

The *Special Edition* Milkweed



Dairy's best marketing info and insights

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**Biggest Issue Ever
20 Pages**

“Giants” Break Antitrust Laws as Gov’t Snoozes

Dairy is dominated by giants. During the past decade-plus, dairy marketing and processing in the U.S. have dramatically consolidated into fewer, bigger firms. Consolidation came late to dairy, compared to other major agricultural sectors such as beef, pork, poultry and grain. But once the trend towards a few, dominant dairy firms started in the mid-1990s, such changes have accelerated with vengeance.

Long story short: Farmers are paid less for their milk. Consumers pay more for dairy products at the supermarket. Between the dairy farmer and the consumer, dairy’s “Great Middle” has grown increasingly inefficient and profit-hungry.

“Giants” prefer to do business with other giants—squeezing out smaller competitors. The giant fluid milk processor has exclusive milk supply contracts with the centralized marketer of farmers’ milk. That same giant fluid milk processor cuts deals to supply large supermarket chains, restricting competitors’ access to the dairy case. Dairy’s “giants” harm the entire industry, from farm to consumer:

* Dairy farmers’ survival is threatened, because the nation’s giant dairy co-op is a debt-ridden, black hole: sucking money from farmers’ milk checks, and failing to optimize farmers’ value of raw milk. This giant co-op—Dairy Farmers of America (DFA)—has become virtually the only outlet to which dairy farmers may sell milk in several parts of the country. DFA has repeatedly violated laws in its coast-to-coast coercion, forcing non-member farmers to market their milk through DFA or DFA-controlled subsidiaries.

DFA’s leaders have repeatedly forced non-member producers into the co-op ... to feed the co-op’s cancer-like debts and inefficiencies. DFA’s debts total over \$1 billion. Those co-op debts are like a huge cancer—continually consuming nearby healthy tissue to sustain the malignancy.

But federal Department of Justice (DOJ), despite repeated investigations, has taken no action against DFA.

* Today, in several states and regions, Dean Foods controls more than 75% of all fluid milk distributed, including: Michigan (+90%), Massachusetts (80%), Tennessee (80-90%), New England (70%), northern Alabama (+80%), and northern New Jersey (70% or more). (These estimates are those of the editor of *The Milkweed*, based upon more than 30 years’ experience observing marketing trends in the U.S. dairy industry.)

Without honest competition among fluid processors, buyers of fluid milk (from moms to school children) pay unduly high prices for this important source of daily protein and nutrition.

But the DOJ’s Antitrust Division has taken virtually no actions to rein in Dean Foods’ onslaught against competition in fluid milk processing/distribution. Dean Foods has achieved previously unprecedented market shares—a trend that threatens this nation’s entire food system, based on the way DOJ oversees the food industry.

* Cheese-pricing is often rigged, through brazen manipulations of Cheddar trading at the Chicago Mercantile Exchange (CME)—dairy’s pricing center for cash commodity markets and related futures/options contracts. Cheese-pricing shenanigans are particularly critical. Roughly half of all U.S. farm milk is processed into cheese. CME Cheddar prices are dairy’s price trend-setters for basically all farm milk processed into consumer products.

To date, the federal Commodities Futures Trading Commission (CFTC) has taken no enforcement action against wild abuses of CME cash markets—by DFA and others. In spring 2004, DFA wildly drove up CME Cheddar prices—costing U.S. consumers an estimated, minimum of \$1.5 to \$2 BILLION dollars in higher retail dairy product prices. (See sidebar, page 8, this section.)

Like a basketball game without an honest referee ...

During the past decade, demised competition in dairy has coincided with failure by federal regulators to enforce laws governing competition.

* The federal DOJ allowed Dean Foods’ massive growth, capped by the December 2001 corporate marriage of Suiza Foods and Dean Foods—the nation’s two largest fluid milk processors. Through White House politics, the federal government has allowed Dean Foods to almost single-handedly rewrite Antitrust rules. Dean Foods has long retained a former, high-level federal DOJ lawyer who rewrote Antitrust benchmarks during the Clinton administration!

* DOJ has let DFA operate unrestricted, over the past 12 years, as farmers’ milk buyers have been taken over by DFA through a variety of anti-competitive

actions. DFA has repeatedly violated terms of a still-binding Consent Decree with DOJ that was put in place to stop similar predations, way back in 1977, by DFA’s predecessor co-op, Mid-America Dairy, Inc. (Mid-Am).

* Why has the CFTC allowed blatant manipulations—by DFA and others—of cash Cheddar markets at the CME? In late 2000 or early 2001, the CFTC failed to act upon a formal complaint issued to that agency by the editor of *The Milkweed*, regarding blatant Cheddar price manipulation at CME by DFA during August-September 2000. Despite receipt of an audiotape featuring DFA’s CEO/President bragging about price manipulations of Cheddar prices at CME turned over to CFTC as part of this complaint, that federal agency “heard no evil” and failed to pursue the matter at that time.

* USDA has failed its mandate to ensure competition in oversight of the federal milk marketing order program. In the Northeast marketing region, for example, USDA has let go unchallenged virtually exclusive raw milk supply deals involving DFA (and its subsidiary, Dairy Marketing Services—DMS) with the three largest fluid processors in the region. Those three processors control about 80% of all fluid milk in the region. Several smaller competing cooperatives have no choice but to go through DFA/DMS to make requisite milk sales to fluid processors in the region.

Federal overseers—DOJ, USDA and CFTC—have repeatedly allowed unrestrained takeovers and abuses of competition in dairy, to the point where an “anything goes” atmosphere has evolved. Dairy has become something like a basketball game, in which referees have ignored blatant fouls: illegal tactics are the norm.

No surprise:

Two-year Antitrust investigation now stalled at top of DOJ

In late August 2006, career professionals at the DOJ’s Antitrust Division concluded a 26-month investigation into far-ranging, anti-competitive practices in the nation’s dairy industry. This investigation stretched from New England to Florida to California, including about 20 state Attorneys General. DOJ Antitrust division investigators spend tens of thousands of hours sifting through the milk business; they conducted over 150 interviews of dairy industry personnel.

DOJ’s Antitrust division dairy investigation team recommended to their higher-ups, around August 28, 2006, federal indictments against some of dairy’s biggest firms: DFA, Dean Foods, and National Dairy Holdings (a fluid milk joint venture primarily owned by DFA.)

But those recommended indictments have gathered dust on the desks of top-level DOJ officials for more than four months ... as DFA keeps stealing money and markets from producers, and Dean Foods keeps adding to its collection of fluid milk processors. Why can’t, or won’t senior DOJ officials of the Bush administration move to indict DFA and Dean Foods? The stench of top-level political favoritism permeates ... reaching into the highest levels of the federal government. (One hint: the Texas “big money boys” who made George W. Bush’s personal fortune financially back Dean Foods.)

To allow political favoritism and campaign contributions to stand in the way of enforcing this nation’s laws, denies any hopes of restoring fair farm milk prices to U.S. dairy producers ... and fair prices charged to this nation’s consumers.

Will DOJ enforce the law? Or will politics trump the law? At this critical juncture in the history of the U.S. dairy industry, *The Milkweed* has produced this 12-page, special section that details the history of competitive abuses by DFA against dairy farmers. Our hopes are that concerned persons will use this information to take to their elected representatives—in the U.S. Senate and Congress—to pressure the U.S. Department of Justice to enforce the law against DFA and Dean Foods.

How To Order Extra Copies

Additional copies of this 12-page special Dairy Antitrust report are available by mail, and also may be downloaded from our Web site www.themilkweed.com.

Persons wanting additional copies should write or call Pete Hardin. Cost for extra copies: \$5 each; or, five or more copies, \$3 each. Call 608-455-2400, or write to *The Milkweed* P.O. Box 10 Brooklyn, WI 53521. Help spread details of this travesty.

DFA ... the “ENRON of the dairy industry”

by Pete Hardin

This 12-page special section has been created so that persons in the U.S. dairy industry may use the information to act upon their concerns about the harm that has accrued to many --farmers and consumers, -- due to anti-competitive practices by Dairy Farmers of America and others.

On page 12, you will find contact information for U.S. Senators and Congressional representatives, as well as a sample letter to use to contact elected officials. At this stage of the game, legislative oversight is necessary to compel the U.S. Department of Justice to do its job: pursue indictments against dairy's miscreants.

Get informed and contact your elected officials.

Dairy Farmers of America (DFA) is the largest milk producers' cooperative in the U.S.—controlling more than one-third of U.S. farm milk. DFA is the “Enron of the dairy industry”. As DFA starts its 10th year of operations, the co-op's future is clouded by the incredible debt and destruction in its wake:

* The Antitrust Division of the U.S. Department of Justice (DOJ) concluded a two-year investigation in late August 2006, recommending federal indictments of DFA (and others) for antitrust violations.

* The Commodities Futures and Exchange Commission (CFTC) is investigating alleged manipulations of dairy cash markets and futures/options at the Chicago Mercantile Exchange (CME). DFA is a prime culprit at CME. Manipulations of CME Cheddar prices have cost consumers more than a billion dollars, due to higher retail dairy product costs.

* The world's largest antitrust law firm—Howrey Simon, LLC, is *finally* just about saddled up and loaded to fire private antitrust lawsuits against DFA (and perhaps others).

* The Internal Revenue Service is investigating DFA's tax for 2001-2003.

DFA's history has featured brazen coercion of producers and milk markets—an effort to control U.S. milk supplies from Maine to California. DFA admittedly controls about one-third of farm milk supplies in the U.S. The actual figure is probably higher. In some parts of the country, DFA (and its related subsidiaries) are just about the *only* outlets for farmers to sell their milk. Ironically, where DFA's control over milk supplies is greatest, dairy farmers receive the smallest payback of available dollars for their milk sales.

Why low returns to dairy producers in areas where DFA literally controls milk supplies? Simply put, DFA uses its control of milk markets to bleed money out of farmers' milk checks to cover its debts and inefficiencies. DFA is a financial disaster waiting to implode ... dairy's Enron:

* DFA's debts total over \$1 billion. Besides debts listed in DFA's audits, other liabilities and “keep-well agreements” burden the co-op. DFA's debts equal at least two months of members' milk production. DFA's leaders blatantly lied about “reducing debt” in fiscal 2005. In truth, the co-op's 2005 audit changed debt numbers from 2004's audit to give the appearance of reducing debt in 2005! DFA changed debt numbers from 2004's audit and then claimed the co-op had written down debt during 2005.

* As collateral for its debts, DFA pledges revenues from sale of farmers' milk—members' upcoming milk check money! (Historically, dairy farmers are paid several weeks after milk leaves their farms—thus leaving large amounts of “receivables” lying around, attracting crooks.)

* DFA's net pension liabilities are \$145 million in the red, effective 12/31/05 (the latest available financial audit). That \$145 pension hole persists, despite DFA's plugging \$97 million of cash and equity into pension programs during fiscal 2005! Unfortunately, the U.S. dairy industry is a lot like the nation's steel industry--far fewer employees today cover an army of retired laborers' benefits.

* In 2005, DFA members received zero profits from \$34 million earned by the co-op's subsidiaries. DFA members' assets were used to acquire such “non-member” businesses, and DFA's assets secure those businesses' debts. But members receive no direct benefit from profits of DFA's “non-member” subsidiaries and joint ventures. Sounds like Enron's “off the books” antics. Subsidiaries' profits have long offset DFA's money-losing internal operations—making year-end profits *look* better, but not putting money where needed—in farmers' pockets.

Here in early 2007, low milk prices throughout 2006 leave dairy producers devastated. Many U.S. dairy producers have just about reached the end of their financial ropes, due to failures of the milk marketing system. DFA's operating nucleus—producer numbers, cash flows and operating efficiencies—is threatened. The parasite, DFA, is killing its host—dairy farmers.

History of misdeeds ... dating back to the early 1970s

Anti-competitive wrongdoings landed DFA's predecessor co-op, Mid-

America Dairymen (Mid-Am), on the losing side of huge private lawsuits and continuing oversight of federal Antitrust authorities. In the early 1970s, Mid-Am (and other co-ops) committed illegal activities in the central Plains (Kansas, Missouri) and the Chicago market, attempting to block initial milk marketing efforts by the National Farmers Organization (NFO).

Mid-Am's long-ago tactics against NFO (and other competitors) were remarkably similar to those used by DFA in the past decade: exclusive take-over of milk plants' supplies, with threats to non-member producers to “join or else”; diversion of milk funds between regions; denying competitors access to fluid milk plants; penalizing milk haulers who also worked for competing milk marketers. All such activities are clear violations of still-binding portions of a 1977 Consent Decree by which DOJ officials tried to shackle Mid-Am (and its successor—DFA).

Mid-Am and fellow conspiring dairy co-ops initially sued NFO, claiming, incredibly, that fledgling NFO had violated Antitrust rules. What came to be called the “NFO Case” wound through the federal legal system for more than 15 years, concluding with a decision by the U.S. Supreme Court in the late 1980s that Mid-Am (and other co-ops) had illegally conspired to deny NFO legitimate competition in raw milk sales to fluid milk processors. By the time it concluded, the “NFO case” became the longest-running, most voluminous private antitrust case in the history of the U.S. judicial system.

Long before the NFO case was concluded, however, federal Antitrust authorities intervened against Mid-Am's dirty tactics. DOJ and Mid-Am finalized a Consent Decree on May 17, 1977, forcing Mid-Am officials to agree, in writing, not to engage in certain practices deemed illegal, including:

- * Use of coercion against dairy producers and competitors.
- * Requiring non-members to join the co-op for one year following take-over of their plant (or plant's milk supply) by the co-op.
- * Penalizing milk haulers for also doing business with competitors.

Portions of that 1977 Consent Decree are still in force. DFA has repeatedly ignored them ... and DOJ has repeatedly failed to enforce them. Recent years have witnessed numerous, extortionate attacks by DFA against the U.S. dairy industry. Ironically, DFA has utilized many coercive and anti-competitive behaviors that are clearly deemed illegal by the 1977 Consent Decree.

1993-95: Mid-Am controls Southeast; Louisiana battleground, co-op has 98.5% of milk but takes \$1.00/cwt. from members

The take-over of milk markets in the Southeastern U.S., by Mid-America Dairymen in 1993-1995, provided a preview of what Mid-Am's successor cooperative (DFA) would do when it gained control of milk supplies in a region: steal millions from dairy farmers' milk checks.

Starting in mid-1993, Mid-Am initiated a “Southern Strategy” of mergers, buy-outs and take-overs of fluid milk plants and milk supplies of several competing regional milk marketers. In milk-rich northeastern Louisiana and adjoining counties in Mississippi, Mid-Am's control over local milk markets was virtually complete. By early 1995, Mid-Am controlled all milk markets in Louisiana, except for a dozen (or so) “colored breed” producers shipping Jersey herds' milk to a small local handler—Kleinpeter. Locals calculated that Mid-Am controlled 98.5% of all farm milk produced and sold in Louisiana by mid-1995.

What happened? Despite promises of improved efficiencies for Louisiana producers before their local co-op—the Gulf Dairy Association—merged with Mid-Am, Louisiana producers almost immediately saw Mid-Am deducting up to \$1.00/cwt. (and sometimes more) in unexplained “marketing costs”. The Gulf Dairy Assn. merger was typical for Mid-Am: lies, coercion ... and financial “plums” extended to the pliant local co-op manager—Dr. Bobby Wallace.

Wallace had informed his board that Gulf Dairy had to merge with Mid-Am, because Mid-Am leaders threatened that if the local co-op didn't merge, Gulf Dairy would not be able to sell milk to local fluid bottlers. (Wallace cashed in personally, joining Mid-Am's payroll as a high-paid vice president after the merger.)

Once Mid-Am took control, local Louisiana dairy farmers raged at Mid-Am's low milk prices. Their efficient local co-op had by-laws prohibiting deducts of more than five cents per cwt. from members' milk checks for co-op losses. Holy catfish! Mid-Am was swiping more than \$1.00/cwt. some months, without giving any explanation for these “marketing losses”.

For several years, starting about early 1995, Mid-Am controlled 98.5% of all milk in Louisiana—and access to all fluid milk plants there, except one. “Marketing losses” assessed Mid-Am members in the Deep South were mostly funds transferred to other sectors of the co-op's empire. Low milk prices for the past decade have wiped out thousands of dairy farmers in the milk-deficit Deep South.

Local Louisiana producers fought back. They organized demonstrations at Mid-Am's plant in Franklinton—a protest drawing nearly two hundred angry producers that was televised on three New Orleans television stations. Next, locals elected several neighbors to Mid-Am's regional board of directors, aiming stop the cancerous thefts from their milk checks.

But hopes that local farmers on the Mid-Am regional board could make a difference were ill-founded. One key Louisiana “trouble-maker” challenging Mid-Am was Carole Knight—newly elected by her neighbors as a director of Mid-Am's local board in early 1996. Knight was a full-time business journalist, who, with her husband Clayton (an attorney), helped operate the Knights' family dairy farm. Carole Knight was kicked off Mid-Am's local board after attending only two meetings! Co-op big-wigs were offended by Knight's behavior as a director: she asked questions, *repeated* questions when initial questions were ignored, and took notes!

Mid-Am's angry bosses kicked the Knights' farm out of the co-op in June

1996. During the co-op's internal proceedings to remove the Knights', the co-op's lawyer mentioned their "file". Carole promptly demanded to see that file—a three-inch thick set of documents, something akin to what might have been found in Stalin's Soviet Union. In that file, Knights learned they'd been targeted as "troublemakers" long ago. Mid-Am's in-house lawyer wrote, in a summer 1995 memo, how to get rid of the Knights—nine months before the co-op commenced internal legal action (and roughly six months before Carole Knight was elected to the local board)! Long story short: Mid-Am booted the Knights, and there was no other market for their farm's milk. A forced sale of their nice, mixed herd of Holsteins and Jerseys followed—animals Carole named and raised from birth.

Predictably, the Knights sued for damages and eventually won a court case against Mid-Am that paid the plaintiffs \$400,000 plus legal costs. However, the damage was done—the Knights' dairy was gone and they'd never again milk cows. As the years passed, many, many of their neighbors in the once-rich New Orleans milk shed of Tangipahoa and Washington parishes in Louisiana, and the adjoining counties in Mississippi, quit farming. Mid-Am had simply bled their milk checks dry. Neighbors also witnessed the lengths to which co-op officials would persecute "troublemakers". (A couple years later, Mid-Am threatened a dairy farm woman in east Texas with the "Carole Knight treatment" if that woman did not stop publishing a newsletter slamming the co-op for neighboring dairy farmers.)

Throughout these battles, the Knights regularly contacted federal Antitrust Division officials in Washington, D.C. Carole, repeatedly and in explicit detail, told the story of Mid-Am's predatory actions to Joan Huggler, a high-level, DOJ Antitrust official. Carole's patience wore thin, after explaining misdeeds of Mid-Am to many times to Huggler. Knight nick-named Huggler, "Oh, my!"—for Huggler's exaggerated verbal expressions of shock at Mid-Am's misdeeds ... and Huggler's failure to do anything about them!

"Antitrust Insurance" with DOJ??? Mid-Am's \$25,000 helped bail out Webster Hubbell; Hanman/Ashcroft are "buddies"

DOJ's failure to halt illegal predations by Mid-Am (and then DFA) during the 1990s may have occurred because co-op leaders had purchased "Antitrust Insurance" early in the Clinton administration. Remember the "Webster Hubbell scandal"?

Prior to Bill Clinton's election to the presidency in November 1992, Webster Hubbell was a senior attorney and partner at The Rose Law Firm (Little Rock, Arkansas)—where Hillary Clinton also practiced. Hubbell, a close family friend of the Clintons, was appointed as the third-highest official at the Department of Justice in early 1993, once Clinton was in office.

In early 1994, Hubbell's theft of about half a million dollars from his former law firm became public. Hubbell was immediately cut loose from DOJ. Hubbell was suddenly without income, under threat of various lawsuits, and emotionally fragile. The Clintons feared the compromised Hubbell as a potential political liability ... if he spilled his guts about dirty dealings back in Arkansas.

Following Hubbell's job loss at DOJ, Mid-Am was one of a dozen or so firms that immediately sprang to Webster Hubbell's financial rescue. Hubbell was paid large sums of money, upfront, for future, unspecified personal consulting services. According to an article in the *Los Angeles Times*, in early 1994, Mid-Am's President/CEO Gary Hanman handed Hubbell \$25,000 in a Washington, D.C. hotel room. Thus, Mid-Am bought "Antitrust Insurance" from DOJ for the rest of the Clinton years—paying to help "shut up" the disgraced Hubbell. Despite repeated probes, DOJ never prosecuted Mid-Am (or DFA) for blatant violations of the 1977 Consent Decree during the Clinton years.

And once George W. Bush entered the White House in January 2001, DFA's "Antitrust Insurance" policy at DOJ became "platinum": U.S. Attorney General John Ashcroft (during George W. Bush's first term) and former Missouri governor is a close personal friend of fellow Missourian Gary Hanman. Mid-Am and DFA had made numerous financial contributions to Ashcroft's various political campaigns. Hanman and the Attorney General socialized privately when Hanman was in Washington, D.C. It is ironic that the DOJ Antitrust division *finally* instituted its coast-to-coast dairy investigation in June 2004—roughly six months after serious health problems sidelined Ashcroft from day-to-day leadership at the U.S. Department of Justice.

Another source of "Antitrust Insurance" for dairy's "giants" during the Bush administration: close ties between the Bush White House and the big money behind Dean Foods—DFA's alleged co-conspirator—the largest fluid processor in the U.S.

Fall 1997: DFA's finances misstated at merger; co-op's lawyer says equities might be worth "only 10 cents" on the dollar

The Milkweed is convinced that the prime motive behind DFA's larceny is simple: the financial foundation was severely cracked in fall 1997, when four co-ops merged to form DFA. Back then, leaders of Mid-Am; AMPI Southern Region (AMPI); Milk Marketing, Inc. (MMI); and Western Dairymen's Co-op, Inc. (WDCI) merged those organizations into DFA. Financially, only MMI was sound. AMPI Southern Region was in such bad financial shape that it *probably* had a negative equity position (i.e., worth less than nothing). AMPI Southern Region's board president at that time, Charles Beckendorf (now chairman of the National Milk Producers Assn. and a prominent DFA director/officer), refused to release the 1997 audit of AMPI to curious members who sought it.

Shabby finances among some of the founding co-ops—the "Cracked Foundation Theory"—is substantiated by incautious statements made by the co-op's legal counsel, Michael Fayhee of the Chicago office of McDermott, Will & Emery. Fayhee oversaw the legal mechanics behind DFA's merger.

In fall 1997, a potentially serious monkey wrench was thrown into the merger works. A Texas-based law firm revealed Kansas co-op legal statutes specifying how retired equity-holders of merging co-ops could dissent in writing during the merger proceedings and, if the merger went through, could

receive prompt payment of all their equities held by merging co-ops. DFA was chartered in Kansas.

If honored, full pay-out of retired members' equities could have totaled tens of millions of dollars ... or more! *That* liability certainly wasn't in the game plan for these financially strapped, merging co-ops. If anything, the co-ops' performance—before and after the merger—has been to *withhold* financial resources from dairy farmers. Thus, in the tense, merger-directed activities of fall 1997, amid the controversy over dissident retirees' claims for full payback of their co-op equities, attorney Fayhee was cited by *Dairy Profit Weekly* (a weekly dairy industry publication) in November 3, 1997:

"Fayhee adds that even if the Kansas law did apply in this case, former members would not come out ahead financially for two reasons. The value of the stock would not be its face value, and one-third of any successful claim would have to be paid out as attorney fees. If former members have \$1 of equity, the face value of that stock today 'might be only 10 cents,' he says.

According to the lead lawyer overseeing the DFA merger, equities of some merging cooperatives were not worth their face value. In fact, some of the cooperatives' equities "might be only 10 cents".

That same basic statement—overvalued book value of unspecified merging co-ops—was repeated in February 25, 1998 letter signed by Herman Brubaker (DFA's newly-installed board chairman) denying payments to retired, dissident co-op equity holders. Brubaker's letter stated, in part:

"This letter also constitutes notice that we disagree that the value of your membership interest, if paid immediately, would equal \$1.00 of capital in DFA. For a variety of reasons, the value of your membership interest, if paid today, would be less than \$1.00 and (sic) some cases considerably less. These reasons take into account the time value of money, separate agreements with certain former members, and the expectation that capital accounts will be retired in full over time."

At DFA's formation, management, directors and lawyers valued all assets of the four merging cooperatives at book value. But attorney Michael Fayhee, who was overseeing the merger, publicly stated that in some cases, such assets might not be worth even a dime on the dollar! Brubaker's February 25, 1998 letter made similar statements. Despite the fact that DFA's lawyer and leaders severely discounted the values of certain (unnamed) merging co-ops' assets in statements to the news media and letters to dissenters, full book value of all cooperatives' assets was accepted in the merger. From the very beginning, DFA's financial foundation appears severely cracked by known, possibly fraudulent valuation of merging co-ops' assets.

The "cracked foundation" theory explains, why from DFA's very beginning, the co-op's leadership has repeatedly forced more dairy farmers' milk revenues under co-op control ... and underpaid farmers' milk checks when and where possible. All these activities were designed to sustain the co-op's debts, inefficiencies, bogus assets and overstated equities. Get the picture?

Early 1998:

Illegal, full-court press to coerce non-members into DFA

DFA immediately launched an illegal *blitzkrieg* against non-members:

In September 1997, DFA's wholly-owned subsidiary, the Southern Foods Group, bought the remaining dozen and a half (or so) fluid milk plants from

DFA is truly "Hanman's Baby"

DFA is the creation of its powerful, long-time President/CEO, Gary Hanman. Perhaps the best parallel for a nation-wide, membership organization with which DFA and Hanman could be compared is the Teamsters' Union under the leadership of old Jimmy Hoffa.

Hoffa, it may be remembered, was famous for bluster and thug-like behavior. But behind the scenes, it turned out that the rhetoric Hoffa gave the members, and what he was doing behind their backs, were in complete contrast. Old Jimmy Hoffa would transfer union members from local to local, making sure they'd never get enough years in with any single local to qualify for a pension.

DFA, under Hanman's aegis, has treated dairy farmers much like the bovines they milk. The farmers have been confined (to markets often solely controlled by DFA), milked (of their cash flow), and stripped (of their equities and dignity).

No figure in the last 50 years has cut a wider swath through the U.S. dairy industry than Gary Hanman. The stumpy Hanman, famous for his trademark red suspenders, crafted DFA and much of the U.S. dairy in his "vision". Trouble is, for many other persons, Hanman's "vision" turned out to be their nightmare.

Hanman, took over the top spot at Mid-America Dairymen (Springfield, Missouri) in 1974—following that co-op's disastrous loss of \$7 million due to the Nixon administration's allowing in massive quantities of dairy imports. Hanman ruled both Mid-Am and DFA with an iron fist, disguised with a line of "good old boy" rhetoric that fooled many into thinking he and his cooperative(s) worked for the betterment of dairy farmers.

Along the way, Hanman carefully selected middle and senior management, as well as regional and corporate directors, who were, first and foremost, loyal to ... Hanman. No critics of Gary Hanman ever rose very high in the Mid-Am/DFA system. Ironically, though, Hanman could not run the co-op with financial success. Debts piled upon debts. Subsidiaries' profits offset regular losses by Mid-Am/DFA core businesses—probably all part of some greater plan.

Borden. These plants were located primarily in the Southwest and Intermountain region. The 1977 Consent Decree's dictate about Mid-Am (and its successor, DFA) were prohibited from forcing non-members to join within one year after the co-op took over milk plants supplied by non-members. Bleep the Consent Decree! In late January and early February 1998, just weeks after DFA began operations, DFA leaders (including present board chairman Tom Camerolo of Colorado) started "visiting" independent producers supplying Borden plants in the Intermountain region, dictating that non-members had to join DFA immediately ... or else not be able to sell their milk to those plants. These coercions started *just four months* after the Borden fluid milk plant acquisition—far short of the Consent Decree's dictates.

Dairy farmers in Colorado, Utah and Idaho (among others) were thus coerced. In Utah, DFA stepped into a political hornet's nest. Dixie Leavitt, father of Utah's governor at that time, Mike Leavitt, was coerced by DFA. So too were several key state legislators (who were also dairy farmers). These competitive predations sparked an investigation by the Utah Attorney General's office. No results from that probe are known here.

Meanwhile, in December 1997, AMPI, despite its possibly negative net worth, acquired half-interest in a fluid milk processor with operations in Tennessee and Kentucky—Turner Dairies. DFA inherited that new joint venture—Turner Holdings—on January 1, 1998. Predictably, in complete violation of the still-binding 1977 Consent Decree, DFA dumped one local milk cooperative supplying Turners, Dairymen's Marketing Co-op, Inc. (DMCI) and instructed another, Vanguard Milk Producers, to join DFA or else lose its markets almost immediately. DFA ratcheted up its threat against Vanguard by unilaterally withholding payment of funds due for milk sales by Vanguard to Turner Holdings, without explanation.

Note: these events took place in February, March and April 1998—*two to four months after AMPI/DFA bought into Turner Holdings*. DOJ Antitrust officials were fully informed of these events ... but failed to act against DFA's blatant violations of the 1977 Consent Decree. Don Allen—DMCI's manager at that time—exhaustively detailed DFA's predations against his co-op to DOJ officials ... to no avail. The "Antitrust Insurance" was working to protect DFA.

Thus, in the early months of DFA's existence, the co-op *repeatedly* violated the 1977 Consent Decree (carried over from Mid-Am), in different parts of the country ... under the watchful eyes of the somnambulant DOJ Antitrust division. DFA's initial game plan was simple: pull more and more dairy farmers into the co-op's debt-ridden financial morass, by hook or by crook. DOJ did nothing.

Urge to merge: 1999—Cal Gold & ICMCA (Michigan)

Around DFA's two-year mark, the co-op pulled off two mergers, bringing dairy co-ops based in California and Michigan under the DFA banner.

In California, in 1999, DFA officials informed management of the California Gold Co-op (Cal Gold, based in beautiful Petaluma) that DFA would exercise options to supply roughly 70-80% of the raw milk sales enjoyed at that time by Cal Gold ... unless Cal Gold merged with DFA. Cal Gold was recovering nicely from some tough years caused by prior mismanagement. Despite a spirited debate among Cal Gold members against merging with DFA, Cal Gold capitulated and merged into DFA.

In Michigan, members of the Independent Cooperative Milk Producers Assn. (ICMCA) merged into DFA in early 1999. In this case, the merger was almost single-handedly driven by ICMCA's strong-willed board chairman, Robert Naerebout. Naerebout ignored competing merger offers from in-state rival, Michigan Milk Producers Assn. Naerebout pushed ICMCA into merger with DFA, and then immediately announced he was selling his farm. Naerebout took a full-time job with DFA in the co-op's headquarters in Utah just weeks after the ICMCA merger—precooked fare. DFA's old trick worked again: financial "gimmies" for *yet another* co-op official who championed merger with DFA.

2000: New USDA milk pricing rules inspire DFA to rig CME cash Cheddar and butter prices

DFA's formation in 1998 coincided with a weather-induced uptick in farm milk prices for much of 1998 and 1999. But in early 2000, a collapse of Cheddar prices at the Chicago Mercantile Exchange (CME) pulled down farm milk

prices to dire levels.

The June 2000 Class III price for cheese milk in the federal milk pricing program was only \$9.46 per 100 lbs. Rock bottom.

In January 2000, USDA instituted a new farm milk pricing system that was driven by complex formulas incorporating values for dairy commodities—Cheddar cheese, Grade AA butter, and nonfat dry milk. USDA shifted to a weekly survey system to get these prices. But those weekly survey results track in almost perfectly with the ups and downs of CME dairy commodity cash markets. DFA helped construct, and then approve, this new USDA milk pricing system.

In early February 2000, Gary Hanman committed the first of two parallel blunders: bragging about manipulating CME prices to maximize dairy farmers' incomes ... and then sending out audio tapes of those price-fixing rants to DFA's staff of field representatives. This tape was part of a series of monthly "inspirational materials" sent out to certain DFA employees. (One former DFA employee regularly provided those tapes to *The Milkweed*.) Hanman's price-raising boasts parallel Enron executives' internal e-mails bragging about jacking up electricity prices for consumers and industries.

Bragging about driving up Exchange Cheddar prices was repeat behavior for Hanman: in the late 1980s, Mid-Am was suspended from trading at CME's predecessor, the old National Cheese Exchange in Green Bay, Wisconsin, when Hanman's boasts of boosting farmers' incomes to co-op membership meeting were reported in a Wisconsin farm paper.

On February 2, 2000, Hanman made these (excerpted) comments to DFA Area Leaders Conference in Kansas City, Missouri, speaking about USDA's new milk pricing system and how DFA could influence monthly milk values by selective activities at CME's cash dairy markets:

"... (U)nder the new order, we're going to use the 'higher of' those two (butter or cheese market prices. We're not gonna be tied to the market of one commodity.

"So, if our objective, if DFA's objective, is to raise prices primarily to Grade A producers ... this is the side of the market we need to attack. Class I.

"...(I)f your mindset says we want to do something in the commodity markets, use our market power, not only to make money with those items, but also that might have a side benefit in milk prices, which one of those two markets would you look at that might give you the best bang for your buck? Which one would have less volume to manage? For each one cent the butter market changes, your milk price changes four cents. So what's the strategy?

"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."

During the first couple weeks in January 2000, traders noticed unusual purchase activity by DFA for Grade AA butter in CME cash markets. Hanman and DFA were "gaming" USDA's new milk pricing system from its earliest weeks: clear-cut manipulation of CME cash market prices.

August-September 2000:

DFA's Cheddar price manipulation backfires at CME

Complaints about low milk prices from desperate dairy farmers in early summer 2000 forced overt manipulations of CME Cheddar prices by DFA. The purpose was to show that DFA could exercise market power to improve farm milk prices, at least short-term.

Remarkably, Hanman detailed this CME Cheddar cash market manipulation in *another* audio tape distributed to DFA personnel. That second tape was dated September 18, 2000, and recorded intemperate remarks made by Hanman to a meeting of DFA employees in Kansas City. The following information is gleaned from daily/weekly Cheddar trading records from CME, industry scuttlebutt, Hanman's audio tape and internal DFA documents. In early August 2000, DFA began a six-week Cheddar buying spree at CME that saw the co-op acquire several hundred, 40,000-lb. carloads of 500-lb. Cheddar barrels and 40-lb. Cheddar blocks. During this intense buying binge, DFA bought far more Cheddar than had ever previously changed hands (in a similar time frame) in the history of CME, or its predecessor, the National Cheese Exchange. DFA's purchases drove up market prices for block Cheddar nearly 30 cents per pound, in that six-week period. Short-term, farmers' cheese-milk prices in the federal milk order system rose marginally. But overall, the price increase was minimal. Here are USDA's Class III (cheese) milk prices for June-November 2000:

June 2000--\$9.46/cwt.
July 2000--\$10.66/cwt.
August 2000--\$10.76
September 2000--\$10.76
October 2000--\$10.02
November 2000--\$8.57.

Hanman bragged on the September 18, 2000 audiotape about buying large quantities of Cheddar at CME, and then noted:

"So when you go back home and members want to know, 'What have you done for us lately,' ... they should see some improved prices as we go into the fall as a result of this activity."

Problem: in mid-September 2000 (just around the time Hanman made his boasts on September 18), worried Cheddar sellers approached senior officials at CME with a serious concern: DFA HAD NOT PAID FOR HUNDREDS OF CARLOADS OF CHEDDAR BOUGHT IN AUGUST-SEPTEMBER! Unpaid sellers were waiting for about \$20 million in Cheddar acquired by DFA on CME's cash floor!

CME rules specify that buyers must take physical possession of dairy commodities acquired in cash trading within a few days of the purchase, and that

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.

buyers must pay for those acquired commodities within a few days of taking physical possession.

When disgruntled sellers voiced complaints to CME overseers, two events quickly transpired:

* DFA paid off sellers within days.

* But DFA also basically quit buying Cheddar at CME. A severe price-crash followed. By early November 2000, CME block Cheddar prices collapsed below \$1.00/lb.—lower than they were when DFA started buying Cheddar in early August to boost farmers' milk prices.

DFA then docked all members' milk checks to cover inventory losses on demised cheese prices. A November 1, 2000 internal DFA memo explained:

"In September, all 7 area council were asked by Gary Hanman to hold back or reduce their payments to producers by \$.10/Cwt. This was necessary due to the crash in the block market from mid-September from \$1.32 to mid-October of \$1.02. Cheese inventories in our manufacturing division were carried at \$1.16 prior to the drop and the cost of taking the inventories down to \$1.02 lb. the end of October will cost \$7-8 million for DFA based on approximately 50 million lbs.... Consequently, this \$.10/cwt reduction in September from our producers is to fund this loss from the drop in the cheese market."

DFA's first overt attempt to manipulate CME Cheddar prices backfired.

No surprise:

CME & CFTC don't penalize DFA for rules violations

Despite clear-cut violations of CME rules by DFA—failing to pay promptly for Cheddar acquired in floor trading—CME took no enforcement action against DFA. Bob Prosi, DFA's floor trader, headed the CME oversight committee on such matters. Roughly two or three years later, at a butter-pricing seminar held at the annual meeting of the American Dairy Products Institute, CME officials pretended they didn't even remember DFA's failure to pay for those hundreds of carloads of Cheddar acquired during August-September 2000—at that time, the single-greatest sales spree for Cheddar at CME.

In early 2001, the editor/publisher of *The Milkweed* submitted a personal complaint to the Commodities Futures Trading Commission (CFTC)—the federal agency overseeing the nation's commodity exchanges. That complaint included a copy of the audiotape in which Hanman detailed DFA's strategy to boost farm milk prices by driving up CME Cheddar prices. CFTC took no action, but did note in its response to the complainant that it was unusual to have an audio tape detailing the alleged misdeeds. CFTC preferred to "Hear no Evil."

Fall 2001: New Hampshire Ag Commissioner Smokes 'em Out—DFA is DMS

In summer 2001, DMS took over marketing of milk from the Garelick Farms' producers in New England and eastern New York. Credit New Hampshire agriculture commissioner Steven H. Taylor with smoking out the fact that DMS is DFA. New Hampshire requires milk buyers to post security with the state, to cover producers' losses in the event of a default. It had been publicly announced that DMS—not DFA—would take over the "independent" Garelick producers in New England. DMS applied for the milk producer security application from New Hampshire's agriculture department. But when the payment check came back, the check was from DFA! Commissioner Taylor wanted to know why. Finally, on November 7, 2001, DMS official Brad Keating wrote the NH 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."

Using DMS as a surrogate has allowed DFA to control far greater volumes of U.S. dairy farmers' milk—generally underpaying producers for their milk value, and dumping large amounts of costs (such as hauling) on the farmer instead of hiking fees to milk buyers (like Dean Foods).

Merry Christmas 2001 from the White House:

DOJ Approves Suiza Foods + Dean Foods merger!

The George W. Bush administration celebrated its first Christmas in the White House with a real "turkey" of a gift for the milk-drinking public: okaying the corporate marriage the nation's two biggest fluid milk processors—Suiza Foods and Dean Foods. From an Antitrust basis, this merger was a farce. Unfortunately, emergence of the "new" Dean Foods as the nation's milk-processing giant allowed its near-exclusive raw milk supplier—DFA—to worsen its predations against the nation's dairy farmers.

DFA already had a one-third ownership in the "Suiza Fluid Milk Group" and functioned as a near-exclusive raw milk supplier in many parts of the country. DFA gained mightily from the processors' merger. DFA gained special status as the exclusive raw milk supplier to selected Dean Foods' milk plants. The "new" (merged) Dean Foods counted more than 100 dairy plants, from Maine to Florida to California. DFA and Dean Foods forged a series of 20 consecutive, one-year milk-supply deals. If Dean Foods were to drop this virtually exclusive raw milk supply deal with DFA, Dean Foods would have to pay DFA an escrow fund that totals in the \$75 million range. The multiple, long-running, one-year raw milk sales deals effectively ignore DOJ's dictate in the 1977 Consent Decree that specify DFA may not have milk supply deals longer than one year in duration.

Another travesty evolved from that merger: DFA's emerging as the part-owner of the nation's *second-largest* fluid milk producers: a joint-venture (with former top-level Dean Foods executives) of National Dairy Holdings (NDH).

Using a "please don't throw me in the briar patch" tactic during merger

deliberations, lawyers for Suiza/Dean proposed to DOJ nearly a dozen dairy plants to "spin off" to protect competition in fluid milk processing. With a couple exceptions, DOJ acquiesced to the list of plants to be sold to "preserve competition".

Quite handily, all the dairy plants removed from the Suiza/Dean holdings were purchased by NDH. And DFA emerged, over time, as the near-exclusive raw milk supplier to NDH, also. Thus, DFA (through these and other deals) has ended up with a virtually exclusive raw milk supply deal with not only Dean Foods' 100+ milk plants across the U.S., but also became part-owner (and raw milk supplier) to the second-largest fluid processor in the country—NDH, among others.

In December 2001, DOJ Antitrust lawyers specified that in markets (e.g., Florida and Ohio) where plants had been spun off from the merged Dean/Suiza firm, DFA could not be the exclusive raw milk supplier to all the plants in those markets. DOJ's December 18, 2001 press release announcing approval of the merger stated:

"The parties also agreed to modify Suiza's supply contract with DFA to ensure that dairies owned by the merged firm in the areas affected by the divestitures will be free to buy the milk from sources other than DFA."

It didn't take DFA long to violate that dictate from DOJ, which, again, did nothing . . . if DOJ was paying attention at all.

2003: Thousands of "independent" dairy farmers forced into DMS—a DFA joint venture

The first week of 2003 started with a bang in dairy country. Dean Foods and DFA announced all 2500 (or so) independent dairy producers supplying milk to Dean Foods were being forced to sell milk to Dairy Marketing Services (DMS—a joint venture controlled by DFA). Most of these changes took place on February 1, 2003, except in Wisconsin. In Wisconsin, Dean Foods' producers were shifted to DMS on May 1, 2003.

In fact, 2003 consolidated DFA's worst antics against "independent producers" since early 1998, in terms of coercing unwilling non-member producers into the giant co-op's clutches. But first, a little background.

In 1999, DFA and Dairylea Co-op (Syracuse, New York) formed a joint venture to market milk in a dozen Northeast states for cooperatives—Dairy Marketing Services. DFA quickly used its influence with fluid milk handlers to increasingly compel independent fluid milk processors to turn over their "independent" producers to DMS' control. Currently, DMS probably controls over 70% of all farm milk marketings in the Northeast. DMS is best at dumping increased marketing costs on dairy farmers, rather than forcing raw milk buyers (like Dean Foods) to pay more for rising marketing expenses like milk hauling. DMS operates as a lap dog for raw milk buyers and an enforcer for DFA—eliminating competition to procure farm milk.

The matter of possible Antitrust issues involving DFA's taking over non-member producers had been around for a long time. Even Gary Hanman alluded to the problem, in that same September 18, 2000 audio tape where he bragged about raising CME Cheddar prices. Here's what Hanman said then:

"We've got some stress going on in New York and in New England. One of our joint ventures 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 much 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 the pressure on this membership. But will get that done over time ... plus the oversight of Justice today, which is very severe, very significant."

In early 2003, DMS operations had suddenly spread coast-to-coast. DMS became the marketer of milk for DFA and a range of related co-ops, as well as independent producers, whether they liked DFA/DMS or not. DFA used DMS as a "front organization"—hoping that many U.S. dairy farmers, who were scared of DFA's tactics and debts, would erroneously think that DMS was distinct from DFA.

Some DMS employees continue to deny to farmers that DMS and DFA are linked. But DMS employees paychecks are issued by DFA. DMS employees participate in DFA's employee pension program. One DMS field person in Michigan got into a heated argument with a farmer about the DMS/DFA relationship. The DMS field rep denied DFA had anything to do with DMS. Finally, the farmer asked the DMS employee to pull out the vehicle registration from the glove compartment of her company vehicle and show the farmer to whom that vehicle was registered. You guessed it: her company vehicle was owned by DFA!

The rapidly-announced conversion of marketing milk from Dean Foods to DMS did not go smoothly. In California, DMS illegally failed to provide requisite details and paperwork to officials of the California Department of Food and Agriculture, prior to DMS' starting to market producers' milk. In Kentucky and Tennessee, laboratory testing of independent (ex-Dean) producers samples for milk fat and quality (bacteria, somatic cell counts) for February 2003 bore a statistically impossible resemblance to tests for the prior month. The longer DMS tested their milk, the lower many farmers perceived their milk fat tests ... and milk quality results suffered. Lower milk fat tests and worse quality tests both degraded affected producers' milk values.

February 1, 2003—Tit for tat: "Rebate" to Dean Foods raises big questions

Paybacks to Dean Foods from DFA for Dean's dumping its producers into DMS' clutches soon became apparent. DFA (and the super pools it controlled) quickly moved to create special "rebates" for Dean Foods, delayed "discounts"

off the price of raw milk Dean Foods paid in certain regions of the country. In the Southeast, Dean Foods' rebate was exclusive to that company. Competing fluid processors—even DFA's own NDH—didn't get that rebate!

In terms of clear violation of antitrust precepts, these "rebates" spelled out the special relationship between DFA, its regional marketing agencies, and Dean Foods. The worst-case scenario for these "rebates" occurred in the Southeast (except Florida), where Dean Foods reigns as a milk processor and DFA-controlled milk marketing entities have the region's milk supply pretty well locked up. The "rebate" to Dean Foods in the Southeast opens up a big, ugly picture: gouging school milk prices as well as those for institutions and military bases. Here's how that "rebate" was fashioned.

On February 1, 2003, the Southern Marketing Agency (SMA), a DFA-controlled regional milk marketing agency that included four other smaller co-ops, instituted an eleven-cent per cwt. "promotion credit" exclusively for Dean Foods. That seemingly small credit was rebated to Dean Foods three months after the month in question. For example, for February 2003's "promotion credit", Dean Foods would receive a rebate from SMA in mid-Spring 2003. No other fluid milk handler in the Southeast received that credit.

Eleven cents per cwt.—just less than a penny per gallon—is less than one percent of Dean Foods' total milk costs in the Southeast. But spread over Dean Foods' massive milk processing operations in the Southeast, that small fee could add up to millions.

Southeast dairy history ripe with school milk contract fraud!

Three words—"School Milk Fraud"—summarize the biggest, court-documented scandal in the history of the U.S. dairy industry ... at least until now. Starting in 1985, Florida officials discovered a school milk bid-rigging fraud among local milk processors/distributors. Starting in Florida, state and federal investigations rolled the scandal over state borders. Investigators used cooperating school milk bid-riggers to tattle on their competitors. Result: after several years later, 100 convictions/guilty pleas had been extracted in 26 states. Tens of millions of dollars in fines and penalties were extracted from guilty dairy processors. Some individuals served time in federal prisons.

For a time, federal Antitrust officials used school milk bidding as THE measure of competition among fluid milk processors in a given state or region. However, during the later Clinton years and the Bush administration, that measure seems to be used infrequently and selectively. DOJ did force DFA to sell off a fluid milk company in Kentucky (Southern Belle, located in Somerset, Kentucky), recently, due to school milk competition concerns.

Thus, when the specter of alleged school milk bid-rigging arises ... a big, red blinking light signaling danger should go off—both within dairy circles and for state/federal Antitrust overseers. The recommended indictments from DOJ's Antitrust division are rumored to focus on the Southeast and involve DFA, Dean Foods, and the likelihood of school milk contract abuses through the "promotional credit" created exclusively for Dean Foods in that region. *IF*, that is, DOJ ever does anything!

Promotion credits created potential school milk fraud in Southeast

In many areas of the Southeast, contracts to supply beverage milk products to schools, institutions (hospitals and prisons), and military bases are based upon monthly formulas that incorporate two basic costs:

* The prevailing monthly Class I (fluid) milk price per cwt. established by the regional federal milk marketing administrator, and

* Any prevailing Class I premiums established by local cooperative super pools.

These two pricing factors are used by school districts to calculate a monthly base price for a half-pint container of milk. (There are 186 half-pints of milk in a hundredweight of milk.) To complete the monthly cost calculation for school milk under these pricing formulas, milk processors compete for school milk contracts by submitting bids that represent a "surcharge" (per half pint) for the entire year. Simple example: say that the combined costs for federal milk order Class I costs and prevailing local super pool charges total \$18.60/cwt. That's simple: a cost of ten cents per half pint (\$18.60 divided by 186 half-pints). A common "surcharge" bid by milk processors for each half-pint of white, 2% milk might be 12 cents apiece. Thus, the cost to the school system, using these price parameters, would be 22 cents per half-pint (10 cents + 12 cents).

BUT ... if a certain processor receives a retroactive "rebate" (promotion credit) from the super pool surcharge that effectively lowers raw milk costs, then the school districts are being overcharged for their school milk formulas, using the above-detailed pricing formula. The combined \$.11/cwt. "rebate" spread over tens upon tens of millions of half-pints of school milk in the Southeast nets quite a pot of money!

DFA extends promotion credits to Order 33, defeated in Order 30

DFA moved quickly to extend the concept of "promotion credits" to Class I handlers to other markets. One morning at the very end of January 2003, non-DFA directors on the "Hoosier Pool" (the DFA-controlled super pool for Indiana) were summoned out of bed around 5:00 a.m. by phone calls summoning them to an "emergency meeting" of that super pool at 11:00 a.m. that same morning. What "emergency"?

DFA demanded that directors of the Hoosier Pool who represented other milk marketing organizations approve a change in the agency's pricing program, to create an \$.11/cwt. "promotion credit" for fluid handlers—effective February 1, 2003. That was exactly the same "promotion credit" that DFA had extended exclusively to Dean Foods in the Southeast, effective February 1, 2003. (Dean

Foods was the largest fluid processor in that market.) The Hoosier Pool directors passed that "emergency" credit. Other co-ops' directors constituted a minority, in comparison to DFA's representation on that board.

In mid- or late-February 2003, DFA tried to sneak a similar "promotion credit" past directors of the Central Milk Producers Cooperative (CMPC). CMPC is the dairy co-op "super pool" that prices milk in the Chicago market—northern Illinois and southern Wisconsin. (Again, Dean Foods is the largest fluid processor in that market.) But this time, with advance notice of the scheme, representatives of Foremost Farms and Land O'Lakes (other co-ops) blocked DFA's proposed "promotion credit" for Class I milk—citing potential illegality.

The Class I "promotion credit" scam continues to the present in the Southeast and parts of Order 33 (the Mid-East order).

January 2003:

DFA puts extortion threats against Florida co-op on paper!!!

Were DFA leaders suffering excess testosterone levels in early 2003? Had "successes" (like corraling all the Dean Foods' producers) created self-delusional aura of invincibility at that time? Whatever ... in late January 2003, DFA's senior management committed a bone-headed blunder: overt extortion threats against a competing milk cooperative, **in writing!**

On January 28, 2003, DFA's senior vice president and chief operating officer in the Southeast, John Collins, wrote a letter to Calvin Covington, general manager of Southeast Milk, Inc. (SMI—based in Florida), demanding that SMI enter into a one-sided milk pricing deal dictated by DFA ... or else. Specifically, the "or else" meant DFA would take over supplying fluid processors in Florida. At that time, Florida's fluid milk market was basically divided up into plants owned by Dean Foods and National Dairy Holdings (owned by DFA).

Florida's system of supplying needs of fluid milk plants is the most unique marketing challenge in the U.S. dairy industry. Florida's seasonal milk supplies vary greatly, based upon heat and weather challenges facing dairy cows in the "Sunshine State". Further, the number of people in Florida nearly doubles in the winter months (compared to the summer)—as vacationers and "snowbirds" flock to Florida. Florida dairy farmers virtually all belong to a single milk cooperative—SMI. "Balancing" the fluctuations between local milk supplies and seasonal demand is a complex task for SMI—which has built into its pricing system high super pool premiums that must cover costs of importing outside milk supplies when local supplies are inadequate, as well as shipping out of state any extra "surplus" milk. If enacted, DFA's threat to cut out the heart of SMI's milk marketing structure by taking over supplying Florida's fluid processors, would have killed the Florida co-op.

John Collins' letter was a brazen threat that SMI's leaders could not ignore. In early February 2003, SMI's members unanimously approved milk check deductions to counter DFA's threats. SMI then hired lawyers and lobbyists, who worked in both Florida and the nation's capital to detail DFA's attacks against competitors to government officials.

More than any other single entity, SMI's efforts are responsible for kindling the current federal/state Antitrust investigation against DFA.

To understand why a senior DFA management employee would commit to paper such brazen threats, as did John Collins' January 28, 2003 letter to SMI, it's important to realize that Collins—an out-and-out ...—had for years performed as a henchman for DFA and other cooperatives. Collins' letter shines as an example of DFA's arrogance, clearly ignoring several key aspects of Antitrust oversight:

* Violating requirements of DOJ's Antitrust division, dating back to late December 2001 when the Suiza/Dean merger had been approved. DOJ specified that in markets where milk plants had to be "spun off" to preserve competition, DFA could not act as the exclusive raw milk supplier. Florida had two plants sold off from Suiza/Dean to NDH.

* Ignoring binding portions of the 1977 Consent Decree with DOJ inherited by DFA from Mid-Am. That document specified that the co-op could not use coercion against competitors. Threatening to take away SMI's Class I markets in Florida was coercion.

* Violating the little-known Agricultural Fair Trade Practices Act of 1967—a federal law detailing prohibited practices in the sale of agricultural products. Coercion is specifically listed as an illegality in that law.

DFA's pressures against SMI continued throughout much of 2003. DFA boosted big milk price gains to its few producers in Florida in August 2003—to make DFA's pay prices look better during the time in late September 2003 when SMI members could give their annual notice to quit that co-op. (Simultaneously, DFA dropped pay prices to its members in neighboring Georgia by about \$1.50/cwt.) Shifting milk money between regions to attract new members, or dissuade current members from leaving, is a tactic specifically prohibited by the 1977 Consent Decree binding DFA.

Throughout all of 2003:

Rolling more producers and milk into the DFA/DMS system

This attempted chronology has deviated a bit, detailing SMI events. Let's turn back to additional events in 2003, as DFA/DMS stepped up continued coercions of dairy producers into their controlling clutches.

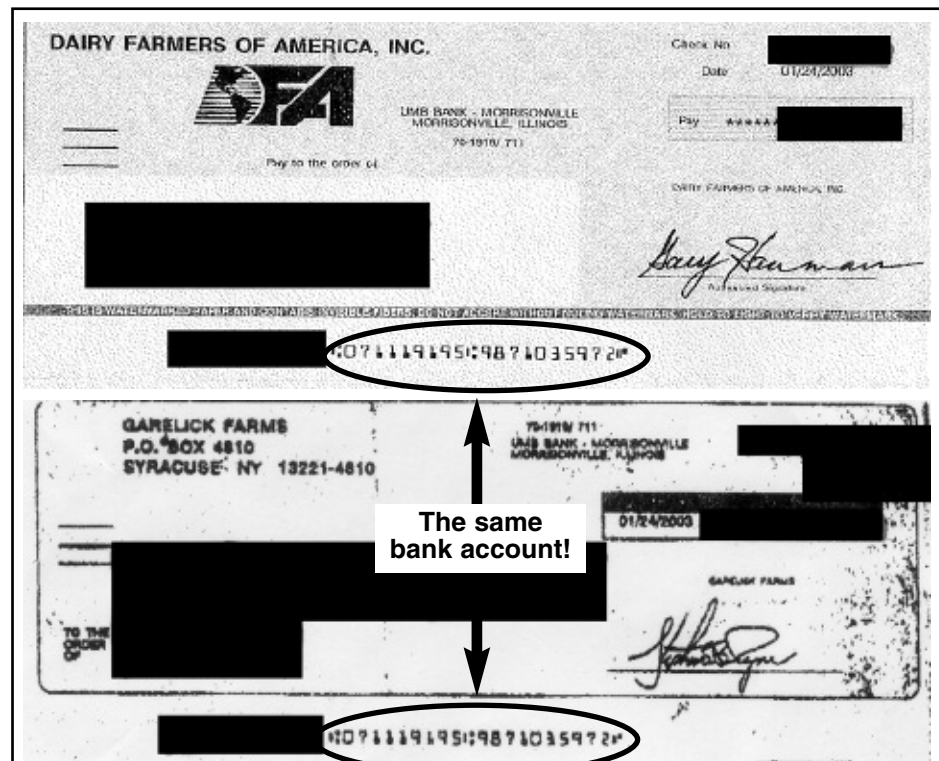
* On May 1, 2003, DMS took over control of milk marketing by the Dean Foods' producers in Wisconsin. Outside California, Wisconsin was Dean Foods' biggest milk procurement state.

* In June 2003, all independent producers shipping to NDH's Dairyman's plant near Cleveland, Ohio were forced to sell milk through DMS. As with the threats against Florida's co-op, forcing Dairyman's producers into DMS violated the December 2001 dictate from DOJ that DFA (and related parties) could not be sole suppliers to Dean Foods/NDH plants in markets where fluid plants had

been sold off at merger to preserve competition. NDH had acquired that Cleveland-area plant as a spin-off from the big merger. DOJ took no action.

* In early summer 2003, Dean Foods informed Wisconsin cheese plants that sold milk to Dean's fluid milk plants in northern Illinois under requirements of the regional federal milk order that, effective August 1, 2003, all such sales would be conducted through DMS. This move shifted massive quantities of raw milk through DMS' control. This move also increased financial risk to those Wisconsin cheese plant operators. That's because the cross-border milk flow into Illinois puts such milk outside the oversight of the milk plant security program operated by Wisconsin's agriculture department. If DFA busted financially, DMS would follow. The cheese plants had reasonable security when selling their milk to Dean Foods—because of Dean Foods' relatively stronger financial condition. Hilariously, in late December 2004, DMS failed to pay Wisconsin cheese plants' on a timely basis for millions of dollars of milk shipments in November 2004. DMS' checks to cheese plants were more than two weeks late!

The DFA/DMS monster rolled in, gathering more control of raw milk markets. Every additional dollar of cash flow that coursed through DFA/DMS bank accounts was all the more money that DFA's creditors could grab if the co-op failed financially.



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!

August 2003:

DMS grabs 300 Kraft Cheese shippers in Missouri, Arkansas

On July 28, 2003, about 300 independent dairy producers selling their milk to Kraft Foods’ cheese plants in Springfield, Missouri and Bentonville, Arkansas were informed, by letter, that effective August 1, their milk marketing would be taken over by Dairy Marketing Services.

Over the years, Kraft Foods had solicited “high-solids milk” (i.e., farm milk of higher than average composition for both milk fat and protein) to supply those two cheese plants. Many of these dairies supplying the two Kraft Cheese plants milked Jersey cattle. Kraft benefited because these farms’ milk yielded more cheese per hundredweight. Kraft, for years, had treated those producers fairly. Kraft Foods paid producers premiums for both protein and quality—bonuses that added liberally to those farmers’ milk incomes.

By mid-summer 2003, Kraft Foods was basically the only milk buyer in southern Missouri that had not been compromised by DFA/DMS. Many of the dairy farmers supplying Kraft Foods loathed DFA ... and anything connected to it. After all, DFA (and before it, Mid-Am) had been locally based and for years committed “homeland insecurity”—bleeding farmers’ milk checks.

No other markets existed locally. It’s an old DFA trick to make such change-overs of independent producers’ markets with little or no notice. Lack of advance notice stymies any attempts to find other milk buyers.

The “honeymoon” period with DMS, for the ex-Kraft Foods shippers in southern Missouri, didn’t last long. DFA farmers in that part of Missouri were angry that non-member producers could ship to a marketing agency owned by DFA, and those non-members could collect premiums and get paid the “statistical uniform price” (basically, a minimum price calculated each by USDA). The DFA members received no quality or protein premiums, and were paid less for their milk each month (than their non-DFA member neighbors). In southwest Missouri, adding those ex-Kraft Foods’ producers through DMS created terrible internal dissonance at DFA.

Solution? In November 2003, DMS informed those producers in Missouri that, effective December 1, 2003, they’d lose all premiums for quality and protein. Angrily, the Jersey dairy herd owners had to relinquish payments for their higher-value milk. There were no alternate markets available. DFA/DMS had

stifled competition in Missouri. (Editor’s note: These moves are similar to events in the mid-1980s, when the American Jersey Cattle Club tried to institute “protein pricing” at two small Missouri cheese plants. At the last minute, Mid-Am bought those plants and closed them—to prevent Jersey producers from gaining new markets paying premiums for their higher-protein milk. Ironically, Calvin Covington—then heading AJCC’s efforts to gain protein-pricing from cheese plants for Jersey herds, is now general manager of the Florida co-op. Hanman’s co-ops have made life difficult for Covington, over the decades.)

Postscript: In early 2004, angry Jersey producers in Missouri re-incarnated an inactive dairy cooperative—Central Equity Co-op—and launched a milk marketing campaign to sell their milk to the Mil-Not milk plant in Seneca, Missouri. Central Equity has grown to about 200 members. Mil-Not manufactured canned milk products, as well as non-dairy products. Had the Jersey producers again “escaped” DFA? However, in late 2005, DFA acquired an equity interest in Mil-Not’s corporate parent. The milk sales deal between Mil-Not and the local producers’ cooperative runs through 2007 ... so at least temporarily, DFA cannot overtly shaft those Jersey producers. However, in January 2005, a milk hauler in Oklahoma, who’d started hauling milk for Central Equity (in addition to hauling milk for DFA/DMS), received a check for \$0.00 for his December 2004 milk hauling services. DFA/DMS claimed he’d violated his contract with them, for hauling non-members’ milk. Such tactics were a clear violation of the 1977 Consent Decree with DOJ, binding DFA from discriminating against milk haulers who also work for other marketers.

August-October 2003:

DFA rigs CME Cheddar prices while shopping financial notes

Manipulating CME’s cash dairy commodity markets has served many purposes for DFA. Sometime in mid-2003, DFA’s leaders cooked up a scheme to create debt instruments that “borrowed” against DFA members’ equities in the co-op! (Keep in mind: integrity of the co-op’s assets and equities had sparked the “worth less than ten cents on the dollar” comments from DFA’s outside attorney, Michael Fayhee at merger time in fall 1997). To help create the guise of cash flow stability while searching out new borrowings, DFA “flooded” the CME block Cheddar price at \$1.60/lb. from July 31 to October 27, 2003.

DFA also “flooded” its members in the Deep South—hitting them with milk check deductions way over \$1.00/cwt. for both August and September 2003. Had to keep the co-op’s margins stable while shopping for a lender!

Background: On September 24, 2003, DFA summoned its delegate body to Nashville, Tennessee to hear details of a complicated, “unique opportunity” to borrow against the co-op’s equity. Delegates needed to amend the co-op’s by-laws so DFA could “issue preferred equity capital ...”

For this matter, delegates were asked to sign “proxy statements,” turning over their voting powers to DFA’s board of directors. These proxy statements allowed DFA to dispense with calling a second delegate meeting on this matter—a move which might have sparked outrage among members if they learned that DFA was mortgaging their equities..

On October 9, financial news services reported that Standard & Poors gave a BBB- rating to DFA’s offering of \$150 million in “preferred equity securities”. That’s a junk bond rating—rightfully so! The S&P description of DFA’s “preferred equity securities” noted that: “As in the case of the indebtedness, amounts owing by DFA for dividends on and amounts owing in liquidation to the Preferred Equity Capital will rank senior to amounts owing to members.”

S&P’s word detail that DFA’s payments due members for unpaid milk deliveries were being used as collateral by the co-op’s lenders, and that now DFA would borrow against member’s’ equities!

That financial background aside ... DFA engaged in apparent CME Cheddar price manipulation in from late July 2003 through late October 2003. For that 12-week period, DFA maintained a flat-line price of \$1.60/lb. for block Cheddar at CME. Week after week after week, cash Cheddar prices remained stuck at \$1.60/lb.—a most unusual, anti-market scenario.

Why? As DFA prepared to offer its \$150 million (junk-grade investments) “Preferred Equity Capital” to investors, stability of CME Cheddar prices would undergird the financial stability of the co-op’s monthly cash flow. Remember: one of DFA’s biggest assets used as collateral to creditors was the monthly cash-flow from members’ milk checks—\$400 to \$500 million dollars per month at that time, when propped up by unduly high CME Cheddar prices!

April 1, 2004:

“Dairy Antitrust” conference in Syracuse, NY draws 250+

With only about ten weeks’ planning time, dairy farmer John Bunting (Delhi, New York) put together a remarkable conference on dairy antitrust abuses in Syracuse, New York on April 1, 2004. The conference drew over 250 attendees from coast-to-coast. An all-star roster of speakers included a keynote address by then New York Attorney General (now Governor) Eliot Spitzer. Other speakers included Louisiana’s Carole Knight, Pete Hardin, Bunting, and others. Carole Knight’s description of what Mid-Am/DMS did to the dairy community in northeastern Louisiana brought tears to the eyes of at least half the audience.

The timing of the “Dairy Antitrust” conference was perfect—helping publicly focus industry-wide concerns about competitive misdeeds. In less than three months, the DOJ Antitrust dairy probe had started.

The National Family Farm Coalition helped coordinate details for the conference. Industry and individual contributions (to help defer costs) totaled around \$8,000.

While attending a meeting of the American Antitrust Institute in Washington, D.C. in late June 2004, SMI’s Calvin Covington and board chairman Joe Wright were confidentially advised by high-level DOJ officials that the feds had

started an Antitrust investigation against DFA.

April-June 2004: DFA's biggest theft EVER—stealing tens of millions of dollars from FMMOs & members

In early 2004, DFA commenced its most blatant thievery to date—stealing tens upon tens of millions of dollars from its own members and dairy farmers in many federal milk orders. (Note: If the following paragraph is too complicated, skip it. Milk pricing is complex by design—assisting in confusion.)

The basis of this grand larceny rested on an old trick: manipulation of CME's cash Cheddar markets. By rapidly raising Cheddar prices at CME, DFA created a rare "price inversion" in the federal milk order system. That upside-down pricing situation saw prices for normally lower-valued Class III (cheese) milk rise above Class I (fluid) milk. Under this unusual phenomenon, cheese plants that normally pool their milk on a federal milk order may "depool" (not participate) in the federal order pool during the months in question. (Normally, cheese plants have an economic incentive to "pool" – i.e., make their Grade A milk available for bottling plants if needed – their milk. A federal order "price inversion" encourages "depooling" by replacing the normal incentives with penalties that require cheese plants to make payments to the federal order pool.) Result: cheese plants "kept the difference" between higher-valued cheese milk and lower-priced milk in regional federal milk orders.

DFA netted untold, many tens of millions of dollars in this complex scam.

Starting in late February/early March 2004, CME cash prices for Cheddar cheese rose to astounding heights in just several weeks. CME block Cheddar started early 2004 at a low point of \$1.30/lb. per pound on Friday, January 23. Price momentum started building the following week. March 2004 saw spectacular gains for CME block Cheddar—more than a 50-cent per pound gain, to close trading on Friday, March 26 at \$2.04/lb. That price momentum kept building—up to an astounding peak of \$2.20/lb. registered on April 20, 2004. That price was an all-time peak—and a most unnatural price. True: cheese output was tight, due in part to weather events, as well as a 50% shortage of a milk-stimulating, biotech cow growth hormone drug sold by Monsanto to dairy farmers. But by any sane measure, a \$2.20/lb. CME block Cheddar price peak was beyond reason.

These all-time peak CME Cheddar prices directly caused all-time, peak prices for USDA's Class III milk prices in the federal milk order system in April (\$19.96/cwt.) and May 2004 (\$20.58/cwt.). The general consensus in the industry was that CME Cheddar cash prices had been driven far too high, and that DFA was the prime force pushing up CME Cheddar to unprecedented levels.

These huge CME Cheddar price increases created "depooling" in numerous federal milk orders, allowing DFA/DMS to pirate huge sums of money from the system. Examples:

* In the Northeast marketing region, the market administrator's office estimated that "depooling" Class III milk removed thirty-one cents per cwt., or a total of \$13 million, from producers' revenue for April 2004. In May 2004, Northeast dairy farmers lost thirteen cents per cwt.—about \$4 million dollars—due to depooling.

* Meanwhile, the market administrator for federal order #33 (Mid-East) estimated the following losses due to "depooling" in April/May 2004: -\$1.64

\$1.5-\$2 BIL. Consumer Cost For DFA's Cheese Price Manipulations in Early 2004

Elsewhere in this special section, *The Milkweed* asserts that consumers paid a minimum of \$1.5 to \$2 BILLION dollars in higher dairy product costs in spring 2004, because DFA drove up prices of Cheddar cheese at cash markets at the Chicago Mercantile Exchange (CME). Cheese is dairy's price-driver. About half of all U.S. farm milk is processed into cheese. Cheddar is the only cheese variety traded at CME's cash pits. The ups-and-downs of CME Cheddar cash prices track very closely with the prices paid for virtually all uses of farm milk through USDA's federal milk order program and California's state milk-pricing system.

In February 2004, DFA commenced a single-handed push at CME, bidding and buying up Cheddar cash prices to all-time peaks, by early April. This push saw the price of 40-lb. Cheddar blocks at CME climbing nearly \$1.00/lb. from early January price levels to a peak of \$2.20/lb. in early April. Yes, milk output and cheese supplies were tight ... but not that tight!

Those peak CME Cheddar prices caused all-time record Class III (cheese) milk prices under USDA's federal milk order program. The April 2004 Class III price was \$19.56/cwt. May 2004's Class III price peaked at \$20.58. And May 2004 registered a \$17.58/cwt. Class III milk value. Let's assume, for the sake of argument, that those months' Class III prices averaged \$4.00/cwt. higher than normal market conditions would have dictated, if DFA hadn't manipulated Cheddar prices at CME.

The math is simple: Let's say that milk production for April-May 2004 averaged roughly 15 billion lbs. Multiply those monthly volumes by \$4.00/cwt. \$4.00/cwt. X 15 billion lbs. of milk per month equals \$600,000,000 higher milk prices. A conservative, straight-line pass-through of those higher milk costs equals \$1.8 billion dollars in higher consumer costs for those three months.

This calculation is both conservative and naïve, in presuming that consumer costs merely reflected the higher values for milk prices received by dairy farmers. Obviously, additional costs are passed on to consumers, atop raw milk costs, by processors and supermarkets.

cwt/ for April, and -.74/cwt. for May.

Adding insult to injury, DFA/DMS were forced to ship large quantities of milk from Northeast states (Vermont, New York, New Jersey, etc.) to Ohio plants in June 2004, to "qualify" for federal milk order payments in Order 33. Two months of "depooling" of Northeast milk meant that the co-op, otherwise, could not have qualified to pool the June 2004 milk on the Northeast milk order—and thus would have lost millions. Added volumes of Northeast milk pooled in June 2004 on the Mid-East milk order cost local producers \$.11-.22/cwt., according to the Order 33 market administrator's office.

April-May 2004: DFA steals *mucho dinero* from Southwest members who'd signed fix-price contracts

Even more cynically, DFA stole untold tens millions of dollars from its members in southwestern states who'd "locked in" fixed-price contracts for their milk during 2004. Due to this scam, some of these DFA members forfeited more than \$10/cwt. for their "contracted" milk production in April and May 2004!

Here's how that scam worked: At the very beginning of 2004, DFA personnel strongly recommended that members in the Southwest sign fixed-price, annual contracts for the entire year. A common price for these deals was right around \$11.75/cwt. range. Simply stated: those contracts paid the farmers \$11.75 for 2004 on all contracted milk volumes. DFA personnel implied that the \$11.75/cwt. price looked better than what market prices would yield in 2004.

Those fixed-price deals quickly proved very disadvantageous for the producers (suckers) who signed them. April-May 2004 Class III prices rose to all-time peaks of \$19.96 and \$20.58 per cwt., respectively. DFA's members who'd been duped into inking fixed-price deals failed to enjoy on the upside of the best farm milk prices in history.

Worse yet, DFA's fixed-price annual milk sales deals contained a vicious "stinger" that left even more gaping milk check wounds for those unfortunate producers who had signed contracts for April-May 2004. Simply stated (to avoid too many cumbersome milk pricing details), in months where the Class III price exceeded the Class I milk price, the difference (technically called a "negative Producer Price Differential) was subtracted from the contracted amount.

Thus, a DFA farmer in Texas, who'd contracted a fixed-price deal for \$11.75/cwt. in 2004 through his co-op, that producer saw the "negative PPD" subtracted from his \$11.75/cwt. price.

The "negative PPD" for the Southwest milk order (Order 126) in April 2004 was about \$3.84/cwt. Thus, the dairy farmer who'd contracted his milk at \$11.75 through DFA netted only about \$8.00/cwt., once co-op dues, milk hauling, dairy promotion fees, etc., were deducted from his paltry milk income. One farmer from Texas told *The Milkweed* that he alone had lost \$600,000 through DFA's fixed-price milk contracts scam in 2004. The May 2004 "negative PPD" in Order 126 was (minus) \$.191/cwt.

These farmers—and there were many of them—suffered silently as other farmers around the U.S. (who hadn't signed fixed-price deals) enjoyed all-time, record milk prices (albeit briefly). Milk markets in the Southwest feature little competition.

If DFA's goal was to siphon tens upon tens of millions of dollars from the U.S. dairy industry, then in early 2004, DFA's strategy paid off handsomely:

* Drive up CME cheese prices that, in turn would drive up farm milk prices. Record propulsion for CME cheese prices created all-time record cheese milk prices in the federal order system—driving cheese milk prices above fluid milk prices for April and May 2004.

* Then, DFA "depooled" Class III milk from FMMOs—pocketing the difference in many markets. (In Wisconsin, where healthy competition for farm milk still existed, DFA paid out the higher cheese-milk values to producers.)

* Locking in Southwest members' at \$11.75 and then driving up Class III prices (within a few months) to nearly \$20/cwt. was a second grand larceny perpetuated against farmers' milk checks in spring 2004 by DFA. How many tens upon tens of millions of dollars DFA stole in these scams in April/May 2004 is unknown outside the co-op.

Consumers paid dearly for these milk-pricing shenanigans, also. DFA's price run-up scam cost U.S. dairy product consumers, at minimum, between \$1.5 and \$2 billion dollars in higher supermarket prices. (See sidebar for greater details.)

Driving up consumer prices could well be interpreted as meriting an investigation by the USDA Secretary into undue price enhancement by an agricultural cooperative. Don't worry. No government agency showed any interest at the time.

Spring 2004: What goes up too high must come down hard CME Cheddar prices tumble and crash

The sky-high CME Cheddar prices had fall off their unnatural pinnacle in late April 2004. Cheese marketers minimized their purchases of cheese—fearing financial losses from depressed inventory values when, not if, the predictable CME Cheddar price collapse followed. From peak of \$2.20/lb. for block Cheddar attained about April 23, prices tumbled about \$.40/lb. and then held flat at the still-high plateau of \$1.80/lb. for Cheddar blocks for about six weeks. The \$1.80/lb. CME cash Cheddar price held from roughly mid-May until late June: another "unnatural act" in CME cash market price manipulation by DFA. DFA bought hundreds of 40,000-lb. carloads of Cheddar at CME to sustain the \$1.80/lb. block Cheddar plateau.

Finally, in late June 2004, reality punctured DFA's \$1.80/lb. CME block Cheddar price bubble. Cheese prices collapsed in late June 2004, dropping pre-

cipitously down to a bottom of \$1.36/lb. for CME block Cheddar by the end of the first week of July.

From late April through early July, CME Block Cheddar prices had collapsed a total of \$.84/lb.

These roller-coaster CME cash Cheddar prices wrecked havoc upon the dairy industry—spreading confusion, inventory losses, and higher consumer prices across the nation.

DFA's leaders must have reflected upon 2004 with great self-satisfaction. The co-op had whipsawed the dairy pricing system for its own gains—netting tens and tens of millions from “depooling” and lowball fixed-contract deals with member producers. Only one possible headache loomed: DOJ's Antitrust division investigation had commenced.

Franklinton, Louisiana ... August 5, 2004: DOJ announces DFA Antitrust investigation

On August 5, 2004, about two dozen dairy farm men and women gathered at the farm home of Brent and Laurie Duncan, outside Franklinton, Louisiana. These struggling dairy farmers heard news for which they'd been waiting and praying for nearly ten years: DOJ had formally launched an Antitrust investigation against DFA. The news brought tears to many in the room, including ex-dairy farmer Carole Knight, now employed full-time at her husband's law office. For this long-awaited occasion, Carole Knight packed a tape-recorder and rushed an article for page 1 of *The Milkweed's* August 2004 issue.

Speaking for DOJ was senior attorney Allee Ramadhan of the Antitrust division. Mr. Ramadhan, who had logged more than 30 years in service as a federal attorney, stated clearly DOJ's objective: follow the money. He puzzled how unduly large sums of money were disappearing at DFA, from the sale of members' milk. Ramadhan stated to the group:

“On its face, it does not 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.”

Ramadhan gained the confidence of the Louisiana dairy farmers. He stayed overnight in the area: eating catfish, drinking wine and swapping hunting stories into the wee hours of the next morning. Ramadhan is a serious hunter: one year, he bagged seven deer *with his bow and arrow!* Ramadhan's hunting philosophy, as explained to Louisiana dairy farmer Jerome Walker: “Know your prey”. The next two years would provide Ramadhan plenty of knowledge of dairy's darnivores.

News of the Antitrust investigation ... long time coming ... jolted the dairy industry, if not DFA, whose leaders began to systemically discount the significance of the DOJ investigation. Comments by DFA leader Gary Hanman discounted the DOJ probe, claiming that DOJ was always investigating DFA. DFA leaders' public comments gave no hint they imagined this latest Antitrust probe would turn out different. So far, Hanman's arrogance has been sustained by DOJ's senior officials to pursue indictments.

About 20 state AGs join Antitrust's dairy probe

The Antitrust probe got off the ground quickly, and soon developed into a joint federal-state probe, ultimately bringing in about 20 different states' top law enforcement offices. In the course of the two-year investigation—which culminated (to date) with Ramadan's team's recommending indictments against DFA, Dean Foods and NDH—government attorneys interviewed dozens and dozens of dairy industry personnel, and demanded thousands of pages of documents from DFA, its joint ventures and subsidiaries, as well as requiring documents from many other dairy cooperatives.

Word filtering back from persons who'd talked with DOJ personnel investigating DFA was that DFA's lawyers reverted to the same tactic they'd perfected during the lawsuit brought on behalf of the Knight family in Louisiana: sometimes refusing to provide requested documents for long, long periods of time.

As the Antitrust investigation ensued, government attorneys found a wide, wide range of apparent misdeeds by DFA. Focus of the federal-state investigation has apparently narrowed to activities in the Southeast, involving DFA, Dean Foods, regional “super pools”, and National Dairy Holdings. If one could pick a single region of the country where DFA has behaved in the most predatory fashion, the Southeast would win, hands-down. The special “promotion credits” extended by DFA-controlled “super pools” beg questions about whether DFA truly operated as an independent entity for Dean Foods, or just a lap dog. The whole history of the Southeast dairy industry during the past twelve years has been that of, first Mid-Am, and later, its successor, DFA, consolidating near absolute control of farm milk supplies in the region, and then purposefully undervaluing the raw product (and costs of marketing) to the main buyers—Dean Foods and NDH. Years of repeated marketing losses in the region are specifically what DOJ's Allee Ramadan spoke about when puzzling to the assembled Louisiana dairy farm men and women, back on August 5, 2004, about “following the money”.

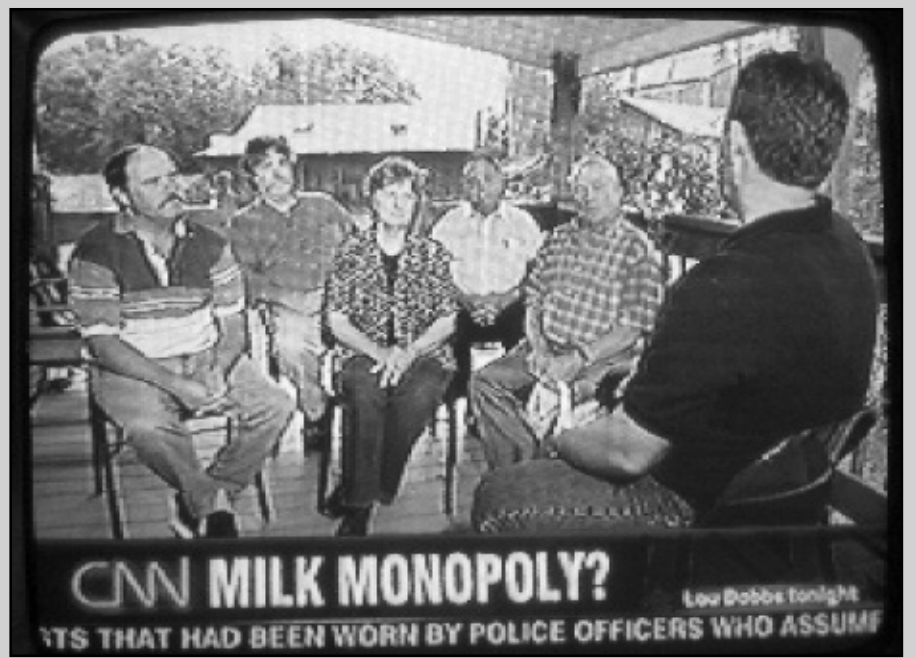
June 2005:

DFA-owned fluid processors bully KY co-op

In the middle of the DOJ investigation of DFA, the co-op had no qualms about using its fluid milk processing businesses in Kentucky to “bully” a local dairy co-op's attempts to get a better milk price for its members.

In spring 2005, the Southeast Grade A Milk Producers Assn.—Kentucky's only remaining local dairy producers' cooperative—searched for a better deal. For several decades, that co-op had sold milk to Southern Belle (Somerset, Ken-

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.

Lou Dobbs' introduced the segment, noting:

“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 of building its control of the milk market into an outright monopoly. Its critics say the group has crippled American dairy farmers and created yet another trade deficit for this country in dairy products.”

Reporter Bill Tucker introduced Hal Drick, saying: “Drick, one of a fading breed, 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 co-op, with more than 14,000 member farms. Drick says if he doesn't sign, there will be nowhere he can sell his milk.”

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???

tucky). Southern Belle owned, in 2005 jointly by DFA and the family of Robert Allen. Local producers looked at Southern Belle's business and environmental problems—and decided to shop their milk elsewhere. On July 9, the Kentucky co-op's directors signed a one-year sales contract with Flav-O-Rich (London, Kentucky). Flav-O-Rich is Southern Belle's “competitor”—albeit owned by National Dairy Holdings (*another* DFA joint venture). The contract specified raw milk sales would begin July 1, 2005.

But NDH's “Go” turned to “Whoa” real fast. Only five days after that milk supply agreement was inked, the Flav-O-Rich plant manager called and cancelled the contract with the local co-op. Locals suspected DFA was behind the 180-degree reversal.

On Monday, June 20, 2005, a delegation from the Kentucky co-op flew to Washington, D.C., where they met with officials from the Antitrust Division's dairy investigation team. DOJ officials listened attentively for four hours, but did not intervene against this attack on a small competitor by DFA.

When one older gentleman returned home to Kentucky, late that night, he puzzled aloud how he could explain, to his grandson, the portion of the “Pledge of Allegiance” that refers to “... and Justice for all.”

July 2005: 300-400 Farmland Dairies producers (NY, PA, & NJ) lose “independent markets” to DMS

No dairy producers in the U.S. better fit the label as “stubborn, independents” more than the several hundred producers who remained shipping milk to Farmland Dairies in summer 2005. Farmland historically relied heavily on independent milk supplies. Loyalty of those producers—who resided in New York State, Pennsylvania, and New Jersey—had been tested. Farmland's parent corporation—Parmalat, based in Italy—was scandalized by corporate accounting fraud. Parmalat's North American operations—which included Farmland Dairies—filed for bankruptcy protection, even though it was not enmeshed in the corporate parent's shenanigans.

In early 2005, DMS field persons spread rumors about how the Parmalat

bankruptcy could hit Farmland's independent producers in the Northeast. A couple hundred producers in New York and Pennsylvania deserted Farmland Dairies—going to DMS and its related co-ops. Losing that milk volume hurt Farmland Dairies—which was forced to buy additional milk supplies from DMS ... at high premiums.

Around July 20-21, 2005, Farmland Dairies' producers received written notice that, retroactive to July 1, that DMS had taken over marketing of Farmland's independent producers' milk. DMS would be the sole raw milk supplier for Farmland. Virtually no other milk markets were available to Farmland Dairies' producers. DMS' belated notice that it was taking over Farmland Dairies' producers' milk marketings violated advance-notice requirements in New York, Pennsylvania and New Jersey. No problem.

Unhappy producers squawked. At an August 1, 2005 meeting at the fire house in Unionville, New York (a tiny community straddling the state line separating Orange County, New York and Sussex County, New Jersey), DMS personnel met with local Farmland Dairies' producers. But DMS personnel Sherad Mathur and Brent Bunce were completely uninformative.

Mathur and Bunce refused to provide basic financial information about DMS. They were asking producers to sell their milk to DMS, but refused to provide a financial audit of DMS. Mathur and Bunce also refused:

* To tell farmers the name of the bank issuing DMS' milk checks in the Northeast.

* To reveal in what firm's name that bank account was listed.

* To clarify whether the assets of that bank account were used as collateral to cover the indebtedness of any lender.

All those questions were prudent, given that DMS' financial "parent"—DFA was saddled with huge debts and had pledged its "assets" (including money in checking accounts) to its creditors.

Mathur and Bunce also promised producers at the Unionville, New York meeting that DMS would continue all premiums that they'd been paid by Farmland Dairies. It didn't take long for that lie to become clear.

By October, DMS boosted hauling charges paid by Farmland Dairies' producers. And come January 1, 2006, DMS cut out many of the premiums that had been paid by Farmland Dairies to its independent producers, including premiums for "rbGH-Free" milk.

(Ironically, at a hearing held by the New Jersey Department of Agriculture in late August 2006, one New Jersey producer testified about his anger about having his premiums taken away by DMS. He griped that Farmland Dairies was selling "rbGH-Free" milk in stores in New Jersey, but he'd lost his "rbGH-Free" premium for milk sold to Farmland. Immediately, the plant manager for Farmland Dairies—Tim Barber—jumped up to clarify that producer's statements. Barber told state officials that Farmland Dairies continued to pay premiums to DMS for "rbGH-Free" farm milk. But if DMS wasn't remitting those premiums to the individual producers ... *that* wasn't any of Farmland's responsibility.)

DMS continues to bleed ex-Farmland Dairies independent producers' milk checks, particularly through higher hauling costs. Even though diesel fuel prices are perhaps 60-70 cents per gallon cheaper in the Northeast than they were four to six months ago, the former Farmland Dairies' independent producers have not seen their milk hauling costs decline. In fact, effective January 1, 2007, DMS *raised* net milk hauling/stop charges to some of those producers. If the truth were known, throughout the Northeast, DMS' actions in recent months and years have dramatically piled hauling and marketing costs atop independent producers' milk checks.

Mid-July 2005:

Exec. Committee Boots Hanman Upstairs

In mid-July 2005, at an executive committee meeting in Chicago, DFA's ruling circle heard Gary Hanman's heir-apparent, Rick Smith, warn that Hanman was leading the co-op towards financial ruin. Smith complained Hanman hadn't given him the responsibilities designated when Smith moved to Kansas City in early 2005.

Smith, a lawyer, must have presented his case persuasively. At that meeting, DFA's executive committee voted to give Smith additional powers, effective August 1. Smith was anointed as DFA's "President and Chief Operating Officer". Hanman sent out a strange announcement on July 19, noting: "I will continue as CEO of Dairy Farmers of America and Rick will report directly to me."

The trauma of Hanman's partial demotion was assuaged by a late July trip for DFA's directors (and wives) and top executives to a four-star resort on the Maine coast, for a "Lobsterfest" that lasted nearly one week. (DFA admitted rooms cost \$200 per night, even with a discount.) Subject? Long-term planning.

Spring 2006: Lew Gardner—(Bankrupt) DFA Big-Wig Director

Bankruptcy papers filed with the U.S. Bankruptcy Court for the Middle District of Pennsylvania last spring, revealed the double-life of prestigious DFA director Lew Gardner, a "dairy farmer" from Galeton, Pennsylvania: dairy co-op leader and bankrupt.

Gardner is a "worst case" example of the sub-class of dairy farmers known as "professional per diem collectors"—farmers who "milk" corporate directorships instead of cows. Gardner, who has headed DFA's Northeast region since

DFA & DMS Own Northeast Farm Milk Supply

(Note: This section would be more complete if the Northeast federal milk market administrator's office had complied with a simple request for the dates on which DFA and/or DMS had become the "handler of record" for various groups of "independent" dairy farmers who milk markets were taken over by the two "Ds".)

In the past eight or so years, the complexion of Northeast dairy farms' milk marketing has changed dramatically. It's impossible to estimate how much milk in that important region is controlled by DFA and its joint venture, Dairy Marketing Services, but that figure certainly ranges between 70% and 80%. In the past eight years, those two co-ops have repeatedly cut deals with private milk processors to take over milk supplies. The net result of these actions has been to put control of raw milk in the Northeast into these incompetents' hands. DMS is so incompetent, that in recent years, it has been sending bills to processors for adjustments in fees for milk sold that have been three and four years old!

Here's a quick list of Northeast dairy processors whose independent milk supplies have been given up to DFA and DMS (without any chronological sequence):

Garelick Farms, Tuscan-Lehigh, Farmland Dairies, Sunnysdale Farms, Cumberland Farms, H. P. Hood (partial supply, Crowley Foods, Boice Brothers, Marcus Dairy. (Note: Cumberland Farms in recent years has re-established its own producer supply.)

The net impact of the DFA/DMS takeover of Northeast milk supplies has not been to put money in dairy farmers' milk checks. If anything, DFA/DMS have failed to recover higher costs of marketing from the profit-laden buyers of milk (like Dean Foods and H. P. Hood). Instead, DFA/DMS have continually added costs to milk checks, like hauling and stop charges. Serious questions arise about the validity of component testing (butter fat, protein) and milk quality sampling.

Don't ask questions about DMS' performance. In August 2003, *The Milkweed* profiled an anonymous Maine dairy producer who'd complained that DMS had suspended his milk market without the appropriate number of milk quality test violations. The producer had sent "split-samples" to a DMS-controlled dairy quality laborator and to a state lab. The DMS-controlled lab registered a somatic cell count of 1.5 million, while the state lab tested the SCC at 500,000. **Seven days from the day that issue of *The Milkweed* was mailed, DMS field personnel (accompanied by a femi-Nazi state inspector) arrived at that producer's farm to tell him that he was permanently shut out from selling milk. The Maine inspector told him that neither he nor his wife would ever again obtain a state license to sell milk.**

DFA/DMS have Northeast milk supplies hog-tied. DFA/DMS have clearly failed to pass along higher costs of marketing to buyers. Instead, DFA/DMS have continually hiked marketing costs paid by producers, many of whom didn't want to be associated with DFA/DMS in the first place.

the co-op's inception in 1998, belonged to just about every dairy group humanly possible—even the prestigious National Dairy Promotion and Research Board.

But Gardner's business judgment, indeed his morality, are betrayed by the bankruptcy papers. Lew Gardner "milked" DFA's system for all it was worth, before filing for protection from his creditors (including DFA):

*Gardner received advance milk check payments from DFA. His bankruptcy listed \$12,714 in milk check advances due DFA.

*Gardner had borrowed a \$1.5 million *third mortgage* from Agri-Financial Services (Syracuse, New York) on his half-share of the modest Pennsylvania dairy farm and low-producing Holstein herd. Preferential treatment? Agri-Financial Services is a subsidiary of Dairylea Co-op—which is affiliated with and operates in tandem with DFA in the Northeast. Lew's cash-flow problems probably related to the average monthly pay-down of nearly \$40,000 extracted from his milk checks by Agri-Financial Services during the two year period of the mortgage. No wonder Gardner couldn't pay his bills. (Note: Gardner is not the only DFA/Dairylea director who loaned money from Agri-Financial Services.)

*Gardner owed Eagle Supply Co.—another Dairylea subsidiary—\$17,491 for unpaid bills for supplies.

*Gardner's bankruptcy filing reported estimated income of \$15.33/cwt. (*The Milkweed's* calculation) average milk price for May 2006. Gardner had signed up roughly 80% of all his monthly milk sales during 2006 for a \$12.90/cwt. Class III contract with DFA. Somehow, it appears Gardner was being paid a lot more money for his milk than prices received by his neighbors in early 2006.

Gardner's bankruptcy papers show he stiffed a long line of local service and supply firms, not to mention leaving more than \$50,000 in unpaid credit card bills.

Lew Gardner resigned as the chairman of DFA's Northeast region in mid-2006, but that didn't prevent him from testifying before a high-falutin' in front of legislators in early summer 2006 about what dairy farmers need in the 2007 farm bill. Gardner continues to serve as a DFA corporate director.

A sad comment on Lew Gardner's business skills and acumen: he failed to file bankruptcy before the mid-October 2005 federal deadline, before which individuals filing bankruptcy could still "mostly" walk away from their debts. With such business skills, it's no small wonder that DFA is governed so poorly ... and that directors (like Gardner) give management everything they want. One hand washes the other.

October 2005-early April 2006: DOJ Antitrust Investigation Slows

Unfortunately, the start of the federal fiscal year on October 1, 2005 saw DOJ's financial resources pulled back from the Antitrust investigation. Senior officials had other priorities and shifted some staffers to a critical home appliance merger matter. Contacts with DOJ's dairy sources slowed ... to almost nothing. Worst fears were being realized: the political "fix" was on.

Then, in late March 2006, a group of Pennsylvania dairy farmers from northwestern Pennsylvania (including some of the same folks who'd been on the Lou Dobbs CNN story in late August 2005) journeyed by van to meet with Pennsylvania's senior U.S. Senator: Arlen Specter—chairman of the Judiciary Committee of the U.S. Senate. The farmers laid out their heartache over the loss of competition in dairy.

Specter promptly wrote a letter to U.S. Attorney General Alberto Gonzalez... and within a few days, DOJ's dairy Antitrust team started making phone calls and contacts again ... and finished up the investigation in fairly short order.

In late August, DOJ lawyers interviewed Rick Smith—now DFA's President/CEO. Interviews with DFA's new boss were virtually the final agenda item, before Antitrust's dairy team submitted its final recommendations to DOJ's top officials on August 28, 2006: indict DFA, Dean Foods, and National Dairy Holdings. The two-year long investigation concluded.

The decision to indict now rested at the top of DOJ. It was presumed that no indictments would be issued before the November elections, since most of dairy's giants are good Republicans.

At the annual meeting of the Dairy Lea Co-op in Syracuse, New York in October, DFA President/CEO Rick Smith stated that DFA had only failed to fill out a few forms correctly, and predicted the matter would be resolved by DOJ, one way or the other, by Christmas.

Thanksgiving came and went. Christmas came and went. In late December, at a gathering of DMS personnel in the Northeast, word from DFA was that the co-op's leaders were breathing easier. DFA's leaders, at the end of 2006, seemingly had reason to believe they had avoided any Antitrust bullets ... and would not be indicted by DOJ.

Meanwhile ...

For the past year, the world's largest private law firm has been digging into the competitive misdeeds of DFA ... and others. Sometime in early 2007, it is likely that private lawsuits will be filed against DFA ... and others ... whether or not the U.S. Department of Justice's senior officials get off their thumbs.

DFA's Finances: Debts, Debts & Pension Liabilities

In the beginning ... and at the end ... it's all about money. Profits in dairy have oftentimes been modest, compared to other sectors of industry. But dairy generates tremendous amounts of regular monthly cash flow. Dairy farmers are paid, on average, about four weeks after their milk is shipped off the farm. That means huge amounts of milk money are waiting in the industry ... to be abused, in the case of DFA.

From the very beginning, questions about DFA's finances have swirled. In the September 1997 issue of AMPI Southern Region's magazine, board president Charles Beckendorf (who later served as DFA's treasurer) wrote: "For months, rumors and myths have circulated to the effect that at least one of the groups was broke, financially unstable and gasping for the last breath. Nothing could be further from the truth. All four cooperatives are financially sound."

(Beckendorf refused to provide members with a 1997 AMPI Southern Region financial audit. In September 1997, AMPI members in Texas saw the co-op gobble up virtually all of a \$1.00/cwt. increase in higher prices charged for raw milk to Class 1 processors.)

That set the stage, in November 1997, for the lawyer overseeing merger details, Michael Fayhee, to claim that some co-ops' equities might be worth less than ten cents on the dollar!

It's all control of money and cash flow.

Today, DFA's indebtedness totals roughly \$1 billion. DFA has pledged as collateral to its creditors, the co-op's "receivables"—money as yet unpaid to members for the sale of their raw milk. Depending upon a particular month's price of milk, DFA's monthly milk sales cash flow ranges around \$400 million, give or take a hundred million. That figure is less than half of the co-op's debts.

In DFA's carefully crafted Articles of Incorporation, Article III notes:

"Purposes of the Association"

"The Association is formed for the following purposes:

...

"(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 were covered—standing ahead of the farmers in the co-ops payment schemes.

DFA's membership contracts specify that members must adhere to the by-laws and Articles of Incorporation.

In December 1997, at DFA's first board of directors meeting, the minutes contain a resolution that the board adopt the "Security Agreements" from Mid-America Dairymen, Inc.'s relationship from the Harris Bank. Those "Security Agreements" provided for basically all of DFA's assets, including bank accounts and receivables, to be pledged to the lender.

DFA leaders regularly asserted the financial strength of their cooperative, and denied oftentimes that the members' milk checks were used as collateral for DFA's lenders.

On March 4, 2001, Moody's Investors Service assigned DFA favorable ratings as a borrower. The headline for that Moody's news release read: "Moody's Assigns Long and Short Term Ratings to Dairy Farmers of America; Outlook Stable." But the fine print of that press release explained why lenders should take comfort in lending money to the co-op:

"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 for very comfortable coverage. Moody's anticipates that coverage of debt and preferred stock obligations should remain high in the medium term."

Years passed. DFA gobbled up more and more dairy businesses. DFA coerced more and more producers into the co-op's financial system. The cancer was spreading across America's dairy farms, forcing more and more dairy producers incomes into DFA's cash-flow. Control of the cash flow—that's what the co-op needed to satisfy the bankers.

By May 9, 2005, Moody Investors Service had changed its tune. On that day, Moody's issued revised, downgraded ratings for various types of borrowings by DFA. Moody's downgraded DFA's notes to "junk" status. **Four separate times in the text of the release, Moody's referred to DFA's finances and management as "weak".** That announcement came almost five months after Moody's had announced a 90-day review of DFA's financial condition.

Moody's financial analysis found at DFA:

*Debts exceeding \$950 million. DFA's borrowings had risen by \$195 million in the past two years.

*Low cash flow relative to debt load.

*Failure to take enough money from members' milk checks to protect lenders.

*Earnings from equity affiliates that dramatically overstated actual cash received.

*Weak management.

Small wonder that Rick Smith attacked Gary Hanman's management in July 2005. Hanman stayed around for a few months, retiring formally at the end of December 2005. Rick Smith simultaneously threw out the door Hanman's long-time chief financial officer, Gerry Bos.

New audit, same old lies ...

DFA's fiscal audit for December 31, 2005 was the first financial report that was produced by characters other than Hanman and Bos. In fact, there was no picture, indeed, not a single mention of Gary Hanman in DFA's 2005 audit. The man who'd headed the organization, the man who's DNA stained the nation's largest co-op, was gone without formal mention in that audit.

Hanman and Bos may have been gone, but the overt misrepresentations in DFA's 2005 shined with the greatest of any financial "whoppers" DFA's leaders ever invented:

*DFA's earnings fell to only \$10.1 million—the worst showing ever. Earnings from affiliates and joint ventures plunged by \$34 million from 2004's performance.

*DFA's retirees' pension programs showed a net deficit of \$145 million. The federal agency overseeing corporate pension programs had urged DFA to boost pension program assets. In fiscal 2005, DFA plugged a total of \$97 million worth of assets and cash into the pension "black hole".

*In the audit, President/CEO Rick Smith and board chairman Tom Camerlino claimed, "During 2005, we focused our attention on strengthening DFA's balance sheet. Overall, interest-bearing debt decreased by \$149.1 million."

To achieve that claim, DFA's leaders played serious games with the numbers. Here's how:

Continued on page 12, Column 2

Allen Meyer netted \$90 in one deal with DFA!

Who is Allen Meyer? DFA members ought to know, because Allen Meyer has made more money in a single deal with DFA than DFA ever claimed as "profits" in a single year!

According to court documents filed by the U.S. Department of Justice in Kentucky, in the case involving DOJ's efforts to strip DFA's ownership of the Southern Belle fluid milk processing firm, DOJ used Meyer as one example of persons who have benefited financially in their dealings with DFA.

DOJ documents claimed that Meyer made almost \$90 million in a single deal, involving selling a jointly-owned milk processing business! \$90 million! That's more profit that DFA has ever claimed in a single year.

Meyer has lurked on the sidelines for about a decade, buying and selling fluid milk businesses ... at times to give the appearance of "competition" in different regions of the Southeast. Meyer's single deal profit of almost \$90 million makes DFA's partner in the Southern Belle, Robert Allen, look like a bit player. Allen gained about \$20 million from the joint venture deal when he sold his holdings in the Tuscan-Lehigh fluid milk business to DFA.

Friends—It's *Your* Industry. Write Your Elected Officials. Demand Answers Why DOJ Has Not Pursued Dairy Justice!

Concerned citizens must get involved in this issue. Use our sample letter to write your U.S. Senators and/or Congress persons. Use the telephone numbers for the Senate and House Switchboards to obtain your elected officials' address.

Our elected officials need to know how the Department of Justice's senior officials have failed to follow up a two-year Antitrust investigation that recommended indictments against some of dairy's biggest players.

The Milkweed will have a special "Antitrust Update" section on our Web site at:
www.themilkweed.com

your street address
your town, state & zip code
date

Dear _____ (Senator or Congressional Representative):

Please intervene and help U.S. dairy farmers and consumers get some honest competition in this nation's milk business.

Right now, top officials at the U.S. Department of Justice are sitting on recommendations from DOJ's Antitrust Division to indict two of the biggest firms in the U.S. dairy industry:

—Dairy Farmers of America (the nation's largest dairy cooperative)

—Dean Foods (the nation's largest fluid milk processor)

In late August 2006, DOJ's Antitrust Division finished a two-year investigation into the U.S. dairy industry, with recommended indictments.

Since then, top level officials at DOJ have not moved to pursue those indictments.

I ask you to please:

Write U.S. Attorney General Alberto Gonzales, demanding that his department promptly move upon the Antitrust Division's recommended indictments.

Call for the U.S. Senate and House Judiciary Committees to hold prompt hearings, to determine why DOJ's senior officials have not moved ahead with these recommended indictments.

The nation's dairy farmers are suffering extremely low milk prices. The nation's consumers are paying unduly high prices for their dairy products at the supermarkets. If the present situation continues, many dairy farmers will financially fail and the U.S. will be dependent upon foreign, imported dairy products.

Thank you for your prompt assistance! Please keep me posted of any progress on this important issue for U.S. dairy farmers and consumers.

_____ (your name)

_____ (your phone)

_____ (your e-mail address, if you wish)

Contact Your Senators and Congressional Representatives

Senate Switchboard: (202) 224-3121

House Switchboard: (202) 225-3121

Members of the Senate Judiciary Committee

Biden, Joseph
Brownback, Sam
Cardin, Benjamin
Coburn, Tom
Cornyn, John
Durbin, Richard
Feingold, Russel
Feinstein, Dianne
Graham, Lindsey
Grassley, Charles

Hatch, Orin
Kennedy, Edward
Kohl, Herbert
Kyle, Jon
Leahy, Patrick
Schumer, Charles
Sessions, Jeff
Specter, Arlen
Whitehouse, Sheldon

Senate Judiciary Committee Phone:
(202) 224-7703

House Judiciary Phone: (202)-225-3951

Chair: John Conyers, Jr.
Minority: Lamar S. Smith

Note: At press time, assignments to the House Judiciary Committee had not been announced.

DFA is Dairy's "Enron"

Continued from page 11

DFA's 2004 audit listed debts as \$679.6 million. But DFA's 2005 audit listed the previous fiscal year's debts as up to \$870.4 million—an increase of \$190.7 million. No explanation or footnote in the audit clarified where all that extra debt for 12/31/04 had come from.

DFA's 2005 audit listed the co-op's indebtedness as \$721.5 million. On that basis, DFA's leaders claimed they had "decreased interest-bearing debt . . ." The integrity of that claim is baseless.

*DFA's audit contained, as usual, some \$200 million in "assets" categorized as "Goodwill"—an accounting fiction.

*From the 2005 audit, there disappeared a long-ago listing of \$105 million in losses attributed to a subsidiary. Presumably they're on the books, just off the audit.

Conclusion: The "same-old, same-old"—debts, deductions, lies

There is no conclusion, at this time, just more of the same from DFA. The books were closed on fiscal 2006, the financial audit awaits completion.

DFA has many, if not more, of the same financial faults as when the co-op was merged in 1997.

In April 2004, at the Dairy Antitrust meeting in Syracuse, New York, Carole Knight concluded her speech about the experience of Louisiana dairy producers when their milk markets were taken over by DFA. Knight observed, in retrospect, that the co-op did not want anyone looking closely at, or asking questions about the finances. That reality continues to the present.

Small wonder, then, that DFA is labeled as the "Enron of the Dairy Industry. The coercion, financial misdealings, theft of financial resources, manipulation of markets (for a variety of reasons) ... all reveal the dirty dealings of thenation's biggest dairy cooperative. Where's the U.S. Department of Justice?