SURREBUTTAL EXHIBIT D1

PMMB AREA 1

WHOLESALE DISCOUNT HEARING

Lehigh Valley Dairies – Lansdale, H.P. Hood, Wawa, and Balford Farms

2% gallon – 30 month average price	$ 3.6907
Adjustment to dock	(.9364)
Discount adjustments needed:	
Increase in fixed expense – Route/Class I volume decline	.0100
Operating income below PMMB Order (3.4 – 1.1)	.0821
Providing for Multi-employer unfunded pension liability	.1476
Discount price for dock pick-up as adjusted	$ 2.9940
Discount percentage for dock pick-up as adjusted	19%
Dock discount requested based on market place circumstances	21%

Discounted Dock Price at 21% for Sep 2013

$3.6568
(.7679)

$2.8889

SURREBUTTAL EXHIBIT D1-A

PMMB AREA 1

WHOLESALE DISCOUNT HEARING

Lehigh Valley Dairies – Lansdale, H.P. Hood, Wawa, and Balford Farms

Qualifying Provisions – Customer Dock Pick-up Discount

A. A milk dealer making a wholesale sale of Class I or II price-controlled packaged products may reduce the base wholesale prices by:

1. 21% if the buyer takes possession of 4,000 quarts of price-controlled packaged products at the plant where manufactured, or at a branch owned or controlled by a manufacturing dealer, or a location of a non-processing dealer.

B. The price reductions set forth in Subsection (A) may be made only if:

1. The selling dealer does not pay consideration of any type to the purchaser for services rendered; and

2. The selling dealer does not provide to the purchaser, directly or indirectly, any labor or other personal service in connection with the transportation for resale of the products purchased. The selling dealer must be independent from the trucking company utilized in the dock pick-up.

3. The buyer places the order at least two business days before dock pick-up takes place.

SURREBUTTAL EXHIBIT D1-B

PMMB AREA 1

WHOLESALE DISCOUNT HEARING.

Lehigh Valley Dairies – Lansdale, H.P. Hood, Wawa, and Balford Farms

Multi-employer unfunded pension liability	$38,000,000
2011 in Area cold room points	205,966,570
Amortization period – 5 years	
Annual amount - $38,000,000 ÷ 5	$7,600,000
Per gallon calculation - $7,600,000 ÷ 205,966,570 = .037 .037 x 4 =	$.1476

SURREBUTTAL EXHIBIT D2

PMMB AREA 2

WHOLESALE DISCOUNT HEARING

Lehigh Valley Dairies – Schuylkill Haven, H.P. Hood, Clover Farms, Turkey Hill Dairy, and Swiss Premium

2% gallon – 30 month average price	$ 3.4203
Adjustment to dock	(.8324)
Discount adjustments needed:	
Increase in fixed expense – Route/Class I volume decline	.0100
Operating income below PMMB Order (3.5 – 1.1)	.0793
Providing for Multi-employer unfunded pension liability	.0897
Discount price for dock pick-up as adjusted	$ 2.7769
Discount percentage for dock pick-up as adjusted	19%
Dock discount requested based on market place circumstances	21%

Discounted Dock Price at 21% for Sep 2013

$3.4314
(.7206)

$2.7108

SURREBUTTAL EXHIBIT D2-A

PMMB AREA 2

WHOLESALE DISCOUNT HEARING

Lehigh Valley Dairies – Schuylkill Haven, H.P. Hood, Clover Farms, Turkey Hill Dairy, and Swiss Premium

Qualifying Provisions – Customer Dock Pick-up Discount

A. A milk dealer making a wholesale sale of Class I or II price-controlled packaged products may reduce the base wholesale prices by:

   1. 21% if the buyer takes possession of 4,000 quarts of price-controlled packaged products at the plant where manufactured, or at a branch owned or controlled by a manufacturing dealer, or a location of a non-processing dealer.

   2. 20% if the buyer takes possession of 2,500 quarts of price-controlled packaged products at the plant where manufactured, or at a branch owned or controlled by a manufacturing dealer, or a location of a non-processing dealer.

   3. 18% if the buyer takes possession of 800 quarts of price-controlled packaged products at the plant where manufactured, or at a branch owned or controlled by a manufacturing dealer, or a location of a non-processing dealer.

B. The price reductions set forth in Subsection (A) may be made only if:

   1. The selling dealer does not pay consideration of any type to the purchaser for services rendered; and

   2. The selling dealer does not provide to the purchaser, directly or indirectly, any labor or other personal service in connection with the transportation for resale of the products purchased. The selling dealer must be independent from the trucking company utilized in the dock pick-up.

   3. The buyer places the order at least two business days before dock pick up takes place.

SURREBUTTAL EXHIBIT D2-B

PMMB AREA 2

WHOLESALE DISCOUNT HEARING

Lehigh Valley Dairies – Schuylkill Haven, H.P. Hood, Clover Farms, Turkey Hill Dairy, and Swiss Premium

Multi-employer unfunded pension liability	$12,000,000
2011 in Area cold room points	107,036,177
Amortization period – 5 years	
Annual amount - $12,000,000 ÷ 5	$2,400,000
Per gallon calculation - $2,400,000 ÷ 107,036,177 = .0224 .0224 x 4 =	$.0897

PMMB AREA 3

WHOLESALE DISCOUNT HEARING

Schneider Valley Farms, Guers Dairy, Clover Farms, Pocono Mountain, Turkey Hill, Swiss Premium, and Lehigh Valley Dairies – Schuylkill Haven

2% gallon – 30 month average price	$ 3.4572
Adjustment to dock	(.8000)
Discount adjustments needed:	
Increase in fixed expense – Route/Class I volume decline	.0100
Operating income below PMMB Order (3.4 – 1.1)	.0769
Providing for Multi-employer unfunded pension liability	.0557
Discount price for dock pick-up as adjusted	$ 2.7998
Discount percentage for dock pick-up as adjusted	19%
Dock discount requested based on market place circumstances	20.5%

Discounted Dock Price at 20.5% for Sep 2013

$3.4702
(.7114)

$2.7588

SURREBUTTAL EXHIBIT D3-A

PMMB AREA 3

WHOLESALE DISCOUNT HEARING

Schneider Valley Farms, Guers Dairy, Clover Farms, Pocono Mountain, Turkey Hill, Swiss Premium, and Lehigh Valley Dairies – Schuylkill Haven

Qualifying Provisions – Customer Dock Pick-up Discount

A. A milk dealer making a wholesale sale of Class I or II price-controlled packaged products may reduce the base wholesale prices by:

1. 20.5% if the buyer takes possession of 2,000 quarts of price-controlled packaged products at the plant where manufactured, or at a branch owned or controlled by a manufacturing dealer, or a location of a non-processing dealer.

B. The price reductions set forth in Subsection (A) may be made only if:

1. The selling dealer does not pay consideration of any type to the purchaser for services rendered; and

2. The selling dealer does not provide to the purchaser, directly or indirectly, any labor or other personal service in connection with the transportation for resale of the products purchased. The selling dealer must be independent from the trucking company utilized in the dock pick-up.

3. The buyer places the order at least two business days before dock pick up takes place.

PMMB AREA 3

WHOLESALE DISCOUNT HEARING

Schneider Valley Farms, Guers Dairy, Clover Farms, Pocono Mountain, Turkey Hill, Swiss Premium, and Lehigh Valley Dairies – Schuylkill Haven

Multi-employer unfunded pension liability		$12,000,000
2011 in Area cold room points		172,226,856
Amortization period – 5 years		
Annual amount - $12,000,000 ÷ 5		$2,400,000
Per gallon calculation - $2,400,000 ÷ 172,226,856 = .0140	.0140 x 4 =	$.0557

SURREBUTTAL EXHIBIT D4

PMMB AREA 4

WHOLESALE DISCOUNT HEARING

Galliker's Dairy, Harrisburg Dairies, Lehigh Valley Dairies – Schuylkill Haven, Rutter's Dairy, Swiss Premium, Turkey Hill

Proposal to create a multi-store discount structure as follows:

A. A person making a limited service wholesale sale of Class I or Class II price-controlled packaged product to a multi-store group may reduce the base wholesale price by 1% on top of the following::

Discount per Quart	Weekly Average Delivery per Stop
.1010	1,000

B. Economic justification:

2% gallon 30 month average price $3.4640 multi-store group additional discount 1% = $.0346 economic justification for additional discounts:

Delivery cost increase 14.8% over 4 years = 3.7% per year.

Small delivery increase - .8152 x .037 = $.0302

PMMB AREA 4

WHOLESALE DISCOUNT HEARING

Galliker's Dairy, Harrisburg Dairies, Lehigh Valley Dairies – Schuylkill Haven, Rutter's Dairy, Swiss Premium, Turkey Hill

Multi-store Discount Qualification

A. Three or more stores may form a multi-store group provided all of the following are satisfied:

1. The stores are owned by the same person or persons, are operated under franchises granted by the same franchiser, or purchase Class I or II price-controlled products pursuant to a contract with the same contracting entity.

2. All invoices for Class I or II price-controlled packaged products purchased by the stores are received and processed by the common owner, franchiser, or contracting entity and payment for all Class I or II price controlled packaged products purchased under a multi-store discount is guaranteed by the common owner, franchiser, or contracting entity.

3. Each store receives an average of 1,000 quarts of Class I or II price-controlled packaged products per delivery.

4. The primary dealer files with the Board a sworn statement listing the name and address of each store in the multi-store group and the aggregate weekly volume of purchases of Class I or II price-controlled packaged products for all stores in the multi-store group. The multi-store group may file the information required by this paragraph if the primary dealer fails to do so.

5. The primary dealer serving a qualified multi-store group must provide to each member store of the group a letter certifying that the multi-store group qualifies for the discount based upon its stated volume transaction with that same primary supplier.

B. A milk dealer making a limited service wholesale sale of Class I or II price-controlled packaged products to a multi-store group may reduce the prices set forth in base wholesale prices by:

1. $.1010 if the average number of quarts per delivery for each store within the qualified multi-store group is at least 1,000 quarts.

C. The average number of quarts per delivery for each store in the multi-store group shall be determined by dividing the total number of quarts of Class I and Class II price-controlled packaged products (net of returns of defective products) delivered to each member store in the multi-store group for resale in the original package by the number of actual deliveries of price-controlled packaged products to that same member store between 12:01 a.m. on Monday to 12:00 midnight on the following Sunday. Based on the average volume, each member store may qualify for the discounts noted in Subsection B.

PMMB AREA 4

WHOLESALE DISCOUNT HEARING

Galliker's Dairy, Harrisburg Dairies, Lehigh Valley Dairies – Schuylkill Haven, Rutter's Dairy, Swiss Premium, Turkey Hill

Multi-store Discount Qualification - continued

D. The total volume for the multi-store group as a whole shall be determined by the total number of quarts of Class I and Class I price-controlled packaged products (net of returns of defective product) delivered to all qualified stores within the group, for resale in the original package, between 12:01 a.m. on Monday to 12:00 midnight on the following Sunday. This total shall determine the level of discount.

E. Volumes by any other dealer qualifying as a secondary supplier shall not be used to compute either the total volume for the multi-store group or the individual volume for each store within the group.

Multi-store Group – Secondary Supplier Provision

A. A secondary supplier making a wholesale sale of Class I or II price-controlled packaged products to a store that is a member of a multi-store group may reduce the wholesale prices of the Order by the same percentage that the primary supplier is permitted to reduce its prices.

B. A secondary supplier selling Class I or II price-controlled packaged products to a member of a multi-store group must comply with all the requirements set forth in this Order that apply to the primary supplier except for the volume of purchases.

C. A secondary supplier may be the exclusive supplier for an individual store within a multi-store group as long as all other requirements specified in the Order are satisfied.

D. A secondary supplier must obtain and keep available for inspection and copying by Board personnel a copy of the certification letter provided by the multi-store group's primary dealer as required in the Order, to one or more members of the group that the secondary supplier is servicing.

Multi-store Group – Additional Discount Provision

A. A primary supplier or a secondary supplier making a wholesale sale of Class I or II price-controlled packaged products to a multi-store group on a limited service basis may reduce the prices set forth in the Order by an additional:

   1. 1% of the total amount due prior to the application of the discount set forth in the wholesale price schedule if total deliveries to the multi-store group are in excess of 200,000 quarts per week.

B. The additional discount permitted by this Provision may be given to the common owner, franchiser, or contracting entity only and not to the individual store members of the multi-store group. A common owner, franchiser, or contracting entity that accepts the additional discount permitted under this Provision guarantees payment to the primary supplier or the secondary supplier or both.

SURREBUTTAL EXHIBIT D5

PMMB AREA 5

WHOLESALE DISCOUNT HEARING

Turner Dairy, United Dairy – Fikes, Dean Foods – Sharpsville, Dean Foods – Meadow Brook, United Dairy – Martin's Ferry, and Schneider's Dairy

2% gallon – 30 month average price	$ 3.4910
Adjustment to dock	(.8536)
Discount adjustments needed:	
Increase in fixed expense – Route/Class I volume decline	.0100
Operating income below PMMB Order (3.5 – 1.1)	.0810
Providing for Multi-employer unfunded pension liability	.0848
Discount price for dock pick-up as adjusted	$ 2.8132
Discount percentage for dock pick-up as adjusted	19.5%
Dock discount requested based on market place circumstances	18%

Discounted Dock Price at 18% for Sep 2013

$3.5063
(.6311)

$2.8752

PMMB AREA 5

WHOLESALE DISCOUNT HEARING

Turner Dairy, United Dairy – Fikes, Dean Foods – Sharpsville, Dean Foods – Meadow Brook, United Dairy – Martin's Ferry, and Schneider's Dairy

Qualifying Provisions – Customer Dock Pick-up Discount

A. A milk dealer making a wholesale sale of Class I or II price-controlled packaged products may reduce the base wholesale prices by:

   1. 18% if the buyer takes possession of 4,000 quarts of price-controlled packaged products at the plant where manufactured, or at a branch owned or controlled by a manufacturing dealer, or a location of a non-processing dealer.

   2. 15% if the buyer takes possession of 1,700 quarts of price-controlled packaged products at the plant where manufactured, or at a branch owned or controlled by a manufacturing dealer, or a location of a non-processing dealer.

B. The price reductions set forth in Subsection (A) may be made only if:

   1. The selling dealer does not pay consideration of any type to the purchaser for services rendered; and

   2. The selling dealer does not provide to the purchaser, directly or indirectly, any labor or other personal service in connection with the transportation for resale of the products purchased. The selling dealer must be independent from the trucking company utilized in the dock pick-up.

   3. The buyer places the order at least two business days before dock pick up takes place.

SURREBUTTAL EXHIBIT D5-B

PMMB AREA 5

WHOLESALE DISCOUNT HEARING

Turner Dairy, United Dairy – Fikes, Dean Foods – Sharpsville, Dean Foods – Meadow Brook, United Dairy – Martin's Ferry, and Schneider's Dairy

Multi-employer unfunded pension liability		\$30,080,000
2011 in Area cold room points		283,809,097
Amortization period – 5 years		
Annual amount - \$30,080,000 ÷ 5		\$6,016,000
Per gallon calculation - \$6,016,000 ÷ 283,809,097 = .0212	.0212 x 4 =	\$.0848

SURREBUTTAL EXHIBIT D6

PMMB AREA 6

WHOLESALE DISCOUNT HEARING

Galliker's Dairy, Schneider Valley Farms, Dean Foods – Sharpsville, and Dean Foods – Meadow Brook

2% gallon – 30 month average price	$ 3.5685
Adjustment to dock	(.8384)
Discount adjustments needed:	
Increase in fixed expense – Route/Class I volume decline	.0100
Operating income below PMMB Order (3.4 – 1.1)	.0794
Providing for Multi-employer unfunded pension liability	.0554
Discount price for dock pick-up as adjusted	$ 2.8749
Discount percentage for dock pick-up as adjusted	19.5%
Dock discount requested based on market place circumstances	18%

Discounted Dock Price at 18% for Sep 2013

$3.6047
(.6488)

$2.9559

SURREBUTTAL EXHIBIT D6-A

PMMB AREA 6

WHOLESALE DISCOUNT HEARING

Galliker's Dairy, Schneider Valley Farms, Dean Foods – Sharpsville, and Dean Foods – Meadow Brook

Qualifying Provisions – Customer Dock Pick-up Discount

A. A milk dealer making a wholesale sale of Class I or II price-controlled packaged products may reduce the base wholesale prices by:

1. 18% if the buyer takes possession of 2,000 quarts of price-controlled packaged products at the plant where manufactured, or at a branch owned or controlled by a manufacturing dealer, or a location of a non-processing dealer.

2. 15% if the buyer takes possession of 1,000 quarts of price-controlled packaged products at the plant where manufactured, or at a branch owned or controlled by a manufacturing dealer, or a location of a non-processing dealer.

B. The price reductions set forth in Subsection (A) may be made only if:

1. The selling dealer does not pay consideration of any type to the purchaser for services rendered; and

2. The selling dealer does not provide to the purchaser, directly or indirectly, any labor or other personal service in connection with the transportation for resale of the products purchased. The selling dealer must be independent from the trucking company utilized in the dock pick-up.

3. The buyer places the order at least two business days before dock pick up takes place.

SURREBUTTAL EXHIBIT D6-B

PMMB AREA 6

WHOLESALE DISCOUNT HEARING

Galliker's Dairy, Schneider Valley Farms, Dean Foods – Sharpsville, and Dean Foods – Meadow Brook

Multi-employer unfunded pension liability	$6,862,812
2011 in Area cold room points	99,173,579
Amortization period – 5 years	
Annual amount - $6,862,812 ÷ 5	$1,372,562
Per gallon calculation - $1,372,562 ÷ 99,173,579 = .0138 .0138 x 4 =	$.0554

SURREBUTTAL EXHIBIT D7

PMMB STATE-WIDE PROFITABLITY

WHOLESALE DISCOUNT HEARING

Lehigh Valley Dairies – Lansdale, H.P. Hood, Wawa, Balford Farms, Clover Farms, Turkey Hill, Swiss Premium, Lehigh Valley Dairies – Schuylkill Haven, Schneider valley Farms, Guers Dairy, Pocono Mountain, Galliker's Dairy, Harrisburg Dairies, Rutter's, Turner Dairy, United Dairy – Fikes, United Dairy – Martins Ferry, Dean Foods – Sharpsville, Dean Foods – Meadow Brook, and Schneider's Dairy

COMPARATIVE INCOME STATEMENT SUMMARY

	2011	2010	2009
Net Sales	$ 2,068,609,849	$ 1,914,710,984	$ 1,707,884,295
Cost of goods sold	1,450,984,570	1,283,936,406	1,063,716,907
Gross margin	$ 617,625,279	$ 630,774,578	$ 644,167,388
	29.9%	32.9%	37.7%
Cost center costs	594,857,657	582,747,350	584,449,070
Operating income	$ 22,767,622	$ 48,027,228	$ 59,718,318
	1.1%	2.5%	3.5%

SURREBUTTAL EXHIBIT D8

DEALER PROFITABLITY ANAYLSIS

WHOLESALE DISCOUNT HEARING

Lehigh Valley Dairies – Lansdale, H.P. Hood, Wawa, Balford Farms, Clover Farms, Turkey Hill, Swiss Premium, Lehigh Valley Dairies – Schuylkill Haven, Schneider valley Farms, Guers Dairy, Pocono Mountain, Galliker's Dairy, Harrisburg Dairies, Rutter's, Turner Dairy, United Dairy – Fikes, United Dairy – Martins Ferry, Dean Foods – Sharpsville, Dean Foods – Meadow Brook, and Schneider's Dairy

	2011	
	All Twenty Cross Section Dealers (A)	Ten Dealers With Mostly PMMB Price Controlled Sales (B)
Net sales	$2,068,609,849	$1,033,830,890
Cost of goods sold	$1,450,984,570	$729,141,204
Gross margin	$617,625,279	$304,689,686
	29.9%	29.5%
Cost center costs	$594,857,657	$305,252,412
Operating income	$22,767,622	($562,726)
	1.1%	-0.1%

(A) Corresponds to PAMD Exhibit D7 (submitted August 23, 2013)

(B) Eliminates six (6) dealers from the cross-section that sell more than 60% of their milk sales outside Pennsylvania and eliminates four (4) dealers that have more than 40% of their bottling points from non-dairy packaging (juices, drinks, and teas).

Compares statewide profitability to ten (10) dealers with mostly PMMB price controlled sales.

IDFA's Dairy Cost Accounting Workshop

Presented by:

Carl D. Herbein, CPA
Ronald W. Mong, CPA

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IDFA's Dairy Cost Accounting Workshop

May 11 – 12, 2010
Hyatt Regency Rosemont
Rosemont, IL

 1

Delivery Benchmarks

Type of Delivery		Cost Per Gallon
Delivery to a branch/depot		$0.0836
Supermarket - tractor trailer[1]		0.1520 x 1.12 = .1702
Supermarket - straight truck		0.1876
Wholesale customer		0.2252
Convenience store customer		0.2748
Small wholesale customer		0.4572
School deliveries		0.5164
	Per half pint	0.0323
Vending deliveries		1.0284
	Per pint	0.1286

[1] Initial benchmark study was conducted utilizing 2009 delivery information and an inflationary factor of 12% has been added to update the delivery costs to 2013.

SURREBUTTAL EXHIBIT D9C

DEALER DOCK PROPOSAL VS. EXISTING DELIVERED DISCOUNTS

PMMB AREA 1

WHOLESALE DISCOUNT HEARING

Lehigh Valley Dairies – Lansdale, H.P. Hood, Wawa, and Balford Farms

Dealer proposal:

September 2013 2% gallon dock price per Exhibit D1	$2.8889
Independent hauler delivery cost for supermarket/gallon	.1700
Into store price	$3.0589
Current maximum discount for delivered product	15%
2% gallon price –September 2013	$3.6568
Net of 15% discount price	3.1083
New incentive (3.1083 – 3.0589)	**$0.0494**
Current dock discount 18% x 3.6568	$0.6582
Current maximum delivered discount 15% x 3.6568	0.5485
	$0.1097
Proposed dealer dock 21% x 3.6568	$0.7679
Current maximum delivery 15% x 3.6568	0.5484
	$0.2194

Additional margin given up due to proposal
($0.2194 – 0.1097 = $0.1097)

DEALER DOCK PROPOSAL VS. EXISTING DELIVERED DISCOUNTS

PMMB AREA 2

WHOLESALE DISCOUNT HEARING

Lehigh Valley Dairies – Schuylkill Haven, H.P. Hood, Clover Farms, Turkey Hill Dairy, and Swiss Premium

Dealer proposal:

September 2013 2% gallon dock price per Exhibit D2	$2.7108
Independent hauler delivery cost for supermarket/gallon	.1700
Into store price	$2.8808
Current maximum discount for delivered product	11.5%
2% gallon price –September 2013	$3.4314
Net of 11.5% discount price	3.0368
New incentive (3.0368 – 2.8808)	**$ 0.1560**
Current dock discount 20% x 3.4314	$0.6863
Current maximum delivered discount 11.5% x 3.4314	0.3946
	$0.2917
Proposed dealer dock 21% x 3.4314	$0.7206
Current maximum delivery 11.5% x 3.4314	0.5484
	$0.3946

Additional margin given up due to proposal
($0.3946 – 0.2917 = $0.1029)

DEALER DOCK PROPOSAL VS. EXISTING DELIVERED DISCOUNTS

PMMB AREA 3

WHOLESALE DISCOUNT HEARING

Schneider Valley Farms, Guers Dairy, Clover Farms, Pocono Mountain, Turkey Hill, Swiss Premium, and Lehigh Valley Dairies – Schuylkill Haven

Dealer proposal:

September 2013 2% gallon dock price per Exhibit D3	$2.7588
Independent hauler delivery cost for supermarket/gallon	.1700
Into store price	$2.9288
Current maximum discount for delivered product	15%
2% gallon price –September 2013	$3.4702
Net of 15% discount price	2.9497
New incentive (2.9497 – 2.9288)	**$0.0209**
Current dock discount	None
Proposed dealer dock 18% x 3.4702[1]	$0.6246
Current maximum delivery 15% x 3.4702	0.5205
	$0.1041

SURREBUTTAL EXHIBIT D9F

DEALER DOCK PROPOSAL VS. EXISTING DELIVERED DISCOUNTS

PMMB AREA 5

WHOLESALE DISCOUNT HEARING

Turner Dairy, United Dairy – Fikes, Dean Foods – Sharpsville, Dean Foods – Meadow Brook, United Dairy – Martin's Ferry, and Schneider's Dairy

Dealer proposal:

September 2013 2% gallon dock price per Exhibit D5	$2.8752
Delivery cost	.1700
Into store price	$3.0452
Current maximum discount for delivered product	12%
2% gallon price –September 2013	$3.5063
Net of 12% discount price	3.0943
New incentive (3.0943 – 3.0452)	**$0.0491**
Current dock discount	None
Proposed dealer dock 18% x 3.5063	$0.6311
Current maximum delivery 12% x 3.5063	0.4208
	$0.2103

DEALER DOCK PROPOSAL VS. EXISTING DELIVERED DISCOUNTS

PMMB AREA 6

WHOLESALE DISCOUNT HEARING

Galliker's Dairy, Schneider Valley Farms, Dean Foods – Sharpsville, and Dean Foods – Meadow Brook

Dealer proposal:

September 2013 2% gallon dock price per Exhibit D6	$2.9559
Delivery cost	.1700
Into store price	$3.1259
Current maximum discount for delivered product	12.5%
2% gallon price –September 2013	$3.6047
Net of 12.5% discount price	3.1541
New incentive (3.1541 – 3.1259)	**$0.0282**
Current dock discount	None
Proposed dealer dock 18% x 3.6047	$0.6488
Current maximum delivery 12.5% x 3.6047	0.4506
	$0.1982

Carl D. Herbein, CPA
Curriculum Vitae

EDUCATION
Elizabethtown College – B.S. Degree in Accounting (1968)
Delta Mu Delta – National Honor Society – Co-captain Cross Country Team

EMPLOYMENT
Herbein + Company, Inc., Reading, PA
October, 2004 to present
President and CEO

July, 1985 to October, 2004
Managing Partner

1974 to June, 1985
Partner
Reading, PA

Carl D. Herbein, CPA – Reading, PA
1972 to 1974

Ernst & Young, Reading, PA
1967 to 1972
Staff/Senior Accountant

PROFESSIONAL AND CIVIC ASSOCIATIONS AND DESIGNATIONS
CPA – Commonwealth of Pennsylvania (1971)

Member – American Institute of CPAs – Council (1990 – 1991)

Member – Pennsylvania Institute of CPAs – President (1988 – 1989)

Firm Member – PKF North American Network – Board of Directors (1993 – 1994)

Chairman – Reading Redevelopment Authority (1992 – 1998) Board of Directors (1984 – 1998)

Board Member
- Greater Berks Development Fund (1995 – present)
- Berks County Convention Center Authority - Treasurer (1996 – present)
- Alvernia University (2012 – present)

Berks County Chamber of Commerce (1980 – present)
- Chairman of the Board (1994 – 1996)
- Treasurer (1992 – 1993)
- Treasurer (2007-2009)

C.H. Briggs Hardware, Reading, PA
Member of Board of Directors
2008 to present

Carl D. Herbein, CPA

PROFESSIONAL AND CIVIC ASSOCIATIONS AND DESIGNATIONS (CONTINUED)

Greater Reading Economic Partnership (2005 – present)

Elizabethtown College
- Board of Trustees (1987 – 1992)
- Accounting Advisory Committee (1993 – present)
- Chair – Leadership Council (2007 – 2009)

Berkshire Country Club
- Board of Directors
- Treasurer (October 2001 – 2007)

PUBLICATIONS

"Product Costing In A Volatile Environment," which appeared in the *National Ice Cream Mix Association, Inc.* publication

"Milk Costing and Regulation - Is There a Conflict?" which appeared in the 2003 *International Association of Milk Control Agencies'* publication

"Benchmarking," which appeared in the August 2004, *422 Business Advisor*

"Financing Agribusiness Growth", which appeared in the *Pennsylvania CPA Journal*

"Processors Improve Profits With Benchmarking", which appeared in the October 2011, *Dairy Foods Magazine*

COMMUNITY AWARDS

2006 Eugene L. Shirk Community Builder Award
2010 Corporate Honoree – March of Dimes
2012 Franciscan Award – Alvernia University
2013Business Weekly Unity Award

EXPERT REPORTS, DEPOSITION AND TESTIMONY

COURT AND OTHER TESTIMONY

Montana Department of Agriculture – Testimony concerning Montana Milk pool. (hearing held July 23, 2008)

State of Vermont – Expert testimony concerning establishment floor price – raw milk. (hearing held October 9, 2008)

Windsong Farms v. Telemark – Expert testimony – lender liability November 17, 2008

Niagara Milk Cooperative, Inc. v. Thomas J. Krenzer et al. – determination of fair value of dissenter's interest February 23, 2009

State of New Jersey Department of Agriculture – Expert testimony - Farmer premium establishment. (hearing held November 19, 2009, December 17, 2009 and January 28, 2010)

Sweetwater Valley Farm, Inc. v. Dairy Farmers of America, Inc. – June 15, 2010

Bross v. Bross – domestic matter. Testimony October 16, 2010.

Van Peenen Dairy, Inc. v. Tuscan/Lehigh Dairies, Inc. – contractual dispute, November 22, 2011

Carl D. Herbein, CPA

Nicholas Meat Packing Co. v. Brigandi, Gleghorn and Associates – August 20, 2011

U.S. Justice Department Report – Dean Foods / Suiza – merger analysis

State of Kentucky v. Trauth Dairy – damage calculation

State of Indiana v. Schenkel Dairy – damage calculation

Sweet Water Valley Farm v. Dairy Farmers of America

COMMONWEALTH OF PENNSYLVANIA MILK MARKETING BOARD APPEARANCES

2007
Expert witness appearing on behalf of dealer association concerning licensee to licensee discounts.

Expert witness appearing on behalf of dealer association concerning cost replacement hearings for Areas 1, 2, 3, 4, 5, and 6.

2008
Expert witness appearing on behalf of dealer association concerning cost replacement hearings for Areas 1, 2, 3, 4, 5, and 6.

Expert witness appearing on behalf of dealer association concerning bulk milk cream, shrinkage, producer premium related to recombinant bovine growth hormone, and milk prices and percentage discounts.

2009
Expert witness appearing on behalf of dealer association concerning cost replacement hearings for Areas 1, 2, 3, 4, 5 and 6.

Expert witness appearing on behalf of dealer association concerning emergency hearing related to level of Class I Over Order Premium.

2010
Expert witness appearing on behalf of dealer association concerning formula for calculating the Over Order Premium.

Expert witness appearing on behalf of dealer association concerning cost replacement in Area 4 and Area 5.

2011
Expert witness appearing on behalf of dealer association concerning cost replacement in Areas 1, 2, 3, 4, 5, and 6.

2012
Expert witness appearing on behalf of dealer associations concerning multi-store discounts in Area 5 and Area 6.

Expert witness appearing on behalf of dealer associations concerning Over Order Premium duration and level.

My name is Chuck Turner, Jr., president of Turner Dairy Farms in Penn Hills, PA. Our family owned and managed milk business is located in the eastern suburbs of Pittsburgh where my grandfather started it in 1930. We purchase milk from 44 Pennsylvania dairy farms all within 70 miles of our plant. We employ 155 full and part time workers to process, package and distribute milk and other products throughout western PA and also have some sales into Ohio and the West Virginia pan-handle.

Thank you for the opportunity to testify at this hearing today. I appreciate the PMMB’s efforts to listen to the facts and make decisions that are in the best interest of the whole dairy industry including dairy farmers, milk haulers, co-ops, processors, distributors, retailers and consumers.

My purpose in testifying here today is to speak to the deep discounts for dock pick-up proposed by PMMB Staff. In my testimony, I will refer to data from PMMB Area 5 only to avoid repetition. My testimony would be the same using data from any of the PMMB Areas.

Table 1 below essentially duplicates Staff Surrebuttal Exhibit 2 at the Area 5 Cost Replacement Hearing last year that resulted in OGO A-954. The numbers are slightly different from those presented by Board Staff today but the differences are not significant to my testimony. You may also note that I totaled the weighted cost column.

Table 1 Area 5 Costs and Points for Processing, Packaging and Delivery
Year 2011 Data

	Cost Center	Weighted Costs	Weighted Points	Cost Per Point
1	Receiving, lab and field work	2,289,313	223,333,775	0.0103
2	Standardization and pasteurization	4,900,565	250,573,664	0.0196
3	Bottling	9,198,830	246,834,526	0.0373
4	Cold room	11,995,482	283,809,097	0.0423
5	Delivery	35,796,734	270,815,738	0.1322
6	Selling	8,675,402	276,924,619	0.0313
	Total	72,856,326		0.2730

- Table 1, as presented at the Area 5 cost replacement hearing, captures all of the cross-section dealer costs and then groups them into six cost centers.
- Some of the costs are directly attributable to one of the cost centers. The best example of this is wages and benefits for employees working in one of those six departments.
- Other costs are allocated to one or more cost centers. Fixed asset depreciation and administrative costs are examples of costs that are typically allocated and which do not just go away because they are erased with the deletion of the related row.

Table 2

Area 5 Costs Without Delivery (Dock)
Year 2011 Data

	Cost Center	Weighted Costs	Weighted Points	Cost Per Point
1	Receiving, lab and field work	2,289,313	223,333,775	0.0103
2	Standardization and pasteurization	4,900,565	250,573,664	0.0196
3	Bottling	9,198,830	246,834,526	0.0373
4	Cold room	11,995,482	283,809,097	0.0423
6	Selling	8,675,402	276,924,619	0.0313
	Total	37,059,592		0.1408

- Table 2 essentially duplicates Staff rebuttal exhibit 5 (again, the slight differences are not significant to my testimony).
- Note that deleting the row for delivery removes almost half of the dealer costs.
- While this deletion of costs is arithmetically correct, it is far from correct in terms of accounting or reality.
- The deleted costs include both direct costs attributable to the delivery cost center and indirect costs allocated to delivery.

Table 3

Area 5 Costs Without Bottling
Year 2011 Data

	Cost Center	Weighted Costs	Weighted Points	Cost Per Point
1	Receiving, lab and field work	2,289,313	223,333,775	0.0103
2	Standardization and pasteurization	4,900,565	250,573,664	0.0196
4	Cold room	11,995,482	283,809,097	0.0423
5	Delivery	35,796,734	270,815,738	0.1322
6	Selling	8,675,402	276,924,619	0.0313
	Total	63,657,496		0.2357

- In Table 3, the row for Bottling department costs has been deleted from the schedule presented at Cost Replacement.
- Again this is arithmetically correct but not good accounting. In fact we could accurately go further into the pricing schedules and delete the packaging costs.
- Deleting Bottling department costs eliminates direct and indirect costs associated with that department and results in significant "savings".
- In reality, of course, this could never work. The cold room and delivery departments would need to be retooled to handle bulk milk. The sales department would need to be retrained as would customers.

Table 4

Area 5 Costs Without Selling
Year 2011 Data

	Cost Center	Weighted Costs	Weighted Points	Cost Per Point
1	Receiving, lab and field work	2,289,313	223,333,775	0.0103
2	Standardization and pasteurization	4,900,565	250,573,664	0.0196
3	Bottling	9,198,830	246,834,526	0.0373
4	Cold room	11,995,482	283,809,097	0.0423
5	Delivery	35,796,734	270,815,738	0.1322
	Total	64,180,924		0.2417

- In Table 4, the row for Selling department costs has been deleted from the schedule presented at Cost Replacement.
- Again, this is arithmetically correct but maybe not as unrealistic as the previous two tables; at least for the short term. Eventually customers would be lost and dealers would have resources to find new ones.

In my opinion and based on my education and management experience, the cost center analysis that has been done by the Board Staff and the Dealers for the past several years is valid and appropriate for setting prices. The cost center model includes the entire businesses of the cross-section dealers and categorizes all of the costs, both direct and indirect.

Milk dealers are certainly in the delivery business. Simply deleting the delivery cost center does not accurately reflect what our businesses would look like if we didn’t make deliveries. Deleting the deliver cost center is outside the scope of the cost center analysis, as historically used in price hearings, for the following reasons:

1. Deletion does not address allocated costs like general and administrative expenses. HR costs, for example, would go up in the short term.

2. Even direct costs do not go away easily. Delivery assets (milk trucks) will stay on the books until they are disposed of. Dislocated employees will need to be retrained hopefully or at worst there will be separation costs.
3. Delivery, like other cost centers, is interrelated to other departments. For example, loading delivery trucks needs to be coordinated with the plant bottling schedule because of limited cold room space. This obviously affects processing and delivery schedules.
4. Significant dock pick-up would require investment in infrastructure to support it in the cold room and loading docks.

Please consider the following issues that are beyond the accounting.
Putting a 27% discount out there would cause major disruptions in the marketplace. This is more than twice the discount currently available to multi-store groups. As a result of the magnitude of this discount, alone, Buyers will want the discount even if they don't qualify for it. And, it will force dealers to make a choice between complying with the discount criteria and losing a customer to someone willing to give that discount whether in-state or out-of-state. I believe it is a mistake to adopt a discount that sets up such a low price as a target for stores to pursue one way or another. Fluid milk plants are already dealing with reduced volumes resulting from decreased consumption. At the same time, many of us are wrestling with problems associated with unfunded pension liability. The proposed "super" discounts would only add to our problems.

If the Board is committed to new discounts, the discounts offered by the Milk Dealers are far superior than the discounts offered by Board staff because as Mr. Herbein demonstrates, the dealer proposed discounts take into account operational costs that result when an operational change is made, the current state of fluid milk plants, and unfunded pension liability. The reality of our marketplace is that it is very difficult for milk dealers to sell at prices above the PMMB minimums. This discount level is important because most of our sales will gravitate to the level set by the Board at this hearing.

Thank you for your consideration.

CHARLES H. TURNER, JR.

Turner Dairy Farms, Inc.
1049 Jefferson Road
Pittsburgh, PA 15235

Phone (412) 372-2211 ext. 643

♦ WORK EXPERIENCE

	Turner Dairy Farms, Inc.
2003 -	President
1994–2002	Vice President – Production
1986-1994	Quality Control Director
	Handee Marts, Inc.
1992-2012	Director and Secretary
	Titusville Dairy Products Co.
2009-	Director and President
1999-2008	Director and Secretary

♦ EDUCATION

- MBA, Katz Graduate School of Business at the University of Pittsburgh, 2002
- BS Food Science with Highest Distinction, Penn State, 1986

PMMB AREA 1

WHOLESALE DISCOUNT HEARING

Lehigh Valley Dairies – Lansdale, H.P. Hood, Wawa, and Balford Farms

Qualifying Provisions – Customer Dock Pick-up Discount

A. A milk dealer making a wholesale sale of Class I or II price-controlled packaged products may reduce the base wholesale prices by:

1. 21% if the buyer takes possession of 4,000 quarts of price-controlled packaged products at the plant where manufactured, or at a branch owned or controlled by a manufacturing dealer, or a location of a non-processing dealer, and does so using a refrigerated tractor trailer.

B. The price reductions set forth in Subsection (A) may be made only if:

1. The selling dealer does not pay consideration of any type to the purchaser for services rendered; and

2. The selling dealer does not provide to the purchaser, directly or indirectly, any labor or other personal service in connection with the transportation for resale of the products purchased. The selling dealer must be independent from the trucking company utilized in the dock pick-up.

3. The buyer places the order at least two business days before dock pick-up takes place.

PMMB AREA 2

WHOLESALE DISCOUNT HEARING

Lehigh Valley Dairies – Schuylkill Haven, H.P. Hood, Clover Farms, Turkey Hill Dairy, and Swiss Premium

Qualifying Provisions – Customer Dock Pick-up Discount

A. A milk dealer making a wholesale sale of Class I or II price-controlled packaged products may reduce the base wholesale prices by:

   1. 21% if the buyer takes possession of 4,000 quarts of price-controlled packaged products at the plant where manufactured, or at a branch owned or controlled by a manufacturing dealer, or a location of a non-processing dealer, and does so using a refrigerated tractor trailer.

   2. 20% if the buyer takes possession of 2,500 quarts of price-controlled packaged products at the plant where manufactured, or at a branch owned or controlled by a manufacturing dealer, or a location of a non-processing dealer.

   3. 18% if the buyer takes possession of 800 quarts of price-controlled packaged products at the plant where manufactured, or at a branch owned or controlled by a manufacturing dealer, or a location of a non-processing dealer.

B. The price reductions set forth in Subsection (A) may be made only if:

   1. The selling dealer does not pay consideration of any type to the purchaser for services rendered; and

   2. The selling dealer does not provide to the purchaser, directly or indirectly, any labor or other personal service in connection with the transportation for resale of the products purchased. The selling dealer must be independent from the trucking company utilized in the dock pick-up.

   3. The buyer places the order at least two business days before dock pick up takes place.

PMMB AREA 3

WHOLESALE DISCOUNT HEARING

Schneider Valley Farms, Guers Dairy, Clover Farms, Pocono Mountain, Turkey Hill, Swiss Premium, and Lehigh Valley Dairies – Schuylkill Haven

Qualifying Provisions – Customer Dock Pick-up Discount

A. A milk dealer making a wholesale sale of Class I or II price-controlled packaged products may reduce the base wholesale prices by:

   1. 20.5% if the buyer takes possession of 2,000 quarts of price-controlled packaged products at the plant where manufactured, or at a branch owned or controlled by a manufacturing dealer, or a location of a non-processing dealer, and does so using a refrigerated tractor trailer.

B. The price reductions set forth in Subsection (A) may be made only if:

   1. The selling dealer does not pay consideration of any type to the purchaser for services rendered; and

   2. The selling dealer does not provide to the purchaser, directly or indirectly, any labor or other personal service in connection with the transportation for resale of the products purchased. The selling dealer must be independent from the trucking company utilized in the dock pick-up.

   3. The buyer places the order at least two business days before dock pick up takes place.

PMMB AREA 5

WHOLESALE DISCOUNT HEARING

Turner Dairy, United Dairy – Fikes, Dean Foods – Sharpsville, Dean Foods – Meadow Brook, United Dairy – Martin's Ferry, and Schneider's Dairy

Qualifying Provisions – Customer Dock Pick-up Discount

A. A milk dealer making a wholesale sale of Class I or II price-controlled packaged products may reduce the base wholesale prices by:

   1. 18% if the buyer takes possession of 4,000 quarts of price-controlled packaged products at the plant where manufactured, or at a branch owned or controlled by a manufacturing dealer, or a location of a non-processing dealer, and does so using a refrigerated tractor trailer.

   2. 15% if the buyer takes possession of 1,700 quarts of price-controlled packaged products at the plant where manufactured, or at a branch owned or controlled by a manufacturing dealer, or a location of a non-processing dealer.

B. The price reductions set forth in Subsection (A) may be made only if:

   1. The selling dealer does not pay consideration of any type to the purchaser for services rendered; and

   2. The selling dealer does not provide to the purchaser, directly or indirectly, any labor or other personal service in connection with the transportation for resale of the products purchased. The selling dealer must be independent from the trucking company utilized in the dock pick-up.

   3. The buyer places the order at least two business days before dock pick up takes place.

PMMB AREA 6

WHOLESALE DISCOUNT HEARING

Galliker's Dairy, Schneider Valley Farms, Dean Foods – Sharpsville, and Dean Foods – Meadow Brook

Qualifying Provisions – Customer Dock Pick-up Discount

A. A milk dealer making a wholesale sale of Class I or II price-controlled packaged products may reduce the base wholesale prices by:

1. 18% if the buyer takes possession of 2,000 quarts of price-controlled packaged products at the plant where manufactured, or at a branch owned or controlled by a manufacturing dealer, or a location of a non-processing dealer, and does so using a refrigerated tractor trailer.

2. 15% if the buyer takes possession of 1,000 quarts of price-controlled packaged products at the plant where manufactured, or at a branch owned or controlled by a manufacturing dealer, or a location of a non-processing dealer.

B. The price reductions set forth in Subsection (A) may be made only if:

1. The selling dealer does not pay consideration of any type to the purchaser for services rendered; and

2. The selling dealer does not provide to the purchaser, directly or indirectly, any labor or other personal service in connection with the transportation for resale of the products purchased. The selling dealer must be independent from the trucking company utilized in the dock pick-up.

3. The buyer places the order at least two business days before dock pick up takes place.

SURREBUTTAL TESTIMONY OF

CARL D. HERBEIN, CPA

Appearing on Behalf of the Area 1, 2, 3, 4, 5, and 6 Milk Dealer Association

Testimony before Pennsylvania Milk Marketing Board

Wholesale Discount Hearing

October 2, 2013

Surrebuttal Testimony of Carl D. Herbein, CPA

Wholesale Discount Hearing

I am Carl D. Herbein, CPA, President and CEO of Herbein + Company, Inc. and my address is 2763 Century Blvd., Reading, PA 19610. I wish to present Surrebuttal Testimony on behalf of the Area 1, 2, 3, 4, 5, and 6 Milk Dealers Associations. I attach my Curriculum Vitae, as Surrebuttal Exhibit D10, which outlines my education, and experience in the dairy industry.

Background and Purpose of Hearing

Pursuant to Bulletin 1495, the Pennsylvania Milk Marketing Board is conducting a public hearing to receive testimony and exhibits concerning establishing an additional level of wholesale discounts. This bulletin has been expanded by PMMB Board action on August 21, 2013 to receive proposals regarding discounts that milk dealers may offer to stores beyond those contemplated by the petitions, which initiated this hearing.

Study Conducted

On behalf of the Area Dealer Associations, I have reviewed the delivery study information that has been accumulated by PMMB Staff for this hearing and the information that some cross-section companies have been requested to produce by PMMB Staff.

I have also conducted personal interviews with cross-section dealer managers (transportation, sales, and chief executives) to determine the current marketing conditions in Pennsylvania' six (6) marketing areas.

I have also reviewed the existing customer dock discount provisions as they exist in the General Orders currently controlling Pennsylvania's six (6) areas. I have also reviewed the wholesale limited service discounts and the current multi-store discounts as they appear in the current General Orders. I have also reviewed the most recent cost replacement hearing financial information (2011) including the annual financial statement (PMMB 60) submitted by the cross-section dealers.

During my personal interviews with cross-section dealer managers I obtained information concerning the market place condition for the sale of controlled dairy products, and the effect on operations with increased volume at a processing dealer's dock due to increases in customer dock pick-up. I also reviewed and analyzed the information concerning cross-section dealer's multi-employer pension liability that I previously had as a result of prior consulting work on behalf of cross section dealers. Unfunded pension liability is a serious financial concern for Pennsylvania dealers with organized labor defined benefit pension arrangements and plants with non-union defined benefit pension plans.

Cross-section

The cross-section of dealers utilized in the preparation of dealer exhibits is identical with the cross-sections utilized in the most recent Cost Replacement Hearing. These companies process, package, and deliver the majority of fluid milk products in Pennsylvania and comprise a group of companies which include organizations that deliver to supermarkets and other retail outlets. In my opinion this cross-section of dealers is representative of those serving the individual milk marketing areas and is appropriate for analyzing discounts and their cost justification.

Exhibits

Surrebuttal Exhibit D1, D2, D3, D5, and D6 present a request to increase or introduce in the case of Areas 3, 5, and 6, a dock discount. Surrebuttal Exhibit D4 presents a request to introduce a multi-store concept in Area 4, which already has an extremely aggressive dock discount.

Under Generally Accepted Accounting Principles and according to this Board's past practice, a discount is a tool to pass on cost savings. It is important that where costs are saved to review if other costs are incurred and to net the savings in developing any discount. For instance, in the case of a dock delivery, it would not be proper cost accounting to conclude that since there is no delivery the discount should be the existing price minus delivery. This is because there are other costs that will be incurred as a result of the operational change. For instance, more volume at the dock means less volume on delivery routes and greater expense. More volume on the dock brings with it the need for more logistical support, manpower at the dock, yard jockeys, delay due to congestion and the potential for overtime. My analysis has developed a proxy for these costs and has been prepared to ensure that it is cost savings, not the statutory rate of return that is being passed on through a discount.

By increasing dock discounts the Dealer Associations intend to improve Pennsylvania's competitive price structure when compared with the geographic areas surrounding Pennsylvania.

Overview

The proposed discounts were developed through a two-pronged approach. First, the dealers evaluated which discount type would allow Pennsylvania processors to offer a new and improved incentive for stores to buy from Pennsylvania dealers. It was determined that a dock discount would provide stores with a similar opportunity to that which is being used by out of state dealers. It was then determined by the dealers what percentage discount in their judgment and based on their private competitive intelligence would be attractive to a store that was either considering picking up product out of state or currently importing product from out of state into Pennsylvania. One of the significant factors in this consideration was the recognition that in some cases stores would be able to achieve very efficient delivery. As I will explain, my analysis of store delivery confirms that the dealer proposals are offering new and increased savings to stores even with the moderating adjustments that are being sought. There are many considerations that determine how efficient they can be. Some stores or food service companies are already going by the plant with other products. Their delivery is extremely efficient. Stores can also achieve efficient delivery using independent haulers with fully depreciated trucks and no unions. Efficiency also comes when the only product on the truck is theirs and there are less stops and/or the product is delivered directly to a warehouse. Delivery for this kind of efficient self-delivery has been observed at Herbein & Company at $0.17 per gallon. I have created Surrebuttal Exhibit D9 to demonstrate the decrease in into store price which results when combining an increased discount at a dealer's dock with independent hauling to stores and/or store warehouses.

The focus on improving Pennsylvania's competitive position by utilizing dock pick-up was not appropriate in PMMB Area 4 where existing dock business, utilizing the existing 23% discount is at the maximum level supportable when considering cost savings, dealer financial condition, and unfunded pension liability. The Area 4 dealers instead focused on what they could do to add a new incentive in the marketplace. The Area 4 dealers recommend that a multi-store concept be developed and this will provide improved store buying by adding the 1% multi-store discount. Based upon a September 2% gallon wholesale price of $3.4843, this would result in store savings of $0.0348 per gallon.

Second, the Dealers considered what discount level they could tolerate financially and that would not be overly disruptive in the marketplace. On behalf of the dealers, who considered the dock discount level after a review of their individual financial and market information and also after considering their operating margins, I have performed an analysis of the discount request and have concluded that their concerns could be documented and that their discount proposals were justified.

As my exhibits demonstrate, the discounts starts from the idea that this is a dock price so the delivery component of the wholesale price is removed, but as I will explain in more detail, that is not the end of the cost calculation. My surrebuttal exhibits D1, D2, D3, D5 and D6 demonstrate that there are other conditions which the Board must consider in developing a dock discount which is conducive to promoting Pennsylvania sales while not convulsive in the market place or destructive in dealer rate of return. These surrebuttal exhibits, D1, D2, D3, D5, and D6 reflect increase fixed costs absorption (explained in detail later) and industry conditions concerning seriously deteriorated operating income and providing for multi-employer unfunded liability economic consequences which are a serious threat to the ongoing viability of Pennsylvania's processing industry. The profit calculation which is included in these exhibits is performed by first removing the profit included in the 2% gallon – thirty month average price and then recalculating the profit deficiency on all other costs. Thus, this calculation procedure is necessary to remove any possibility of calculating profit on profit.

Dealer Exhibits and Analysis

In analyzing the effect of increased dock customer pick-up activity I have reviewed operationally the current economic performance, important economic conditions, and the effect on existing store door route efficiency. The attached surrebuttal exhibits reflect my findings.

With respect to the dock discount, these exhibits begin with using the 2% gallon 30 month average price. This 30 month average was used in this analysis to remove the cyclical nature of milk pricing. The adjustment to dock calculation is performed by removing from the average price the small delivery adjustment, which is incorporated in the development of wholesale and retail prices in all of Pennsylvania's areas. These small delivery costs are those currently incorporated in PMMB's pricing.

The calculation of increased fixed expenses is based upon my experience with dairy processors who have approximately 30% of their operating costs (not including ingredients, containers, and raw milk), which are fixed in nature. With the decline in Class I sales of approximately of 3% a year, dealers have less points of sale upon which to spread their fixed expenses and the resulting additional cost is approximately $.01 per gallon.

I have prepared Surrebuttal Exhibit D7, which reflects the operating income level that existed in 2009, 2010, and 2011. It shows that there has been a clear deterioration over this period and based on my work with dealers throughout Pennsylvania, I can assure the Board that the situation is very serious still. The 1.1% is significantly below the rate of return reflected in the current PMMB area Orders. I have calculated the amount per gallon necessary for this discount to allow for the rate of return intended and have included this finding in cents per gallon in the attached exhibits.

In order to address questions over what is the source of this negative profitability analysis, I have prepared Surrebuttal Exhibit D8, which reflects and analyzes the operating income level presented on Surrebuttal Exhibit D7. This exhibit shows that the profit deterioration that has occurred is focused on dealers that are mostly selling PMMB price controlled products. To rule in or out that the cause might be from drinks or out of state sales, I eliminated six (6) dealers from the cross-section that sell more than 60% of their milk sales outside of Pennsylvania and I have also eliminated four (4) dealers that have more than 40% of their bottling points from non-dairy packaging. Thus, it can be seen that the deteriorated operating income exists at a significant level for all dealers and even more deteriorated level for those dealers that are heavily focused on PMMB price controlled sales.

Finally, the most significant issue that I believe must be recognized has to do with unfunded pension liability facing dealers subject to organized labor. The majority of cross-section dealers are facing this issue. Most of the dealers participate in multi-employer plans, which create the most significant risk. This is because as companies exit the plan, those remaining face increased liability. Due to recent developments, unfunded pension liability is now required to be disclosed in the financial statements of dealers as of December 31, 2012 and is so serious that cost accounting requires that provision is made for this liability.

I have calculated the unfunded pension liability that is facing the cross section dealers using: Form 5500 (required by ERISA) and - the "Summary Report of Multi-employer Plan Information" for the cross-section dealers, reports prepared by actuaries for individual companies to quantify their unfunded pension liability, financial statement disclosures, and in limited cases prepared estimates using actual plan data and employee data to arrive at the unfunded pension liability for the dealers that participate in the cross sections. These calculations were made available to Board staff for review. For all cross section dealers affected, the unfunded liability was calculated to be $100,000,000. I have prepared Surrebuttal Exhibits D1-B, D2-B D3-B, D5-B and D6-B, which reflects the unfunded pension liability allocable to each area. These surrebuttal exhibits present an amortization over a five (5) year period. This has been reflected on a per gallon basis that is included in the surrebuttal exhibits as a condition that should be considered by the Board in determining how much operating margin should be transferred to stores as an inducement.

In my opinion, unfunded pension liability is a very egregious condition affecting Pennsylvania's milk plants. Unfunded pension liability is significant and material and should serve to moderate the discount that is established as a result of this hearing. There are recent developments with respect to unfunded pension liability that mean Pennsylvania Milk Dealers are now facing real life business impacts. For instance, the recent decision by FASB to require the disclosure of unfunded pension liability in a company's externally prepared financial statement means that creditors and investors will now condition credit and bonding on evidence of a company's fitness and ability to satisfy this liability as it comes due. For companies, that means, they must be able to show that they have or are on track to satisfy their liability, hence my suggestion that the Board consider this in terms of something that companies must plan for over a five-year period. For those companies that are in plans that fall into what the government has identified as an endangered or critical plan, they are facing the near term prospect of increased funding payments per employee per month as part of the rehabilitation plans that are required for these plans. With net income of 1.1%, I ask where will their ability to meet these obligations come from? A more moderate discount will allow for plants to improve their circumstances to plan for these payments. Some plants may also decide to withdrawal from their pension plans because as other participants go out of business, their liability will continue to increase. Again, where will their ability to plan for and fund this strategy come from if the Board does not consider this issue in establishing the discounts.

I have talked with Bankers about this concern and am regularly asked to help milk plants improve their ability to qualify for credit and bonding. I know that Bankers seeing these significant unfunded pension liabilities have increased their reluctance to provide bonding, lines of credit, and other commercial loans and when such financing arrangements are made they many times carry higher interest rates. Also, the existence and industry understanding of these liabilities has also reduced the fair market value of the dealers' businesses.

I also wish to note that establishing a discount that acknowledges this condition or the status of dealer operating income is forward looking and in no way compensates dealers for prior expenses or lack of profitability in the past. The dealers are not asking for the rate of return adjustment or the unfunded pension liability to serve as a cost that would increase the base minimum price. The dealers are simply asking that after providing for delivery and additional savings for the stores, some of the remainder stays with the dealers to address the negative operating environment in which dealers find themselves.

The Associations' request for a dock discount percentage and related requirements are attached to the Surrebuttal exhibits. In my opinion, the discount requests are justified by cost savings net of adjustments that I believe are necessary as discussed herein. In all cases, the Milk Dealers have arrived at a dock discount request that is slightly higher than my analysis suggests dealers can afford to give. But, the request is based on a determination by the Milk Dealers that if a new discount is to be offered it needs to be at a level that provides stores with a new savings opportunity.

Surrebuttal Exhibit D4 reflects the Area 4 Dealer Association's request to establish a multi-store discount structure to afford store customers who have chosen not to take advantage of dock pick up a lower price opportunity. The idea is to add to the existing limited service discount structure an additional 1% incentive for stores that centralize their buying, purchase sufficient volume by group per week, and guarantee payment. Area 4 already has an aggressive dock discount, so this additional 1% for store chains is intended to provide an additional incentive to store chains currently being supplied from Area 4 so they do not feel compelled to look outside of Pennsylvania. An additional 3.5-cent per gallon reduction is expected to work in conjunction with maintaining a competitive over order premium structure to incentivize existing customers to stick with their Area 4 supply. The aggressive dock discount is expected to continue to help compete with out of state dock sales.

The economic justification for this is based upon an analysis of increased costs incurred by the Area 4 cross-section in delivery cost from 2007 (data from the last General Price Hearing) and 2011 (data from the last Cost Replacement Hearing), which is the date of the last Cost Replacement Hearing. The average delivery in 2007 was $.0927 per quart and in 2011 has increased to $.1064 per quart. This is a 14.8% increase over the four years. By annualizing this increase we find the annual increase to be 3.7% year. By applying this .037 to the small delivery cost per gallon of .8152 we find that the increase in small delivery is .0302 per gallon. This increase in small delivery is saved when the multi-store group satisfies the weekly group requirement.

Surrebuttal Exhibits D9A, D9B, D9C, D9D, D9E, D9F, AND D9G were developed to test whether the discounts the dealers intuitively proposed would in fact provide stores with an additional incentive beyond those currently available. These exhibits begin with a 2% gallon dock price proposed by the dealers, as shown on my previous exhibits, and then add a $.17 per gallon delivery cost in order to compare the proposed dock discount to the maximum delivered discount currently available. In all cases, the exhibits show that the dealers are proposing discounts that would provide the stores with new and additional savings over current discounts. These savings to the stores are reductions in dealer operating margin.

The $.17 delivery number is used to test how stores might see the discount and is derived from the Herbein + Company database. I attach an exhibit extracted from the International Dairy Foods Association Dairy Cost Accounting Workshop that Herbein + Company presents annually for IDFA members and other dairy industry personnel. It supports the $.17 delivery after being adjusted for inflationary factors. I have utilized $.17 per gallon for delivery for each area because the type of customer being served (large stores) are similar across the state of Pennsylvania and thus reasonably similar delivery statistics are appropriate for this test. The Herbein supermarket – tractor trailer cost per gallon of $.1520 has been updated to include inflationary occurrences since 2009 the date of the delivery information used in the original calculations. This results in a today's cost to deliver of $.17 per gallon when the delivery is being made by an independent hauler picking up at a dealer's dock and delivering tractor trailer loads to supermarkets. The important and noteworthy point of this series of exhibits is that they confirm that in each instance a new dock discount has been proposed by the dealers, stores will be able to achieve new and additional margin after providing for delivery. This additional margin for the store is referred to as "new incentive".

This series of exhibits also reflects the increase in dealer discount and calculates the per gallon value to customers that utilize this opportunity where dock deliveries existed previously. They show that where dock deliveries existed previously, dealers are giving up 10-cents per gallon in operating margin, which exceeds the 7-cent per gallon contribution that dairy farmers were asked to make to the price reduction to incentive stores to buy Pennsylvania.

Other Marketing Condition Considerations

The controlling provisions for the dock pick-up by customer which are presented as D1-A, D2-A, D3-A, D4-A, and D5-A are intended to replicate the dock pick-up discounts that exist presently and have been functioning and controlling this activity appropriately. A key provision that the dealers have included is the two-day pre-order requirement. This requirement is important to the logistical planning that takes place when another company is coming to the dock. The multi-store discount being recommended for Area 4 is intended to follow the controlling provisions that exist in other PMMB areas such as Area 5, which have multi-store activities.

The Pennsylvania Milk Marketing Board has undertaken important steps toward keeping Pennsylvania milk priced in a competitive manner and the dealer requests follow that intention. In the case of existing dock discounts, an increase of 3% in some areas and 2% in other areas amounts to approximately $.10 per gallon for all gallons affected by the discount changes requested. The recent change in over-order premium at July 1, 2013 amounted to approximately $.07 per gallon on all controlled products. Thus, it is my opinion that the dealer proposals are both significant and in-line with Board stated objectives.

The dairy consulting practice of Herbein + Company, Inc., which I manage and participate in regularly, consults with clients in milk pricing and milk contract determination. I have been privy to a number of bids and have conducted cost studies related to out of state competition in the last few years and I am knowledgeable about the pricing that has been offered outside of Pennsylvania. It is my opinion that these discount proposals would enhance Pennsylvania dealers' opportunity to retain existing business and obtain new opportunities within Pennsylvania.

The Area 4 multi-store proposal should be viewed in conjunction with the current dock pick-up discount, which has existed for many years in Area 4 at the 23% level. The 23% dock discount is approximately equal to a discount level that accounts for the operational adjustments that I feel should be considered in reviewing and establishing discounts.

Review of PMMB Staff Testimony and Exhibits (Original Pre-Submission)

I have reviewed the delivery study information, processing and packaging calculations, the various cross-sections utilized by Board Staff in producing their August 23, 2013 pre-submitted exhibits and I am prepared comment on them. However, based on a representation from Board staff that they are withdrawing Exhibits 1-2, 10-11, and 13, I am limiting my comments and analysis to Exhibits 3-9 and 12.

Findings

As part of our review of PMMB Staff calculations and adjustments to dealer submitted information I discovered a number of calculation and formula errors, which have been brought to PMMB Staff's attention. It is my understanding that these corrections will be made to the extent they are relevant to the more limited set of exhibits being submitted and if they are not I wish to reserve the right to bring such corrections to the Board's attention.

I also discovered footnote omissions pertaining to the cross sections. I have brought these issues to Board Staff's attention and understand that the corrections will be presented in their surrebuttal submissions. Staff Exhibit 3 omitted Balford Farms from the utilized cross-section. Staff Exhibit 5 omitted Pocono Mountain from the cross-section utilized and Staff Exhibit 6 included H.P. Hood in the cross-section, but they were not actually included in the calculations.

Board Staff Exhibit 9 shows that the discount is calculated by measuring the difference between Line J (Cost with Profit) and Line K (Current Wholesale Price). Line J reflects all costs except delivery costs and the rate of return on those costs. On the other hand, Line K reflects all costs including delivery costs and the rate of return on the average delivery costs. This means that the comparison of Line J and Line K is actually not proper because the difference is necessarily larger because the rate of return on average delivery is in one line but not in the other. Nor does the calculation isolate actual delivery costs saved when possession takes place at the dock. It removes delivery costs saved plus what used to be the dealers' operating margin on all but small delivery accounts after application of appropriate discounts. In other words, Board staff's proposal dramatically alters the way discounts currently operate. Currently discounts are based on the base wholesale price and then a deduction is taken from the base price that reflects the savings associated with the particular efficiency achieved from a particular service level. Board Staff Exhibit 9 is also technically deficient in that Board staff has utilized a point in time for calculating the discount rather than an average that attempts to smooth out the highs and lows of the milk cycle.

Beyond the technical issues raised here, the Board Staff's proposal is problematic for the Milk Dealers because it fails to account for costs and other considerations that I have outlined as important considerations in setting a dock discount. I wish to assure the Board that the considerations I have included with Dealer Surrebuttal Exhibits as "Necessary Adjustments" on D1, D2, D3, D5, and D6, would not result in a double counting of costs and will not raise any existing prices to stores or consumers. The objective of the discounts being proposed by the Milk Dealers is to provide stores with an additional and alternative incentive to purchase from Pennsylvania milk dealers. Based on dealer feedback and based on my knowledge of large store deliveries and existing discounts as well as my deep knowledge of competitive circumstances in the area, I am confident the milk dealers are offering dock discounts that would afford more, not less, cost savings than existing discounts allow stores presently. Thus, the Board can and should consider the cost and financial viability considerations that I have presented on behalf of the milk dealers in determining the level of the discount.

The cost considerations that I believe Board staff's proposal erroneously ignores are costs that we know will be incurred in future periods and will be included then in the cost replacement process. The offsetting adjustments I have presented will not affect the base minimum price until that time. However, Pennsylvania's dealers are not in a position to absorb these costs let alone allocate funding for these future costs (unfunded pension liability) when the discounted price allocates what was previously dealer operating margin to stores. For instance, the unfunded pension liability is not being offered to include these costs in the base price, but rather to include a provision (by moderating the discount) that these costs will be able to be absorbed by the dealers until they are included in the cost replacement process in future periods. Under Board staff's proposal, funds for these obligations will not be available until twelve to eighteen months after the costs are incurred. With milk dealers operating based on a 1.1% net income or even based on a rate of return within the statutory framework, they need the Board to leave some of what was previously dealer operating margin with the dealers so that they are able to fund these costs as they come due.

Granting the Staff's discount presentation would seriously erode the already depleted rate of return of the dealers and ensure that dealers are ill-prepared to deal with unfunded pension liability. It would also erect a discount with a significant volume requirement that, while not technically available to many customers, would create a precedent in the marketplace that such pricing is something to strive for and would in my opinion cause market disruption as result. I, and the milk dealers, are simply putting up a stop sign and issuing a warning not to follow Board Staff's recommendation.

Finally, I wish to once again recommend that the discounts proposed be on a percentage basis other than in Area 4 where the cents per quart arrangement should continue with the exception of the multi-store additional 1% discount which is being suggested. This request is based upon my experience with market stability and dealer pricing to stores who continue to analyze their dairy department margins on a percentage basis. When cents per quart is proposed, this causes dealer and store operators to speak different languages. Moreover, over the years, it has been observed that change of any significance tends to cause market disruption. Now is a particularly bad time to adopt policies that may create market disruption.

Review of PMMB Staff Testimony (Rebuttal Submission)

I have reviewed the rebuttal testimony submitted by Board staff and wish to provide comments on several issues raised in their testimony.

Board staff, in their discount calculations have eliminated the entire small delivery adjustment in arriving at what they believe to be an appropriate dock cost. Board staff has failed to consider the continued existence of much if not all of the overhead related to the delivery function. When volume moves from dealer store door routes to being picked up at the dealer's dock, much of the related overhead for route supervision, accounting, human resources, etc. will remain. These remaining expenses are expertly explained and demonstrated in the testimony of Chuck Turner whose testimony I support in its entirety. The $.01 per gallon of additional cost that I present as developing at the dealer's dock is the result of reduced volume and the increased cost per unit of fixed expenses due to the reduction in units. My calculation in no way considers the overhead factor that the Chuck Turner testimony focuses on. That means that the level requested by the Milk Dealers is likely a bit higher than it should be.

Board staff questions what problems could develop if dealers do no use the funds that I am recommending need to be provided for the unfunded pension liability. The simple answer is nothing would happen as the Board's accounting system is designed to prevent any "double dipping" of these costs. What the dealers will do with these provided for funds is they will make business decisions as to what will be the best use of these funds. This may be to improve efficiency of their operation, reduce borrowings, or other balance sheet improvements. This will allow them to be in a stronger financial position to borrow funds and/or to afford increased pension contributions when they arrive due to government requirements and/or union pension negotiations. I agree with Board staff that there is no mechanism in the law or regulations that would permit the Board to require dealers to put aside funds for the pension purpose. Further, it is my opinion that such a regulation is unnecessary and business practices and smart economics will handle this issue.

Board staff also expresses concern about the certainty of this pension liability and/or expense. Based upon Board staff's review of my workpapers and supportive evidential matter, I believe the staff is now comfortable with the real existence of this liability and that it is a condition requiring Board consideration in establishing the discount limits. As to the resulting expense, when it appears on the books of the dealers there are variables that will affect the ultimate outcome. These variables include government action, union negotiations, continued existence of other employers in these multi-employer plans and the success or the lack thereof of the investment policies of these pension plans. But the liability today and its amount today is not in doubt. It is that liability that is affecting business decisions today. It is affecting banking, bonding, investment decisions, and planning decisions today. Moreover, in my opinion there is no possibility that unfunded pension liability will not become an actual expense. But for purposes of this hearing, we are presenting this as a condition to be considered (as opposed to an actual calculation to be included in prices) the exact amount of the future expense is not necessary for purposes of the Board helping dealers to deal with the looming liability by simply adopting a moderate new discount level. Finally, on this point I dislike being repetitive, however repetition appears necessary to once again state that the dealers request is not to include these pension liabilities in a cost that affects the into or out of store price but merely to realize the severity and importance of this matter as a condition in establishing discounts. The request by the Milk Dealers is simple – after providing stores with a new incentive (after delivery), allow the dealers to retain operating margin that would unnecessarily go to stores (not consumers) due to the serious economic conditions facing fluid milk dealers.

Summary and Recommendation

The Pennsylvania Area Milk Dealer Associations recommend that the Milk Marketing Board make the discount adjustments, which are reflected in the dealer sponsored exhibits originally submitted on August 23, 2013 and re-attached here for convenience. The Milk Dealers further urge the Board to reject the Board Staff's alternate proposal. The Associations request that the Milk Marketing Board consider the deteriorated financial position of the dealers and maintain dealer operating margins that allow for a continued purchase of raw milk from Pennsylvania farmers at competitive levels. It is also extremely important that dealers are allowed to provide for the multi-employer unfunded pension liability which is looming over Pennsylvania's milk industry and which has become so significant and imminent that financial accountants must now record unfunded pension liability as a provision in accordance with GAAP, and business leaders and managerial accountants are compelled to respond to the provision with a funding plan in order to obtain credit and bonding and to meet the obligation as it comes due in order to avoid bankruptcy. This is true for the unfunded plans that are in critical or endangered status as defined by the Department of Labor, which must adopt a rehabilitation plan as well as plans that seek to avoid slipping into either status. It also applies to companies considering withdrawing from these pension plans voluntarily or by necessity. A significant increase in discounts at a dealer's dock will further deteriorate the weakened financial position of the dealers and leave them with little to no opportunity to accrue funds to meet unfunded pension liability and the added costs associated with increased dock delivery. Thank you for consideration of my analysis, exhibits and opinions.

Testimony of Robert F. Firely, Jr., CPA

October 2, 2013 Wholesale Discount Hearing

I am Robert F. Firely, Jr., CPA, Partner of Herbein + Company, Inc. (Firm) and my address is 2763 Century Blvd., Reading, PA 19610. I am presenting testimony of behalf of Area 1, 2, 3, 4, 5, and 6 Milk Dealers Associations. I attach my Curriculum Vitae, as Firely Rebuttal Exhibit D-1, which outlines my education and experience in the accounting profession.

In my position as Partner-in-charge of Herbein + Company's auditing and accounting services group, I am responsible for the quality control system (QC). As part of these duties, I am responsible for establishing and maintaining policies and procedures that ensure financial statements that are audited, reviewed, or compiled by the Firm are in accordance with generally accepted accounting principles (GAAP) and generally accepted auditing standards (GAAS).

Our QC system requires that all audits, reviews, and compilations with disclosures be subject to an independent second partner financial statement review. Additionally, certain audit engagements, in accordance with our quality control system, require a more detailed level of review by an independent second partner.

Given the importance of accounting firms to adhere to regulatory requirements, my role as partner-in-charge of quality control is to keep the firm in compliance with said requirements.

In addition to the above duties, I am responsible for providing training on accounting and auditing topics to our staff as part of our continuing professional education (CPE) program that is part of our quality control system. It is important to note that our firm CPE requirements exceed the requirements of the Pennsylvania state licensing board.

In addition to the above noted education, compliance, and administrative functions, I serve as partner-in-charge or provide second partner review of many of the firms largest audit clients including those in the dairy industry.

It is important to note that Herbein + Company, Inc. has never been sued and we are proud of that fact. Additionally, we have passed all industry required peer reviews since the inception of the peer review program.

I currently serve as President of the Pennsylvania Institute of Certified Public Accountants, a statewide professional organization with more than 20,000 members representing Pennsylvania's CPAs.

I wish to provide an overview of the rules governing the reporting of unfunded pension liability. In my opinion, the unfunded pension liability represents a reliable measure of a liability that pension plan participants must plan for.

The magnitude of the unfunded obligations of multiemployer plans has resulted in improved reporting and disclosure requirements as well as enhanced funding requirements. These requirements are designed to bring about more intense funding of underfunded multiemployer plans by the contributing employers so that the deficiencies do not land in the hands of the Pension Benefit Guarantee Corporation ("PBGC") and ultimately the taxpayers.

According to the recent announcement of the Financial Accounting Standards Board, which is effective for years beginning after December 15, 2012, entities must disclose details of unfunded pension liabilities on their financial statements. That disclosure is audited by the accountants who in turn rely on the reports prepared by the actuaries of the multiemployer plans. These reports are reliable because the actuaries must adhere to certain standards under the Employee Retirement Security Act of 1974 ("ERISA") and certain actuarial standards. A key reason for the new reporting obligation is to inform creditors, investors and employers of the magnitude of the unfunded pension liability. This is part of the effort following Enron to ensure that a clear picture of a company's risk exposure and ability to meet debts is clearer. As explained herein, part of the new reporting requirement addresses the different classes of underfunded plans and the efforts of Congress to install rehabilitation proceedings.

As an aside, the Government Accounting Standards Board in June, 2012, issued Statement No. 68 which is designed to improve the financial reporting for state and local government pension plans and is effective for fiscal years beginning after June 15, 2014. That standard is noteworthy because it now requires government pension plans to place the unfunded liability on what is effectively their balance sheet.

Briefly, unfunded pension liability represents the difference between a multiemployer plan's assets and its liabilities to pay benefits. Pursuant to collective bargaining agreements, employers make contributions to the multiemployer plans that address both the normal cost which deals with current benefit accruals and the past service costs which is largely comprised of retroactive increases in retirement benefits that result from the labor negotiations.

Generally, defined benefit plans have two forms namely the multiemployer plans and the single employer plans. The multiemployer plan is in substance an aggregation of single employer plans that have been combined to allow participating employers to pool assets for investment purposes and to control costs of plan administration. These plans are able to provide benefits to employees who move from employer to employer in the same industry.

While the accounting profession has engaged in improved reporting and disclosure requirements with respect to unfunded pension liability, the major issue for contributing employers such as the Milk Dealers is the funding for the multiemployer plans, which have substantial underfunded liabilities.

Congress has provided a framework in which to identify the multiemployer plans that have fallen into a critical or endangered funding status and once identified has provided that these plans must be rehabilitated to improve the funding status. See generally, ERISA Section 305(a), 29 U.S.C. 1085(a). Congress established the "critical" status threshold as a multiemployer plan that has a funded percentage of less than 65%. The funded percentage for an endangered plan is between 65% and 80%.

The critical status is often referred to as the "red" zone, which presents the greatest concern because of the possibility of not being able to pay benefits within a an approximate 6-year period. In order to address the situation, the trustees of a multiemployer plan that is in critical status must adopt a rehabilitation plan that would allow the plan to emerge from the critical status by the end of a 10-year period. See ERISA Section 305(e)(3), 29 U.S.C. Section 1085(e)(3). For example, contributing employers must respond to the rehabilitation plan during the contract negotiation process. If they fail to agree to a proposed schedule, a default schedule will take over. Until the employer agrees to a collective bargaining agreement that includes an acceptable schedule of contributions, the employer is assessed a 5% contribution surcharge which escalates to 10% surcharge at the start of the next year. See ERISA Section 305(e)(7), 29 U.S.C. Section 1085(e)(7).

The financial meltdown of 2008 added to the depth of the funding problems. Certainly, an employer can decide to undergo withdrawal liability, as opposed to a rehabilitation plan, if its business is in decline and it faces a new collective bargaining agreement. However, that individual employer situation just adds to the dilemma because with the fewer employers contributing to a multiemployer plan, the unfunded pension liability must be borne sooner rather than later by the remaining contributing employers.

Congress took action to make sure that the multiemployer plans do not end as a responsibility of the PBGC. Without action the taxpayer will end up paying the bill of the PBGC and the plan participants will receive reduced benefits. Congress' action shifts the burden back to the employers. These unfunded liabilities are measurable and meaningful based upon the analyses done by actuaries whose reports adhere to actuarial and ERISA standards. If a multiemployer plan enters the critical stage or the endangered stage, it only means that the employer faces increased risk of larger contributions.

Recently, clients of Herbein & Company have inquired how these new disclosures will affect their business. We explain it is of interest to creditors and investors. In essence, banks will want to be assured that the employer has the cushion to meet this obligation when it comes due whether it comes due as withdrawal liability or increased payments. This means that companies must plan to have the funding available if they want bankers or investors to provide credit and bonding at all, or on favorable terms. They of course must understand that they need to be prepared to fund these obligations as they come due or face a worse fate, bankruptcy.

Based upon my experience in working with clients subject to unfunded pension liability, it is my opinion that this liability is a genuine and significant condition affecting the dairy industry in Pennsylvania. Thank you for your consideration of my testimony.

Robert F. Firely, Jr., CPA, CGMA
Curriculum Vitae

EDUCATION
The Pennsylvania State University - B.S. Degree in Accounting

EMPLOYMENT
Herbein + Company, Inc., Reading, PA
2006 – Partner in charge of Accounting and Auditing Services
2001 – Partner
1997 – 2001:
Senior Manager, Accounting & Auditing Department

Maillie, Falconiero & Company, LLP, Valley Forge, PA
1996-1997:
Manager

Beard & Company, Inc., Reading, PA
1983 -1993:
Manager

PROFESSIONAL AND CIVIC ASSOCIATIONS AND DESIGNATIONS
Certified Public Accountant (CPA) Pennsylvania and New York State
Chartered Global Management Accountant (CGMA)
Pennsylvania Institute of Certified Public Accountants (PICPA) –
Current President; Member; Member of Council; PICPA Foundation –
Board of Directors; Members Services Committee; Vice Chair: Annual Fundraising luncheon
American Institute of Certified Public Accountants (AICPA) – Member; Member of AICPA Council 2012 – current
PKF Accounting and Auditing Committee – Member (2008 – present) – Chairman (2011 – 2012)
Greater Reading Chamber of Commerce and Industry Board of Directors (2010 – present); Vice Chairman;
Audit Committee Chair (2010 – 2013)
Reading Area Community College, Accounting Advisory Committee – Member (2007 – present)
John Paul II Center – Finance Committee Member
Family Guidance Center – Past Board President
Reading Chapter of the PICPA School and College Committee - Past Member
Institute of Management Accountants – Past Member
Junior Achievement of Berks County – Past Classroom Consultant
Reading Royals Charity Foundation – Past Treasurer

SPECIFIC FIRM AND PRACTICE RELATED EXPERIENCE

Robert F. Firely, CPA, CGMA is the Partner in charge of Herbein's accounting and auditing department. He is responsible for all aspects of services provided to clients in the service, manufacturing, and wholesale distribution industries, as well as to nonprofits, colleges and local governments. Bob is also currently President of the PICPA and began serving his year-long term on July 1, 2013.

Firely is Partner in charge of Herbein's Quality Control System. As such, he is responsible for establishing and maintaining policies and procedures that ensure financial statements audited, reviewed, or compiled by the Firm are in accordance with Generally Accepted Accounting Principles and Generally Accepted Auditing Standards.

Firely provides management advisory services. Bob has performed various consulting projects including regulatory projects, industry benchmarking studies, economic impact engagements, product costing, gross margin studies, feasibility analyses, and fraud investigations.

SPECIFIC DAIRY RELATED EXPERIENCE

Firely performed various dairy consulting projects as a member of the firm's dairy consulting team, including federal milk marketing order issues, state regulatory projects, industry benchmark studies, economic impact engagements, product costing, gross margin studies, dairy feasibility analyses, delivery cost studies, and route profitability analyses.