



HERBEIN

EXPERT REPORT OF CARL D. HERBEIN, CPA

SHRINKAGE – ULTRA-PASTUERIZED AND ASEPTICALLY PROCESSED FLUID MILK AT 7(b) DISTRIBUTING PLANTS

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 testimony on behalf of Agropur, Inc., Aurora Organic Dairy, Byrne Dairy – Ultra Dairy, Cumberland Dairy, HP Hood LLC, Saputo, and Western Quality Foods. I attach my Curriculum Vitae as Exhibit California Dairy Institute - 2 which outlines my education and experience in the dairy industry.

QUALIFICATIONS AND BACKGROUND OF CARL D. HERBEIN, CPA

Carl D. Herbein, CPA, is President and CEO of Herbein + Company, Inc. a regional CPA firm headquartered in Reading, PA. I founded this firm in 1972 after working for Ernst & Young. Herbein + Company, Inc. is a general practice CPA firm with a number of specialized practice areas including the dairy industry. Our practice in dairy includes representing dairy farmers, dairy cooperatives, and dairy food manufacturers and distributors as their auditors, tax accountants, and consultants. I am personally responsible for this part of our practice and spend more than 50% of my time representing dairy clients in rate making cases, valuation assignments, mergers and acquisitions, and as partner responsible for company audits, tax services and other business related consulting issues.

BACKGROUND AND PURPOSE OF HEARING

The Agricultural Marketing Service, Dairy Programs has called a hearing to consider establishing a California Milk Marketing Order. The Dairy Institute of California is a party to this hearing and has requested adding an additional provision for shrinkage for ultra-pasteurized or aseptically processed fluid milk at a 7(b) distributing plant or at a 7(a) distributing plant. This testimony is developed to provide historical shrinkage levels in 7(b) plants.

STUDY CONDUCTED

I entered into non-disclosure and engagement letters with the above cross-section of 7(b) plants. I obtained their monthly Federal and / or state milk reports which reflects shrinkage incurred for each month. The study conducted covered the time period of January 1, 2013 to December 31, 2014. My calculation utilized all pounds received at the cross-section plants including farm receipts, receipts from sellers of bulk cream and transfers. Proper cost accounting requires that all milk in a plant be utilized when calculating a shrink factor. I then summarized the reports and calculated a weighted percentage average shrink based on total product pounds, skim pounds, and also a weighted average shrink percentage for butterfat. This weighted average calculation was performed so that the cross-section members with the most volume carry the most weight in the average calculation. It is my opinion that a weighted average calculation is preferable to a simple average for a proceeding such as this.

EXHIBIT CALIFORNIA DAIRY INSTITUTE - 1

CROSS-SECTION

The cross-section of Agropur, Inc., Aurora Organic Dairy, Byrne Dairy – Ultra Dairy, Cumberland Dairy, HP Hood LLC, Saputo, and Western Quality Foods is representative of 7(b) plants located in California and also elsewhere in the United States. The cross-section of dealers has increased the pounds of milk received and processed by approximately ten percent (10%) from 2013 to 2014. Thus, this is a portion of the dairy industry which is changing and the related regulations should also be adjusted for this dairy segment.

FINDINGS

My analysis and results are presented on Exhibit California Dairy Institute - 3 and shows that shrinkage in 7(b) plants on a total product pounds basis is 2.73%, on skim 2.68%, and the butterfat shrinkage is 3.35%.

The Dairy Institute requests that the California Federal Milk Order should include shrinkage levels for 7(b) plants (and for 7(a) plants that process ultra-pasteurized or aseptically processed fluid milk) at the percentages reflected on Exhibit California Dairy Institute - 3. These percentages shall be used in determining the payment requirement for pounds of skim and pounds of butterfat lost by plants.

SUMMARY

Based upon my review, analysis, and calculations I find that the “allowable shrink factors” for 7(b) plants should be updated to reflect the findings presented on Exhibit California Dairy Institute – 3.

REPORT QUALIFICATIONS

I understand that this report will be used in connection with this hearing and may not be used for any other purpose. This report is based on information provided to me as of the date of this report and is subject to changes as a result of additional information which may be provided in the future. My opinions included in this report have been stated to a reasonable degree of professional and accounting certainty. I reserve the right to respond to any additional expert reports or additional information provided.

This will confirm that my fee is a product of the time spent by me and my staff on this engagement and our applicable billing rates. Our fee is in no way based on the outcome of this hearing.

SUBMITTED BY:

Carl D. Herbein

Carl D. Herbein, CPA

October 16, 2015

Date

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 September, 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)

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 – 2005)
- Member – Leadership Council (2007 – present)

Berkshire Country Club

- Board of Directors
- Treasurer (October 2001 – 2007)

SPECIFIC DAIRY RELATED EXPERIENCE

Grew up and worked on his parents' dairy farm

Partner-in-charge of services for all dairy clients currently serviced by the Firm

Performed the feasibility and accounting work for numerous successful dairy mergers

Currently leads the Firm's engagements in industry consolidation, including due diligence, valuation, and consolidation benefit analysis

Performed other special projects for dairies – Product cost analysis, route accounting and profitability analysis, by-product and excess butterfat cost analysis, buy-sell arrangements, labor contract negotiations, hauling cost analysis, plant shrink studies, delivery cost studies, market price analysis, cost benchmarking projects, business valuations, Federal Trade Commission analysis, and dairy financial reporting design

Has spent more than 16,000 hours of time in personally preparing for and testifying at over 172 Pennsylvania Milk Marketing Board price hearings between 1976 and 2015

Has visited and provided services to more than 155 dairy food companies

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 AWARD

2006 Eugene L. Shirk Community Builder Award

2010 Corporate Honoree – March of Dimes

2012 Franciscan Award – Alvernia University

2013 Business Weekly Unity Award

Carl D. Herbein, CPA

SPEAKING ENGAGEMENTS (2006 – 2015)

International Milk Control Agency – Why Dairy Plants Relocate, August 13, 2006

All Star Dairy Association – Cost Benchmarking, March 16, 2006

Quality Chekd Dairy – Valuation of Your Dairy Company, February 1, 2007

All Star Dairy Association – Cost Benchmarking, March 28, 2007

All Star Dairy Association – Financial Reporting, March 6, 2008

Quality Chekd Dairy – Captive Insurance, April 21, 2008

Pennsylvania Association of Milk Dealers – Cost Comparison Analysis, September 22, 2009

World International Dairy Foods Association – Worldwide Food Expo – Dairy Industry Analysis, October 31, 2009

All Star Dairy Association – Forensic Accounting, March 23, 2010

Pennsylvania Association of Milk Dealers and Northeast Dairy Foods Association, Inc. – Delivery, Depots and Distributors – August 22, 2011

International Association of Milk Control Agencies – California Federal Milk Marketing Order – September 14, 2015

International Dairy Show – Capital Budgeting – September 15, 2015

TEACHING ASSIGNMENTS (2007 – 2015)

Developed and presented the annual “Dairy Cost Accounting Workshop” for International Dairy Foods Association – annual two (2) day seminar May 2007 to May 2015

Quality Chekd Dairy – Dairy Accounting Seminar, March 6 - 7, 2007

Carl D. Herbein, CPA

EXPERT REPORTS, DEPOSITION AND TESTIMONY (2007 – 2015)

COURT AND OTHER TESTIMONY

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)

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

Maine Milk Commission – Expert testimony – Dealer Margin Study (hearing held October 25, 2012)

Nicholas Meat Packing Co. v. Brigandi, Gleghorn and Associates – August 20, 2011 and July 2013.

Supports Coordination Organization Modeled Rate Review – payment rate dispute – July 15, 2013.

Allen S. Fisher, et. al. v. Dominion Transmission, Inc. – crop damage – loss calculation – October 2013.

DeVries Dairy v. White Eagle Cooperative Association – expert testimony – economic discrimination – October 2013.

Dar-View Farms v. Maryland Dairy Veterinarians – professional malpractice matter – March 2015.

Preferred Kitchen Equipment, Inc. v. Jeff Hessel and B.S.E. Keystone – contractual dispute – July 2015

Carl D. Herbein, CPA

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.

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

2013

Expert witness appearing on behalf of dealer associations concerning cost replacement in Areas 3 and 6.

Expert witness appearing on behalf of dealer associations concerning wholesale milk discounts in Areas 1, 2, 3, 4, 5, and 6.

Expert witness appearing on behalf of dealer associations concerning cost replacement in Areas 1, 2, and 3.

Expert witness appearing on behalf of dealer associations concerning cost replacement in Areas 4, 5, and 6.

2014

Expert witness appearing on behalf of dealer associations concerning over price premium – Part II in Areas 1, 2, 3, 4, 5, and 6.

Expert witness appearing on behalf of dealer associations concerning small delivery costs in Areas 1, 2, 3, 4, 5, and 6.

Expert witness appearing on behalf of dealer associations concerning cost replacement in Areas 4, 5, and 6.

Expert witness appearing on behalf of dealer associations concerning cost replacement in Areas 1, 2, and 3.

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COMMONWEALTH OF PENNSYLVANIA MILK MARKETING BOARD APPEARANCES – Continued

2015

Expert witness appearing on behalf of dealer associations concerning over price premium – Part II – continued from June 2014 in Areas 1, 2, 3, 4, 5, and 6.

Expert witness appearing on behalf of dealer associations concerning small container in Areas 1, 2, 3, 4, 5, and 6.

**SHRINKAGE ULTRA PASTEURIZED AND ASEPTICALLY PROCESSED FLUID MILK AT 7(b)
DISTRIBUTING PLANTS**

January 1, 2013 to December 31, 2014

**Cross-section of processors: Agropur, Inc., Aurora Organic Dairy, Byrne Dairy – Ultra Dairy,
Cumberland Dairy, HP Hood LLC, Saputo, and Western Quality Foods**

Total product pounds received	10,959,937,353
Shrink product pounds	299,206,000
Weighted average product pounds shrink %	<u>2.73%</u>
Total skim pounds received	10,104,823,281
Skim shrink pounds	270,578,691
Weighted average skim shrink %	<u>2.68%</u>
Total butterfat pounds received	855,114,072
Butterfat shrink pounds	28,627,319
Weighted average butterfat shrink %	<u>3.35%</u>