Internal Distribution of Talking Points to Counsel for Kansas Livestock Association

1/28/25

Background:

Dairy farmers regularly sell perishable raw milk to manufacturers. In that instance, farmers have virtually no way to protect themselves from catastrophic financial losses or ruin if the manufacturer/buyer of the raw milk gets into financial distress and does not pay timely for the milk.

While dairy farmers are paid an advance check, the final settlement occurs weeks after the final monthly shipment. Thus, farmers normally have provided significant days of milk before being aware of the manufacturer's financial problem. Even when the problem is suspected, the supplier may cause the farmer to believe all will be resolved. The point is that the farmer can be 35-60 days into a financial crisis before the farmer is even aware of a real long-term problem.

When the train wreck is fully recognized and the farmer realizes the manufacturer is in financial straits, unlike grain farmers or those who are not selling perishable products, dairy farmers cannot decide to store the product until a better price/better purchaser is available. Because the milk is perishable, farmers have few options to move the milk to another supplier as it is often treated as distressed milk and would receive distressed prices. Ultimately, a dairy farmer can find another market, but there is a strong likelihood that the farmer will suffer financially and could himself be thrown into bankruptcy.

Without creating legislation requiring milk processors to hold in trust all payments received from the sale of milk for the benefit of the dairy farmer until the dairy farmer has received full payment, farmers have no protection.

Unlike farmers, lenders have liens to protect themselves. Likewise, suppliers of other services or supplies may have a mechanics and materialmen's lien.

The proposed Legislation protects farmers, manufacturers and communities.

The proposed legislation provides significant protection to the farmers; the community those farmers live in because of the direct and collateral jobs the farmers create; and the manufacturer and the community where the manufacturer's plant is located.

The Borden Dairy bankruptcy of 2020 provides a good example of how farmers were protected and how that did not harm the manufacturer. In 2020, Borden Dairy filed bankruptcy in Delaware. Many of its dairy manufacturing plants existed in Texas. In a motion filed during bankruptcy, Borden stated: "As of the Petition Date, the Debtors estimate that they owe the Milk Vendors approximately $25.05 million on account of prepetition claims, the total amount of which the Debtors believe is critical." *In re: Borden Dairy Company, et al.,* Cause Number 20-10010-CSS, United States Bankruptcy Court, District of Delaware (1/05/2020) at Docket # 10, pg. 7.

The filing also is an indication that Borden did not view the law as harmful or negative. In fact, Borden used it as a tool to help it remain in business while it attempted to reorganize. In footnote 4 of the filing, Borden affirmatively argued to the bankruptcy judge that the money belonged to the farmers in TX and MS because of laws similar to what I am proposing be created in KS. *Id,* fn. 4.

Without laws protecting farmers in Texas (which was a significant source of its milk), lenders could have potentially fought for the right to grab $25 million dollars. If that had occurred, dairy farmers and dairy farmer cooperatives could have been financially wiped out.

While manufacturers may initially think the law is detrimental to them, it is not. Borden is a great example. Borden wanted to remain in business and get reorganized. It used the dairy farmer trust laws as one tool to help it stay operational through bankruptcy. Borden realized without farmers committed to bringing milk long term its efforts to reorganize would not be successful. Borden retained some plants, sold some plants and emerged out of bankruptcy. No farmer was shorted any milk payments and no community was harmed.

In contrast, when Dean Foods filed Ch. 11 bankruptcy in 2019, the lenders initially controlled the bankruptcy. Not only did Dean hold some payments due farmers, but about 500 independent dairy farmers received letters and packets of legal documents seeking payback of varying amounts received for milk delivered during the final 90 days – beginning about Aug. 14, 2019, and prior to Dean Foods' bankruptcy filing on Nov. 12, 2019.[1]

Notwithstanding the above, there is no evidence that the trust laws deter businesses from entering those states. In fact, there is evidence that the manufacturers do not view the trust laws for dairy farmers as significantly harmful to not do business in Texas given the expansion of those manufacturers in Texas. As an example, Hilmar has expanded its footprint in the Panhandle of Texas. Hiland's has expanded its facilities in East Texas. Cacique Foods, a cheese manufacturer, has recently constructed new facilities in the Panhandle of Texas. Leprino just completed construction of a cheese plant in Lubbock, Texas. Leprino claims that it will process one million gallons of milk per day in the new Lubbock plant.

Without dairy pay protection laws, recent events in Hugoton, KS demonstrate how an entire community can be harmed. In early 2024, Kansas Dairy Ingredients ("KDI") went into receivership. There was no advance notice to the community and KDI's closure was very disruptive. As a very minor owner of KDI, I believe the owners of KDI wanted to pay in full the dairy farmers who supplied milk to the plant, but after required payments, there were insufficient funds. As a dairy farmer, I and others suffered losses as my cooperative was not fully paid for my milk that was delivered. While it is questionable if KDI could have remained a viable entity even with the trust laws as a tool, it would have increased its chances. At a minimum, KS dairy farmers would not have suffered as significantly as we did.

[1] https://www.agproud.com/articles/36153-producer-defenses-to-dean-preference-payment-demand-letters-mount