

# The Milkweed

Dairy's best information and insights

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“Float like a butterfly,  
sting like a bee.”

— Muhammad Ali

## NMPF & 4 Dairy Co-ops Agree to \$52 Million Settlement With Animal Welfare Activists in CWT “Cow Killing” Case

The long list of antitrust penalties absorbed by the nation’s dairy cooperatives just got longer and more expensive — **\$52 million** more expensive.

In late August, a settlement was reached in the long-running, civil lawsuit against National Milk Producers Federation (NMPF) and four major dairy cooperatives – Dairy Farmers of America, Inc. (DFA), Land O’Lakes (LOL), Dairyalea Co-op, Inc. (Dairyalea), and Agri-Mark. The settlement of \$52 million will be tempered by legal fees awarded to plaintiffs’ attorneys. The remainder – estimated at around \$32-33 million, will be made available to residents of 15 states and the District of Columbia who file claims that they purchased fluid milk and other dairy products. (See below for more specific details.)

At its core, the private (civil) legal matter brought against NMPF and the four dairy cooperatives goes back to events starting in 2003, when NMPF hatched the “Cooperatives Working Together” (CWT) program. CWT was set up as a “marketing agency in common” (i.e., a co-op of co-ops) that aimed to boost dairy farmers’ milk prices. The CWT program was funded by deductions from milk checks of members of cooperatives that voted to participate in the common marketing agency. For about the first eight or nine years of CWT’s operations, a major effort to reduce farm milk production (and boost dairy farmers’ milk prices) was a voluntary program, in which dairy farmers signed up to kill their entire herds of milk cows. Obviously, that effort offended the animal welfare community.

At this time, it’s not clear how costs for the \$52 million settlement will be apportioned among NMPF and the four cooperative defendants. NMPF has no such financial reserves to cope with a seven- or eight-figure liability, and will likely “pass the hat” among member cooperatives. How those four dairy co-op defendants allocate their respective shares of the \$52 million in damages will be interesting. (Note: Dairyalea Co-op was merged into DFA in early 2014, so DFA inherits Dairyalea’s share of liabilities in this matter.)

Here’s a good question: How will these dairy cooperatives explain their multi-million dollar liabilities to member farmers? Ultimately, farmer/members are the folks who foot the bill, through milk check assessments. (Imagine Agri-Mark directors trying to explain to hardscrabble New England farmers why those farmers have to absorb thousands of dollars of milk check deductions *each* to pay off legal costs in a loss incurred by their cooperative to a bunch of animal rights activists.)

This lawsuit against NMPF and other defendants was filed in 2011. Shortly after that filing, CWT ceased its cow-killing program. CWT continues to subsidize dairy commodity exports by member cooperatives and, reportedly, some private dairy processors.



A closed cheese plant is enjoying a renewal in Maryland. Lanco-Pennland is investing \$25 million to upgrade this cheese plant to handle members’ production. Adding milk processing and storage capacity in the milk-logged Northeast is an important investment for the co-op’s marketing security.

*Matthew Edwards, et al. vs. NMPF, et al.* challenged the legality of CWT’s structure as a common marketing agency. In NMPF’s original haste to jerry-rig CWT, the CWT board of directors consisted of members of NMPF’s executive committee. Problem was, a significant number of NMPF’s executive committee members were not representing cooperatives participating in the CWT program. That situation was in apparent violation of legal precepts for cooperative marketing agencies, as defined by the federal Capper-Volstead Act, a federal law passed in 1922, which establishes certain exemptions from federal antitrust laws for agricultural cooperatives in the pricing and marketing of farm products.

The case is listed as *Matthew Edwards, et al., vs. National Milk Producers Federation, aka Cooperatives Working Together; Dairy Farmers of America, Inc.; Land O’Lakes, Inc., Dairyalea Cooperative Inc., and Agri-Mark, Inc.* The class action lawsuit is being adjudicated in the U.S. District Court, Northern District of California (Oakland Division). The Case Number for the case is 11-CV-04766-JSW. Federal judge Jeffrey S. White presides. The settlement apparently forestalled a pending trial.

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## CME Cheddar & Butter Prices Decline Sharply

by Pete Hardin

Cheddar prices at the Chicago Mercantile Exchange started plunging at the very end of August. Through September 9, Cheddar barrels had lost 27.5 cents/lb. off their peak price attained on August 11. Meanwhile, Cheddar block prices at CME settled on September 9 at \$1.7100 — a decline of 15.5 cents/lb. from their August 19 peak.

These commodity Cheddar price declines at CME come despite reports of strong demand for cheese at retail, restaurant and food service outlets.

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# NMPF & 4 Dairy Co-ops Agree to \$52 Million Settlement, con't

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## NMPF's self-inflicted wounds ...

Hilariously, NMPF paid for the ammunition used to blow holes in its shoddy legal defense. For many years, NMPF hired University of Missouri agricultural economist Dr. Scott Brown to conduct an annual "economic impact" assessment of the CWT program. Brown would then issue lofty-sounding claims about CWT's successful returns on investment. For one particularly bleak year for dairy farmers' incomes (2010?), Dr. Brown claimed that CWT had netted about a \$.60/cwt. increase in all U.S. dairy farmers' incomes!!!

Brown's economic impact analyses for CWT did not escape notice by plaintiffs' attorneys. In fact, Brown's CWT analyses provided plaintiffs' lawyers with handy estimates for gauging the economic impact upon consumers' dairy product costs – potential damages as a result of CWT's alleged, illegal price-fixing activity.

Hilariously (again), a source who reviewed numerous documents in the *Edwards, et al. vs. NMPF et al.* case chuckled when reading that NMPF's response to plaintiffs' lawyers' citing Brown's economic impact analyses of CWT as evidence of potential consumer damages — NMPF disavowed Brown's studies as inaccurate! Do the math: Whether Brown's estimated CWT return on investment for that high-mark year was accurate or not, a \$.60/cwt. (or so) milk price boost for a year when U.S. dairy farmers produced, say 190 billion lbs. of milk, would easily yield a consumer cost increase of a little over \$1 billion! Under such a scenario, given CWT's weak defense, the \$52 million settlement could be viewed as a bargain, in the analysis of *The Milkweed*.

Dr. Brown's bragging about CWT's economic impact got really carried away at times. Sources note that Brown claimed, sometime after 2010, that the total, multi-year, accumulated impact of CWT had put \$9.5 BILLION dollars more income in dairy farmers' milk checks, since the program's inception in 2003.

\$9.5 BILLION in added income for dairy farmers, according to NMPF's academic hireling??? At that rate, maybe the \$52 million settlement negotiated between the warring parties was sort of a victory for the defendants, if a far worse fate might have awaited at trial.

When adding up multiple years' consumer costs from CWT's self-funded claims of "success," it's clear that NMPF's settling the case for a mere \$52 million was significantly less costly than what damages might have been awarded by a jury trial.

That same source's readings are that defendants lawyers "got whipped" at almost every turn in the case – a reflection of the weakness of the defendants' position.

## Terms of the Settlement

Consumers who live in 15 states and the District of Columbia are eligible to file monetary claims in this settlement. Claims must be filed by January 31, 2017. Eligible claimants must be residents of one of the following states between 2003 and 2012: Arizona, California, Kansas, Massachusetts, Michigan, Missouri, Nebraska, Nevada, New Hampshire, Oregon, South Dakota, Tennessee, Vermont, West Virginia, or Wisconsin.

Claimants must assert they bought one or more of the following dairy

products: fluid milk, cream, half & half, yogurt, cottage cheese, cream cheese or sour cream. ANY claimed purchases of these dairy products may qualify individuals as eligible to receive payments from the settlement.

For precise terms and conditions of the settlement, interested individuals should go to the following website: [www.boughtmilk.com](http://www.boughtmilk.com)

## NMPF's upcoming annual meeting should be fun

NMPF's annual meeting is scheduled for late October. By that time, the echoes of the \$52 million settlement should be resonating widely among dairy farmers (who are already disgruntled following two years of low milk prices).

The nation's dairy cooperative leaders don't have much to show for their efforts in the past couple years – a period of frustratingly low farm milk prices. NMPF can point to USDA's recent promise to buy \$20 million worth of "surplus" cheese. (NMPF had asked for \$90 million in purchases.) That purchase is insignificant.

NMPF still defends the integrity of the Dairy Margin Protection Program (DMPP) – the current, worthless USDA "safety net" for producers that was enacted as part of the current farm law at NMPF's pushing. The DMPP is widely scorned by dairy producers. DMPP's big problem: the "All Milk Price" – a measure of producer income – does not factor in the many marketing deductions extracted from farmers' milk checks before net milk prices are calculated. Growth of marketing deductions (and loss of premiums) coincided closely with the January 2015 start-up of DMPP. *The Milkweed* estimates that about \$2.00/cwt. is disappearing through milk check deducts for marketing costs, before farmers ever see their payments.

One year ago, the "big news" at NMPF's meeting was moving up the ban on "tail-docking" from Jan. 2021 to January 2017 – a dictate from NMPF's F.A.R.M. program. In the past year, F.A.R.M. has become a vehicle for denying non-complying dairy farmers milk markets, as well as a source of reduced milk payments for farmers who "score" poorly on F.A.R.M. inspections.

This year? NMPF's leaders can try to explain how the federation and fellow defendants will have to fork over \$52 million in the settlement of the legal case brought by animal rights activists.

## Good questions for NMPF and dairy co-op leaders:

How will the \$52 million settlement be apportioned among the defendants – NMPF and the four dairy co-ops?

What lawyer(s) consulted in the formulation of CWT's legal structure?

What is the total tab for legal costs, to date, for NMPF in the *Edwards et al. vs. NMPF et al.* case?

How is NMPF going to cover its share of settlement costs?

For each individual dairy cooperative defendant, what have been their total legal costs for *Edwards et al. vs. NMPF et al.*?

Why did NMPF claim, in legal documents filed in the case, that Dr. Scott Brown's annual analyses of CWT's per cwt. were not accurate?

# Latest in a Long List of Huge Antitrust Pay-outs by Dairy Co-ops

by Pete Hardin

\$50 million here, \$52 million there, another \$45 million over there, and throw in another \$140 million ... and that money starts to add up to a LOT of moo-la. The list of settlements and fines absorbed by dairy cooperatives in the past several years is troubling, particularly so for dairy farmers whose milk checks absorb these fines and settlements totaling hundreds of millions of dollars. In every instance, DFA's DNA shows up prominently!

Here's a tentative, seat-of-the-pants list of penalties and settlements in recent years involving our illustrious dairy cooperatives and their scofflaw attitudes towards antitrust laws.

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## July Milk Dumpage: Up and Down

by Nate Wilson

The July Animal Feed and Dumpage figures for Federal Milk Marketing Orders 1 (Northeast) and 33 (Mid-East) are again "mixed."

Order 33, which had seen a 2/3 drop in dumpage for June (compared to May) saw dumpage better than *DOUBLE*, for July compared to June. Order 33's July 2016 dumpage came in at 13,910,09 lbs. of milk at 1.37% butterfat. The previous month, Order 33 milk marketers "dumped" 6,676,358 lbs. at 2.27% butterfat. Clearly, some significant skimming of cream, before dumping, went on here.

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