DFA blatantly breaks CME rules

Details for the following sequence of events are enhanced by another audiotape of DFA’s Gary Hanman bragging about upwards manipulation of a dairy commodity at CME. This inspirational tape from DFA’s “Great Leader” was of a September 18, 2000 speech given to a group of employees at the co-op’s Kansas City, Missouri headquarters. Hanman provided intricately detailed descriptions of DFA’s purchases of hundreds of carload lots of Cheddar at CME, which drove up cash market prices by about 30 cents per pound.

Trouble was: in this round of heavy Cheddar purchases, DFA wildly violated CME rules by failing to pay for these purchases on a timely basis. CME trading rules clearly stipulate that buyers must pay for and take possession of dairy commodities purchased in CME cash trading. DFA so failed. The co-op’s heavy purchases – several hundred, 40,000-lb. carloads – started on August 3, 2000 and constituted the biggest volume of Cheddar purchases in CME’s dairy history. But by mid-September 2000, unpaid sellers, owed an estimated \$20 million, descended on CME’s hierarchy, demanding payment. DFA paid up fairly promptly, but immediately ceased further purchases – thus sending Cheddar markets into free-fall ... to price levels below that at which the buying binge began. The September 18, 2000 Hanman speech was delivered within a day or two of the unpaid sellers’ complaints to CME overseers.

CME, CFTC failed to penalize DFA

DFA’s failure to pay for CME Cheddar purchases on a timely basis was page 1 news in the October 2000 issue of *The Milkweed*. Several hundred words of Hanman’s detailed speech of the co-op’s Cheddar buying binge were transcribed in the December 2000 issue of *The Milkweed*. CME overseers took no action to penalize DFA for such blatant trading irregularities. Consider the implications! What validity do cash markets serve if buyers drive up commodities’ prices, but do not promptly pay for those purchases?

CME failed to police itself, perhaps due to internal politics. Bob Prosi – DFA’s dairy floor trader at that time – also headed the CME committee designed to review trading irregularities. No internal investigation by CME. (Note: Mr. Prosi was also a director of CME at that time – a situation that entailed even deeper potential liabilities for CME.)

In late 2000 or early 2001, *The Milkweed*’s editor submitted a formal complaint to the federal agency with oversight powers – the Commodities Futures Trading Commission (CFTC). That complaint featured Hanman’s audiotape. At length, a reply from CFTC’s Chicago regional office explained that CFTC would not investigate that complaint. But, the letter admitted, it was unusual for a complaining party to submit an audiotape of the alleged misdeeds as part of the complaint! CFTC’s mandate over cash markets is to safeguard against trading activities that influence the settlement of monthly futures/options contracts. Impossible to believe that DFA’s blatant run-up of Cheddar cash markets, in August-September 2000, didn’t influence resolution of related dairy futures/options contracts. CFTC did nothing.

August-October 2003: DFA flat-lined block Cheddar at \$1.60/lb.

(Hint: anytime a prolonged, “flat-line” price for block Cheddar cash markets at CME stretches beyond several weeks, that’s a sure sign that price manipulation is occurring.)

DFA’s next overt manipulation of CME cash dairy commodity markets occurred in August-October 2003. During that time, DFA held block Cheddar cash markets at a level of \$1.60 per pound for 13 consecutive weeks. Why? During that time, DFA’s management was shopping for a lender to accept a \$150 million loan package scheme that offered the co-op’s members’ equities as collateral. A flat CME block Cheddar price provided prospective lenders an apparent, stable undergirding for short-term farm milk prices. (Remember: DFA was using those milk prices yet paid to its farmers as a collateral base for its debts.) Medium story short: within a couple days of DFA signing the \$150 million borrowing deal, the co-op quit holding up CME Cheddar prices at \$1.60 per pound ... and the market collapsed.

March-June 2004: DFA’s worst-ever CME manipulations!

If one had to select a single event, or sequence of events, that depicted the depths of DFA’s most depraved, brazen manipulations of dairy cash markets ... and indeed, the whole *&^%\$ dairy pricing system, then events spanning from late March through late June 2004 would win the prize, without question.

In this time frame, DFA drove up block Cheddar prices to all-time peak prices. Along the way, DFA (and subsidiaries) accumulated an illegally large number of Class III (cheese) milk futures contracts for June-August 2004. After driving up block Cheddar prices to \$2.20 per pound on April 14, 2004, DFA then managed a “fall-back” price of \$1.80 per pound for four-plus weeks. That \$1.80 block Cheddar price lasted from May 21 through June 22, During that time, the co-op strategically unloaded all 15,000+ Class III futures it held for June-August 2004. Once that load was dumped on unsuspecting dupes, DFA ceased further block Cheddar purchases. The block Cheddar cash market crashed all the way down to \$1.36 per pound by July 7, 2004.

In this sequence of events, DFA managed to inflict tremendous financial

harm on dairy farmers, cheese manufacturers, retailers, consumers, and dairy futures/options traders. DFA’s actions were in complete violation of CME trading rules and CFTC trading laws.

Severe harm accrued to the following parties:

* In early 2004, DFA had induced many member producers in the Southwest to sign annual, fixed-price milk price contracts, in the \$11.75 per hundred-weight range. Those contracts left producers responsible for some of the “upside” damage. Class III (cheese) milk prices in the federal orders rose as high as \$2.20 per pound on April 20, 2004 ... prices which would should have netted dairy farmers over per \$20.00 per cwt. for their milk. Those co-op members who’d signed fixed-price deals ended up netting about \$8.00 per cwt. for their milk, after co-op deducts. Those prices were far more than \$10 per cwt. below what they should have received in that price run-up.

* The rapid increase in Cheddar price drove USDA’s federal milk order system into an unusual paradox during April and May 2004: values for farm milk used in cheese manufacture (Class III) were higher than fluid milk (Class I) values. That unusual pricing flip-flop (or price inversion) allows raw milk marketers, in some federal orders, to “depool” Class III milk and keep the price difference for themselves. *Mucho dinero* was stolen. The Northeast federal milk market administrator estimated that “depooling” cost Northeast dairy farmers an estimated \$13 million (-\$.31/cwt.) in April 2004, and another \$4 million (-\$.13/cwt.) for May 2004. The Mid-East market administrator’s office estimated the April-May 2004 depooling impacts at -\$1.64/cwt. and -.74/cwt., respectively.

* These sky-high CME cash Cheddar prices proved dangerous and destructive to the industry. Inventory values skyrocketed ... and then crashed: cheese plants and firms inventorying cheese lost a couple hundred million dollars in declined product values in the subsequent crash. U.S. cheese plants were caught in a financial bind: they had paid sky-high prices for milk, starting in late winter and heading into mid-Spring. But when cheese prices dropped, many plants were forced to sell off finished product at far lower prices. These combined price gyrations of cheese milk and cheese markets wiped out a couple hundred-million dollars of inventory values, creating great financial stress in the industry.

* Consumer costs for milk and cheese went sky-high. *The Milkweed* has estimated that the consumer cost impact, resulting from DFA’s 2004 Cheddar price manipulations, were in the range of \$1.5-2.0 BILLION. That’s because those unduly high (\$2.20/lb.) CME cash Cheddar markets drove up consumer costs for both retail cheese and fluid milk, through USDA’s milk pricing system. Consumer prices for both fluid milk and cheese are directly influenced by movement of cash Cheddar markets at CME – particularly on the upside.

DFA’s CME price manipulations cost consumers dearly.

* Dairy speculators, through CME’s futures and options instruments, lost big-time in these wild, up-and-down Cheddar price swings. One major speculator is currently suing DFA for an estimated \$20 million (including accumulated interest), as a result of those spring 2004 dairy price manipulations. DFA’s initial line of defense collapsed: that the investor should have known about DFA’s illegal Cheddar manipulations by reading industry reports, including *The Milkweed*.

In late 2004, the federal CFTC started probing potential irregularities in DFA’s cash market Cheddar and futures/options antics that had occurred in the first half of the year. CFTC’s probe continued for FOUR YEARS, until mid-December 2008 (the waning days of the George W. Bush administration), when CFTC levied a piddling \$12.5 million fine against DFA. When viewed from the perspective that DFA’s CME Cheddar manipulations had cost U.S. consumers upwards of one billion dollars ... that \$12.5 million fine levied against the co-op by CFTC was paltry.

Until that mid-December 2008 CFTC announcement and fine was detailed, the cynical extent and scope of DFA’s 2004 CME events could not be fully appreciated. DFA (and subsidiaries) held an illegally high (15,000+) “long” Class III (cheese) milk futures/options positions for the three month period of June-August 2004. CME rules strictly prohibit related parties from holding more than 1,500 such positions in any given month.

Relevant documents subsequently referenced in a massive, “RICO” (anti-mafia law providing for triple damages) legal complaint filed against DFA in April 2010 demonstrate just how far DFA’s CME manipulations extended. Internal DFA documents, cited in the April 2010 complaint, describe a strategy to buy enough block Cheddar at CME, starting in late May 2004, until such time as DFA had exited all 15,000+ of its long Class III milk futures positions for June-August 2004.

DFA’s internal documents strategized the co-op would hold CME block Cheddar prices at \$1.80 per pound until all of the co-op’s futures positions were sold off. Then ... DFA would stop buying Cheddar and the cash markets would crash! That’s exactly what happened. Bouyed by DFA’s purchases of more than 300 carloads of block Cheddar, the block Cheddar market at CME held until June 22, 2004, at which time DFA quit buying and cash Cheddar block prices crashed.

Thus, not only was DFA unduly manipulating prices, but the co-op held an illegal amount of potentially dangerous “long” Class III milk futures for June-August 2004. Those “long” positions, if held by DFA, would have required the co-op to pay up the difference between the contracted price and the settlement price – losses that could have totaled in the tens of millions of dollars if DFA had retained the contracts and settled the difference between the contracted prices and month-end cash markets.

According to court documents, DFA officials lied to CFTC investigators for two years, claiming that Cheddar purchased during April-June 2004 was needed for commercial sales. In late 2006, DFA dropped that lie and admitted the massive purchases of block Cheddar in 2004 were conducted to try to protect the co-

Continued on page 18

op's exposure to (an illegally high volume of) Class III contracts. Why, after admission of that blatant illegality, did CFTC need TWO YEARS before finally settling the matter with a piddling, \$12.5 million fine against DFA?

Aftermath: CME took no action penalizing DFA

CME has taken no action against DFA for its highly illegal activities during 2004. Definite harm, but no foul called by the referee.

CFTC's \$12.5 million fine, a modest penalty if measured both by the damages wrought and the blatant violations, was bragged about internally by DFA personnel as a "cost of doing business" that had the net effect of putting hundreds of millions of dollars in dairy farmers' milk checks.

Federal courts are clogged with various cases in which a wide variety of plaintiffs claim damages against DFA for 2004 Cheddar cash market events. DFA's 2009 annual statement acknowledges a variety of legal claims against the co-op, as a normal course of business, and discounts any significant impact upon the co-op's finances if future findings are adverse.

The Milkweed has previously demonstrated how DFA used the "Cooperatives Working Together" (CWT) program of National Milk Producers Federation (NMPF) to subsidize export of about four million pounds of Cheddar during the second half of 2004. That four million pound figure was about one-third of all Cheddar DFA purchased during its late May-late June 2004 buying binge to keep block Cheddar markets at \$1.80 per pound. CWT paid DFA \$1.30 per pound to export those four million pounds of Cheddar. DFA made a big profit on those deals!

Working towards the present ...

In spring 2005, Moody's Investors Services strongly urged DFA to deduct more money from members' milk checks, to preserve the co-op's financial integrity.

In late July 2005, at a DFA executive committee meeting in Chicago, Rick Smith – who'd been imported to Kansas City earlier that year as the aging Hanman's heir apparent – warned the executive committee of DFA's corporate board that the co-op was headed for financial ruin if Hanman wasn't replaced. Hanman's duties were then scaled back. Smith assumed more responsibilities for DFA's day-to-day management.

On December 31, 2005, Hanman retired. One of Smith's first actions as DFA's new President/CEO was to dump Hanman's long-term financial Rasputin – CFO Gerald Bos.

In August 2006, the joint federal/state antitrust task force recommended indictments of DFA, Dean Foods and National Dairy Holdings for various violations of the Sherman Antitrust Act. Top DOJ officials never moved upon those recommended indictments. During both the Bush and Obama administrations, DOJ personnel have stated that the dairy antitrust investigation, which began in summer 2004, is still "open" – and thus, no official comments may be made on that subject. In the interim, the private legal sector has struck hard at DFA and Dean Foods, among others.

In July 2007, the first private antitrust class action lawsuits were filed against DFA, Dean Foods, National Dairy Holdings, and certain individuals in federal courts in Tennessee. Numerous of those lawsuits have been consolidated at the Federal District Court for Eastern Tennessee (Greenville division). These matters proceed slowly and quietly, but deeply.

During 2007, National Dairy Holdings (DFA's fluid milk processing subsidiary) lost \$134 million dollars – believed to be the biggest annual loss ever posted by a U.S. dairy business.

In 2008, DFA discovered two illegal payments to directors authorized by Gary

Hanman. Former board chairman Herman Brubaker received an illegal, \$1 million payment from NDH. And long-term DFA director (and peckerwood) Buckey Jones of Mississippi was paid a total of \$385,000 over several years, by NDH, as some form of a kickback involving a non-existent transportation business.

Hanman continued on for nearly three years as a consultant to DFA, in addition to his growing obligations to explain actions involving the burgeoning investigations and lawsuits into which his leadership helped mire DFA. As late as summer 2008, Hanman was actively engaged at DFA's "War Room" – where DFA personnel monitor real-time trading at CME and make buy/sell decisions involving cash dairy commodities.

But events following DFA's \$12.5 million settlement with CFTC in December 2008 proved to be the demise of any favorable relationship between Hanman and DFA. After that CFTC settlement, which Hanman's successor, Rick Smith, claimed was entered into to "stop the bleeding" of legal costs to the co-op, a barrage of directly related, private lawsuits then immediately hit DFA. DFA officials immediately summoned top-level legal help. And those expensive lawyers immediately surveyed the terrain they had to defend. One rumored, quick finding: that Hanman and Bos had engaged in personal futures/options speculation, and rumoredly used the resources of the cooperative to benefit themselves. Truth be known: over the years, it's very likely that other DFA management personnel similarly benefited ... in addition to key corporate directors.

In fall 2009, DFA and other cooperatives (Dairyalea, DMS) and private processors (Dean Foods, H. P. Hood) were hit with a massive private lawsuit, alleging widespread abuses of dairy farmers' milk markets in the Northeast. In May 2010, the presiding federal judge ruled that plaintiffs' attorneys could move forward with discovery and interrogatories.

In recent years (post-Hanman), the antitrust spotlights' glare – both civil and private – has somewhat diminished DFA's most blatant anti-competitive behaviors. But those intimidations against dairy farmers continue:

* In 2009, in eastern New York State, one small, local cooperative was kicked out of its market with DMS after the co-op refused to pay "voluntary" dues to fund the CWT program. In net, CWT has been a collection agency for DFA and other big co-ops. Most of the CWT funds for "export" subsidies go to big co-ops – income transfer.

* In Vermont, in recent months, well-known, long-term, independent dairy producers have been converted from DMS marketing their milk to direct cooperative membership (DFA, Dairyalea) with threats that they'd receive no premiums if they didn't join the cooperatives. Coercion, pure and simple.

* In the Northeast, squawking continues about DFA/DMS charges to producers for milk hauling, as well as quality/components testing. DMS controls about 80% of the farm milk in the Northeast.

* Sources tell how one dairy plant in New York State recently sought out independent milk producers, only to be warned by DMS that if that plant took in any "independent" milk, that plant's milk supply would be shut off!

* One small co-op, seeking a market with a regional fluid milk processor, was warned that processors' existing contract with DMS disallowed any other sources raw milk.

* Over time, the net effect of DFA and related marketers – such as DMS or regional milk-pricing superpools – has been to shift an increasing volume of marketing costs (particularly milk hauling) onto the shoulders of dairy producers and away from raw milk buyers. Given the ups and downs of farm milk prices – particularly the "downs" for the past 18 months – failure to extract reasonable costs from raw milk buyers is one of the primary failures by DFA and its related cronies.

DFA Target of Many Lawsuits

Dairy Farmers of America (DFA), after sailing alone for several years, apparently immune to significant legal action, has in recent years become an antitrust case magnet.

First major case was filed in 2007 in the U.S. District Court for the Eastern District Court of Tennessee at Greeneville, Tennessee, also known as the Southeast case. Although there were other cases filed, the initial filing was by the law firm of Howery and Simon, Washington, D.C., the world's largest competitive law firm. All the cases have been consolidated into one case which is presently waiting for class certification.

Normally, cases are settled after discovery is complete. Reportedly, there over a million documents in discovery files.

In 2008, Mark Anderson DBA as "Killer Whale Holdings, LLC," filed a case against DFA for price fixing on the Chicago Mercantile Exchange (CME).

A Dean Foods stockholder's "derivative" lawsuit filed in the name of Richard Livermore names DFA is a defendant.

Another class-action suit against DFA for manipulation of prices on the CME was fairly recently filed in Chicago. This case also presses RICO or racketeering charges against DFA.

There is another case filed in federal district court, Burlington, Vermont, charging DFA, Dairy Marketing Services, Dean Foods and HP Hood with antitrust violations which have harmed dairy farmers in the Northeast, specifically federal milk marketing Order One.

The Northeast case is being prosecuted by both Cohen Milstein and Howery as co-counsels.

Dean Foods' Special Dividend: \$15/Share Scam on Borrowed Money

In early 2007, Dean Foods' board of directors announced a special, one-time, \$15 per share stock holder dividend. Previously, the company had paid no dividends.

However, that \$15/share bonus showed the money-grubbing tendencies of Dean Foods' leadership: the dividend was paid out using \$1.96 BILLION of borrowed funds!

In the normal course of corporate business, stock dividends are paid out from earnings. But not at Dean Foods. CEO Gregg Engle personally pocketed \$39.6 million from that \$15/share special payout approved by the board of directors.

Banks and other financial institutions – major share holders of Dean Foods – took in several hundred million dollars from that \$15/share payout. Few Wall Street analysts puzzled, at the time, about the curious stockholder dividend bankrolled by borrowed money.

But those were the old days – Wall Street's "go-go" years when, literally, almost anything went. Dean Foods' directors managed to catch the last wave of Wall Street largesse for their one-time, \$15/share stock dividend.

If a major firm's directors tried to pull such a scam today, a banker would look quizzically and ask if the board were collectively crazy.

Appropriate Future Agricultural Antitrust Policy

by Pete Hardin

Obviously, in the great world of U.S. agriculture and food, there will never exist perfectly honest markets and competition. “Perfect competition” has seldom, if ever, existed and future prospects for such appear meager. *IF* ... however, the U.S. Department of Justice is finally ready to instill far greater integrity in the competition in agriculture and food, then there are a few good starting points, including:

*** The Antitrust Division needs to bang some heads together, HARD. Until the big cooperative and corporate wrongdoers feel real pain as a result of their misdeeds, they’ll continue anti-competitive business as usual. All one needs to do is look at the continued, repeated antitrust violations by Dairy Farmers of America to see that nothing the DOJ has done in the past 15 years has made a bit of difference.**

Logic: At a certain point, the teacher needs to take a miscreant to the woodshed for a severe, deserved thrashing to restore order in the school house. If dairy is the “worst” industry in agriculture/food, from an anti-competitive basis, then dairy can certainly serve up some well-deserving individuals and firms.

*** Act upon the recommended indictments issued by the 2004-2006 federal/state dairy antitrust task force. That task force, headed by senior DOJ Antitrust Division attorney Allee Ramadahn, recommended indictments against: Dean Foods, DFA, and National Dairy Holdings (at the time a DFA joint venture and the nation’s second-largest fluid milk processor, which was sold by DFA in 2009).**

Logic: The present DOJ is now using the same excuse as the Bush administration started in March 2007 – that investigation is still open. We understand why the Bush administration wanted to protect its political cronies (Dean Foods, DFA). But with a full package of recommended indictments, DOJ Antitrust could readily call back Mr. Ramadahn from his forced retirement and indict Dean Foods and DFA in rapid order. The longer the Obama administration takes to move on this supposed, “still open” investigation, the more its credibility is diminished.

*** The Antitrust Division needs to take over DFA as a “corrupt organization” ... just like DOJ took over the Teamsters Union from the corrupt control of Jimmy Hoffa, Sr. and his henchmen.**

Logic: What does it take to prove that DFA is systemically corrupt? Repeated violations of its 1977 Consent Decree with DOJ? Systematic manipulation of dairy commodity prices at the Chicago Mercantile Exchange? (The early 2004 manipulations – that drove block Cheddar prices to

\$2.20 per pound – cost U.S. consumers a minimum of \$1.5 to \$2 BILLION dollars in higher retail costs for fluid milk and cheese. (That estimate is *The Milkweed’s*.)

*** Restrict Capper-Volstead exemptions for agricultural cooperatives to only the original assembly, transportation and sale of farm products. In all other functions, cooperatives should compete on an equal footing with other businesses, particularly in the area of finance.**

Logic: When the Capper-Volstead Act was passed in the early 1920s, the nation’s transportation, agriculture, food and financial systems were far different than today’s realities. Farm cooperatives have grown to multi-billion dollar enterprises. Many of the misdeeds witnessed in dairy have included so-called “Marketing Agencies in Common” – cooperatives of cooperatives that have pooled their collective, larcenous tendencies on a greater scale.

“Restrict Capper-Volstead exemptions for agricultural cooperatives to only the original assembly, transportation and sale of farm products. In all other functions, cooperatives should compete on an equal footing with other businesses, particularly in the area of finance.”

In finance, farmers would be better served by cooperative financial records that were as equally transparent as corporate finances. Why can’t many farmers find out what their co-op managers and directors are being paid, both in salaries and other compensations?

“Cooperative bookkeeping” has devolved to a spectacular world of keeping money away from farmers. “Retained earnings” is a scam in which cooperatives’ profits are partially paid back to members (minimum 20% of annual profits). But the farmers pay full income taxes on “retained earnings” (i.e., annual profits not revolved to members). Farm cooperatives have many different names for various types of funds retained from farmers.

Too often, the farmer NEVER sees those retained earnings or equities. In the best-case scenario, the co-op pays the remaining 80% of the co-op member’s “retained” earnings to his/her estate after the member is deceased. Nationally, farmers are holding the bag for several tens of billions of dollars of co-op earnings, equities and member capital that they’ll never see. Transparent cooperative financial records are a must.

*** The DOJ Antitrust Division needs to**

make permanent its newly-created food/agriculture unit, and further staff that unit with regional investigators that can quickly respond to complaints from farmers, consumers ... and anybody else in the food chain. Cozy nests in Washington, D.C. are a poor site to watch the dirty doings in agriculture and food industries.

Logic: If DOJ/Antitrust wants to know what’s going on in the country, then it needs a regular presence in the country.

*** To protect the public’s multiple interests in a stable dairy industry and milk supply, it would be wise for the DOJ to review DFA’s compliance with existing Consent Decrees, and include public comments in that process. Further, it’s probably high time to forge new Consent Decrees between DOJ and DFA/Dean Foods. Of course, new Consent Decrees must be enforced.**

ADDITIONAL TOOLS NEEDED ...

Some of the anti-market and anti-competitive events we watch in dairy go beyond the auspices of DOJ’s Antitrust Division. We observe the need in dairy for:

*** A nationwide USDA “milk check security” program to cover losses by dairy farmers and milk haulers, in the event of a cooperative or processor bankruptcy. In addition to making farmers whole by moving them to the front of the line of secured creditors, this nationwide security program should also offer 1% loans for two to three years, to tide over cash flow that’s been disrupted by financial failure. We’re not asking for a bailout, but a cash flow assist.**

*** Stronger oversight and better tools for the Commodities Futures Trading Commission (CFTC) to watch-dog dairy cash markets and futures/options trading. CFTC personnel admit that: CME dairy commodities are too thinly-traded to be used as accurate price-setting tools (direct or indirect), and that CME does not have the personnel or the computer resources to stay current with cash market trading events.**

*** Federal law and/or regulations should be changed to prohibit “trading against interest” at CME. The best example of “trading against interest” occurred when Kraft Foods sold cheese at lower prices on the old National Cheese Exchange, because the contracts Kraft had to buy from its cheese plant suppliers were based on NCE weekly prices. Kraft lost money selling at NCE’s cash market, but gained higher revenues (per pound) on other modes of bulk, commodity cheese sales. Ban trading against interest in CME dairy cash markets, and watch the rats change their tunes.**

NY Sen. Schumer: Preserve Capper-Volstead

by John Bunting

Sen. Charles Schumer (Democrat, New York) is the third most powerful senator in the U.S. Senate. Additionally, Schumer is a member of the Senate Judiciary Committee, which oversees the U.S. Department of Justice (DOJ).

Assistant attorney general Christine Varney made a comment while visiting Vermont in February 2010 concerning re-examining the Capper-Volstead Act. This practically side comment put most of the big cooperatives’ knickers in a knot.

The Capper-Volstead Act exempts cooperatives from antitrust enforcement, provided the cooperatives act in a manner mutually beneficial to their members. Needless to say, oversight of cooperatives is virtually nonexistent.

Sen. Schumer wrote a letter to Varney, the federal Antitrust chief which remains unavailable, but, basically tells DOJ to leave Capper-Volstead alone.

In March, 2010 Sen. Schumer and Varney conducted a hearing in Batavia New York. The cooperatives turned out plenty of witnesses to pay for the preservation of Capper-Volstead as it stands.

Perhaps, Sen. Schumer’s defense of the largest cooperatives was not well thought out. A look at the dairy farm “mailbox” price, comparing New York State with Wisconsin for 2009, shows Wisconsin, as usual, with a higher mailbox price.

The reason for this Wisconsin advantage is not readily apparent. The fluid milk market generates the most money to farmers milk checks. Wisconsin tends to have about 12% Class I (fluid) milk utilization, while New York tends to have just under 50% Class I utilization.

New York’s milk marketing is tied up, primarily by Dairy Farmers of America (DFA) and Dean Foods, the nation’s largest fluid milk processor. DFA and Dean Foods have a full supply agreement which covers New York State. The full supply agreement means Dean Foods gets all the milk the firm wants without paying significant premiums. That is another way of saying, there is no competition in New York State.

Because of the complexities of balancing milk and the pooling requirements to achieve the blend price, small cooperatives which appeared to be independent are fully under DFA’s thumb.

In early July 2008, the National Family Farm Coalition wrote a letter to the Senate Judiciary Committee and sent copies to each member, including Sen. Schumer. The letter requested a Senate Judiciary Committee hearing because, “What is needed is a sense of the nature and extent of DFA’s control which can be provided only through the hearing process. Clearly the Senate Judiciary Committee is best suited to conduct a hearing examining DFA.”

Even though a follow-up letter was sent, neither the Judiciary Committee nor Sen. Schumer responded. DFA’s Political Action Committee (PAC) has been a donor to Schumer. Every politician will tell you there is a firewall between them and the PAC donor. However, according to the National Bureau of Economic Research study, PAC money is handed out not as an effort to influence, but rather as a reward for activities.

Obviously, to do nothing while DFA has seized control and continues to plunder New York State’s dairy industry might be just the action the DFA chooses to reward. Schumer’s letter to Varney reportedly promotes business as usual.

Dean Foods Replacing DFA Milk with Supplies from Land O'Lakes

by Pete Hardin

In late-breaking events in early June, Dean Foods has made major readjustments in its raw milk supply for an unknown number of dairy plants (believed to be primarily located in the Southeast). The on-again, off-again relationship between Dean Foods and its historic raw milk supplier – Dairy Farmers of America (DFA) – is decidedly OFF, at least in major parts of the Southeast.

Dean Foods is lining up Wisconsin milk, through Land O'Lakes (LOL), to displaced DFA milk at Dean Foods' Louisville, Kentucky fluid milk plant. It is believed that other Dean Foods' milk plants in the Southeast are involved. Dean Foods and DFA have been increasingly back-and-forth at each other for much of the past year.

Dean Foods' Louisville plant is pooled on the Appalachian federal milk order (Order #5). Dairy farmers currently shipping to Order 5 could see their Class I (fluid) utilization decline in coming months. That's because LOL can pool tremendous amounts of Wisconsin milk in Order 5, and draw down Class I resources from the monthly revenue pools. LOL could have a pretty good scam going: pooling Wisconsin farms' milk on Order 5 and then skimming the cream from the higher Class I utilization.

Dean Foods and LOL have numerous business relationships going. Dean Foods has purchased both the cultured products and fluid milk operations from LOL in recent years.

Relationships between Dean Foods and DFA have been souring for the past couple years, starting with the onus of multiple antitrust class action lawsuits brought against the pair, starting in July 2007 in the Southeast. At a certain point, Dean Foods' management has got to be wondering what kind of milky, antitrust mess DFA lead Dean Foods into.

In spring 2009, DFA sold its long-struggling fluid milk subsidiary – National Dairy Holdings – to Mexico's biggest fluid milk company, Grupo LALA. In the subsequent year, Grupo LALA has suddenly emerged as a very aggressive competitor to Dean Foods in the Southeast – a turn of events for which Dean Foods was not prepared. Dean Foods' management was irked to learn that Grupo LALA was not paying the prevailing, regional, Class I (fluid) superpool premiums for raw milk purchased from DFA (and others). Grupo LALA apparently got off *el cheapo* on raw milk costs, through a special deal with DFA, last summer. Those lower raw product costs allowed Grupo LALA to effectively take away some retail and food service accounts from Dean Foods, much to the displeasure of Dean Foods' senior management.

At the very end of September 2009, Dean Foods announced it was moving ahead in an effort to procure full milk supplies for about a dozen company milk plants (primarily in the Southeast), effective January 1, 2010. That news blindsided DFA. Dean Foods hired away several field representatives from DFA.

Dean Foods' attempt to self-supply about a dozen of its milk plants within a three-month period was naïve, to say the least. Dean Foods did pull in a large number of producers in the Southeast, feeding on producers' anger at DFA and its 'ugly cousin' – Dairy Marketing Services (DMS). In early January 2010, DFA continued to supply some milk to Dean Foods plants, although some of those volumes were invoiced through another cooperative.

Dean Foods' newly-acquired independent producers became very angry, very fast at their new milk marketer. Dean Foods' pay prices were virtually no better than those of DFA/DMS. Southeast farmers shipping milk to Dean Foods were particularly angry over botched laboratory information – regarding milk quality and components – that were being sent to a laboratory in Minnesota.

So ... in March 2010, about 100 dairy farmers who'd shifted to Dean Foods as their milk market in January turned in "quit notices" to leave Dean Foods ASAP. DMS also hired back a couple of the field representatives who'd quit DFA/DMS to go to work for Dean Foods last fall. At this point, about six dozen dairy producers in Southeast states, who are currently shipping to Dean Foods, will quit Dean Foods and go back to DFA/DMS in late June/early July.

But Dean Foods' sudden move, kicking out DFA as a raw milk supplier in certain Southeast plants, could suddenly leave DFA without an effi-

cient, nearby home for a significant volume of milk in the Southeast. Word is that DFA personnel are mystified about what they'll do with the milk, barring a miracle (like a massive wave of heat and humidity).

Wisconsin is a-brimming with farm milk. The state's raw milk supply, in recent months, has consistently registered gains of five to six percent more milk each month, compared to year-ago totals.

Wisconsin's dairy plants have plenty of milk. "Cheap" Wisconsin milk on wheels could do a lot of damage in the Southeast.

"Muscle Milk" Contaminated with Toxic, Heavy Metals

The June 2010 issue of *Consumer Reports* printed an article titled, "Alert: Protein drinks." This article warned of unduly high levels of toxic, heavy metals in selected products from that category.

"Muscle Milk" is one of the worst offenders, in terms of high levels of toxic heavy metals. (In the January 2010 issue of *The Milkweed*, "Muscle Milk" was pummeled for its marketing strategy employing the word "milk," when, in fact, that product contains very little dairy-based ingredients. Further, "Muscle Milk" meets no working definitions of milk. Even worse: the marketers of "Muscle Milk" have filed widespread legal actions against other certain other consumer products that used the word "milk" in their names.

With *Consumer Reports'* laboratory analyses finding sky-high volumes of Arsenic, Cadmium and Lead in various "Muscle Milk" products, perhaps it's time for that firm to invest in fewer lawsuits and more quality-control analysis of their ingredients and end-products. Sources report widespread ripple-effects of news media reports feeding off *Consumer Reports'* findings. "Muscle Milk" certain

deserves what it's getting, but why'd they have to label their product 'milk' and damage dairy's image," puzzled one long-term industry pro.

Here's a summary of the "worst of the worst" liquid protein drink products containing toxic, heavy metals, according to *Consumer Reports*:

EAS Myoplex Original Rich Dark Chocolate Shake: Arsenic (16.9* micrograms), Cadmium (5.1* micrograms).

Muscle Milk Chocolate: Arsenic (12.2 micrograms), Cadmium (5.6* micrograms), and Lead (13.5* micrograms).

Muscle Milk Nutritional Shake Chocolate: Arsenic (14.3 micrograms), Cadmium (0), Lead (6.5 micrograms).

Muscle Milk Vanilla Creme: Arsenic (11.2 micrograms), Arsenic (2.0 micrograms), Lead (12.2* micrograms).

[Items denoted with asterisk (*) exceed maximum daily limited proposed by U.S. Pharmacopeia. *Consumer Reports* advises that three servings daily are common.]

Farm Groups Offer Events Scheduled Around USDA/DOJ June 25 Dairy Antitrust Workshop

www.familyfarmdefenders.org

Two activist farm organizations have scheduled a series of events sandwiched around the upcoming June 25, 2010 "Dairy Antitrust" workshop in Madison, Wisconsin.

The Family Farm Defenders and the National Family Farm Coalition will hold their own seminars on dairy antitrust and related issues on the afternoon of June 24. These events will be held at the Great Hall in the University of Wisconsin-Madison Memorial Union (800 Langdon St.).

These two organizations will hold evening meetings (with food) both on June 24 (pre-workshop) and June 25 (a summary meeting, after the workshop). For full details, go to the Web site of the Family Farm Defenders at:

As part of the "pre-workshop" meetings, Pete Hardin, editor/publisher of *The Milkweed*, will present a wide-ranging discussion of two important topics: dairy antitrust issues, and the impact of manipulations of dairy commodity prices at the Chicago Mercantile Exchange.

Hardin's presentation will take place at 3:00 p.m. on June 24, at the invitation of the Family Farm Defenders and National Family Farm Coalition. This event will be held at the Great Hall of the UW-Madison Memorial Union. The discussion and follow-up question period will last about one and a quarter hours.

Please join us. Dinner will be available.

Cheese Data Does Not Add Up

by John Bunting

By May 25, 2010, block Cheddar cheese had traded for three days at \$1.50 per pound. Then on May 26, 2010 the price began to fall and continue to fall through June 10, 2010, at which point block Cheddar price on the CME was \$1.36 per pound.

What news or data, can be used as an excuse for the price drop? On May 21, 2010, USDA's NASS survey indicated over 1,011,658,000 pounds of cheese. Experts made comments relating the size of the cold storage numbers to 1984, with no connection to George Orwell's novel "1984", a work of science fiction. In 1985, the cold storage numbers dropped, even though cheese production increased. Perhaps the cold storage numbers in 1984 were also a work of politically oriented fiction.

Looking at the numbers indicates 58.4 million more pounds of cheese was produced in the January – April period in 2010 than in the same period of 2009. However, the U.S. exported an additional 31

million pounds more in the January – April period. The USDA "commercial disappearance" numbers are only available, at this time, for January – March. Interpolating the "commercial disappearance" numbers suggests an additional 16.6 million pound more disappeared in the January - April period. Taken all together, adds up to only an additional 10.7 million pounds should be in the "cold storage" report, not the 72.7 million USDA is showing.

According to NASS data, cheese production in New Mexico for the months of April 2010 was up 26.8%. The cheese production data stands in stark contrast to USDA's milk production numbers for New Mexico which were off by 1.7% when compared with April 2009.

Wisconsin data shows an increase of 6.2% more milk in April 2010. Yet, Wisconsin's total cheese production fell by 1.2% in April 2010, when compared with April 2009.

Something very strange is going on.