

STATE OF WISCONSIN

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF CLAIMS OF PRODUCERS FOR MILK AND CREAM SOLD TO CLOVER HILL COOPERATIVE CHEESE FACTORY)
DOCKET NO. 1281)
ORDER ALLOWING CLAIMS)

Pursuant to section 100.06(4), Wis. Stats., and in accordance with Findings of Fact and Conclusions made and filed in this matter;

It is ordered, that the claims filed in this proceeding are allowed in the following amounts:

<u>NAME</u>	<u>CLAIMED</u>	<u>ALLOWED</u>	
William Habermeyer	\$ 503.17	\$ 503.17	
Clifford Neitzel	1,705.15	1,705.15	
Greg Neitzel	531.88	531.88	
Jerome P. Weiler	159.83	<u>159.83</u>	\$2,900.03
<u>AMPI for:</u>		\$3,893.18	3,893.18
Arlan Hamm	1,924.00		
Raymond Kiefer	1,969.18		
<u>Claims Submitted By AMPI For Underpayment:</u>			
Leslie Struz	64.00	\$ 50.42	
Richard Habl	141.84	118.33	
Raymond Kiefer	149.58	117.84	
William Clark	171.40	142.20	
Robert Weideman & Sons, Inc.	405.85	404.66	
Arlan Hamm	138.65	114.94	
Ronald Hofmann	208.75	<u>167.36</u>	
Total Allowable Claims		\$1,115.75	7,908.96

It is further ordered, that claims allowed in this proceeding be paid in full or on a pro rata basis from proceeds of security funds available for distribution.

Dated at Madison, Wisconsin, this 27th day of April, 1977.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE

By Gary E. Rohde
Secretary of Agriculture

STATE OF WISCONSIN

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF CLAIM OF PRO-)
DUCERS FOR MILK AND CREAM SOLD)
TO CLOVER HILL COOPERATIVE)
CHEESE FACTORY.)

DOCKET NO. 1281
FINDINGS OF FACT
AND CONCLUSIONS

Notice for the filing of claims and hearing thereon having been published and posted in this matter as required under section 100.06(4), Wis. Stats., and a public hearing on claims having been held on March 30, 1977, as provided in said notice, and evidence relating to claims filed and the department's audit thereof having been presented at said hearing, I, Gary E. Rohde, Secretary of Agriculture, make and file the following findings of fact and conclusion:

FINDINGS OF FACT

(1) Clover Hill Cooperative Cheese Factory, Curtiss, Wisconsin, hereinafter called Clover Hill, was a cheese manufacturing company, and at all times referred to herein was licensed as a dairy plant under section 97.20, Wis. Stats., and subject to bonding and security requirements under section 100.06, Wis. Stats., and Chapters Ag 7 and 8 of the Wis. Adm. Code.

(2) Pursuant to bonding and security requirements under section 100.06, Wis. Stats., and Chapters Ag 7 and 8 of the Wis. Adm. Code, Clover Hill filed with the department a trusteeship agreement providing for the complete control over all manufactured and processed milk and dairy products by a trustee, Donald Koerner, and supported by UCC inventory and receivable security agreements,

dated September 8, 1970, and recorded September 9, 1970, granting the trustee a security interest in all inventory and accounts receivable. The UCC inventory and accounts receivable security agreements were continued by re-filing and recording in the Office of the Secretary of State on August 22, 1975. Barbara Stoiber, subsequently replaced Donald Koerner as trustee on May 5, 1975. The trustee was further bonded by a dairy plant trustee bond, number 3SM 261 332, with the American Motorist Insurance Company, Chicago, Illinois, originally issued in the amount of \$43,000.00, and subsequently increased on August 28, 1974, to \$140,000.00, running to the State of Wisconsin Department of Agriculture for the benefit of the producers of Clover Hill guaranteeing faithful performance as a trustee.

(3) The department became aware of the financial difficulty of Clover Hill on or about April, 1976, as a result of a failure of Clover Hill to pay the South Alma Cheese Factory, Inc., for 1,370,570 pounds of milk at an agreed price of \$118,594.64. On June 3, 1976, South Alma, American Motorist Insurance Company, Clover Hill, and Barbara Stoiber, trustee, reached an agreement by which Alma Creamery would forego commencing legal action of any kind or nature against Clover Hill upon the agreed release by the trustee of the sum of \$75,000.00 for payment to Alma Creamery, the balance due and owing Alma Creamery of \$43,000.00 to be immediately invested at an interest bearing certificate of deposit, to be taken out in Jackson County banks, and not to be cashed without the written consent of all the parties.

(4) Clover Hill ceased operation on December 22, 1976, and the department was aware of the default through correspondence with the attorney for American Motorist Insurance Company. Norman Hamm also submitted written notice of default to the department on January 28, 1977. The confirmed bank balance of the trustee account, number 4766, Farmers & Merchants Bank, Rudolph, Wisconsin, at the time of default was in the amount of \$4,583.72. Of this amount, however, there was \$3,923.74 of money set aside for patronage dividends, which should not have been in the trustee account. There was a further recovery of \$6,000.00 from receipts of the escrow certificates of deposit available as a result of an agreement between the interested parties in this matter, i.e., American Motorist Insurance Company, South Alma Cheese Factory, Inc., Clover Hill, Farmers & Merchants Bank of Rudolph, and Barbara Stoiber, Trustee. This agreement was dated March 1, 1977 and was subsequent to the informal agreement reached with respect to the money due and owing South Alma Creamery referred to in paragraph 3. The total sum available for payment of producer claims under this agreement and the confirmed bank balance is in the amount of \$6,659.98.

(5) The default occurs because of the failure of Clover Hill to pay Arlan Hamm, William Habermeyer, Clifford Neitzel, Greg Neitzel, Jerome Weiler and Raymond Kiefer for milk sold to Clover Hill during the period December 1, 1976 to December 15, 1976. These producers were not paid on the advise of the bonding company, claiming a common law right of set off against these persons for

an alleged watering of the milk sometime during the month of June, 1976, and which is alleged to have contributed to the financial difficulty of Clover Hill. Associated Milk Producers, Inc., (hereinafter AMPI), also alleges a default on the basis of an underpayment for producer milk sold to Clover Hill during the period December 1, 1976 to December 22, 1976, for all producer claims paid by and assigned to AMPI under producer contracts.

(6) Upon receipt of the notice of default, the department issued an order under section 100.06(4), Wis. Stats., notifying producers to file verified proof of claims on or before March 18, 1977, and of the hearing on claims to be held on March 30, 1977. A copy of the notice was posted on the front door of the Clover Hill dairy plant on February 4, 1977, and published as a Class C notice in the Tribune Phonograph for three successive weeks, the first publication being February 9, 1977, and the last February 23, 1977. The notice was also published in the Star News on February 10, 17, and 24, 1977. The department also caused an audit to be made of the books and records of Clover Hill to determine amount due and owing producers within 30 days of the first written notice of default, and made a determination of the security funds available under the inventory and account receivable security agreement with Clover Hill.

(7) Clover Hill paid the Grade A producers an advanced payment on the 3rd of the month for milk received the previous month and a final payment on the 18th of the month. Clover Hill paid Grade B producers on the 3rd of the month for the milk shipped

for 1/2 of the previous month on the 3rd day of the month and a final payment on the 18th day of the month.

(8) Total of 6 claims were filed with the department consisting of: William Habermeyer, Clifford Neitzel, Greg Neitzel, Jerome Weiler and 1 claim by AMPI for 2 Grade A members paid pursuant to their membership agreement and were assigned to AMPI. AMPI also submitted an additional claim for its Grade A members on the basis of underpayment for producer milk sold to Clover Hill during the period December 1, 1976 to December 22, 1976, which payment was calculated on a price below the competitive pay price in the area and that such underpayment was paid without prior notice to producers.

(9) In addition to the claims as specified under paragraph 8, Associated Milk Producers, Inc., filed a claim on behalf of Robert Weideman, due for milk sold and delivered to Clover Hill during the period May 20, 1976 to July 13, 1976, in the amount of \$69.53. This claim was filed on March 29, 1977, after the time for filing claims had expired. The claim was also for a period not covered under 100.06, Wis. Stats.

(10) Clover Hill paid Grade A producers \$8.96 per hundredweight for 3.5% milk for the month of November, 1976. This amounted to approximately 36¢ over order premium over and above the Federal order price, and was a competitive pay price in the area. The payroll for the month of December was calculated by Clover Hill on the basis of \$8.45 per hundredweight and was based on the Federal order price. The over order premium of 36¢ paid by Clover Hill for November milk and customarily paid by Clover Hill was completely ignored in the December Calculation. The

average payroll for the month of November for competing dairies in the area of Clover Hill was \$8.96 including the AMPI dairy plant at Abbotsford, Kraft at Milan, Lynn Dairy at Granton, Badger Consolidated at Medford, Edelweis, and Harrison Cheese Factory at Unity. All of these plants are in Wisconsin and are approximately within a 20-30 mile radius of Clover Hill and most of them are in direct competition for the producers of Clover Hill. The above mentioned plants including Borden's paid an average of \$8.85 per hundredweight during the month of December. The purchase of the sale of milk is a contract between the dairy plant and the producer which arises by implication by operation of law and is a sale with payment to be made at the competitive pay price for milk in the area. This implied agreement or contract is based upon long established custom and usage of the trade and obligates Clover Hill to pay the reasonable market value for milk purchased on the basis of the competitive prices in the area. Dairy plants or milk buyers determine their prices on the basis of the competitive price and if the dairy plant is not paying on a competitive basis, there is little question of them soon losing their patrons. This practice of paying the competitive price for milk purchased certainly justifies an expectation by producers that they will receive a price that is competitive in the area unless notified in advance to the contrary. The payment of \$8.45 by Clover Hill to producers for milk for the month of December is under the average of the competitive prices in the area with no prior notice given to producers of the intention of Clover Hill to pay less than the competitive

price. The price paid by Clover Hill during the month of December of \$8.45 was based upon the Federal order price; however, it was the practice of Clover Hill as well as plants in the surrounding areas to pay an over order premium above the Federal Order price, and in the case of Clover Hill that over order premium was 36¢ per hundredweight. Because of the financial condition of the trustee account, Clover Hill decided not to pay the over order premium of 36¢ and is in default to this extent for producer milk purchased from December 1, 1977 to December 22, 1977.

(11) Included in AMPI's claim based on the underpayment to its member producers, was a claim for hauling charges. The claim for hauling charges is based upon the fact that the AMPI plant at Abbotsford subsidizes all hauling charges of producer milk. However, it was the custom of Clover Hill to subsidize part of the hauling and to deduct part of the hauling charges from their producers for milk sold to the dairy plant. A claim of AMPI for hauling charges cannot be justified if the full 36¢, determined to be the amount in default in paragraph 10, is allowed.

(12) The department conducted an audit of the books and records of Clover Hill to determine amount due and payable to producers. All of the amounts claimed by producers, or their assignees or agents, were verified by the department audit and were found to be as follows:

<u>NAME</u>	<u>CLAIMED</u>	<u>ALLOWED</u>	
William Habermeyer	\$ 503.17	\$ 503.17	
Clifford Neitzel	1,705.15	1,705.15	
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Total Allowable Claims		\$1,115.75	7,908.96

(13) The department calculated the payroll for Grade A milk delivered during the period December 1 through December 22, 1976, at a price of \$8.81 per hundredweight for milk of 3.5% butterfat content which is a competitive pay price in the area during this pay period.

(14) Except as provided in finding 9 and 11, all of the claims of the producers and assignees were verified by the department audit and were found to be due and payable not more than 30 days prior to receipt of written notice of default and are allowable in the amounts indicated in paragraph 12.

CONCLUSION

(1) Pursuant to section 100.06(4), Wis. Stats., and in accordance with the foregoing findings of fact, an order should be issued allowing claims, as set forth in paragraph (12) of the findings.

(2) Such order should direct that upon receipt by the department of money to be applied to the satisfaction of such claims, it be distributed to the claimants and assignees, as provided in finding paragraph 14, in accordance with the amounts allowed, in full or on a pro rata basis, as the case may be.

Dated at Madison, Wisconsin, this 27th day of April, 1977.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE

By Gary E. Rohde
Secretary of Agriculture