

1989

Gene Brice, Willis Hall, Joseph R. May, Douglas Quayle, J. Rolfe Tuddenham, and Gordon Zilles, on behalf of themselves for the benefit of Cache Valley Dairy Association and for all members and/or Holders of Certificate of Interest in Cache Valley Dairy Association vs. Cache Valley Dairy Association, a Utah agricultural cooperative, Intermountain Milk Producers Association; a Utah Agricultural Cooperative; Vernon Bankhead; Randall Bradshaw, Don C. Nye; Frank P. Olsen; Wilford B. Meek; Lathair Peterson; Rulon King; Larry Pitcher; Lynn Mickel; Robert Haworth; Jeff Hyde; Evan Skinner; Robert Jackson; and William

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Lindley; Randon Wilson; John Does 1-30; Sam Soes 1-10: Appendix to Brief of Appellants

Utah Court of Appeals

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DOCKET NO. 870289 ~~IN THE SUPREME COURT OF THE STATE OF UTAH~~

GENE BRICE, WILLIS HALL, *
JOSEPH R. MAY, DOUGLAS *
QUAYLE, J. ROLFE TUDDENHAM, *
and GORDON ZILLES, on *
behalf of themselves, *
for the benefit of *
Cache Valley Dairy *
Association and for all *
members and/or Holders of *
Certificates of Interest in *
Cache Valley Dairy *
Association, *

Plaintiffs and Appellants, *

vs. *

CACHE VALLEY DAIRY *
ASSOCIATION, a Utah *
agricultural cooperative, *
INTERMOUNTAIN MILK PRODUCERS *
ASSOCIATION; a Utah *
Agricultural Cooperative; *
VERNON BANKHEAD; RANDALL *
BRADSHAW; DON C. NYE; FRANK P. *
OLSEN; WILFORD B. MEEK; *
LATHAIR PETERSON; RULON KING; *
LARRY PITCHER; LYNN MICKEL; *
ROBERT HAWORTH; JEFF HYDE; *
EVAN SKINNER; ROBERT JACKSON; *
and WILLIAM LINDLEY; *
RANDON WILSON; JOHN *
DOES 1-30; SAM SOES 1-10, *

Defendants and Respondents. *

87 0289

Docket No. 870301

Priority No. 14b

APPENDIX TO BRIEF OF APPELLANTS

APPEAL FROM THE ORDER OF DISMISSAL OF THE
DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF CACHE COUNTY
HONORABLE VENOCY CHRISTOFFERSEN

IN THE SUPREME COURT OF THE STATE OF UTAH

GENE BRICE, WILLIS HALL, *
JOSEPH R. MAY, DOUGLAS *
QUAYLE, J. ROLFE TUDDENHAM, *
and GORDON ZILLES, on *
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LARRY PITCHER; LYNN MICKEL; *
ROBERT HAWORTH; JEFF HYDE; *
EVAN SKINNER; ROBERT JACKSON; *
and WILLIAM LINDLEY; *
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APPENDIX

- Appendix A: Notice
T. R. at 26, 63, 324.
- Appendix B: Summary of Merger
T. R. at 64, 325.
- Appendix C: Letter of Intent
T. R. at 328-333.
- Appendix D: CVDA Minutes
November 27, 1985, and December 17, 1986.
T. R. at 380, 384.
- Appendix E: IMPA Resolution of December 19, 1985.
T. R. at 326.
- Appendix F: Letter of Randon Wilson dated November 19, 1986.
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- Appendix L: Interchanges of Fact, Combination of Plaintiffs'
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T. R. at 52-54, 140-151, 197-199, 227-238.
- Appendix M: Title 3, U.C.A. 1953.

APPENDIX A

EXHIBIT A

NOTICE TO MEMBERS OF CACHE VALLEY DAIRY ASSOCIATION

The Board of Directors of Cache Valley Dairy Association has adopted a Resolution directing that a Plan of Merger (Consolidation) under Section 3-1-30. et. seq., Utah Code Annotated, be submitted to a vote of the members of Cache Valley Dairy Association at a special meeting of members to be held at 10:30 o'clock a.m. on Monday, December 16, 1985, at the Smithfield Armory, 10 East Center Street, Smithfield, Utah.

The principal purpose of the meeting is to consider and vote upon the Plan of Merger (Consolidation) of Cache Valley Dairy Association, Western General Dairies, Inc., Star Valley Producers, Inc. and Lake Mead Cooperative Association into Intermountain Milk Producers Association.

A summary of the Plan of Merger (Consolidation) is enclosed with this Notice. A full copy of the plan shall be furnished to any member upon request without charge. Requests should be made to Intermountain Milk Producers Association, 195 West 7200 South, Midvale, Utah 84047.

Passage of this plan will require a simple majority of the members present at the meeting and voting thereon.

By order of the President as of this 25th day of November, 1985.

CACHE VALLEY DAIRY ASSOCIATION

By /s/ Wm. L. Lindley
President

APPENDIX B

SUMMARY OF PLAN OF MERGER (CONSOLIDATION)

1. Cache Valley Dairy Association, Western General Dairies, Inc. Lake Mead Cooperative Association and Star Valley Producers, Inc. ("Consolidating Cooperatives") propose to consolidate their assets into Intermountain Milk Producers Association, formed under Title 3, Utah Code Annotated, as an agricultural cooperative association ("IMPA")

2. The terms and conditions are: 1) the Consolidating Cooperatives will transfer to IMPA all of their assets at book value in exchange for the promise by IMPA to assume all liabilities of said cooperatives; b) All membership agreements held by said cooperatives shall be assigned to and assumed by IMPA in accordance with their terms; c) all milk base held by members shall become milk base of IMPA on a pound-for-pound basis subject to the same rules, regulations and agreements in effect on the day the plan is adopted; d) all equities held by members of said cooperatives shall become equities of IMPA on a dollar-for-dollar basis subject to existing rules, regulations and agreements; f) all agreements, contracts, claims and obligations whatsoever, of said cooperatives shall be assumed by IMPA as though originally held by IMPA; g) All employees employed by said cooperatives as of the date of approval of the plan shall become employees of IMPA and all retirement plans, vacation accruals or other employee benefits shall be assumed by IMPA; and h) all other provisions of the Agreement of Merger (Consolidation).

3. The surviving corporation, IMPA, shall be governed by the Utah Uniform Agricultural Cooperative Association Act.

4. No changes will be required in the Articles of Incorporation of IMPA.

5. The eighteen (18) board members of IMPA shall establish districts which shall include all areas in which IMPA members reside and shall arrange for the election of directors from said districts at the fall 1986 district meetings for seating as the annual meeting of IMPA in January 1987.

6. The Presidents and Secretaries of the respective Consolidating Cooperatives shall execute such documents as are necessary to carry out the plan.

APPENDIX C

LETTER OF INTENT

THIS LETTER OF INTENT is among CACHE VALLEY DAIRY ASSOCIATION of Smithfield, Utah, hereinafter called "CV"; WESTERN GENERAL DAIRIES, INC. of Midvale, Utah, hereinafter called "WG"; STAR VALLEY PRODUCERS, INC. of Thayne, Wyoming, hereinafter called "SV" and LAKE MEAD COOPERATIVE ASSOCIATION of Las Vegas, Nevada, hereinafter called "LM" and all of which are sometimes hereinafter collectively referred to as "Parties".

1. The Parties are all agricultural cooperatives without capital stock, with producer members and operate in the intermountain area. The Parties have determined after considerable discussion and negotiation to form a marketing agency in common to be called "INTERMOUNTAIN MILK PRODUCERS ASSOCIATION", a Utah agricultural cooperative, hereinafter called "IMPA" and to pursue other common goals as set out in this letter.

2. The Board of Directors of IMPA will initially consist of eight (8) members from CV, eight (8) members from WG, one (1) member from SV and one (1) member from LM for a total of eighteen (18) members. A majority of the Board members are required to constitute a quorum for board meetings and sixty percent (60%) of a quorum must approve any action by the Board.

3. It is the intention of the Parties to proceed immediately to form IMPA and to make appropriate notifications and applications to government agencies which would allow for the commencement of operation of IMPA by August 1, 1984 (hereinafter called the "Commencement Date"). The implementation of IMPA is contingent upon the approval by the Board of Directors of all of the Parties hereto of definitive documents and agreements and upon review by the United States Department of Justice and the Federal Trade Commission.

4. It will be necessary for all Parties to obtain as of July 31 or such other day as IMPA commences operations, a formal audit by a Certified Public Accountant which will be completed as soon after said date as possible and which will be made available to the all Parties and to their agents in implementing IMPA.

5. It is the intent of the Parties that the combined net profits of all the parties and of IMPA be allocated to said parties based on the milk delivered by each party to IMPA after considering all the combined income and expenses of the parties including IMPA. A formal audit by certified public accountants of each of the parties will be made on all of the parties as of the year-end when allocation of the combined income is made to all of the parties by IMPA.

6. The ultimate goal of the Parties is to consolidate their operations into IMPA, however, this

consolidation will take place over a period of time in phases which will not be completely specified at this time but will require further Board and/or membership approval of the parties as may be required by law at that time.

7. On the Commencement Date, IMPA will provide management to all existing milk processing plants and all other functions of the Parties, including but not limited to reviewing existing union contracts, wage rates and other personnel matters and benefits, etc.

8. Plants and physical assets of the Parties will remain under the ownership of the Parties and will be made available through lease or other mechanisms to IMPA.

9. All employees except certain management employees remain employees of existing employers and will carry out functions delegated by IMPA. Certain management employees will become employees of IMPA and any existing contracts relating to said employees shall be honored. Employers will be reimbursed all costs of providing labor as directed by IMPA.

10. IMPA will cause the Parties to be reimbursed for the use of their plants through the payment of debt and other reimbursement.

11. Each plant will be operated as a "profit center" in order to assist management in evaluating the operation of said plant and to provide "profit figures" for purposes of profit sharing contribution where required.

12. Milk will be received at the farm of members of the parties and will be delivered by the Parties at the farm to IMPA which will transport the milk to the plants for processing and marketing.

13. Initially, IMPA will assess Grade A milk, a per unit retain of \$.15 per cwt and Grade B milk, a per unit retain of \$.10 per cwt.

14. Payment of IMPA to the Parties for milk will be made at such uniform prices and on such component pricing as shall be set by IMPA.

15. Those members of the parties who do not hold base and who desire and are able to qualify for Grade A permits and who commence shipping Grade A milk shall be allocated base equal to fifty percent (50%) of their production, which base will increase by two percent (2%) per month for the next twenty-five (25) months. Base of members of the parties who are Grade A producers holding base will be adjusted over twenty-five (25) months to be at 100% of production at the end of twenty-five (25) months. Allocations and adjustments to base hereunder are based on production levels as of the date hereof, provided that base as allocated and adjusted will not exceed the daily average production of a producer with a member for the year 1983. The Board of Directors of IMPA will be empowered to make exceptions on a case by case basis to the 1983 limitation where necessary to avoid unforeseen hardship to a member.

16. IMPA shall process producer payrolls for the Parties and shall provide bookkeeping service for the Parties. Existing bookkeeping systems will be maintained until such time as the Parties are satisfied that the bookkeeping system of IMPA is adequate for utilization of the Parties in event the consolidation does not take place. Effective on the commencement date or as soon thereafter as is practicable, inventories of milk and other products will be transferred to IMPA along with accounts receivable, cash and other current assets and IMPA shall assume all accounts payable and shall provide funds with which the Parties may pay any debts or obligations which are not assumed.

17. IMPA shall cause all products to be marketed through existing personnel and marketing channels of the Parties.

18. IMPA will be charged with responsibility of cash management, arranging credit and other bookkeeping and managerial duties.

19. At the time the consolidation is accomplished, all members of the parties will terminate their membership in the parties and will be given membership in IMPA. All remaining assets of the Parties will be transferred to IMPA at book value and all remaining debts will be assumed by IMPA. All employees will be transferred to IMPA, subject to any labor

contracts which may then exist. Producer equities held by the Parties will be assumed by IMPA and will be rotated on a uniform basis.

20. The Board of Directors of IMPA will provide for districts from which directors will be seated at the annual meeting of IMPA in 1987 or at the time of full consolidation and directors will be elected from said districts at that time.

21. The Parties hereto will negotiate in good faith definitive agreements and documents for the purpose of implementing IMPA. In the event definitive agreements and documents are not entered into by the Commencement Date, the matters set forth in this letter shall be terminated and shall become null and void.

22. The Parties shall furnish to each other and to their designated officials such financial or other information as is required and necessary to carry out the intention expressed herein.

IN WITNESS WHEREOF, the parties have executed this Letter of Intent as of the 15th day of June, 1984.

CACHE VALLEY DAIRY ASSOCIATION

By Wm L Lindley

APPENDIX D

CACHE VALLEY DAIRY ASSOCIATION
BOARD OF DIRECTORS
November 27, 1985 11:00 am
Cheese Plant

President William Lindley conducting.

Invocation given by Randy Bradshaw.

All members present except for Bob Jackson.

Randy Anderson presented a financial statement for the month of October.

Kip Winget shared with the Board some overhead slides to show the Board the sales trend for the year. He showed where sales had increased 11.25%. He also showed that the price of cheese had come down the past year.

Randy Bradshaw made a motion that we inform Mr. Bill Calahan that Cache Valley Dairy Drivers will not open and shut the gates to pick up his milk. Seconded by Larry Pitcher.

The capital budget for 1985-86 was presented by Doug Larsen. The budget was approved on a motion by Lynn Meikle and seconded by LaThair Peterson.

The Board gave approval of a Christmas bonus to employees of Cache Valley Dairy. The date of December 20 was set for the employees Christmas party at UVU beginning at 6:30 pm.

On a motion approved by the Board, it was decided not to buy the property from Lee Fertle or Bill Kehr.

Earl Strub presented to the Board more information of co-generation on a motion by Willis Hall and seconded by Randy Bradshaw the Board gave approval to have Westec perform a site analysis.

Equity transfer from Theon Merrill to Walton Feed was approved by the Board.

Farm Store profits will be distributed to members on the 15th of December.

Profit sharing of \$98,000 will be put into the profit sharing fund. On a motion by Lynn Meikle and seconded by Randy Bradshaw.

A meeting to merge the coop together was discussed. On a motion by the Board, they voted 20 for and 1 voted against. Meeting adjourned.

Gordon A. Zilles
Secretary

EXHIBIT C

CACHE VALLEY DAIRY ASSOCIATION
BOARD OF DIRECTORS
December 17, 1986 7:00 pm
George Daines Law Office

Frank Olsen conducting.

Invocation given by Gordon Zilles.

Those present were Bill Lindley, Willis Hall, Randy Bradshaw, Larry Pitcher, Vernon Bankhead, Gordon Zilles, Wilford Meek, Evan Skinner, Don May, LaThair Peterson, Lynn Meikle, Jeff Hyde, Doug Quayle, Joe May, Rolfe Tuddenham, Gene Brice and Frank Olsen. Also present were 4 lawyers, Joe Chambers, George Daines, Kevin Kaine and Randon Wilson.

The minutes of a previous meeting held December 6th were read by Gordon Zilles and approved on a motion by Joe May and seconded by Douglas Quayle.

Lynn Meikle made a motion that we dismiss all people present except Randon Wilson and the Board members. LaThair Peterson seconded. The vote was taken, 6 voted for and 7 against. Motion didn't carry.

The time was turned over to Randon Wilson and he began to explain to the Board the reasons behind putting the merger together the way he did. He explained that it was a consolidation, transfer of assets and an assumption of producer equity. He also explained to the Board that we no longer exist as a Board and that we are trifling with matters that we no longer have authority to deal with. He also explained that we become liable and can be exposed legally. Many other things were discussed and questions were asked and answered.

On a motion by Gordon Zilles and seconded by Randy Bradshaw, the lawyers were asked to leave. 12 voted for with 5 against. Motion carried.

Joe Chambers asked if he could make a comment before they left. Which he did, stating that he was upset and unhappy that the Board had never asked his opinion of this matter.

After everyone had left, except Board members, Lynn Meikle made a motion that we have IMFA indemnify our action as Board members of Cache Valley Dairy Association. That after this is done we go home and continue to milk cows. LaThair Peterson seconded. A vote was taken with 12 for and 4 against. Gene Brice refrained from voting. Those voting against were Rolfe Tuddenham, Willis Hall, Joe May and Douglas Quayle. Meeting adjourned.

Gordon A. Zilles
Secretary

APPENDIX E

RESOLUTION

WHEREAS, the members of Lake Mead Cooperative Association and Star Valley Producers, Inc. previously voted to consolidate their assets with those of IMPA and such consolidation has been accomplished; and

WHEREAS, the members of Cache Valley Dairy Association and Western General Dairies Inc. voted in special membership meetings held December 16, 1985 to approve a plan of merger (consolidation) with IMPA or in the alternative to authorize the assets of said Cooperatives to be conveyed and membership agreements to be assigned in exchange for the assumption of debt and producer equities; and

WHEREAS, the plan of merger (consolidation) allowed for abandonment thereof pursuant to statute; and whereas the board of IMPA has made a preliminary determination that said plan should be abandoned

NOW THEREFORE, it is hereby resolved that the plan of merger (consolidation) be abandoned and that the alternative procedure be followed with respect to the conveyance of assets, assignment of membership agreements and assumption of debts and equities on such a schedule and at such a time as shall meet the objectives of IMPA.

The foregoing Resolution was adopted by the board of IMPA on December 19, 1985.


Assistant Secretary

APPENDIX F

JONES, WALDO, HOLBROOK & McDONOUGH

SAF1011 10

A PROFESSIONAL CORPORATION

ATTORNEYS AND COUNSELORS

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KEVEN M. ROWE
MICHAEL PATRICK O'BRIEN
DAVID N. SONNENREICH
JULIA L. WESTON

SHEERS & RAWLINS 1875
RAWLINS & CRITCHLOW 1891
RAWLINS, THURMAN, WEDGEWOOD & HURD 1897
RAWLINS, RAY & RAWLINS 1907
INGEBRETSEN, RAY & RAWLINS 1928
INGEBRETSEN, RAY, RAWLINS & CHRISTENSEN 1941
INGEBRETSEN, RAY, RAWLINS & JONES 1948
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November 19, 1986

IN REPLY REFER TO:

Salt Lake City

OF COUNSEL
JOSEPH S. JONES
ROGER J. McDONOUGH
FRANK ANTHONY ALLEN
ALDEN B. TUELLER

ADMITTED AND RESIDENT IN WASHINGTON, D.C.
REGISTERED PATENT ATTORNEY

TO: Directors -- Intermountain Milk Producers Association

Dear Directors:

I have just been furnished an undated and unsigned letter entitled "Some Thoughts to Ponder," which was purportedly prepared by an individual or group calling itself "Concerned Producers." The letter is not accurate in many respects. Due to the fact that it may create confusion and unnecessary concern, I am taking this opportunity to present the facts in order that you and the producers you represent may adequately evaluate the situation.

I believe some care is necessary in dispelling the false information. Even though a copy of the letter is enclosed for your review, I will repeat the paragraph from the letter and will then give my response.

1. It appears that IMPA (i.e. CVDA, WGD, Lake Mead and Star Valley) was intentionally put together in violation of state law (Uniform Agricultural Co-operative Association Act, Title 3, Utah Code) in a strong arm play designed to isolate producers from legally exercising their dissenters rights.

RESPONSE. IMPA did not violate state law. IMPA was formed as an agricultural cooperative association under Title 3 of the Utah Code. Active producers or current members were not precluded from exercising dissenters rights.

Directors - IMPA
Page Two
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(a) Section 3-1-33 Utah law requires that the plan of merger be sent to producers and equity holders (of more than \$50.00) prior to meeting. The Plan of Merger went only to producers of record. The equity holders were either intentionally or negligently prevented from knowing what was going on.

RESPONSE. All current members of Cache Valley and Western General were given notice of member meetings to approve the consolidation with IMPA. The members were asked to approve a consolidation with IMPA or, in the alternative, a transfer of assets. The Board of Directors of IMPA determined to follow the alternative of the transfer of assets and all assets of the member cooperatives of IMPA have been transferred. The applicable code section does not require that notice be sent to people who are not entitled to vote at a meeting of members.

It was the position of the Boards of Directors that it would be unfair for former members of these cooperatives to use the consolidation process as an opportunity to force redemption of their equities ahead of existing members. These cooperatives have always stood on the principle that all outstanding equity should be revolved to all members at the same time. It would indeed be unfortunate if retired producers could determine the future of current member producers or if they could force the redemption of their equities before others. Anyone who supports the position of the author of the letter will be giving support to the proposition that old equities should be redeemed for former members but not for current members.

(b) Section 3-1-31 Utah law requires the plan of merger to be approved by the respective boards. Only the IMPA Board approved the plan. This did not even constitute a quorum of the CVDA Board. The other board members were not notified of the meeting nor were they given a chance to approve or disapprove.

RESPONSE. All of the four member cooperatives approved the consolidation with IMPA before it was commenced. The consolidation had been practiced nearly 18 months with approval of the various boards prior to submitting it to a vote of the members of Cache Valley and Western General. The members of Lake Mead and Star Valley gave their approval at the very beginning.

(c) Section 3-1-33 Utah law requires that members and equity holders (of more than \$50.00) be allowed to vote. The state law guarantees that they can vote either: 1. In person; 2. By proxy; or 3. By delegate. Only the members in attendance were allowed to vote and no one (even management) was to know that persons not able to attend the meeting (in the winter time) could vote by proxy or delegate.

RESPONSE. The transfer of assets was not made pursuant to that section of Utah Code. The matter of voting by proxy was discussed. It was determined that because proxies have not been used traditionally by these cooperatives for voting at the annual meetings, it would not be a good procedure. It was also felt that by receiving an explanation at the meeting of the plan that a more informed vote could be cast.

(d) Section 3-1-35 Utah law requires that a majority of votes of all producers and equity holders (of more than \$50.00) be required to approve a merger. Not just those in attendance at the meeting.

RESPONSE. Again Section 3-1-35 was not utilized in approving this transfer of assets.

The proponents of the merger would have you believe that only a majority of those in attendance at the meeting were required to approve the plan. It has been reported to us that only 146 CVDA votes were cast. Approximately 103 for and 43 against. Of the approximate 500+ in CVDA membership, only 25% had a chance to vote for the plan of merger. It has also been reported to us that less than 80 producers were at the Western General meeting held in Salt Lake City that same afternoon. Neither meeting had anywhere near the required attendance to approve a merger or asset transfer.

RESPONSE. The attendance was quite good at the Cache Valley and Western General meetings compared with annual meetings. A large percentage of those who attended both those meetings voted to approve the consolidation or transfer of

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Page Four
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assets. The Board of IMPA felt that, with the clear majority of approval, it was appropriate to proceed. No member of either Cache Valley Dairy or Western General Dairies was prevented from voting.

(e) Dissenters rights granted by state law (Section 3-1-40) have to date been totally disregarded and there is substantial evidence that IMPA is knowingly trying to take advantage of the dissenters by calling the merger an asset transfer. State law does not allow a transfer of assets in a Co-op and therefore the past action is suspect to legal challenge.

RESPONSE. Dissenters rights under that section were not applicable. They were limited to those dissenters who were members of the cooperative. Again, the Board of Directors felt that it would not be wise to rely on a statute which would allow former members to dissent from the consolidation or transfer of assets and thereby receive an accelerated payout of their equities. This would diminish the ability of IMPA to handle and market the milk of its existing members which, in turn, would diminish the ability of IMPA to revolve all of the old equities.

(f) There is no documented board action by the CVDA Board authorizing the transfer of assets to IMPA.

RESPONSE. The Board of Cache Valley, having approved the consolidation with IMPA before it even commenced, did not need to take action after the approval by the members in December of 1985.

2. The agreement putting IMPA and MEDA together was to be an 18 month agreement, before going to members. WDCI is being put together exactly as IMPA was put together utilizing almost the exact agreements. However, only 90 days have elapsed, and MEDA is in complete control. They have the President C.E.O., Financial Control, trucking control, and producer control. (What else is there?) The IMPA people process the milk, then sell it at prices dictated by MEDA. They also process and market cheese with milk provided by MEDA at prices dictated by MEDA.

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RESPONSE. The agreement between IMPA and MEDA to create WDCI is an 18 month agreement. This agreement became effective August 1, 1986. MEDA is not in control. The Board of WDCI, which is composed of all of the directors of IMPA and all of the directors of MEDA, meets on a monthly basis to consider how best to chart the future of the dairy industry in the Intermountain Area. The Board of WDCI adopts policy and makes recommendations to the separate boards of IMPA and MEDA. They can choose to follow those recommendations or not. The President of WDCI is Tom Camerlo, who has been the long-time President of MEDA. The selection of Mr. Camerlo to lead WDCI was a natural one, especially in view of the fact that Joe Hill has elected to sell his cows under the whole herd buyout program. There is nothing which precludes a director of IMPA from serving as President of WDCI. There is presently no Chief Executive Officer of WDCI. Gene Luke is acting General Manager of IMPA. Lee Mortensen is Acting General Manager of MEDA. Gene and Lee are cooperating in order that WDCI might be able to fully explore the possible future merger or consolidation. It has been determined in order to achieve savings that some functions can best be performed by IMPA and other functions can best be performed by MEDA during this period when a merger or consolidation is being explored. For example, MEDA has leased its Twin Falls cheese plant to IMPA for operation along with IMPA's cheese plants. Since MEDA has many more trucks and a larger field staff, the principal responsibility for transportation of milk and for field work have been contracted out to MEDA. IMPA continues to operate all of the cheese and white milk plants. There has been no merger. MEDA does not set the prices for milk either to the producers or to the white milk plants. These prices are recommended by WDCI, but IMPA and MEDA actually determine what will be paid.

3. If things continue for another 30-60 days as they are now going, WDCI will not be able to be pulled apart and that is the objective of the proponents. We understand that the IMPA C.E.O. was removed from office because he insisted on following the written agreement and protecting the producers. If things are not stopped now, producers will have no other market for their milk. They will end up receiving whatever MEDA decides to give them.

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RESPONSE. Negotiations between IMPA and MEDA can be terminated at any time. There will be no merger, consolidation or transfer of assets until the membership of both cooperatives have an opportunity to receive the details and to vote at properly constituted meetings. The CEO of IMPA was not removed from office because he insisted on following the written agreement, but rather he resigned from office rather than to be subjected to a hearing before the entire board of WDCI. He resigned as CEO of IMPA; he was not fired.

It is the position of IMPA's Board of Directors that the proposed consolidation with WDCI by both MEDA and IMPA will greatly enhance the available markets. The producers on the west side of the Rocky Mountains have tried for many years to gain access to the Denver market.. This consolidation will make the Denver market available to these producers. By the same token, if there develops a surplus on the east side of the mountains the extensive plants owned by IMPA will provide an outlet for that milk which will also increase the productivity of the plants. If the consolidation becomes a reality there will be approximately 2,000 producers under the umbrella of WDCI. This is still a relatively small regional cooperative. Dairymen, Inc., AMPI and Mid-Am each have over 10,000 producers under their umbrellas.

4. At the present time, Grade B producers are without representation. They are being paid for their milk on the component milk pricing formula. Grade A surplus milk brings M & W price which is approximately \$.20-\$.30 higher, yet the milk is used only for cheese. Was this what was intended?

RESPONSE. Grade B producers are not without representation. All of the directors of IMPA are responsible for representing all of the producers of IMPA. Most directors have a full understanding of the position of Grade B producers and sympathy for their position. You do not have to be a Grade B producer to adequately represent Grade B producers. It is true that Grade B producers are paid on the component pricing formula. WDCI is in the process of developing a recommended pay program which will also pay Grade A producers for their surplus milk on the component milk pricing formula rather than at Minnesota/Wisconsin price. This is expected to become effective in the very near future. It should be

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understood that some Grade B producers do better on the component pricing than Minnesota/Wisconsin price.

5. Under MEDA Grade B producers were not until two weeks ago allowed membership and received no distribution of profits. Our C.E.O. was pushing to allow Grade B producers membership, distribution of profits, and other membership privileges. This put him in disfavor with the Grade A Board. He was removed because he tried to represent all producers fairly, something MEDA has not done in the past, and appears they will not do today or tomorrow.

RESPONSE. It is true that the producers who were supplying the Twin Falls plant which MEDA recently purchased did not sign membership agreements with MEDA. Steps are now underway to invite all of those producers to sign MEDA contracts. If they refuse to sign such contracts it is expected that they will no longer be able to obtain the benefits of membership. The Boards of IMPA and MEDA have taken steps to unify the procedures used in calculating the pay for producers. It is anticipated that there will be a different pool and different pay for producers on the west side of the mountains than from the east side. However, this will be based on the federal order pricing program which allows differentials based on the percent of utilization of Grade A milk in the respective markets and on other traditional factors.

6. It is rumored that Joe Hill is pushing this organization together because he has been promised a job when he is no longer producing (he is in the buy-out). IMPA has approximately 50 million dollars in assets, MEDA has approximately 10-12 million dollars in assets and yet MEDA has control.

RESPONSE. There are many rumors. Joe Hill has been in favor of the consolidation with WDCI and he is selling his herd under the buyout during 1987. No promises have been made to Joe with respect to future employment.

It is true that IMPA does have more assets than MEDA. Through a consolidation with WDCI the resources of the present

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MEDA producers would be available to cover losses or to defray operating expenses of the present plants of IMPA. This is the price they will have to pay to have access to these plants. This will assist the present IMPA producers to realize increased returns on their milk in the future.

7. The Executive Board of WDCI (made up only of Grade A producers), is running the companies. They make the decisions and announce what is done to the full WDCI Board. If you doubt this, note the removal of Blaine Rich, Vern Bingham, and Vern Thurgood. They were all dismissed and sent home before the full board even knew about it. This was done in spite of the fact that the WDCI Board had previously passed a resolution that none of the management could be released without first bringing it before the full WDCI Board.

RESPONSE. The Executive Board of WDCI is composed of five producers from IMPA's board and five from MEDA's board. These producers were elected democratically. There does not happen to be a Grade B producer on the Executive Board. There is nothing which precludes a Grade B producer from being appointed to the Executive Board. There are many new directors now being elected in the IMPA system. The representatives of IMPA on the Executive Committee will change upon the reorganization of the Board of Directors in January. I presume that the directors will use their best judgment in selecting members to the Executive Committee. All producers should want to have the strongest people serve on that important body. It is true that Blaine Rich, Vern Bingham and Vern Thurgood are all no longer employed by IMPA or MEDA. It is not necessary to go into all of the reasons why they are no longer employed. Suffice it to say, each one of them resigned. The action of IMPA's Board in accepting the resignations of Vern Thurgood and Blaine Rich were unanimous with two abstentions. This does not appear to be an issue where there was serious question about the advisability of accepting those resignations.

8. During the initial IMPA organizational meetings statements were made that the Boards did not know what would happen to base after August 1986. Some board members thought that it would be put on the shelf and not utilized after the 25

months phase in period. The IMPA Board reserved the right and the option to do what was necessary after further studies were completed. However, during that interim study period and before the base policy statement was sent to all producers, some members of the IMPA Board were buying base at substantially distressed prices. Does this action of a select few serve the best interests of IMPA producers?

RESPONSE. The initial IMPA organization did express a question as to what would happen to base after the initial two years or September 1, 1986. Some members and some employees were under the impression that it might be phased out. Others were under the opposite point of view. As it turned out, the IMPA Board, which has ultimate authority with respect to base, determined that base still had a function and it has been perpetuated. It has been alleged that members of the board purchased substantial base during the interim period. Considerable base was transferred and some members of the board were able to acquire base. There is nothing about serving as a director of a cooperative which prohibits a director from acquiring base.

At one point in time directors were advised by counsel not to purchase further base until a final decision had been made with respect to base and until all producers would have equal access to the information. An extensive letter of explanation was furnished to the producers and the restriction to directors from dealing in base was removed. The Board of Directors must approve all base transfers. The Board of Directors is the only body authorized to approve base transfers. No laws were broken and no illegal base was transferred.

The above items infuriate us!!! The actions taken are illegal, unjust, unfair, and completely disregard the rights of producers, and equity holders.

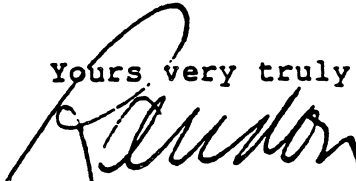
RESPONSE. I am sorry if the anonymous letter writer or writers are infuriated. The actions taken were not illegal, unjust, unfair and without regard for the producers and equity holders. It is important for people to obtain the facts

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before making allegations, innuendos, and attacking the integrity of directors and others who are trying to do their level best for this industry. Some of these issues have been raised by members of the board and they are being dealt with. I would challenge the author or authors of the letter to step forward and deal with facts and deal with the board. I welcome an inquiry into all of the facts and circumstances surrounding the formation of IMPA as well as the working arrangement with MEDA. I am confident that the producers as a whole are appreciative of the efforts being expended and are supportive of the consolidation efforts. All of the assets of the member cooperatives have been transferred to IMPA and all of the plants and other assets are now being operated by IMPA. It should also be noted that all of the debt and equities of the separate cooperatives have been assumed by IMPA and all of the membership agreements have been assigned to IMPA. This means that all former members of Cache Valley, Lake Mead, Western General and Star Valley are now members of IMPA inasmuch as all membership contracts provided for assignment. Utah and Idaho both have statutes which make it a crime for someone to induce a cooperative member to breach his contract with his cooperative. The author or authors of the letter may stand in jeopardy of violating law if they attempt to induce members to breach their contracts.

One must ask whether the author of the letter is thinking of the producers as a whole or only of his own selfish desires. One also must ask whether the future is more secure through cooperation or through rumors, bickering, falsehoods, half truths and strife. The answers seem obvious. I urge not only the directors but all producers to close ranks and move forward to preserve this industry and get higher prices for their milk.

Yours very truly,

A handwritten signature in dark ink, appearing to read "Randon W. Wilson". The signature is fluid and cursive, with a long, sweeping underline that extends downwards.

Randon W. Wilson

RWW/m
Enclosure

SOME THOUGHTS TO PONDER

1. It appears that IMFA (i.e. CVDA, WCD, Lake Mead and Star Valley) was intentionally put together in violation of state law (Uniform Agricultural Co-operative Association Act, Title 3, Utah Code) in a strong arm play designed to isolate producers from legally exercising their dissenters rights. For example:

(a) Section 3-1-33 Utah law requires that the plan of merger be sent to producers and equity holders (of more than \$50.00) prior to meeting. The Plan of Merger went only to producers of record. The equity holders were either intentionally or negligently prevented from knowing what was going on.

(b) Section 3-1-31 Utah law requires the plan of merger to be approved by the respective boards. Only the IMFA Board approved the plan. This did not even constitute a quorum of the CVDA Board. The other board members were not notified of the meeting nor were they given a chance to approve or disapprove.

(c) Section 3-1-33 Utah law requires that members and equity holders (of more than \$50.00) be allowed to vote. The state law guarantees that they can vote either:

1. In person;
2. By proxy; or
3. By delegate.

Only the members in attendance were allowed to vote and no one (even management) was to know that persons not able to attend the meeting (in the winter time) could vote by proxy or delegate.

(d) Section 3-1-35 Utah law requires that a majority of votes of all producers and equity holders (of more than \$50.00) be required to approve a merger. Not just those in attendance at the meeting.

The proponents of the merger would have you believe that only a majority of those in attendance at the meeting were required to approve the plan. It has been reported to us that only 146 CVDA votes were cast. Approximately 103 for and 43 against. Of the approximate 500+ in CVDA membership, only 25% had a chance to vote for the plan of merger. It has also been reported to us that less than 80 producers were at the Western General meeting held in Salt Lake City that same afternoon. Neither meeting had anywhere near the required attendance to approve a merger or asset transfer.

(e) Dissenters rights granted by state law (Section 3-1-40) have to date been totally disregarded and there is substantial evidence that IMFA is knowingly trying to take advantage of the dissenters by calling the merger an asset transfer. State law does not allow a transfer of assets in a Co-op and therefore the past action is suspect to legal challenge.

(f) There is no documented board action by the CVDA Board authorizing the transfer of assets to IMFA.

2. The agreement putting IMFA and MEDA together was to be an 18 month agreement, before going to members. WDCI is being put together exactly as IMFA was put together utilizing almost the exact agreements. However, only 90 days have elapsed, and MEDA is in complete control. They have the President C.E.O., Financial Control, trucking control, and producer control. (What else is there?) The IMFA people process the milk, then sell it at prices dictated by MEDA. They also process and market cheese with milk provided by MEDA at prices dictated by MEDA.

3. If things continue for another 30 - 60 days as they are now going, WDCI will not be able to be pulled apart and that is the objective of the proponents. We understand that the IMFA C.E.O. was removed from office because he insisted on following the written agreement and protecting the producers. If things are not stopped now, producers will have no other market for their milk. They will end up receiving whatever MEDA decides to give them.

4. At the present time, Grade B producers are without representation. They are being paid for their milk on the component milk pricing formula. Grade A surplus milk brings M & W price which is approximately \$.20 - \$.30 higher, yet the milk is used only for cheese. Was this what was intended?

5. Under MEDA Grade B producers were not until two weeks ago allowed membership and received no distribution of profits. Our C.E.O. was pushing to allow Grade B producers membership, distribution of profits, and other membership privileges. This put him in disfavor with the Grade A Board. He was removed because he tried to represent all producers fairly, something MEDA has not done in the past, and appears they will not do today or tomorrow.

6. It is rumored that Joe Hill is pushing this organization together because he has been promised a job when he is no longer producing (he is in the buy-out). IMFA has approximately 50 million dollars in assets, MEDA has approximately 10 - 12 million dollars in assets and yet MEDA has control.

7. The Executive Board of WDCI, (made up only of Grade A producers) is running the companies. They make the decisions and announce what is done to the full WDCI Board. If you doubt this, note the removal of Blaine Rich, Vern Bingham, and Vern Thurgood. They were all dismissed and sent home before the full board even knew about it. This was done in spite of the fact that the WDCI Board had previously passed a resolution that none of the management could be released without first bringing it before the full WDCI Board.

8. During the initial IMFA organigational meetings statements were made that the Boards did not know what would happen to base after August 1986. Some board members thought that it would be put on the shelf and not utilized after the 25 months phase in period. The IMFA Board reserved the right and the option to do what was necessary after further studies were completed. However, during that interium study period and before the base policy statement was sent to all producers, some members of the IMFA Board were buying base at substantially distressed prices. Does this action of a select few serve the best interests of IMFA producers?

The above items infuriate us!!! The actions taken are illegal, unjust, unfair, and completely disregard the rights of producers, and equity holders. If you feel the same as we do, please give us your support by sending your contribution to:

Concerned Producers
P. O. Box -----
Logan, Utah 84321

A minimum effort now will preclude a major disaster in the immediate future!

Thanks for your help and contribution.

CONCERNED PRODUCERS

APPENDIX G

IMPA chief defends action

By Tim Gurrister
staff writer

The merger, labeled an illegal merger in a lawsuit, that created the Intermountain Milk Producers Association was not a merger but a consolidation IMPA's chief executive officer says.

Responding to news of a \$55-million lawsuit filed Feb. 1 in 1st District Court by members of the Cache Valley Dairy Association, Gene Luke, Salt Lake City, said IMPA was created under state statutes governing consolidations, not merger statutes.

CVDA was absorbed in the January 1986 merger/consolidation along with Western General Dairies Inc., Star Valley Producers Inc., and the Lake Mead Cooperative Association.

Anticipating the suit, IMPA has extended "indemnification" — shielding of individuals from personal liability — to all members of the board of directors of the four entities involved in the creation of IMPA.

Seven members of the board of directors of CVDA, based in Amalga, filed the suit last week. It alleges that IMPA was formed without adhering to specific state law regarding mergers, a merger the suit says has damaged CVDA.

The suit names as defendants 13 other members of the CVDA board, CVDA itself, IMPA and the Salt Lake City attorney who drafted the plan for what Luke calls a consolidation and the

Suit

Continued from page 1

lawsuit calls a merger.

"The consolidation was put together by our legal counsel (Randon Wilson, the attorney named as a defendant in the suit) and we have confidence in him," Luke said.

"So I guess the courts will have to decide ... I can't comment as to the right or wrong in the matter, I'm not an attorney. That's what we pay attorneys for."

The creation of IMPA occurred a month after a meeting in December of 1985 in Smithfield in which CVDA members voted to join with the other three cooperatives.

The suit claims that certain actions of the defendants at the meeting, and prior to the meeting, were in violation of Utah state law regarding mergers of agricultural cooperatives.

The suit alleges that since merger statutes weren't followed the creation of IMPA is "null and void."

The legal issues in the suit basically involve whether CVDA members were properly notified as to the association's vote on the merger at a December 1985 meeting, and the number of members of CVDA who were allowed to vote on the merger issue at that time.

CVDA has a membership that tops 500, but only 150 were on hand for the merger vote at the meeting in Smithfield, according to N. George Daines, Logan, the plaintiffs' attorney. Only milk producers were at the meeting, he said.

Luke agreed with those numbers concerning the meeting. He also agreed that, as Daines also said, holders of equity certificates were not allowed to vote on the merg-

er/consolidation.

The suit says merger statutes mandate that holders of equity are allowed to vote.

"It depends on whether it was a merger or a consolidation," Luke said. "This was done under statutes of consolidation."

Under statutes of consolidation, holders of certificates of equity are not considered members of an agricultural cooperative, as they would be under statutes of merger, Luke said.

But the suit alleges the December 1985 meeting was advertised as a vote on a merger.

Daines has a copy of a memo from Gordon Roberts, chairman of the IMPA board of directors, extending indemnification to board members who oppose the lawsuit.

The memo notes indemnification will not be extended "to any director who participates in any action, proceeding or endeavor, to challenge the acts of the boards of directors of any of the forming cooperatives."

Daines's copy of the memo is dated Feb. 3, 1987, 10 days before the filing of the lawsuit.

The indemnification memo means IMPA would pay any damages awarded or claimed arising from an individual director's action, Luke said.

"There were rumors the suit was coming," Luke said. "Some of the directors were concerned about what their liability might be. So IMPA offered the indemnification as a way to put their minds to rest."

Efforts to contact the IMPA attorney for comment were unsuccessful.

See SUIT on page 2

APPENDIX H

JONES, WALDO, HOLBROOK & McDONOUGH

A PROFESSIONAL CORPORATION

ATTORNEYS AND COUNSELORS

DONALD B. HOLBROOK
 CALVIN L. RAMPTON
 W. ROBERT WRIGHT
 RANDON W. WILSON
 RONALD J. OCKEY
 JACK LUNT
 K. S. CORNABY†
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 RONNY L. CUTSHALL
 CHRISTOPHER L. BURTON
 LARRY C. HOLMAN
 WILLIAM B. BOHLING
 D. MILES HOLMAN
 ROBERT S. MCCONNELL
 THOMAS E. K. CERRUTI
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 RICHARD B. JOHNS
 DAVID B. LEE*
 L. R. CURTIS, JR.
 GRETTA C. SPENDLOVE
 TIMOTHY B. ANDERSON
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 L. JOHN LEWIS

G. RAND BEACHAM
 RANDALL N. SKANCHY
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 DIXON F. LARKIN
 EDWARD R. MUNSON
 DAVID L. JONES
 ROBERT A. GOODMAN
 KEVEN M. ROWE
 MICHAEL PATRICK O'BRIEN
 DAVID N. SONNENREICH
 JULIA L. WESTON
 WM. KELLY NASH

SHEERS & RAWLINS 1875
 RAWLINS & CRITCHLOW 1891
 RAWLINS, THURMAN, WEDGEWOOD & HURD 1897
 RAWLINS, RAY & RAWLINS 1907
 INGEBRETSEN, RAY & RAWLINS 1929
 INGEBRETSEN, RAY, RAWLINS & CHRISTENSEN 1941
 INGEBRETSEN, RAY, RAWLINS & JONES 1948
 RAY, RAWLINS, JONES & HENDERSON 1949

March 9, 1987

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N REPLY REFER TO:

alt Lake City

OF COUNSEL
 JOSEPH S. JONES
 ROGER J. McDONOUGH
 FRANK ANTHONY ALLEN
 ALDEN B. TUELLER

*ADMITTED AND RESIDENT IN WASHINGTON, D.C.
 †REGISTERED PATENT ATTORNEY

HAND DELIVERED

H. Ray Gibbons
 830 South 1600 West
 Lewiston, Utah 84320

Dear Ray:

You have asked me to outline the procedure which was utilized to form IMPA and to bring together all of the assets of the cooperative members of IMPA. This will attempt to provide in brief form that explanation.

The boards of directors of the four cooperatives adopted a Letter of Intent during the summer of 1984 which set as a goal the ultimate consolidation of the four cooperatives into IMPA. This Letter of Intent did not set forth the specific procedure which would ultimately be used inasmuch as it was not known at the time the Letter of Intent was signed. Some who were not familiar with the Utah Cooperative Statutes proposed a simple merger much as is done by regular corporations. Since I had been involved representing agricultural cooperatives for over 20 years and knew some of the problems with the Utah Statutes I was reluctant to encourage a regular merger. I was also aware of the procedure which had been adopted under the encouragement of Frank Kerner, a San Francisco lawyer, when Western General Dairies was formed in the early 70's. He advocated that the cooperatives be consolidated or that their assets be conveyed in exchange for an assumption of debt and that their membership agreements be assigned in exchange for

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an assumption of the producer equities. I also was aware that the consolidation into Western General Dairies had been accomplished without the need for a vote of the members of any of the cooperatives.

There were several problems with the Utah Cooperative Statute on mergers:

1. The Utah Statute provides in §3-1-10(b) that "No stockholder shall hold more than one share of common voting stock," and in subsection (e) "No member or stockholder shall be entitled to more than one vote and no vote shall be cast by proxy; provided, that where the member is a corporation, its vote may be cast by an accredited representative."
2. The merger provisions of the Cooperative Act appeared to allow for proxy voting when proxy votes were not permitted in any other cooperative context.
3. The merger statute appeared to extend the right to vote to former members who remained as equity holders both in contradiction with other provisions of the cooperative statute and in contradiction of federal statutes and regulations. One federal case provides as follows:

"Voting based on past patronage is not an acceptable patronage parameter because a farmers' cooperative must be controlled by its members in their capacity as current and active producers and not as stockholders or by reason of any investment in the cooperative."
Cooperative Grain & Supply Co. vs. Commissioner, 407 F.2d 1158

There was an additional problem with which we had to deal. These cooperatives had all taken the view that members are to be treated precisely the same. All of these cooperatives had resisted paying out equities of departed members ahead of equities for other departed members or existing members. Equities had been rotated strictly pro rata with the oldest years having been rotated first. The merger provisions of the Cooperative Statute appeared to not only give former

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members who remained as equity holders the right to vote but also the right to dissent and to be paid out their equities ahead of existing members or former members who did not exercise dissenters rights. This particular provision was unacceptable to the boards of directors and did not appear to be in keeping with federal law or the practices of the cooperatives.

Based on all of these problems and frustrations we were encouraged to develop another procedure for consolidating these cooperatives rather than to follow the merger language. It should be noted that nothing in the merger statutes provides that it is the only way to move cooperatives together or to consolidate assets. It should also be noted that while the regular corporation laws provide a number of alternatives for bringing corporations together, only merger is mentioned with any specificity in the cooperative statute. This does not mean, however, that this was the only course open to these cooperatives.

We knew that Western General had been formed without utilizing the merger statute or without the vote of members. We also knew that the cooperative statute provided broad powers to cooperatives to act. Section 3-1-9 provides the following powers:

An association formed under this act...
shall have power and capacity....:

(b) To make contracts and to exercise by its board or duly authorized officers or agents all such incidental powers as may be necessary, suitable or proper for the accomplishment of the purposes of the association and not inconsistent with law or its articles and that may be conducive to or expedient for the interest or benefit of the association; and

(f) To acquire, hold, sell, dispose of, pledge, or mortgage, any property which its purposes may require.

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We took the position that these provisions permitted the board of directors of the cooperatives to sell certain assets, to have liabilities assumed, to assign membership agreements and to have the equities assumed. While it would be legal in our judgment to have the boards of directors approve these transactions as was done in the case of Western General Dairies, the decision was made by the directors of Cache Valley Dairy and Western General Dairies to present this matter to the members for their vote. This was done at meetings held on December 16, 1985. The members of both cooperatives approved the consolidation or, in the alternative, the transfer of assets on those dates by an overwhelming majority. Through this procedure we were not required to extend the voting rights to former members who were still equity holders nor were we required to utilize proxy voting. Both of these were mentioned in the merger statutes but could not be safely relied upon because of the inconsistencies with other provisions of the cooperative statutes as well as the problem of causing the cooperative to become disqualified under federal law for having given non-members the right to vote.

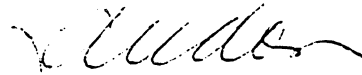
I am painfully aware that others have taken the view that the only legal way to bring these cooperatives together was by merger. There is no question about the fact that if there were a merger specific steps would have to be taken as outlined in the statute. There is no question that we did not take these steps as we did not intend to merge these cooperatives.

It is my view that we have chosen a safe course and that we will ultimately prevail when the matter is presented in court. It is very likely possible that the Utah Merger Statute will be found inconsistent with other Utah cooperative law and that it will be found inconsistent with federal law. We have taken the more conservative course and I believe our course will have been vindicated. It could be said that either course of action carried with it some risk. We chose the course of action which had the least risk to the directors and the greatest possibility of sustaining the wishes of the majority of the producers. We must not let the wishes of the majority be held hostage to the pride, the vendetta, and the selfishness of the few.

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Please let me know if you wish any additional information. I appreciate your interest and support.

Yours very truly,

A handwritten signature in dark ink, appearing to read 'R. Wilson', with a stylized flourish at the end.

Randon W. Wilson

RWW/m

APPENDIX I

N. George Daines - 0803
Kevin E. Kane - 3939
DAINES & KANE
108 North Main, Suite 200
Logan, UT 84321
Telephone: (801) 753-4403

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF UTAH, IN AND FOR THE COUNTY OF CACHE

GENE BRICE, WILLIS HALL,	*	
JOSEPH R. MAY, DOUGLAS	*	
QUAYLE, THEDFORD ROPER,	*	
J. ROLFE TUDDENHAM,	*	
and GORDON ZILLES, on	*	
behalf of themselves,	*	
for the benefit of	*	
Cache Valley Dairy	*	
Association and for all	*	
members and/or Holders of	*	
Certificates of Interest in	*	
Cache Valley Dairy	*	
Association,	*	VERIFIED COMPLAINT
Plaintiffs,	*	
vs.	*	Civil No.
CACHE VALLEY DAIRY	*	
ASSOCIATION, a Utah	*	
Agricultural Cooperative;	*	
INTERMOUNTAIN MILK PRODUCERS	*	
ASSOCIATION; a Utah	*	
Agricultural Cooperative;	*	
VERNON BANKHEAD;, RANDALL	*	
BRADSHAW; DON C. NYE; FRANK P.	*	
OLSEN; WILFORD B. MEEK;	*	
LATHAIR PETERSON; RULON KING;	*	
LARRY PITCHER; LYNN MICKEL;	*	
ROBERT HAWORTH; JEFF HYDE;	*	
EVAN SKINNER; ROBERT JACKSON;	*	
and WILLIAM LINDLEY;	*	
RANDON WILSON; JOHN	*	
DOES 1-30; SAM SOES 1-10,	*	
Defendants.	*	

GENERAL ALLEGATIONS

COME NOW the Plaintiffs by this Verified Complaint and complain and allege against the various Defendants as follows:

1. Defendant Cache Valley Dairy is an Agricultural Cooperative Association organized and operated under Title 3 of the Utah Code Annotated.

2. The principal place of business, corporate offices and designated location of CVD is Cache County, Utah.

3. Each Plaintiff was a Director of CVD at the time of the purported merger and as such remains to date.

4. Plaintiffs Hall, Tuddenham and Zilles are residents of Cache County, Utah.

5. Each Plaintiff was a Member of CVD at the time of the purported merger.

6. Each Plaintiff is a holder of Certificates of Interest (hereinafter referred to as Equity Holder) of more than \$50.00 in Cache Valley Dairy Association as defined in the Amended Articles of Incorporation of the Cache Valley Dairy Association (hereinafter CVD).

7. Defendant IMPA purports to be an Agricultural Cooperative Association organized and operated under Title 3, U.C.A.

8. Defendant Intermountain Milk Producers Association (hereinafter IMPA) purports to be a survivor or successor association of a merger between CVD and other agricultural co-operatives, to wit; Western General Dairy, Inc., Star Valley Producers, Inc. and Lake Mead Cooperative Association.

9. Defendants Bankhead, Bradshaw, Nye, Olsen, Meek,

Peterson, King, Pitcher, Mickel, Haworth, Hyde, Skinner, Jackson, and Lindley were Directors of CVD at the time of the merger and so remain.

10. Defendant Randon Wilson is an attorney at law licensed to practice under the laws of the State of Utah, a member of the law firm of JONES, WALDO, HOLBROOK & McDONOUGH.

11. John Doe 1-30 are other Defendants who are participants and advisors to CVD and its directors with respect to the said merger and as such individuals are identified they will be named by amendment, and Plaintiffs hereby reserve that right.

12. Defendants Sam Soe 1-10 are parties who have received title, claim liens or purport to have taken secured interests in CVD assets from IMPA.

13. Plaintiffs as described in paragraphs 3 through 6 hereinabove are qualified to be representatives of a larger class consisting of all CVD Members and/or Equity Holders existing now or at all times pertinent hereto and that said Plaintiffs as representatives face the same or identical questions of law and fact which are common to the entire class and as representatives would fairly and adequately represent and protect the entire class.

14. That to include all Producers and Equity Holders as Plaintiffs would be burdensome because of their large numbers and therefore their joinder would be impractical.

15. That the court should as soon as is practicable make a determination of the maintenance of this class action and qualify

the representatives of the class pursuant to Rule 23 U.R.C.P.

16. That although Plaintiffs believe the same or identical questions of law exist between all members of the entire class because of the peculiar nature of the class where there are equity holders who are not producers, and producers who are not Directors, etc., Plaintiffs ask that the Court review these various subgroups and determine if any peculiar interests exist which may vary or conflict to a material degree between certain of the subgroups of the class, and if the Court deems it necessary, to then appoint independent counsel for the single and sole purpose of reviewing said special or peculiar interests to insure that these are addressed, protected, and adequately represented.

17. That the Court should also determine how required notice to the class and other costs of maintenance should be apportioned.

FIRST CAUSE OF ACTION

ILLEGAL MERGER

As and for a First Cause of Action, Plaintiffs incorporate and restate herein the General Allegations set forth hereinabove and further complain and allege as follows:

18. That Defendants CVD and IMPA wholly failed to follow the legal procedures which were a condition precedent to the merger of CVD into IMPA.

19. That mergers of Agricultural Cooperative Associations

shall be in accordance with the procedures set forth in Section 3-1-30 et seq. U.C.A.

20. That Section 3-1-31 provides that the Board of Directors approve a plan of merger setting forth certain specific details as required by that statute.

21. That Section 3-1-32 requires that a plan of merger be submitted to a vote at a meeting of the members of the agricultural cooperative association.

22. That Sections 3-1-32 and 3-1-33 require that all members and equity holders holding certificates of interest of \$50.00 or more be afforded all the rights of members with respect to approving a plan of merger, including notice of the meeting to consider the plan and the right to vote on the plan.

23. That Section 3-1-35 provides that with respect to voting on a plan of merger, Members may vote by delegate and/or proxy.

24. That Section 3-1-36 provides that upon approval of the merger, articles of merger shall be signed by the president and secretary of the association which articles shall set forth the plan of merger, recitations concerning notice of the meeting and voting therein wherein the merger was approved by the Members entitled to vote thereon. Further that originals be filed with the Secretary of State along with a filing fee and that a Certificate of Merger be obtained from the Secretary of State.

25. That the Board of Directors of CVD did not approve at any time a plan of merger as required by Section 3-1-31.

26. That the Notice attached hereto as Exhibit A is a true copy of the notice used to advertise a meeting to consider the merger of CVD into IMPA.

27. That said notice states that the merger is to be completed in accordance with Section 3-1-30 et. seq.

28. That in clear violation of Section 3-1-33 holders of certificates of interest (Equity Holders) in CVD of \$50 or more were not provided with any notice whatsoever of the CVD special meeting of members held on December 16, 1985 to consider the IMPA plan of merger.

29. That at the said special meeting Equity Holders of \$50 or more were not allowed to vote on the plan of merger.

30. That at the said special meeting, no voting was allowed by delegate or proxy.

31. That the requisite number of affirmative votes needed to approve the plan of merger pursuant to Section 3-1-35, Utah Code Annotated, was not obtained.

32. That no dissenter's rights were acknowledged or honored all in violation of Section 3-1-39 and pursuant to the design and plan of IMPA, and Defendant Directors, and through them CVD. That this denial was done knowingly and continues to be pursued in various legal efforts to date.

33. That in an illegal and defacto manner, CVD, the Defendant directors and IMPA acted wilfully and wantonly as if the merger was legal and effective knowing it was not.

34. That in violation of Section 3-1-36 there have been no

Articles of Merger approved or even presented to the Board of Directors of CVD nor have they been filed with the secretary of state nor has a Certificate of Merger been obtained.

35. That the purported merger of CVD into IMPA is illegal and as such is null and void.

36. That as a result of said Defendants' illegal and willful and wanton actions, certain assets and equity of CVD have been transferred, mortgaged, sold, liened, assigned or otherwise seriously impaired.

37. That IMPA continued without any right whatsoever to sell milk products of CVD under the trade names and brands of CVD, traded on the latter's goodwill, operated at the same plants and warehouses, continued with the managing personnel and employees, and in every way usurped and appropriated the highly successful business of CVD and operated this business to its own gain and profit.

38. That said Defendants by appropriating the successful business of CVD have deprived it of the opportunity of further financial benefit and gain in continuing the operation of the business.

39. That as a result of the illegal merger and the activities subsequent thereto the assets of CVD have been diluted and dissipated, all to the damage of CVD in an amount exceeding fifty-five million dollars (\$55,000,000.00), and Plaintiffs are entitled to an award of money damages as a result thereof.

40. That Defendant IMPA and the individual Defendant

Directors herein named, are jointly and severally liable for the damage to Plaintiffs' interests in Defendant CVD.

41. That alternatively to money damages, the Plaintiffs are entitled to an Order directing IMPA to rescind the purported merger, restoring CVD to its former estate in all of its property of every kind, free and clear of any and all encumbrances except such as existed at the time of the purported merger. Further that said Defendants account for any and all profits received and pay for such damages as shown to have been suffered by CVD.

42. That as a result of the damages complained of hereinabove, the Plaintiffs and in their capacity as representatives of the interests of CVD, have suffered and do continue to suffer on a daily basis immediate and irreparable harm and damage.

43. That Plaintiffs, be awarded attorneys fees, costs and expenses of this action and the same be apportioned among all the Plaintiffs as a class.

WHEREFORE, Plaintiffs pray for judgment and relief jointly and severally against the Defendants CVD, IMPA, and the individually named Defendant Directors as follows:

A. For a determination by this court that the Plaintiffs are qualified and approved as representatives of the class described herein and a determination as to who are members of the class pursuant to Rule 23(c)(3), U.C.A.

B. For a determination by this Court that the Class Action is maintainable pursuant to Rule 23(c)(1), U.C.A.

C. For a determination by this Court as to how notice shall be provided to members of the class and how costs and other expenses of maintenance of this action should be apportioned and assessed, including attorney fees.

D. For a judgment against the Defendants, jointly and severally, for damages of not less than \$55,000,000.00 as and for the complete and total destruction of the Plaintiffs' equity in CVD and their ability to market their milk products in their known and established markets, along with a determination as to how such money should be distributed to the class and pay the costs and expenses of maintaining this action, including attorneys fees.

E. Alternatively, to an award of money damages that the merger be set aside by:

(1) An Order from this Court requiring that if the fully constituted Board of CVD in the future legally authorizes a new special meeting to approve the IMPA plan of merger or any other plan of merger that such meeting be conducted in a manner guaranteeing a proper vote of the Members of entitled to vote and affording such Members all of the rights required under Title 3, U.C.A., including proper notice and voting rights of equity holders of \$50.00 or more, right of proxy and delegate voting, and notice of and the exercise of dissenter's rights, if a merger is approved, including the right of an appraisal and

payment of fair value of the dissenter's interest.

(2) An injunction enjoining Defendant IMPA from operating as a successor or survivor cooperative of CVD, and enjoining Defendant IMPA from impairing any assets of CVD.

(3) For an injunction enjoining Defendant IMPA from Selling under the trade names and brands of CVD, i.e., Cache Valley Cheese, or otherwise operating under the goodwill of CVD.

(4) For an injunction enjoining Defendant IMPA from operating at the plant of CVD or using the rolling stock of CVD and that possession of the same be immediately returned to the possession of Plaintiffs.

(5) For a determination of damages and an accounting as to profits and rent and an award of damages sufficient to restore Plaintiffs and CVD to its full and former estate.

F. For a determination of a reasonable attorneys fee herein and how said fees and costs and expenses of maintaining this action shall be apportioned.

SECOND CAUSE OF ACTION

SHAREHOLDERS DERIVATIVE ACTION

As and for a Second Cause of Action, in the form of a Stockholders Derivative Action, pursuant to Rule 23.1, Utah Code Annotated, Plaintiffs by this reference restate and incorporate

herein the General Allegations and First Cause of Action and further complain and state as follows:

44. That the action is not a collusive one to confer jurisdiction not otherwise available.

45. That the Plaintiffs were Members and Equity Holders of CVD at the time of the purported IMPA merger which took purported effect on or about January 1, 1986.

46. That at Plaintiffs' request and that of other CVD directors, two special meetings of the Board of Directors of CVD have been duly called and held. At each of said meetings there were discussions of the illegality of the merger and a memorandum discussing these illegalities and the possible effects were presented to all of the directors by counsel for Plaintiffs. On each occasion the Board of Directors refused to take affirmative action to protect the Association, its Members and Equity Holders from the resulting damages as discussed hereinabove.

47. That as of the time of the filing of this complaint, no actions have been taken by CVD or IMPA, or any of the other defendants either as directors or members to protect the Association or the Members or Equity Holders of the Association.

48. That by reason of the control which the individual Defendants have over CVD and the producers thereof, CVD is unwilling and unable to take action to assert its rights against IMPA and the individual Defendants and each of them, and only by the interposition of a court of equity in this suit can the rights of Plaintiffs to have CVD protect its property and

business be asserted and maintained.

49. That the Plaintiffs can fairly and adequately represent the interests of the Cache Valley Dairy Association.

50. That the Plaintiffs are entitled to have the court order CVD to pay their costs and expenses for this action including attorney fees.

WHEREFORE, Plaintiffs pray judgment jointly and severally against Defendant IMPA and Defendant Directors, all for the benefit of CVD as follows:

A. For the damages and relief enumerated in the First Cause of Action.

B. For such other and further relief as the court shall deem equitable.

THIRD CAUSE OF ACTION

NEGLIGENCE

As and for a Third Cause of Action, as Directors, as Class Representatives and on behalf of the Association, Plaintiffs restate the General Allegations and the First and Second Causes of Action and by this reference incorporate the same hereinbelow and further complain and allege as follows:

51. That Randon Wilson is an attorney licensed to practice law under the laws of the State of Utah and as such owes a duty of due care to those he provides legal advice.

52. Defendant Randon Wilson as an attorney undertook to provide legal advice to CVD and its Board of Directors concerning

the merger into IMPA. Pursuant thereto he provided advice to CVD, its Directors and Officers.

53. Said Defendant drafted documents, gave advice concerning the type of notice of merger to be given and to whom it was to be sent. He also provided legal advice as to the conduct of the special meeting relative to approval of the merger and as to entitlement to vote thereon.

54. Subsequent to the merger meeting said Defendant prepared legal documents and caused them to be used to transfer the assets of CVD to IMPA.

55. That Defendant Wilson's advice and documents were relied upon by CVD and its Directors and Officers. No other legal advice was obtained.

56. That Defendant CVD and its Directors and Officers followed the directions of their counsel Defendant Wilson.

57. That in so doing CVD and its Directors and Officers violated as hereinbefore stated Section 3-1-30, et. seq.

58. That said Defendant wholly failed to reasonably inform of alert the Board of Directors and Officers of CVD of:

- A. the statutory merger procedures as per Section 3-1-30 et. seq.; and,
- B. that those procedures were not being followed; and,
- C. that CVD Directors and Officers could be liable for not following those procedures; and,
- D. of the questionable transfer of CVD property, trademarks, goodwill etc. to IMPA; and,

E. in numerous instances specifically advised against the efforts of others to follow the procedures of Section 3-1-30, et. seq.

59. That the activities of said Defendant in providing legal advice, documents and the complete failure to disclose the statutory prerequisites to merger was careless, unskillful, negligent and grossly negligent.

60. That said Defendant failed to exercise due diligence and skill.

61. That said Defendant failed to make the requisite disclosures to his clients which would have allowed them to exercise a reasonable amount of diligence in carrying out their duties as Officers and Directors of CVD.

62. That Defendant Wilson failed to follow the standard of care and skill expected of an attorney.

63. That Defendant Wilson advised CVD at the same time he advised other individuals and entities who had interests adverse and in conflict with that of CVD all in violation of his duty of trust, loyalty and confidentiality to CVD and its Directors and Officers. These entities include IMPA and the other merger participants.

64. That as a direct and proximate result of Wilson's negligence and failure to disclose conflicts of interest, the Plaintiffs, the Class of Members and Equity Holders and CVD have suffered the damage heretofore alleged.

65. That Defendant Wilson when he learned of the pendency

of this action attempted to scuttle the same by promising to have IMPA indemnify CVD Directors who would not take this action and alternatively by threatening reprisals against those who did.

WHEREFORE, Plaintiffs pray judgment jointly and severally against said Defendant Wilson as follows:

A. For the damages and relief enumerated in the First Cause of Action.

B. For such other and further relief as the court shall deem equitable.

FOURTH CAUSE OF ACTION

DIRECTORS' NEGLIGENCE

As and for a Fifth Cause of Action, as Directors, as Class Representatives and on behalf of CVD, Plaintiffs restate the General Allegations and the First, Second, Third and Fourth Causes of Action and by this reference incorporate the same hereinbelow and further complain and allege as follows:

66. That at all times pertinent hereto the Defendant Directors Bankhead, Bradshaw, Nye, Olsen, Meek, Peterson, King, Pitcher, Mickel, Haworth, Hyde, Skinner, Jackson, and Lindley were duly elected and acting Directors of CVD.

67. That with respect to the preparation of a plan of merger into IMPA, and with respect to fulfilling the statutory requirements for accomplishing the purported merger, the Defendant Directors have at some point learned or should have learned that it was done improperly.

68. That the Defendant Directors have at some point learned or should have learned that the assets of CVD were improperly transferred to IMPA and otherwise impaired.

69. That said Directors breached and/or neglected their duty of due care and diligence to CVD and are therefore liable for the losses and/or injuries which proximately resulted to the Plaintiffs as stated hereinabove.

70. That the said Defendant Directors should have learned at some point or did learn that the Equity Holders of \$50.00 or more should have been given an opportunity to approve the merger and that by denying them notice and the right to vote, said Directors breached their duty of due care and their fiduciary duty to those Members. That said breach of duty was a proximate cause of the damages which Plaintiffs complain of hereinabove.

71. That the said Defendant Directors knew or should have known or at some point learned that they were also denying or had denied other Members the statutory right to vote by denying proxy or delegate voting which was directly contrary to statutory provisions, and that by so denying said voting the Directors breached their duty of due care and fiduciary duty to said Members who would have voted by delegate or proxy who were otherwise denied the opportunity to participate in the vote to approve the merger. That said breach of duty by the Defendant Directors was a proximate cause of the damages complained of by the Plaintiffs as described hereinabove.

72. That the neglect and breach of duties by the Defendant

Directors as described hereinabove constitutes negligence on the part of said Directors which has proximately caused damage to the Plaintiffs and in addition has caused similar damage to CVD and said Directors should be required to indemnify CVD as a result of their negligence and breach of duty.

73. That even if the Defendant Directors relied on the expert opinion of Defendant Wilson, said Directors at some point were reasonably alerted to information and circumstances which put them upon inquiry that the measures taken to accomplish the merger were illegal and damaging to CVD and the Plaintiffs and therefore cannot excuse said Directors from their actions.

74. That Title 3 of the Utah Code Annotated specifically imposes statutory requirements on the Defendant Directors by which they must follow to accomplish a merger. That said Directors did not follow said statutory requirements and therefore are responsible for the resulting damage proximately caused as a result of their violation of said statutes.

WHEREFORE, Plaintiffs pray judgment jointly and severally against said Defendant Directors as follows:

A. For the damages and relief enumerated in the First Cause of Action.

B. For such other and further relief as the court shall deem equitable.

FIFTH CAUSE OF ACTION

RESCISSION

As and for the Fifth Cause of Action, Plaintiffs incorporate all the previous allegations stated herein and complain against the Defendants Sam Soe 1-10 as follows:

75. That Sam Soe 1-10 are persons who subsequent to the purported merger of CVD into IMPA took title to property of CVD from IMPA or have taken liens, mortgages, encumbrances or secured interests in the property of CVD.

76. That said transfers and hypothecations are null and void by reason of the fact that IMPA had no authority to alienate or hypothecate the property of CVD.

77. That CVD should be restored full and unencumbered title to all of its property both inchoate and real excepting only those encumbrances in existence at the time of the purported merger.

WHEREFORE, Defendants Sam Soe 1-10 should be ordered to release, relinquish and reconvey any and all secured interest, liens or property received from IMPA. And further that the court order such other and further relief as it deems equitable and necessary under the circumstances.

DATED this 11 day of February, 1987.

Gene Brice
Gene Brice

VERIFICATION

STATE OF UTAH)
 (ss:
County of Cache)

COMES NOW, Gene Brice, being first duly sworn, deposes and states that he has each individually read the foregoing Verified Complaint and understands the contents thereof and that the contents thereof are true and correct to the best of his knowledge, except those matters stated on information and belief and as to those matters he believes them to be true.

Gene Brice
Gene Brice

SUBSCRIBED and sworn to before me this 11 day of February, 1987.

Commission expires: 3/3/87

[Signature]
Notary Public
Residing at: Hydro Park, Ut.

DATED this 1 day of February, 1987.

Willis A. Hall
Willis Hall

VERIFICATION

STATE OF UTAH)
(ss:
County of Cache)

COME NOW, Willis Hall, being first duly sworn, deposes and states that he has read the foregoing Verified Complaint and understands the contents thereof and that the contents thereof are true and correct to the best of his knowledge, except those matters stated on information and belief and as to those matters he believes them to be true.

Willis S Hall
Willis Hall

SUBSCRIBED and sworn to before me this 12 day of February, 1987.

Commission expires: 3/3/87

Notary Public
Residing at: *Super. P.O. Box 67*

DATED this 12 day of February, 1987.

Joseph R. May
Joseph R. May

VERIFICATION

STATE OF UTAH)
 (ss:
County of Cache)

COME NOW, Joseph R. May, being first duly sworn, deposes and states that he has read the foregoing Verified Complaint and understands the contents thereof and that the contents thereof are true and correct to the best of his knowledge, except those matters stated on information and belief and as to those matters he believes them to be true.

Joseph R. May
Gene Brice

SUBSCRIBED and sworn to before me this 12 day of February, 1987.

Gene Brice
Notary Public
Residing at: Lynn ut.

Commission expires:

Dec 7. 1989

DATED this 12 day of February, 1987.

Douglas Quayle
Douglas Quayle

VERIFICATION

STATE OF UTAH)
 (ss:
County of Cache)

COME NOW, Douglas Quayle, being first duly sworn, deposes and states that he has read the foregoing Verified Complaint and understands the contents thereof and that the contents thereof are true and correct to the best of his knowledge, except those matters stated on information and belief and as to those matters he believes them to be true.

Douglas Quayle
Douglas Quayle

SUBSCRIBED and sworn to before me this 12 day of February, 1987.

Lyne F. Holden
Notary Public
Residing at: Lynn, Ut.

Commission expires:

Dec 7, 1989

DATED this 12 day of February, 1987.

Thedford Roper
Thedford Roper

VERIFICATION

STATE OF UTAH)
 (ss:
County of Cache)

COME NOW, Thedford Roper, being first duly sworn, deposes and states that he has read the foregoing Verified Complaint and understands the contents thereof and that the contents thereof are true and correct to the best of his knowledge, except those matters stated on information and belief and as to those matters he believes them to be true.

Thedford Roper
Thedford Roper

SUBSCRIBED and sworn to before me this 12 day of February, 1987.

Commission expires:

Dec 7, 1989

L. H. Threlkeld
Notary Public
Residing at: *Payson, Utah*

DATED this 1 day of February, 1987.

J. Rolfe Tuddenham
J. Rolfe Tuddenham

VERIFICATION

STATE OF UTAH)
 (ss:
County of Cache)

COME NOW, J. Rolfe Tuddenham, being first duly sworn, deposes and states that he has read the foregoing Verified Complaint and understands the contents thereof and that the contents thereof are true and correct to the best of his knowledge, except those matters stated on information and belief and as to those matters he believes them to be true.

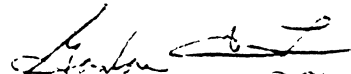
J. Rolfe Tuddenham
J. Rolfe Tuddenham

SUBSCRIBED and sworn to before me this 12th day of February, 1987.

Commission expires: 3/3/87

[Signature]
Notary Public
Residing at: 4, 1st Road 15

DATED this 12 day of February, 1987.



Gordon Zilles

VERIFICATION

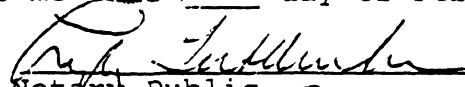
STATE OF UTAH)
 (ss:
County of Cache)

COME NOW, Gordon Zilles, being first duly sworn, deposes and states that he has read the foregoing Verified Complaint and understands the contents thereof and that the contents thereof are true and correct to the best of his knowledge, except those matters stated on information and belief and as to those matters he believes them to be true.



Gordon Zilles

SUBSCRIBED and sworn to before me this 12 day of February, 1987.



Notary Public
Residing at: Home Ct.

Commission expires:

Dec 7, 1989

EXHIBIT A

NOTICE TO MEMBERS OF CACHE VALLEY DAIRY ASSOCIATION

The Board of Directors of Cache Valley Dairy Association has adopted a Resolution directing that a Plan of Merger (Consolidation) under Section 3-1-30, et. seq., Utah Code Annotated, be submitted to a vote of the members of Cache Valley Dairy Association at a special meeting of members to be held at 10:30 o'clock a.m. on Monday, December 16, 1985, at the Smithfield Armory, 10 East Center Street, Smithfield, Utah.

The principal purpose of the meeting is to consider and vote upon the Plan of Merger (Consolidation) of Cache Valley Dairy Association, Western General Dairies, Inc., Star Valley Producers, Inc. and Lake Mead Cooperative Association into Intermountain Milk Producers Association.

A summary of the Plan of Merger (Consolidation) is enclosed with this Notice. A full copy of the plan shall be furnished to any member upon request without charge. Requests should be made to Intermountain Milk Producers Association, 195 West 7200 South, Midvale, Utah 84047.

Passage of this plan will require a simple majority of the members present at the meeting and voting thereon.

By order of the President as of this 25th day of November, 1985.

CACHE VALLEY DAIRY ASSOCIATION

By /s/ Wm. L. Lindley
President

APPENDIX J

IN THE FIRST JUDICIAL DISTRICT COURT, COUNTY OF CACHE
STATE OF UTAH

GENE BRICE, et al)

Plaintiffs)

v.)

CACHE VALLEY DAIRY ASSOCIATION,)
a Utah Argicultural
Cooperative, et al)

Defendants)

MEMORANDUM DECISION

Civil No. 25514

There have been various motions for partial summary judgment, motions to dismiss, motions for summary judgment, motions to have the Court determine whether a class action can be brought, and other motions to strike. The Court will address all of these motions collectively rather than individually.

As to the class action motion, the Court holds that the class action is not appropriate for reasons that three different classes, equity holders, producers, directors, may have different interests, and for other reasons that will be better understood as set forth in the body of this memorandum decision.

Plaintiffs are seeking recession of the action taken by the defendants of what is termed by the plaintiffs a merger under Section 31-31, U.C.A. They are also seeking restitution and a separate cause of action for money damages. The reason they seek this relief is that the defendants failed to affect a valid merger by reason of failure to comply with statutory procedures on mergers. The Court holds this to be correct. The Notice and Summary referred to a

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plan of merger (consolidation) but there is no description of a sale of assets as an alternative in the notice. The Court holds that the Notice was defective if it was contemplated there was to be a merger or consolidation. And, the Court in fact, holds that this never occurred. The Court, however, holds that a merger or consolidation is not an exclusive alternative to a change or affecting a consolidation by exchange of assets.

The Court holds that first there can be no recession as there are many other entities, people involved, that have so changed their position in reliance upon the transfer of assets that it would be inequitable for the Court to consider the remedies of recession and restitution. But, more importantly, the Court finds that there was no merger or consolidation, but there was a transfer of assets by CVD to IMPA for consolidation putting members or producers in CVD in a position where they may have a cause of action for monetary damage by reason of the elimination of all of the assets of CVD which destroys the value of their equity rights. The Court makes no holdings in this regard since there is no indications of a request for such damages in the complaint by the plaintiffs by reason of a sale of the assets, the plaintiffs relying solely for relief by reason of an invalid merger.

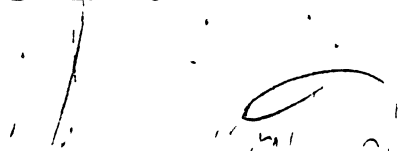
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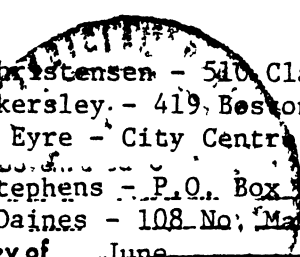
Therefore, the Court dismisses plaintiff's complaint against all defendants without prejudice to amend the complaint for any possible monetary damages by reason of the destruction of the plaintiffs equity in CVD as a result of transfer of assets.

Counsel for defendants to prepare the appropriate order.

Dated this 29th day of June, 1987.

BY THE COURT:


V. Noy Christoffersen
District Judge


Roger P. Christensen - 540 Clark Leaming Bldg. - 175 So. West Temple - SLC, Utah 84101
M. David Eggersley - 419 Boston Bldg. - SLC, Utah 84111
J. Anthony Eyre - City Centre I, No. 330 - 175 East 4th South - SLC, Utah 84111
R. Brent Stephens - P.O. Box 45000 - SLC, Utah 84145
N. George Daines - 108 No. Main, Suite 200 - Logan, Utah 84321
29th day of June 1987
JEH S. ALLEN, Clerk
by *John E. Campbell*
Deputy

APPENDIX K

ROGER P. CHRISTENSEN
ROGER FAIRBANKS
CHRISTENSEN, JENSEN & POWELL, P.C.
510 Clark Leaming Office Center
175 South West Temple
Salt Lake City, Utah 84101
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Attorneys for IMPA

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF UTAH, IN AND FOR THE COUNTY OF CACHE

GENE BRICE, WILLIS HALL,
JOSEPH R. MAY, DOUGLAS QUAYLE,
THEDFORD ROPER, J. ROLFE
TUDDENHAM and GORDON ZILLES,
on behalf of themselves, for
the benefit of Cache Valley
Dairy Association and for all
members and/or Holders
Certificates of Interest in
Cache Valley Dairy Association,

ORDER

Plaintiffs,

vs.

Civil No. 25514

CACHE VALLEY DAIRY ASSOCIATION,
a Utah Agricultural Cooperative;
INTERMOUNTAIN MILK PRODUCERS
ASSOCIATION; a Utah Agricultural
Cooperative; VERNON BANKHEAD;
RANDALL BRADSHAW; DON C. NYE;
FRANK P. OLSEN; WILFORD B. MEEK;
LATHAIR PETERSON; RULON KING;
LARRY PITCHER; LYNN MICKEL;
ROBERT HAWORTH; JEFF HYDE; EVAN
SKINNER; ROBERT JACKSON; and
WILLIAM LINDLEY; RANDON WILSON;
JOHN DOES 1-30; SAN SOES 1-10,

Defendants.

Number 25514-71

JUL 25 1987

SETH S. ALLEN, Clerk

586

087 1000

Various motions for partial summary judgment, motions to dismiss, motions for summary judgment, motions to have the Court determine whether a class action can be brought, motions to strike and other matters are currently pending before the Court. The Court, in this order, addresses these motions collectively, rather than individually.

The Court heard the arguments of counsel, reviewed the record in this case and issued a memorandum decision. Based thereon, and for the reasons stated therein, now, therefore, it is hereby Ordered that:

1. Plaintiffs' Request for Class Certification be, and hereby is denied;

2. Plaintiffs' claims for rescission and restitution be, and hereby are dismissed;

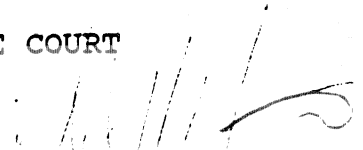
3. Plaintiffs' claims, as pleaded in this case, be and hereby are dismissed as to all Defendants without prejudice.

However, such dismissal is without prejudice to Plaintiffs' right to amend the complaint to assert such claims as Plaintiffs may have for monetary damages, to the extent Plaintiffs may have sustained such damages, for the destruction or diminution, if any, of the value of Plaintiffs' equity interests, as a result of a wrongful transfer of CVDA's assets to IMPA and the transfer of such equity interests from CVDA to IMPA. By granting leave to Plaintiffs to assert such claims, the Court makes no determination as to whether the transfer of assets was wrongful and makes no determination as to the merit, if any, of such claims, but reserves such determinations for future

consideration.

DATED this 31st day of July, 1987.

BY THE COURT



VeNoy Christoffersen
District Court Judge

APPENDIX L

INTERCHANGES OF FACT

Combination of Plaintiffs' and Defendants' Statements of Fact
Taken from T. R. 52-54, 140-151, 197-199, 227-238.

Defendants' Statement No. 1:

Defendants Intermountain Milk Producers Association ("IMPA") and Cache Valley Dairy Association ("CVDA"), are agricultural cooperatives involved in the dairy business. They are similar to numerous other cooperatives throughout the United States.

Plaintiffs' Response No. 1:

Plaintiffs so stipulate but would add in addition to Defendants' Statement that while they are similar each is governed by the applicable state law under which each is organized and to which each owes its existence.

Defendants' Statement No. 2:

The membership of such cooperatives is entirely made up of active producers of milk. If a person either ceases dairy production or ceases to supply milk to the cooperative, his eligibility for membership ends.

Plaintiffs' Response No. 2:

Plaintiffs so stipulate.

Defendants' Statement No. 3:

Dairy cooperatives exist for the purpose of assembling, processing and marketing milk and milk products. The proceeds from the sale of milk products are, for the most part, paid back to the members of the cooperative, in accordance with the Federal Milk Market Order and formulas adopted by the board of directors.

Plaintiffs' Response No. 3:

Plaintiffs so stipulate.

Defendants' Statement No. 4:

A common way for a cooperative to obtain working capital is to retain part of the proceeds realized from marketing the dairy products. As this occurs, the members of the cooperative obtain equity interests in the cooperative based upon such contributions to working capital. These are some times referred to as "producer equities".

Plaintiffs' Response No. 4:

Plaintiffs so stipulate. Plaintiffs would suggest that rather than describe these equity certificates generically, reference should be had to the specific CVDA corporate resolutions, bylaws and articles which describe these rights precisely; to wit:

This cooperative Association is organized as a service organization for its members and not as an investment corporation. The property interests of the members of the Association in the assets of the corporation shall be determined by their respective certificates of interest or certificates of equity issued by the Association. Such certificates of interest shall be subsequent in right to the claims of all creditors of the Association. In case of dissolution or discontinuance or business of the corporation, the assets of the corporation after payment of debts shall be prorated among the members in proportion to their certificates of interest or certificate of equity as appears of record on the books of the company.

Article IV, Amended Articles of Incorporation of Cache Valley

Dairy Association (1955) [Exhibit #1].

This corporation is formed to function on a cooperative basis for the mutual benefit of its members. Reasonable reserves, retains or savings, as determined by the Board of Directors, may be set aside from year to year. After setting aside such reserves, retains or savings, and after the payment of a fair rate of interest on outstanding certificates of interest

payable only in the discretion of the Board of Directors, but not in excess of 8% per year), the balance of the net earnings or savings of the Association shall be distributed on a patronage basis....

The Association may from time to time issue to the members and patrons certificates of interest evidencing their respective interest in any fund, capital investment or other assets of the Association. The form and substance and the manner and term of payment, if any, of such certificates of interest and the time and manner of issuing the same may be determined by the Board of Directors. Such certificates of interest may be transferred only to the Association, or to such other purchasers as may be approved by the Board of Directors, and upon such terms and conditions as shall be provided for in the By-Laws.

The Board of Directors may authorize payment of interest on outstanding certificates of interest not exceeding 8% per annum, until otherwise provided by resolution of the Board of Directors.

Id. Article IX. [Exhibit #1]

The By-Laws of the Association further define the rights and interests of equity holders as follows:

Retirement of a member shall not in any manner obligate the Association to retire and pay any Certificate of Interest held by the retiring member except in the regular manner of retiring similar Certificates of Interest as may be provided by the Board of Directors.

By-Law No. 10, Compiled and Amended By-Laws of Cache Valley Dairy Association (1977) [Exhibit #2].

The Association may, from time to time, issue to the members Certificates of Interest evidencing their respective interest in any fund, capital investment or other assets of the Association. The form and substance and the manner and term of payment, if any, of such Certificates of Interest and the time and manner of issuing the same may be determined by the Board of Directors. Such Certificates of Interest may be transferred only to the Association, or to such other purchasers as may be approved by the Board of Directors, provided the Association does not desire to re-purchase the same.

. . . .

Upon the dissolution of the Association, all holders of Certificates of Interest shall share in the assets of the Association in proportion to their Certificates of Interest or Certificates of Equity as appears of record on the books of the company.

The Board of Directors shall have power to reclassify, increase or decrease the Certificates of Interest arising from the distribution of the net proceeds of the business operations to the revolving capital structure of the Association where Certificates of Interest are issued, based upon the reports of the Auditors, wherein books of the Association include as assets, notes, securities, or accounts receivable, that later are discovered to become uncollectible or worthless. Such Certificates may be reclassified or reduced in amount, for the purpose of redemption, prorata, as the amount of the losses bear to the total amount of Certificates issued for the year in which they were issued or the Certificates may be increased in such proportional amount in case of the collection or recovery on charged off items, the purpose being to have the Certificates redeemed at their true value, taking into consideration their true value in the light of true experience between the issuance of the certificates and the time of their redemption.

Id. By-Law No. 11. [Exhibit #2]

Nothing in this By-Law shall be construed to prevent the owners or holders of certificates of interest of Cache Valley Dairy Association from participating in the redemption of such certificates of interest in the regular course of business of the Association, in rotating their capital structure.

Id. By-Law No. 22. [Exhibit #2]

In accordance with these procedures each year the Board evaluates its financial situation and pays back or rotates the equity certificates as it deems appropriate. In doing so the Board recognizes its "duty" and "obligation to maintain the revolving capital structure" of the Association. As an example, the Resolution of March 5, 1981, is cited noting that a similar

resolution for each year could be introduced:

WHEREAS, the Association has a preexisting duty to pay patronage dividends under Section 1388 of the Internal Revenue Code, as set forth in By-Law No. 10 of the Association, and

WHEREAS, the present indebtedness and obligations of the Association, including the obligation to maintain the revolving capital structure as working capital by continuing the policy of redeeming a portion of the certificates of interest each year, have made it necessary to retain all such funds to be used as capital assets until further ordered of the Board;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of Cache Valley Dairy Association that after deductions of depreciation in accordance with the said report and such special reserve funds as are set aside, in accordance with the previous resolutions of the Board of Directors, all of the remaining income of the Association not paid out to its members and not needed to pay the necessary expenses of the Association be set upon the books of the Association as necessary operating capital as provided by the Articles of Incorporation of the Association, and after setting aside not less than 20% of the amount that would be otherwise certificated as required by the Federal Internal Revenue Code to be paid and remitted to each of the said members on or before February 15, 1981, which when paid will reduce the value of the said certificates to not more than 80% of the face value, proportionately, and that certificates of interest for the net amount of such capital and assets be issued on a prorata 100 weight basis to the members of the Association of the amount of such net income in proportion to the milk and dairy products produced and sold by the member to the Association.

BE IT FURTHER RESOLVED that said credits be set upon the books of the Association as "Series 1980" both for items of revolving capital investment appearing in the said report and also for undistributed credits or retains and any other amounts that may hereafter be discovered to be available as assets accumulated during the said period, and that cumulative certificates of interest in form as heretofore adopted and used, evidencing the total outstanding interest of the member, be issued, signed by the President and Secretary, and delivered to the members accordingly.

ADOPTED this 5th day of March, 1981.

Resolution, Board of Directors, Cache Valley Dairy Association
[Minutes of 3/5/81, Exhibit #3].

Defendants' Statement No. 5:

Generally speaking, where revenues in future years permit, cooperatives attempt to make payments to members representing the value of their equity interests. Such payments are made over a period of years while new amounts are retained from current revenues to replenish working capital. This process is sometimes referred to as "rotating equities". An eight to ten year cycle for such rotation is not uncommon.

Plaintiffs' Response No. 5:

Plaintiffs generally concur but would suggest in the instant matter that reference to the aforesaid Articles, By-Laws and Resolutions would be determinative of rights herein.

Defendants' Statement No. 6:

For various reasons, (such as going out of the dairy business, or joining a competing cooperative), a person's membership in a cooperative may cease. When that occurs, such former member ceases to actively participate in the cooperative, but retains an equity interest until the equity rotation cycle for the co-op has been completed. Because the co-op's ability to retire equities is dependent upon various economic factors, as well as the decisions of the cooperative's board of directors, the former member has no guarantee that his equity interest will every be fully retired.

Plaintiffs' Response No. 6:

Plaintiffs generally concur but again would state that the rights of equity holders herein are specifically described in the cited Articles, By-Laws and Resolutions of the Association. Further, that while an equity certificate holder has no guarantee of repayment there is an obligation of fairness owed to him and the corporation and directors have a fiduciary duty toward such a holder. To state that an equity holder's repayment may be affected by financial reverses suffered by the Association, does not infer that such a holder has no rights, nor that the equity certificate is valueless.

Defendants' Statement No. 7:

During a several year period prior to 1984, various discussions and negotiations took place involving four different dairy-oriented agricultural cooperatives, ("CVDA"), Star Valley Cheese Cooperative, and Lake Mead Cooperative Association. The discussions and negotiations concerned the joining of the assets and resources of such cooperatives to work together in one larger cooperative for assembling, processing and marketing milk and milk products. As part of such discussions, the potential benefits which might be realized by Cache Valley Dairy Association were considered. Among them were the following:

a. The Cache Valley Dairy Association would gain immediate access to a Grade A market, which it did not have at that time. This would enable the members of Cache Valley Dairy Association, who desired to do so, to become Grade A milk producers and receive higher prices for their milk.

b. The cheese plants owned by Cache Valley Dairy Association, would secure commitments for a greater volume of milk, potentially allowing such plants to operate at greater efficiency.

c. Cache Valley Dairy Association would also realize the other benefits relating to "economies of scale" due to its membership in a larger organization with greater bargaining power, broader markets, and common management.

d. By unifying with several of its competitors, Cache Valley Dairy Association would enjoy the benefits of reduced competition for the procurement of raw milk supplies.

e. Cache Valley Dairy Association's liabilities and debts would be assumed by the larger organization.

Plaintiffs' Response No. 7:

Plaintiffs concur that CVD entered into various negotiations and discussions with other agricultural cooperatives relative to joining together. As a part thereof various advantages and disadvantages were discussed. Plaintiffs do not agree that Defendants' Fact No. 7 sets out any of the disadvantages considered.

Defendants' Statement No. 8:

In return, the new organization would realize the benefit of Cache Valley Dairy Association's assets, including its supply of milk, cheese plants, and its cutting and wrapping facility.

Plaintiff's Response No. 8:

Plaintiffs concur that CVD entered into various negotiations and

discussions with other agricultural cooperatives relative to joining together. As a part thereof various advantages and disadvantages were discussed. Plaintiffs do not agree that Defendants' Fact No. 8 sets out all of the advantages considered.

Defendants' Statement No. 9:

The negotiations among the four aforesaid cooperatives resulted in an agreement which was formalized in June of 1984 by a letter of intent among the four cooperatives, which went into effect on August 1, 1984. Such agreement as well as subsequent agreements, eventually led to the transfer of assets and liabilities, over a period of time, by the four cooperatives to Intermountain Milk Producers Association, the new larger cooperative. The transition process concluded on August 1, 1986.

Plaintiffs' Response No. 9:

Plaintiffs stipulate that CVD and three other cooperatives executed a Letter of Intent in June of 1984. A true copy of the same is attached as Exhibit #8. That Letter does not authorize in any way the combination of assets which subsequently occurred. It specifically states in relevant part:

6. The ultimate goal of the Parties is to consolidate their operations into IMPA, however, this consolidation will take place over a period of time in phases which will not be completely specified at this time but will require further Board and/or membership approval of the parties as may be required by law at that time.

. . .

19. At the time the consolidation is accomplished, all members of the parties will terminate their membership in the parties and will be given membership in IMPA. All remaining assets of the

Parties will be transferred to IMPA at book value and all remaining debts will be assumed by IMPA. All employees will be transferred to IMPA, subject to any labor contracts which may then exist. Producer equities held by the Parties will be assumed by IMPA and will be rotated on a uniform basis.

. . . .

21. The Parties hereto will negotiate in good faith definitive agreements and documents for the purpose of implementing IMPA. In the event definitive agreements and documents are not entered into by the Commencement Date [August 1, 1984], the matters set forth in this letter shall be terminated and shall be null and void.

Letter of Intent, dated June 15, 1984. The record is benefit of any "definitive agreement" or "further Board and/or membership approval as may be required by law". Id. Furthermore, by its own wording the Letter expired on August 1, 1984. Id.

Defendants' Statement No. 10:

There were several meetings of CVDA's board of directors where the Letter of Intent was considered. The Letter was approved by the board of directors at each such meeting with no more than 5 of the 21 member board voting against it.

Plaintiffs' Response No. 10:

Plaintiffs so stipulate.

Defendants' Statement No. 11:

At such meetings several of the plaintiffs voted in favor of the Letter of Intent and plaintiffs, Gene Brice, Thedford Roper and Gordon Zilles voted consistently in favor of it.

Plaintiffs' Response No. 11:

Plaintiffs so stipulate.

Defendants' Statement No. 12:

From the period beginning in June of 1984, when the Letter of Intent was executed until August of 1986 when the transfer of assets was completed, none of the seven individual plaintiffs took affirmative action to formally notify CVDA or IMPA that he intended to prevent the transfer of assets from taking place, or otherwise legally contest the transaction.

Plaintiffs' Response No. 12:

The method by which Defendants attempted to combine the cooperatives was never approved nor was it even properly disclosed. The method was evidently determined solely by IMPA and legal counsel. Furthermore Plaintiffs did rely on the legal advice of Defendant Wilson that the method of combination was legal and that all the requisite statutory requirements were being followed. Instructive in this regard are the minutes of IMPA which include this Resolution adopted just three days after the Special Meeting of members of Cache Valley Dairy Association.

WHEREAS, the members of Cache Valley Dairy Association and Western General Dairies Inc. voted in special membership meetings held December 16, 1985 to approve a plan of merger (consolidation) with IMPA or in the alternative to authorize the assets of said Cooperatives to be conveyed and membership agreements to be assigned in exchange for the assumption of debt and producer equities; and

WHEREAS, the plan of merger (consolidation) allowed for abandonment thereof pursuant to statute; and whereas the board of IMPA has made a preliminary determination that said plan should be abandoned.

NOW THEREFORE, it is hereby resolved that the plan of merger (consolidation) be abandoned and that the alternative procedure be followed with respect to the conveyance of assets, assignment of membership agreements and assumption of debts and equities on such a schedule and at such a time as shall meet the

objectives of IMPA.

The foregoing Resolution was adopted by the board of IMPA on December 19, 1985.

Resolution in the Minutes of IMPA [Exhibit #6].

This IMPA Resolution pursuant to "statute" abandons the plan of merger (consolidation) approved by vote. This is an obvious, if misguided, reference to the last paragraph of Section 3-1-35. IMPA purports to make the abandonment and select an alternative never approved by the CVD Board, Members or Equity Holders. No Notice of this change was ever given to CVD, Plaintiffs or the general membership. Furthermore, there was never any meeting of the CVD Board or Directors subsequent to its decision to notify the members of and conduct the Special Meeting held December 16, 1985. [Exhibit #3].

Defendants' Statement No. 13:

It was not until February of 1987, six months after the transfer of assets was completed and 2 1/2 years after the letter of intent was executed, that IMPA became aware that some of the former CVDA directors intended to legally contest the transaction.

Plaintiffs' Response No. 13:

Defendant Wilson wrote a formal legal response to legal challenges on November 19, 1986. See Exhibit #9. Three Special Meetings of the CVD Board were convened because a number of board members questioned the legality of the combination. See Exhibit #3, Notice and a Memorandum prepared at the request of Plaintiffs and submitted therein. Defendant Wilson appeared at one of such

meetings and threatened personal legal action against any dissidents and alternatively promised personal indemnification if the directors went along Id.

Defendants' Statement No. 14:

On December 16, 1985, at a special meeting of members of CVDA was held, at which a vote of the members was taken on the transfer of assets from Cache Valley Dairy Association to IMPA.

Plaintiffs' Response No. 14:

Indeed a Special Meeting was held to consider the plan of merger (consolidation) pursuant to Section 3-1-30 which was later abandoned by IMPA. Equity holders were not allowed to vote nor were proxies or voting by representative allowed. There was no notice, board approval or proper voting on a "transfer of assets". The minutes taken indicate the members present approved "a complete merger." Exhibit #3; See also Notice and Summary attached, Exhibit #4.

Defendants' Statement No. 15:

Included among the non-producer equity holders of the CVDA at the time of the membership vote on December 16, 1985, were individuals who were producing milk for other co-ops or concerns which were in direct competition with the CVDA. Some equities of CVDA were owned by institutions or individuals which were not dairy producers on said date.

Plaintiffs' Response No. 15:

Plaintiffs so stipulate.

Defendants' Statement No. 16:

As or August 1, 1986, all assets owned by Cache Valley Dairy Association as well as the assets of the other three cooperatives had been transferred to IMPA and all liabilities of every kind, whether known or unknown, had been assumed by IMPA. Producer Membership Agreements had been assigned to IMPA as of said date and the producer equities then standing on the books of Cache Valley Dairy and the others had been assumed by IMPA.

Plaintiffs' Response No. 16:

Evidently it was on this or an earlier date that the purported conveyances were made. This was done without membership or board approval or even knowledge thereof.

Defendants' Statement No. 17:

On or about March 28, 1986, IMPA caused certain producer equities standing in the name of former members of Cache Valley Dairy to be redeemed in the amount of \$1,173,989 in order to reduce the outstanding equities of Cache Valley Dairy from ten years to eight years in order to be on the same equity rotation as other producers assigned to IMPA.

Plaintiffs' Response No. 17:

Plaintiffs so stipulate.

Defendants' Statement No. 18:

The principal borrowing of Cache Valley Dairy from the Sacramento Bank for Cooperatives has been consolidated into an \$18,000,000 line of credit from the Sacramento Bank for Cooperatives to IMPA and former Cache Valley Dairy assets have been pledged by IMPA as security for such loan.

Plaintiffs' Response No. 18:

Plaintiffs stipulate only that IMPA and the Sacramento Bank for Cooperatives have purported to do such things. Plaintiffs deny the legal effectiveness thereof.

Defendants' Statement No. 19:

All cash accounts from all functions of Cache Valley have been intermingled into common accounts of IMPA.

Plaintiffs' Response No. 19:

Plaintiffs so stipulate.

Defendants' Statement No. 20:

Since approximately August 1, 1984, the four cooperatives who formed IMPA, including Cache Valley Dairy, have been operating under a Letter of Intent whereby the parties agreed to "blend" their "bottom lines" in order that losses from one company might be offset as against gains in another company. Consolidated financial statements were prepared and joint tax returns filed for fiscal years ending July 31, 1985 and 1986.

Plaintiffs' Response No. 20:

Plaintiffs stipulate only that the Letter of Intent, Exhibit #8, speaks for itself.

Defendants' Statement No. 21:

Legal and auditing expenses have been paid by IMPA on behalf of Cache Valley Dairy, including substantial legal expenses to defend a case against Cache Valley Dairy filed by Cheryl Vause.

Plaintiffs' Response No. 21:

Plaintiffs acknowledge that expenses have been allocated between

IMPA and CVD, but further allege that CVD's profits have been used to substantially subsidize IMPA. Plaintiffs acknowledge that IMPA has both controlled and mishandled the defense of CVD in a legal action brought by Vause.

Defendants' Statement No. 22:

Approximately 82 former members of Cache Valley Dairy have converted from Grade B to Grade A status and have received payment for milk based upon Grade A pricing. They also were allocated IMPA base or quota which represents their proportionate share of the Grade A milk market. These producers did not have access to a Grade A market but were able to convert from Grade B to Grade A due to the established market for Grade A products which was provided through IMPA. This has had the effect of producing more revenue for those 82 producers, as a group, and diminishing the revenue for existing Grade A producers of IMPA, as a group, through the adjustments of the Federal Milk Marketing Order blend price, as a result of a reduction in market utilization percentage. Producers which converted from Grade B to Grade A were required to expend considerable funds to upgrade their facilities which could not be recouped if the Grade A market of IMPA were no longer available to these Grade A producers.

Plaintiffs' Response No. 22:

Plaintiffs stipulate only that some of its five hundred plus producers have had some portion of their milk paid at Grade A Pricing. Plaintiffs deny that Grade A markets were not otherwise available to CVD producers.

Defendants' Statement No. 23:

The producer payroll and all of its components, to include quality program, cheese yield formula, milk market settlement and others, are all centrally computed and paid by IMPA. It would not be feasible to separate the former Cache Valley producers from IMPA for purposes of producer payroll due to the difficulty in obtaining funds from producers which would have been overpaid.

Plaintiffs' Response No. 23:

Plaintiffs deny that separation is not feasible. Plaintiffs believe separation is practical, efficient and in the best financial interest of CVD producers.

Defendants' Statement No. 24:

The amount of milk production in IMPA's operating area has been reduced through the dairy termination program and through other causes. This reduction has an effect on every cheese or surplus milk plant in terms of operating efficiency. Therefore, the milk available for processing in the former Cache Valley plants at Amalga and Beaver has been greatly diminished and it is estimated that only 340,000 pounds daily would have been available during the month of February, which would have permitted the Amalga plant to run at only 25-30% efficiency even with the Beaver plant closed. The Amalga plant cannot be operated profitably at this level of efficiency. The overhead of the closed Beaver plant would also have to be covered. These losses would have to be born by producers.

Plaintiffs' Response No. 24:

Plaintiffs disagree. Plaintiffs note that the cheese division of IMPA, which is nothing more or less than CVD, has and continues to make a profit subsidizing the fluid milk division.

Defendants' Statement No. 25:

All of the milk produced by producer members of Cache Valley has been collected and transported by IMPA since approximately August 1, 1984. Farm pick-up routes have been adjusted to achieve economies and equipment has been modified, reassigned, salvaged or sold.

Plaintiffs' Response No. 25:

Plaintiffs disagree. CVD milk is hauled primarily in trucks owned by CVD. Further there are few realized economics of scale by IMPA to date.

Defendants' Statement No. 26:

Field men have been reassigned since August 1, 1984, and have been reduced from 11 to 8 in number during that time.

Plaintiffs' Response No. 26:

Plaintiffs believe this fact is but irrelevant.

Defendants' Statement No. 27:

Over the period of time since August, 1984, insurance has been centrally purchased by IMPA for all fleet, liability, casualty, property and workmen's compensation and old policies have been cancelled. The fleet insurance provided through IMPA resulted in substantial savings with respect to the fleet of vehicles formerly owned by Cache Valley Dairy.

Plaintiffs' Response No. 27:

Plaintiffs disagree and further state that IMPA is losing money.

Defendants' Statement No. 28:

Substantial capital purchases and leases have been made to provide for increases to the truck fleet, plant equipment, other plant improvements and computer capability, all in the name of IMPA. This also includes the construction of a \$10 million milk plant in Salt Lake County, the financing of which was arranged by IMPA. This plant was constructed to process a volume of milk produced by those producers assigned to IMPA.

Defendants' Statement No. 29:

Computers have been reprogrammed and expanded to accommodate the expanded business created by the assignment of assets to IMPA and the assumption of liabilities of IMPA.

Defendants' Statement No. 30:

Since August 1, 1984, when the Letter of Intent became effective, the central office facility of IMPA has been sold and new quarters have been leased for a period of six (6) years in the name of IMPA to accommodate the increased office needs.

Defendants' Statement No. 31:

Credit arrangements with customers, discounts, terms of sale and other matters relating to the sale of products have been negotiated in the name of IMPA to accommodate the increased office needs.

Defendants' Statement No. 32:

All employee payroll and records relating to employment have been transferred to IMPA and are administered centrally by IMPA and

its computer. The availability of the greater computer capacity of IMPA has obviated the necessity of replacing a computer at Cache Valley Dairy.

Plaintiffs' Response No. 28 through 32:

All of these facts go to reliance of IMPA on the combination. All of the facts cited, however, refer to activities of IMPA before even the purported combination was approved or presented. The Letter of Intent provides no authority to obligate CVD to these involvements.

Defendants' Statement No. 33:

The profit sharing plan of Cache Valley Dairy has been terminated and all proceeds have been paid out. Beginning August 1, 1986, the former Cache Valley Dairy employees were extended a pension plan under the sponsorship of IMPA. No pension or profit sharing plan now exists for Cache Valley Dairy.

Plaintiffs' Response No. 33:

Plaintiffs so stipulate.

Defendants' Statement No. 34:

Since August 1, 1984, significant changes have occurred in management personnel. Personnel have been transferred from Cache Valley Dairy to IMPA and many employees have been terminated with some hired in their place.

Plaintiffs' Response No. 34:

Plaintiffs so stipulate.

Defendants' Statement No. 35:

The corporate entities of the four cooperatives which formed IMPA

possess no members, no assets, no liabilities, or any purpose for existing. These corporations are in varying stages of being dissolved.

Plaintiffs' Response No. 35:

Plaintiffs deny. This fact asserts a legal conclusion which is disputed.

Defendants' Statement No. 36:

Due to the excess plant capacity available in the IMPA system after transfer of all assets to IMPA, certain plants have been, or are in the process of being, closed or modified, which include the Cedar City plant, the Murray plant, the Ogden plant, and the Idaho Falls plant. This has substantially reduced the capability of the remaining plants to process and handle available milk if the former Cache Valley plants were not available. With the closure of the Ogden cheese plant, there is no Utah cheese plant capability left in IMPA without the former Cache Valley plant. Equipment has been removed from plants and sold off or placed in other plants at considerable expense.

Defendants' Statement No. 37:

The cheese cutting and wrapping operations formerly owned by Cache Valley Dairy have been utilized to handle cheese production not only from plants formerly associated with Cache Valley but from cheese available to IMPA from other sources. The reliance upon cheese cutting and wrapping capability is extremely important to IMPA and its future business.

Defendants' Statement No. 38:

IMPA has committed a full supply of raw milk to certain customers and substantial supply to other customers. It also has committed to operate its remaining plants at acceptable efficiency. These commitments were made in reliance upon the availability of producer milk to IMPA from all of the members assigned to it. A withdrawal of a substantial amount of milk would have a tremendous effect on the ability of IMPA to furnish raw milk to handlers, to operate its plants at a satisfactory level and to provide a supply balancing function for the market.

Plaintiffs' Response No. 36 through 38:

Plaintiffs deny responsibility for the same and assert Defendant IMPA and the individual Defendants are responsible therefore. Perhaps Defendant IMPA should reconsider its current activities.

Defendants' Statement No. 39:

IMPA is operating under a Letter of Intent with Mountain Empire Dairymen's Association ("MEDA") and Western Dairymen Cooperative, Inc. ("WDCI") with an intent to merger or otherwise consolidate assets. These parties have entered into a certain agreement whereby IMPA would operate a Twin Falls cheese plant for MEDA, whereby MEDA and IMPA would haul milk for IMPA, certain employees would handle all of the coordination of field work and many other functions. IMPA relies on these arrangements with MEDA and WDCI for its continued successful operation. The loss of the former members and facilities of Cache Valley Dairy Association from IMPA could jeopardize such arrangements with MEDA and WDCI.

Plaintiffs' Response No. 39:

This fact sounds as if IMPA is going about a new combination with yet another cooperative in the same manner as it used with CVD. It may be true that recognizing CVD is not a part of IMPA could create difficulties. Just the same from the perspective of Plaintiffs, CVD continuing with IMPA jeopardizes the financial position of CVD and its members and the equity holders ownership interest therein.

APPENDIX M

train, correct or abate any actions adopted under this with their administration he plaintiff such relief, by er under all the facts and tuate the purposes of this nd rulings made pursuant

rights. In any case which: erminate a nonconforming necessary cannot, because irport zoning regulations e necessary approach prohts rather than by airport in which the property or bdivision owning the airgrant, or condemnation in political subdivisions are poses, such air right, navthe property or nonconnecessary to effectuate the

of this act or the applicaold invalid, such invalidity he act which can be given 1, and to this end the pro-

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TITLE 3

AGRICULTURAL COOPERATIVE ASSOCIATIONS

Chapter
3-1. General provisions relating to agricultural cooperative associations.

CHAPTER 1

GENERAL PROVISIONS RELATING TO AGRICULTURAL COOPERATIVE ASSOCIATIONS

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3-1-2	Definitions
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 3-1-38. Merger — Procedure for and effect of merger of foreign and domestic corporations or associations.
 3-1-39. Merger — Dissent from plan by member or shareholder — Dissent as to less than all of memberships or shares.
 3-1-40. Merger — Dissent from plan by member or shareholder — Filing objection to plan — Demand for payment for membership or shares and procedure for payment.
 3-1-41. Merger — Domestic or foreign corporations or associations — Plan of merger — Articles of merger — Certificate of merger.

3-1-1. Declaration of policy. It is the declared policy of this state, as one means of improving the economic position of agriculture, to encourage the organization of producers of agricultural products into effective associations under the control of such producers, and to that end this act should be liberally construed.

History: L. 1937, ch. 2, § 1; C. 1943, 2-0-19.

Title of Act.

An act concerning agricultural co-operative associations; providing for the incorporation, operation, control, management and dissolution thereof; prescribing penalties for conduct that may impair the standing or credit of such associations; making uniform the law with relation thereto; and superseding and repealing Title 2, Revised Statutes of Utah, 1933. — Laws 1937, ch. 2.

Cross-References.

Franchise and privilege taxes, exemption, 59-13-4.

Motor carrier regulation exemption, 54-6-12.

Nonprofit Corporation and Cooperative Association Act applicability, 16-6-20, 16-6-108.

Produce Dealers' Act applicability, 4-7-5.

Antitrust action against association of milk producers.

An agricultural cooperative association of milk producers organized under and pursu-

ant to Title 3, Utah Code Annotated 1953, acting as the exclusive agent for the sale of milk for its members, did not violate antitrust laws through control of the transportation and marketing of milk where it was shown that the members of the cooperative produced, and the cooperative hauled to market, approximately 50% of the grade A milk produced in the Great Basin marketing area. *Gammon v. Federated Milk Producers Assn.* (1961) 11 U 2d 421, 360 P 2d 1018, reh. den. 12 U 2d 189, 364 P 2d 417.

Collateral References.

Agriculture ⇌ 6.

3 CJS Agriculture § 138.

18 AmJur 2d 260-264, Cooperative Associations §§ 1-4.

Co-operative marketing of farm and dairy products by producers' association, 25 ALR 1113, 33 ALR 247, 47 ALR 936, 77 ALR 405, 98 ALR 1406, 12 ALR 2d 130.

3-1-2. Definitions. As used in this act, unless the context or subject matter requires otherwise:

(a) "Agricultural products" includes floricultural, horticultural, viticultural, forestry, nut, seed, ground stock, dairy, livestock, poultry, bee and any and all farm products.

(b) "Association" means a corporation organized under this act, or a similar domestic corporation, or a foreign association or corporation if authorized to do business in this state, organized under any general or special act as a co-operative association for the mutual benefit of its members, as agricultural producers, and which confines its operation to purposes authorized by this act and restricts the return on the stock or membership

capital and the amount of interest placed thereon by this act for

(c) "Domestic associations" under the laws of this state.

(d) "Foreign association" formed under the laws of this

(e) "This act" means the Association Act."

(f) Associations shall be corporations, inasmuch as their invested capital, but to render or through which the producer reasonable and fair return for the

(g) "Member" includes the be but one class, in an association stock in an association organization

(h) "Producer" means a person an association of such persons

(i) "Person" includes an individual association.

(j) "Board" means the board

(k) "Articles" means the articles

History: L. 1937, ch. 2, § 2; C. 1943

Collateral References.

Agriculture ⇌ 6.

3-1-3. Qualifications of individuals engaged in agriculture or two form an association.

History: L. 1937, ch. 2, § 3; C. 1943

3-1-4. Purposes. Such associations engaging in any co-operative activity in connection with:

(a) Producing, assembling products, or harvesting, processing, blending, canning, packing, grading, shipping, or utilizing such the by-products thereof.

(b) Seed and crop improvement.

(c) Manufacturing, buying machinery, equipment, feed, and other lubricants, seeds, and supplies.

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associations — Plan of merger —

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capital and the amount of its business with nonmembers to the limits
placed thereon by this act for associations organized hereunder.

(c) "Domestic associations" means an association or corporation formed
under the laws of this state.

(d) "Foreign association" means an association or corporation not
formed under the laws of this state.

(e) "This act" means the "Uniform Agricultural Co-operative Associa-
tion Act."

(f) Associations shall be classified as and deemed to be nonprofit corpo-
rations, inasmuch as their primary object is not to pay dividends on
invested capital, but to render service and provide means and facilities by
or through which the producers of agricultural products may receive a rea-
sonable and fair return for their products.

(g) "Member" includes the holder of a membership of which there shall
be but one class, in an association without stock and the holder of common
stock in an association organized with stock.

(h) "Producer" means a person who produces agricultural products, or
an association of such persons.

(i) "Person" includes an individual, a partnership, a corporation and an
association.

(j) "Board" means the board of directors.

(k) "Articles" means the articles of incorporation.

History: L. 1937, ch. 2, § 2; C. 1943, 2-0-20. 3 CJS Agriculture § 138.
Collateral References. 18 AmJur 2d 260, Cooperative Associations,
§ 1.
Agriculture ⇌ 6.

3-1-3. Qualifications of incorporators. Five or more adult persons,
engaged in agriculture or two or more associations of such producers, may
form an association.

History: L. 1937, ch. 2, § 3; C. 1943, 2-0-21.

3-1-4. Purposes. Such association may be organized for the purpose of
engaging in any co-operative activity for producers of agricultural products
in connection with:

(a) Producing, assembling, marketing, buying or selling agricultural
products, or harvesting, preserving, drying, processing, manufacturing,
blending, canning, packing, ginning, grading, storing, warehousing, han-
dling, shipping, or utilizing such products, or manufacturing or marketing
the by-products thereof.

(b) Seed and crop improvement, and soil conservation and rehabilita-
tion.

(c) Manufacturing, buying or supplying to its members and others,
machinery, equipment, feed, fertilizer, coal, gasoline and other fuels, oils
and other lubricants, seeds, and all other agricultural and household sup-
plies.

(d) Generating and distributing electrical energy and furnishing telephone service to its members and others.

(e) Performing or furnishing business or educational services, on a co-operative basis, for or to its members.

(f) Financing any of the above enumerated activities.

History: L. 1937, ch. 2, § 4; C. 1943, 2-0-22.

Collateral References.

Constitutionality and construction of farm-aid laws, 92 ALR 768.

Constitutionality of statutes relating to grading, packing or branding of farm products, 73 ALR 1445.

Co-operative marketing of farm products by producers' associations, 25 ALR 1113, 33 ALR 247, 47 ALR 936, 77 ALR 405, 98 ALR 1406, 12 ALR 2d 130.

3-1-5. Articles of incorporation. Articles of incorporation shall be signed in duplicate by each of the incorporators and acknowledged by at least three of them, if natural persons, and by the president and secretary if associations, before an officer authorized to take acknowledgments, such acknowledgment to state that it is bona fide their intention to commence and carry on the business specified in the articles, and if natural persons, that each of them is an adult person. The articles shall state:

(a) The name of the association which may or may not include the word "cooperative." The corporate name shall not be the same as, nor deceptively similar to, the name of any association or corporation doing business in the state, unless the written consent of such other association or corporation, to the adoption of such name, is filed with the articles in the office of the secretary of state.

(b) Its purposes.

(c) Its duration.

(d) The location and post office address of its principal place of business in this state.

(e) The name and street addresses of each of the incorporators, and if organized with stock, a statement of the number of shares subscribed by each, which shall not be less than one, and the class or classes of shares for which each subscribes.

(f) The names of the first directors and their street addresses.

(g) The name and address of the registered agent.

(h) Whether organized with or without stock; and if organized with stock the total authorized number of par value shares and the par value of each share, and if any of its shares have no par value, the authorized number of such shares; and if more than one class of stock is authorized, a description of the classes of shares, the number of shares in each class, the relative rights, preferences and restrictions granted to or imposed upon the shares of each class, and the dividends to which each class shall be entitled. If only one class of stock is authorized, it shall be common, and if more than one class is authorized, one class shall be designated common stock, and, in any event, the common stock shall carry all voting rights.

(i) If organized without stock, the rights and interests shall be equal for each member.

(j) The articles may provide for the establishment of voting districts and the members to correspond to changes, retirement and transfer.

History: L. 1937, ch. 2, § 5; C. 1943, 2-0-22; L. 1977, ch. 7, § 1.

Compiler's Notes.

The 1977 amendment substituted "quadruplicate" in place of "duplicate"; inserted "and street address" in the beginning of subd. (e); substituted "post office" for "office".

3-1-6. Filing and recording of articles of incorporation — Fee. The fee for filing articles of incorporation shall be paid in the office of the secretary of state, which shall be prima facie evidence of issuance of such certificate of incorporation.

(b) The fee for filing articles of incorporation shall be paid in the office of the secretary of state, which shall be prima facie evidence of issuance of such certificate of incorporation.

(c) No person dealing with the secretary of state shall be liable for constructive notice of the filing of articles of incorporation for reason of such filing or recording.

History: L. 1937, ch. 2, § 6; C. 1943, 2-0-22; L. 1961, ch. 3, § 1; 1977, ch. 7, § 1.

Compiler's Notes.

The 1961 amendment rewrote the provision for filing of incorporation with the clerk of the county in which the corporation has its principal place of business; and delete the provision for fees payable to the county clerk for filing articles of incorporation and amendments to the articles of incorporation.

3-1-7. Amendments. Any corporation may amend its articles of incorporation by a vote of the members.

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(i) If organized without stock, whether the property rights and interest of each member are equal or unequal; if unequal, the rule by which such rights and interests shall be determined.

(j) The articles may also contain any other provisions, consistent with law for regulating the association's business or the conduct of its affairs, the establishment of voting districts, the election of delegates to represent such districts and the members residing therein, for representation of each district upon the board of directors and for changing the number of directors to correspond to changes in the number of districts, and for the issuance, retirement and transfer of memberships and stock.

History: L. 1937, ch. 2, § 5; C. 1943, 2-0-23;
L. 1977, ch. 7, § 1.

Compiler's Notes.

The 1977 amendment substituted "duplicate" for "quadruplicate" in the first sentence; inserted "and street addresses" near the beginning of subd. (e); substituted "street addresses" for "post office addresses" in

subd. (f); inserted subd. (g); and redesignated former subds. (g) through (i) as subds. (h) through (j).

Collateral References.

Agriculture ⇌ 6.
3 CJS Agriculture § 140.
18 AmJur 2d 268-270, Cooperative Associa-
tions §§ 8-10.

3-1-6. Filing and recording articles of incorporation — Certificate of incorporation — Fees. (a) The articles of incorporation shall be filed in the office of the secretary of state, who shall thereupon issue a certificate of incorporation, which certificate or a certified copy of the same shall be prima facie evidence of the due incorporation of the association. Upon the issuance of such certificate of incorporation, the corporate existence shall begin.

(b) The fee for filing articles of incorporation with the secretary of state, for securing a certified copy thereof and for the issuance of a certificate of incorporation shall be \$10, whether incorporated with or without stock; for filing amendments to articles the fee shall be \$5 to the secretary of state.

(c) No person dealing with the association shall be charged with constructive notice of the contents of the articles or amendments thereto by reason of such filing or recording.

History: L. 1937, ch. 2, § 6; C. 1943, 2-0-24;
L. 1961, ch. 3, § 1; 1977, ch. 7, § 2.

Compiler's Notes.

The 1961 amendment rewrote subsec. (a) to eliminate the provision for filing the articles of incorporation with the clerk of the county in which the corporation has its principal place of business; and deleted provisions for fees payable to the county clerk for depositing articles of incorporation and for filing amendments to the articles in subsec. (b).

The 1977 amendment deleted from subd. (a) a sentence requiring the filing of a copy of the articles of incorporation with the state commissioner of agriculture; and deleted from subd. (b) a sentence providing that no fee could be charged for such filing.

Effective Date.

Section 2 of Laws 1961, ch. 3 provided: "This act shall take effect on January 1, 1962."

3-1-7. Amendments to articles of incorporation. (a) An association may amend its articles of incorporation by the affirmative vote of a majority of the members voting thereon at any regular meeting, or at a special

meeting called for the purpose. A notice of the proposed amendment and of the time and place of holding such meetings shall be published in a daily or weekly newspaper of general circulation in the territory in which the members reside, or in case the association publishes and distributes to the members, through the United States post office, a publication devoted to the interests of the association and issued at least once a month, such notice may be published therein, in lieu of publication in a general newspaper as aforesaid. If such notice is published in a general newspaper, the period thereof shall be not less than twenty-one days, if in a paper published by the association, then it must be published in at least two issues and for a period of at least thirty-six days. No amendment affecting the preferential rights of any outstanding preferred stock shall be adopted until the written consent of the holders of a majority of the outstanding preference shares has been obtained.

(b) After an amendment has been adopted, articles of amendment shall be prepared, in duplicate, setting forth the amendment and the adoption thereof, and shall be signed and sworn to by the president or vice-president and by the secretary or treasurer, and filed as in the case of original articles of incorporation.

History: L. 1937, ch. 2, § 7; C. 1943, 2-0-25; L. 1977, ch. 7, § 3.

Compiler's Notes.

The 1977 amendment substituted "duplicate" for "quadruplicate" near the beginning of subsec. (b).

3-1-8. Bylaws. The members of the association shall adopt bylaws not inconsistent with law or the articles, and they may alter and amend the same from time to time. Bylaws may be adopted, amended or repealed, at any regular meeting, or at any special meeting called for that purpose, by a majority vote of the members voting thereon. The bylaws may provide for:

(a) The time, place and manner of calling and conducting meetings of the members, and the number of members that shall constitute a quorum.

(b) The manner of voting and the condition upon which members may vote at general and special meetings and by mail or by delegates elected by district groups or other associations.

(c) Subject to any provision thereon in the articles and in this act, the number, qualifications, compensation, duties and terms of office of directors and officers; the time of their election and the mode and manner of giving notice thereof.

(d) The time, place and manner for calling and holding meetings of the directors and executive committee, and the number that shall constitute a quorum.

(e) Rules consistent with law and the articles for the management of the association, the establishment of voting districts, the making of contracts, the issuance, retirement, and transfer of stock, and the relative rights, interests and preferences of members and shareholders.

(f) Penalties for violations
(g) Such additional provisions
ing out of the purposes of th

History: L. 1937, ch. 2, § 8; C. 1943

Collateral References.

Co-operative associations: Valid
forceability of bylaw amendment

3-1-9. Powers. (I) An association which might be formed by this act took effect, shall have the power to do each of the following for the accomplishment of any one or more of the purposes for which it was organized: (1) To exercise all powers, rights, and privileges which may be exercised by the exercise of any right or power by this state to corporations with the express provisions of

Special Authority.

(II) Without limiting or restricting the powers of subdivision I of this section, any association shall have a

(a) To act as agent, broker, or other producers, and for any other purpose to assist or join with other producers, and for such other activities authorized by its bylaws, and for such other purposes handled or managed by the

(b) To make contracts with other officers or agents, all such contracts shall be proper for the accomplishment of the purposes not inconsistent with law or the bylaws, and expedient for the interest of

(c) To make loans or advances to the members of an association, and to purchase, or to take evidence of debt, obligation

(d) To establish and maintain, and to abolish the same; a fund or other similar fund for the association.

(e) To own and hold membership in other associations and corporations engaged in any related activity

the proposed amendment and shall be published in a daily paper in the territory in which the association publishes and distributes to the public, a publication devoted to agriculture at least once a month, such publication in a general newspaper, or in a general newspaper, the next ten days, if in a paper published in at least two issues. No amendment affecting the authorized stock shall be adopted by a majority of the outstanding

articles of amendment shall be adopted by a majority of the members. The president or vice-president shall call for the adoption in the case of original articles.

Notes.

amendment substituted "duplicate" near the beginning of the article.

on shall adopt bylaws not later than the first meeting, may alter and amend the bylaws, amended or repealed, at any time called for that purpose, by a majority vote. The bylaws may provide

for conducting meetings of the association, all constitute a quorum. The portion which members may attend shall be by delegates elected

articles and in this act, the terms of office of directors shall be determined by the mode and manner of giving

for holding meetings of the association, the portion that shall constitute a quorum

for the management of the association, the making of contracts, the stock, and the relative rights of the shareholders.

(f) Penalties for violations of the bylaws.

(g) Such additional provisions as shall be deemed necessary for the carrying out of the purposes of this act.

History: L. 1937, ch. 2, § 8; C. 1943, 2-0-26. benefits available to members, 61 ALR 3d 976.

Collateral References.

Co-operative associations: Validity and enforceability of bylaw amendment reducing

3-1-9. Powers. (I) An association formed under this act, or an association which might be formed under this act and which existed at the time this act took effect, shall have power and capacity to act possessed by natural persons and may do each and everything necessary, suitable or proper for the accomplishment of any one or more of the purposes, or the attainment of any one or more of the objects herein enumerated or conducive to or expedient for the interests or benefit of the association, and may exercise all powers, rights, and privileges necessary or incident thereto, including the exercise of any rights, powers, and privileges granted by the laws of this state to corporations generally, excepting such as are inconsistent with the express provisions of this act.

Special Authority.

(II) Without limiting or enlarging the grant of authority contained in subdivision I of this section, it is hereby specifically provided that every such association shall have authority:

(a) To act as agent, broker, or attorney in fact for its members and other producers, and for any subsidiary or affiliated association, and otherwise to assist or join with associations engaged in any one or more of the activities authorized by its articles, and to hold title for its members and other producers, and for subsidiary and affiliated association to property handled or managed by the association on their behalf.

(b) To make contracts and to exercise by its board or duly authorized officers or agents, all such incidental powers as may be necessary, suitable or proper for the accomplishment of the purposes of the association and not inconsistent with law or its articles, and that may be conducive to or expedient for the interest or benefit of the association.

(c) To make loans or advances to members or producer-patrons or to the members of an association which is itself a member or subsidiary thereof; to purchase, or otherwise acquire, endorse, discount, or sell any evidence of debt, obligation or security.

(d) To establish and accumulate reasonable reserves and surplus funds and to abolish the same; also to create, maintain, and terminate revolving funds or other similar funds which may be provided for in the bylaws of the association.

(e) To own and hold membership in or shares of the stock of other associations and corporations and the bonds or other obligations thereof, engaged in any related activity; or, in producing, warehousing or marketing

any of the products handled by the association; or, in financing its activities; and while the owner thereof, to exercise all the rights of ownership, including the right to vote thereon.

(f) To acquire, hold, sell, dispose of, pledge, or mortgage, any property which its purposes may require.

(g) To borrow money without limitation as to amount, and to give its notes, bonds, or other obligations therefor and secure the payment thereof by mortgage or pledge.

(h) To deal in products of, and handle machinery, equipment, supplies and perform services for nonmembers to an amount not greater in annual value than such as are dealt in, handled or performed for or on behalf of its members, but the value of the annual purchases made for persons who are neither members nor producers shall not exceed fifteen per centum of the value of all its purchases. Business transacted by an association for or on behalf of the United States or any agency or instrumentality thereof, shall be disregarded in determining the volume or value of member and nonmember business transacted by such association.

(i) If engaged in marketing the products of its members, to hedge its operations.

(j) To have a corporate seal and to alter the same at pleasure.

(k) To continue as a corporation for the time limited in its articles, and if no time limit is specified then perpetually.

(l) To sue and be sued in its corporate name.

(m) To conduct business in this state and elsewhere as may be permitted by law.

(n) To dissolve and wind up.

History: L. 1937, ch. 2, § 9; C. 1943, 2-0-27.

18 AmJur 2d 277-279, Cooperative Associations §§ 18-20.

Collateral References.

Agriculture ⇨ 6
3 CJS Agriculture § 145.

Responsibility of agricultural society for tort, 52 ALR 1400.

3-1-10. Members, qualifications and liabilities — Voting rights. (a)

An association may admit as members only producers of agricultural products, including tenants and landlords receiving a share of the crop, and co-operative associations of such producers. The incorporators named in the articles are thereby made members of the association, and they shall pay for their membership or stock the same amount and in the same manner as may be required in the case of other members.

(b) No stockholder shall hold more than one share of the common voting stock.

(c) Under the terms and conditions prescribed in the bylaws, a member shall lose his membership if he ceases to belong to the class eligible to membership under this section, but he shall remain subject to any liability incurred by him while a member of the association.

(d) No member shall be personally liable for any debt or liability of the association.

(e) No member or stockholder and no vote shall be cast by a corporation, its vote may be cast.

History: L. 1937, ch. 2, § 10; C. 2-0-28.

Cross-References.

Individual income tax, information source, 59-14-55.

Collateral References.

Agriculture ⇨ 6.

3-1-11. Certificates of and distribution of reserves — est, assignability. (a) No certificate issued until fully paid for, but vote and hold office prior to pay

(b) Dividends in excess of cash value of the consideration on common or preferred stock be cumulative if so provided in the

(c) Savings in excess of dividends shall be distributed on the basis that any distribution to a nonmember credited to such nonmember under a membership certificate or a share distribution credited to the account to the membership fund at the time the amount is less than the value of common stock.

(d) The bylaws shall provide membership interests with members or whose membership is otherwise membership interests may be membership, for whatever cause no further control over the facilities

(e) An association may issue shares. Preferred stock may be issued on such terms and conditions as may be and printed on the stock certificate entitled to vote, but no change shall be effective until the written certificate preferred stock has been obtained made in cash, services, or property stock, services, and property as directed

(f) The association may from time to time certificate of interest evidencing his

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(e) No member or stockholder shall be entitled to more than one vote and no vote shall be cast by proxy; provided, that where the member is a corporation, its vote may be cast by an accredited representative.

History: L. 1937, ch. 2, § 10; C. 1943,
2-0-28.

Cross-References.

Individual income tax, information at
source, 59-14-55.

Collateral References.

Agriculture ⇌ 6.

3 CJS Agriculture §§ 141, 142.
18 AmJur 2d 272-277, Cooperative Associa-
tions §§ 13-17.

Income and excess profits tax of coopera-
tive association and its patrons or members,
8 ALR 2d 925.

Liability of member or former member of
marketing or purchasing cooperative for its
debts or losses, 96 ALR 3d 1243.

3-1-11. Certificates of and termination of membership — Dividends and distribution of reserves — Preferred stock — Certificate of interest, assignability.

(a) No certificate for membership or stock shall be issued until fully paid for, but bylaws may provide that a member may vote and hold office prior to payment in full for his membership or stock.

(b) Dividends in excess of eight per centum per annum on the actual cash value of the consideration received by the association shall not be paid on common or preferred stock or membership capital, but dividends may be cumulative if so provided in the articles or bylaws.

(c) Savings in excess of dividends and additions to reserves and surplus shall be distributed on the basis of patronage. The bylaws may provide that any distribution to a nonmember, eligible for membership, may be credited to such nonmember until the amount thereof equals the value of a membership certificate or a share of the association's common stock. The distribution credited to the account of such nonmember may be transferred to the membership fund at the option of the board, if, after two years, the amount is less than the value of the membership certificate or a share of common stock.

(d) The bylaws shall provide the time and manner of settlement of membership interests with members who withdraw from the association or whose membership is otherwise terminated. Provisions for forfeiture of membership interests may be made in the bylaws. After termination of membership, for whatever cause, the withdrawing member shall exercise no further control over the facilities, assets or activities of the association.

(e) An association may issue preferred stock to members and nonmembers. Preferred stock may be redeemed or retired by the association on such terms and conditions as may be provided in the articles or bylaws and printed on the stock certificates. Preferred stockholders shall not be entitled to vote, but no change in their priority or preference rights shall be effective until the written consent of the holders of a majority of the preferred stock has been obtained. Payment for preferred stock may be made in cash, services, or property on the basis of the fair value of the stock, services, and property as determined by the board.

(f) The association may from time to time issue to each member a certificate of interest evidencing his interest in any fund, capital investment,

or other assets of the association. Such certificate may be transferred only to the association, or to such other purchaser as may be approved by the board of directors, upon such terms and conditions as shall be provided for in the bylaws.

History: L. 1937, ch. 2, § 11; C. 1943, 2-0-29.

Cross-References.

Incorporation of cooperative association, 16-6-108.

Collateral References.

Cooperative associations: Rights in equity credits or patronage dividends, 50 ALR 3d 435.

3-1-12. Meetings. Within ninety days after the incorporation of an association the members thereof shall hold an organization meeting at a time and place fixed by the temporary board of directors. Not less than ten days' written notice thereof shall be given to each member. An association may provide in its bylaws for one or more regular meetings each year, which may be held within or without the state at the time and place designated in the bylaws. Special meetings of the members may be called by the board of directors, and it shall be their duty to call such meetings when ten per centum of the members file with the secretary a petition demanding a special meeting and specifying the business to be considered at such meeting. Notice of all meetings, except as otherwise provided by law or the articles or bylaws, shall be mailed to each member at least ten days prior to the meeting, and in case of special meetings the notice shall state the purposes for which it is called, but the bylaws may require that all notices shall be given by publication in a periodical published by or for the association, to which substantially all its members are subscribers, or in a newspaper or newspapers whose combined circulation is general in the territory in which the association operates.

History: L. 1937, ch. 2, § 12; C. 1943, 2-0-30.

3-1-13. Directors. (I) The business of the association shall be managed by a board of not less than three directors; at least two-thirds of the directors shall be members of the association, or officers, directors or members of a member association. A director shall hold office for the term for which he was named or elected and until his successor is elected and qualified.

First Directors.

(II) The names of the first directors shall be stated in the articles. Their successors shall be elected by the members at the first meeting of the members held after the incorporation of the association.

Provisions Concerning, in Articles and Bylaws.

(III) The number, qualifications, terms of office, manner of election, time and place of meeting, and the powers and duties of the directors may, subject to the provisions of this act, be prescribed by the articles or bylaws; Except as otherwise prescribed in the articles or bylaws:

(a) A director shall be elected

(b) Vacancies in the board shall be filled by the remaining members of the board for the election of directors a special meeting of the members to fill the vacancy. A director elected to fill a vacancy shall serve until his next annual meeting of the members prior thereto.

Districts, Provision for in

(IV) The bylaws may provide for the election of directors in territory in which the association operates either directly or by district. In such case, the bylaws shall give the board of directors authority to determine the number of districts and the manner of districting and redistricting. The bylaws may provide that to nominate the directors at such primary elections may be done by association or may be done by

Executive Committee.

(V) The bylaws may provide for the election of directors by the board of directors to perform all the functions and duties of the association and control.

History: L. 1937, ch. 2, § 13; C. 1943, 2-0-31.

Collateral References.

Agriculture § 6.

3-1-14. Removal of directors. A director may be removed from office by a vote of a majority of the members of the association, together with a petition requesting the removal of the director voted upon at the next meeting of the members to remove the director by a vote of a majority of the members. A director whose removal is requested shall have the opportunity at the meeting to present evidence; and the same opportunity. In case of districts, then the petition

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References.

Associations: Rights in equity
atronage dividends, 50 ALR 3d

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circulation is general in

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laws:

(a) A director shall be elected for a term of one year.

(b) Vacancies in the board, other than by expiration of term, shall be filled by the remaining members of the board, unless the bylaws provide for the election of directors by districts, in which case the board shall call a special meeting of the members in the district to elect a person qualified to fill the vacancy. A director elected by the remaining members of the board shall serve until his successor is elected by the members at the next annual meeting of the members or at any special meeting called and held prior thereto.

Districts, Provision for in Bylaws.

(IV) The bylaws may provide, if not restricted by the articles, that the territory in which the association has members shall be divided into districts and that the directors shall be elected according to such districts, either directly or by district delegates elected by the members in that district. In such case, the bylaws shall specify, or vest in the board of directors authority to determine, the number of directors to be elected by each district and the manner and method of apportioning the directors and of districting and redistricting the territory covered by the association. The bylaws may provide that primary elections shall be held in each district to nominate the directors apportioned thereto and that the result of all such primary elections may be ratified by the next regular meeting of the association or may be considered as a final election.

Executive Committee.

(V) The bylaws may provide for an executive committee to be elected by the board of directors from their number and may allot to such committee all the functions and powers of the board subject to its general direction and control.

History: L. 1937, ch. 2, § 13; C. 1943,
2-0-31.

3 CJS Agriculture §§ 143, 144.
18 AmJur 2d 270-272, Cooperative Associa-
tions §§ 11, 12.

Collateral References.

Agriculture ⇨ 6.

3-1-14. Removal of directors. Any member may ask for the removal of a director by filing charges with the secretary or president of the association, together with a petition signed by ten per centum of the members requesting the removal of the director in question. The removal shall be voted upon at the next meeting of the members, and the association may remove the director by a majority vote of the members voting thereon. The director whose removal is requested shall be served with a copy of the charges not less than ten days prior to the meeting and shall have an opportunity at the meeting to be heard in person and by counsel and to present evidence; and the persons requesting the removal shall have the same opportunity. In case the bylaws provide for election of directors by districts, then the petition for removal of a director must be signed by

twenty per centum of the members residing in the district from which he was elected. The board must call a special meeting of the members residing in that district to consider the removal of the director; and by a majority vote of the members of that district voting thereon the director in question shall be removed from office.

History: L. 1937, ch. 2, § 14; C. 1943, 2-0-32.

3-1-15. Officers. The board shall elect a president, a secretary and a treasurer, and may elect one or more vice-presidents, and such other officers as may be authorized in the bylaws. Unless the articles otherwise specifically provide, the president and at least one of the vice-presidents must be directors, but a vice-president who is not a director cannot succeed to or fill the office of president. Any two of the offices of vice-president, secretary and treasurer may be combined in one person.

History: L. 1937, ch. 2, § 15; C. 1943, 2-0-33.

3-1-16. Removal of officer. Any member may bring charges of misconduct or incompetency against an officer by filing them with the secretary or president of the association, together with a petition signed by ten per centum of the members requesting the removal of the officer in question. The directors shall vote upon the removal of the officer at the first meeting of the board held after the hearing on the charges, and the officer may be removed by a majority vote, notwithstanding any contract the officer may have with the association, which shall terminate upon his removal, anything in the contract to the contrary notwithstanding. The officer against whom such charges are made shall be served with a copy of the charges not less than ten days prior to the meeting, and shall have an opportunity at the meeting to be heard in person and by counsel, and to present evidence, and the persons making the charges shall have the same opportunity.

History: L. 1937, ch. 2, § 16; C. 1943, 2-0-34.

3-1-17. Contracts with association. (I) The bylaws may require members to execute contracts with the association in which the members agree to patronize the facilities created by the association, and to sell all or a specified part of their products to or through it, or to buy all or a specified part of their supplies from or through the association or any facilities created by it. If the members contract to sell through the association, the fact that for certain purposes the relation between the association and its members may be one of agency shall not prevent the passage from the member to the association of absolute and exclusive title to the products which are the subject-matter of the contract. Such title shall pass to the association

upon delivery of the product. If the period of the contract exceeds ten days in each year, after giving to the association such notice, the member may withdraw from the association while in default provision, a member may

Damages for Breach.

(II) The contract may fix damages as penalties, specifically upon the breach of any of any facilities of the association holding of products; and may his contract shall pay all costs and attorney's fees, to be fixed in any action upon the contract.

Equitable Relief.

(III) A court of competent jurisdiction may prevent the breach or further breach, decree specific performance of the contract, and upon filing a verified complaint, and a bond in the amount fixed by the court, the court may grant an injunction against the breach.

Remedy Not Exclusive.

(IV) No remedy, either legal or equitable, shall be exclusive, but the association may sue at the same or different times.

Landowners Presumed to be Members.

(V) In any action upon the contract, it shall be presumed that a landowner who delivers products to the association for storage, tenancy or possession or work or possession or labor thereon, or who contracts with the landowner or landlord for such actions, the foregoing shall be enforceable against such landowner.

Filing Contract.

(VI) The association may sue for breach of the contract or through the association in

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upon delivery of the product, or at any other time specified in the contract. If the period of the contract exceeds three years, the bylaws and the contracts executed thereunder shall specify a reasonable period, not less than ten days in each year, after the third year, during which the member, by giving to the association such reasonable notice as the association may prescribe, may withdraw from the association; provided, that if the bylaws or contracts executed hereunder so specify, a member may not withdraw from the association while indebted thereto. In the absence of such a withdrawal provision, a member may withdraw at any time after three years.

Damages for Breach.

(II) The contract may fix, as liquidated damages, which shall not be regarded as penalties, specific sums to be paid by the members to the association upon the breach of any provision of the contract regarding the use of any facilities of the association or the sale, delivery, handling, or withholding of products; and may further provide that the member who breaks his contract shall pay all costs, including premiums for bonds, and reasonable attorney's fees, to be fixed by the court, in case the association prevails in any action upon the contract.

Equitable Relief.

(III) A court of competent jurisdiction may grant an injunction to prevent the breach or further breach of the contract by a member and may decree specific performance thereof. Pending the adjudication of such an action and upon filing a verified complaint showing the breach or threatened breach, and a bond in such form and amount as may be approved by the court, the court may grant a temporary restraining order or preliminary injunction against the member.

Remedy Not Exclusive.

(IV) No remedy, either legal or equitable, herein provided for, shall be exclusive, but the association may avail itself of any and all such remedies, at the same or different times, in any action or proceeding.

Landowners Presumed to Control Delivery.

(V) In any action upon such marketing contracts, it shall be conclusively presumed that a landowner or landlord or lessor is able to control the delivery of products produced on his land by tenants or others, whose tenancy or possession or work on such land or the terms of whose tenancy or possession or labor thereon were created or changed after execution by the landowner or landlord or lessor of such a marketing contract; and in such actions, the foregoing remedies for nondelivery or breach shall lie and be enforceable against such landowner, landlord, or lessor.

Filing Contract.

(VI) The association may file contracts to sell agricultural products to or through the association in the office of the county recorder of the county

in which the products are produced. If the association has uniform contracts with more than one member in any county, it may, in lieu of filing the original contracts, file the affidavit of its president, vice president or secretary, containing or having attached thereto:

(a) A true copy of the uniform contract entered into with its members producing such product in that county;

(b) The names of the members who have executed such contract and a description of the land on which the product is produced, if such description is contained in the contract. The association may file from time to time thereafter affidavits containing revised or supplementary lists of the members producing such product in that county without setting forth therein a copy of the uniform contract but referring to the filed or recorded copy thereof. All affidavits filed under this section shall state in substance that they are filed pursuant to the provisions of this section. The county recorder shall file such affidavits and make endorsements thereon and record and make entries thereof in the same manner as is required by law in the case of chattel mortgages, and he shall compile and make available for public inspection a convenient index containing the names of all signers of such contracts, and collect for his services hereunder the same fees as for chattel mortgages. The filing of any such contract, or such affidavit, shall constitute constructive notice of the contents thereof, and of the association's title or right to the product embraced in such contract, to all subsequent purchasers, encumbrancers, creditors, and to all persons dealing with the members with reference to such product. No title, right, or lien of any kind shall be acquired to or on the product thereafter except through the association or with its consent, or subject to its rights; and the association may recover the possession of such property from any and all subsequent purchasers, encumbrancers, and creditors, and those claiming under them, in whose possession the same may be found, by any appropriate action for the recovery of personal property, and it may have relief by injunction and for damages.

History: L. 1937, ch. 2, § 17; C. 1943, 2-0-35.

Collateral References.

Agriculture ⇨ 6.

3 CJS Agriculture §§ 146 to 150, 157.

18 AmJur 2d 279-290, Cooperative Associations §§ 21-33.

Construction and effect of co-operative farm or dairy products agreement with respect to association's charges and deductions for gathering, grading, processing, shipping, and marketing the products, 90 ALR 2d 1142.

Validity and construction of provision for liquidated damages in contract with cooperative marketing association, 12 ALR 2d 130.

3-1-18. Inducing breach of contract — False reports — Penalty. Any person or any corporation whose officers or employees knowingly induce or attempt to induce any member or stockholder of an association to violate his marketing contract with the association, or who maliciously and knowingly spreads false reports about the finances or management thereof, shall be guilty of a misdemeanor and shall be subject to a fine

of not less than one hundred dollars for each such offense; and in a civil suit in the penal sum

History: L. 1937, ch. 2, § 18 2-0-36.

Collateral References.

Agriculture ⇨ 6.

3-1-19. Association not information. (a) No association deemed to be a conspiracy illegal monopoly; or be deemed ening competition or fixing between the association and this act, be construed as conspiracy or combination act.

(b) An association may its members, to other c present, and prospective c ilar information relating t or through an agent creat ing in conjunction with it.

(c) An association may of their current and pro and its relation to the p and existing or potential served from the most c orderly marketing that enhancement of prices or

History: L. 1937, ch. 2, § 2-0-37.

Cross-References.

Restraint of trade exemption: Trusts and combinations pro Art. XII, § 20.

Unfair Practices Act, ex: 13-5-4.

Control of prices prohibited.

An agreement between a cooperative association of milk its members under which th engaged in fixing the price which milk was sold to distrib cessors was void and could not defense against an action by damages resulting from alle interference with his rights ur

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association, 12 ALR 2d 130.

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of not less than one hundred dollars and not more than one thousand dol-
lars for each such offense; and shall be liable to the association aggrieved
in a civil suit in the penal sum of five hundred dollars for each such offense.

History: L. 1937, ch. 2, § 18; C. 1943,
2-0-36.

3 CJS Agriculture § 158.
18 AmJur 2d 295, Cooperative Associations
§ 38.

Collateral References.
Agriculture ⇌ 6.

3-1-19. Association not in restraint of trade — Right to disseminate information. (a) No association complying with the terms hereof shall be deemed to be a conspiracy, or a combination in restraint of trade, or an illegal monopoly; or be deemed to have been formed for the purpose of lessening competition or fixing prices arbitrarily, nor shall the contracts between the association and its members, or any agreement authorized in this act, be construed as an unlawful restraint of trade, or as part of a conspiracy or combination to accomplish an improper or illegal purpose or act.

(b) An association may acquire, exchange, interpret and disseminate to its members, to other co-operative associations, and otherwise, past, present, and prospective crop, market, statistical, economic, and other similar information relating to the business of the association, either directly or through an agent created or selected by it or by other associations acting in conjunction with it.

(c) An association may advise its members in respect to the adjustment of their current and prospective production of agricultural commodities and its relation to the prospective volume of consumption, selling prices and existing or potential surplus, to the end that every market may be served from the most convenient productive areas under a program of orderly marketing that will assure adequate supplies without undue enhancement of prices or the accumulation of any undue surplus.

History: L. 1937, ch. 2, § 19; C. 1943,
2-0-37.

Gammon v. Federated Milk Producers Assn. (1961) 11 U 2d 421, 360 P 2d 1018, reh. den. 12 U 2d 189, 364 P 2d 417.

Cross-References.

Restraint of trade exemptions, 76-10-915.
Trusts and combinations prohibited, Const. Art. XII, § 20.

Unfair Practices Act, exemption from, 13-5-4.

Control of prices prohibited.

An agreement between an agricultural cooperative association of milk producers and its members under which the cooperative engaged in fixing the minimum price for which milk was sold to distributors and processors was void and could not be set up as a defense against an action by a trucker for damages resulting from alleged malicious interference with his rights under a contract.

Section 3-1-19(a) of the Uniform Agricultural Cooperative Association Act does not permit associations organized thereunder to control prices in violation of the prohibition contained in Art. XII, § 20 of the state Constitution. Gammon v. Federated Milk Producers Assn. (1961) 11 U 2d 421, 360 P 2d 1018, reh. den. 12 U 2d 189, 364 P 2d 417.

The language of Art. XII, § 20 of the state Constitution is not meant to prevent sellers of goods or property, even though acting in a group, from agreeing with buyers upon a price at which to transact business and does not render illegal all cooperatives and efforts to carry on business en group, but the language is designed to prevent persons or corporations from combining together for the

purpose of eliminating or minimizing competition. *Gammon v. Federated Milk Producers Assn.* (1961) 12 U 2d 189, 364 P 2d 417, affirming 11 U 2d 421, 360 P 2d 1018.

An association of milk producers could work to persuade its own members to use only its transportation services in order to further legitimate business interests, but if its objective was to enable it to fix minimum prices for milk, such activity would be in violation of statutory and constitutional provisions. *Gammon v. Federated Milk Producers Assn.* (1963) 14 U 2d 291, 383 P 2d 402.

In action against an association for damages from malicious interference with trucker's exclusive contract rights to haul milk for the association's members, even though it was determined that trucker had no contractual rights, evidence of actual interference with trucker's business pre-

sented jury question as to whether the association had unlawfully interfered with trucker's business in violation of the statute and the Constitution. *Gammon v. Federated Milk Producers Assn.* (1963) 14 U 2d 291, 383 P 2d 402.

Collateral References.

Agriculture \Leftrightarrow 6.

58 CJS Monopolies § 78.

18 AmJur 2d 280, Cooperative Associations § 22.

Law Reviews.

Restraint of Trade and Cooperative Marketing, Mathew O. Tobriner, 27 Colum. L. Rev. 827.

Cooperative Marketing Associations as Combinations in Restraint of Trade, 38 Harv. L. Rev. 87.

3-1-20. Voluntary dissolution — Proceedings. (I) (a) The members of an association may at any regular meeting, or any special meeting called for the purpose, upon thirty days notice of the time, place and object of the meeting having been given as prescribed in the bylaws, by a vote of two-thirds of the members voting thereon, discontinue the operations of the association and direct that the association be dissolved and its affairs settled. The meeting shall by like vote designate a committee of three members who, as trustees on behalf of the association and within the time fixed in their designation or any extension thereof, shall liquidate its assets, pay its debts, and divide any surplus among the members in accordance with their respective rights and interests under their contracts with the association and the articles and bylaws. Upon final settlement by such trustees, the association shall be deemed dissolved and shall cease to exist. The trustee shall make a report in duplicate of the proceedings had under this section, which shall be signed and sworn to and filed as required for the filing of the articles of incorporation.

(b) The trustees may bring and defend all actions by them deemed necessary to protect and enforce the rights of the association.

(c) Any vacancies in the trusteeship may be filled by the remaining trustees.

(II) In the case of an association dissolving pursuant to this section, the district court of the county of the principal place of business of the association, upon the petition of the trustees or a majority of them, or in a proper case upon the petition of a creditor or member, or upon the petition of the attorney general, upon notice to all of the trustees and to such other interested persons as the court may specify, from time to time may order and adjudge in respect to the following matters:

(a) The giving of notice by publication or otherwise of the time and place for the presentation of all claims and demands against the association, which notice may require all creditors of and claimants against the

association to present their respective accounts and which shall not be less than of such notice.

(b) The payment or demands against the association.

(c) The presentation of trustees, the hearing of the discharge of the trustees.

(d) The administration held in trust by or for the

(e) The sale and distribution and the distribution of the members or persons

(f) Such matters as

(III) All orders and its property and assets against it.

(IV) This section shall be incorporated in this statute

History: L. 1937, ch. 2 2-0-38; L. 1977, ch. 7, § 4.

Compiler's Notes.

The 1977 amendment substituted "quadruplicate" for "quaduplicate" in of subd. (I) (a).

3-1-21. Existing law as be applicable to any extent providing for the incorporation a purpose for which particularly to association Act, and all such all the rights, privileges granted, and all such enjoy all the rights, privileges afforded under and in as though organized as

(b) Any cooperative agricultural products Statutes of Utah, 193 under and within the thereafter operate in enjoy all the rights,

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s Assn. (1963) 14 U 2d 291, 383

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280, Cooperative Associations

Trade and Cooperative Mar-
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Marketing Associations as
n Restraint of Trade, 38 Harv.

(I) (a) The members of
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association to present in writing and in detail at the place specified their
respective accounts and demands to the trustees by a day therein specified,
which shall not be less than forty days from the service or first publication
of such notice.

(b) The payment or satisfaction in whole or in part of claims and
demands against the association, or the retention of money for such pur-
pose.

(c) The presentation and filing of intermediate and final accounts of the
trustees, the hearing thereon, the allowance or disallowance thereof, and
the discharge of the trustees, or any of them from their duties and liabili-
ties.

(d) The administration of any trust or the disposition of any property
held in trust by or for the association.

(e) The sale and disposition of any remaining property of the associa-
tion and the distribution or division of such property or its proceeds among
the members or persons entitled thereto.

(f) Such matters as justice may require.

(III) All orders and judgments shall be binding upon the association,
its property and assets, its trustees, members, creditors and all claimants
against it.

(IV) This section shall apply to all associations heretofore or hereafter
incorporated in this state.

History: L. 1937, ch. 2, § 20; C. 1943,
2-0-38; L. 1977, ch. 7, § 4.

Compiler's Notes.

The 1977 amendment substituted "duplic-
cate" for "quadruplicate" in the last sentence
of subd. (I) (a).

Collateral References.

Agriculture 6.
3 CJS Agriculture § 156.
18 AmJur 2d 273, Cooperative Associations
§ 14.

3-1-21. Existing associations continued under act. (a) This act shall
be applicable to any existing association formed under any law of this state
providing for the incorporation of agricultural cooperative associations, for
a purpose for which an association may be formed under this act, and par-
ticularly to associations formed under the Agricultural Cooperative Associ-
ation Act, and all such associations shall have and may exercise and enjoy
all the rights, privileges, authority, powers, and capacity heretofore
granted, and all such associations shall have and may also exercise and
enjoy all the rights, privileges, authority, powers, and capacity granted or
afforded under and in pursuance of this act to the same extent and effect
as though organized hereunder.

(b) Any cooperative association heretofore organized by producers of
agricultural products under the terms of Chapter VI, Title 18, Revised
Statutes of Utah, 1933, for purposes in this act provided, may bring itself
under and within the terms of this act as if organized hereunder and may
thereafter operate in pursuance of the terms hereof, and may exercise and
enjoy all the rights, privileges, authority, powers, and capacity afforded

and provided for under the terms of this act, by filing with the secretary of state, a sworn statement signed by the president and secretary of such association, to the effect that by resolution of the board of directors of such association duly adopted, such association has elected to bring itself within the terms of this act.

History: L. 1937, ch. 2, § 21, C. 1943, 2-0-39; L. 1977, ch. 7, § 5.

Compiler's Notes.

Title 18, ch. 6, R.S. 1933 (§§ 16-6-1 to 16-6-12), referred to in subsec. (b), was repealed by Laws 1963, ch. 17, § 93.

The 1977 amendment deleted from subsec. (a) a citation to Title 2, Revised Statutes of

Utah, 1933, after "Agricultural Cooperative Association Act", deleted from subsec. (b) a clause requiring that a copy of the sworn statement provided for therein be filed with the clerk of the county where the association has its principal place of business; and made a minor grammatical correction.

3-1-22. Accrued rights not affected by act. This act shall not impair nor affect any act, offense committed, or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to the time this act takes effect, but the same may be enjoyed, asserted, enforced, prosecuted, or inflicted as fully and to the same extent as if this act had not been passed.

History: L. 1937, ch. 2, § 22; C. 1943, 2-0-40.

3-1-23. Use of term "co-operative" limited. No person, firm, corporation, or association, domestic or foreign, hereafter commencing business in this state shall use the word "co-operative" as a part of its corporate or business name unless it has complied with the provisions of this act or some other statute of this state relating to co-operative associations. A foreign association organized under and complying with the co-operative law of the state of such association's creation shall be entitled to use the term "co-operative" in this state if it has obtained the privilege of doing business in this state.

History: L. 1937, ch. 2, § 23; C. 1943, 2-0-41.

Collateral References.

Agriculture ⇌ 6.
18 AmJur 2d 264, Cooperative Associations § 5.

3-1-24. Eligible foreign corporations may operate under act. A foreign corporation that can qualify as an association, as defined in section 3-1-2, may be authorized to do business in this state under the provisions of this act by complying with the laws relating to foreign corporations doing business in the state. It shall pay the same fees and charges as domestic associations. Upon such compliance it shall have all the rights and privileges of like domestic associations.

History: L. 1937, ch. 2, § 24; C. 1943, 2-0-42; L. 1977, ch. 7, § 6.

Compiler's Notes.

The 1977 amendment deleted a requirement that a copy of the association's articles of incorporation be filed with the commissioner of agriculture.

3-1-25. Filing of annual associations admitted to do report in accordance with sec

History: L. 1937, ch. 2, § 25, 2-0-43; L. 1977, ch. 7, § 7.

Compiler's Notes.

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History: L. 1937, ch. 2, § 26; 2-0-44.

3-1-27. Construction of
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History: L. 1937, ch. 2, § 27; 2-0-45.

3-1-28. Short title. Thi
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History: L. 1937, ch. 2, § 28; 2-0-46.

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History: L. 1937, ch. 2, § 29; 2-0-47.

Repealing Clause.

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3-1-25. Filing of annual reports. Domestic associations and foreign associations admitted to do business in this state shall file an annual report in accordance with sections 16-6-97, 16-6-98, and 16-6-99.

History: L. 1937, ch. 2, § 25; C. 1943, 2-0-43; L. 1977, ch. 7, § 7.

Compiler's Notes.

The 1977 amendment rewrote this section which provided for payment of a \$5 annual

license fee in lieu of all other corporation, franchise, and income taxes, and charges upon reserves held by the association for distribution to members.

3-1-26. Separability clause. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

History: L. 1937, ch. 2, § 26; C. 1943, 2-0-44.

Collateral References.

Statutes ⇌ 64(1), (2).
82 CJS Statutes § 94.

3-1-27. Construction of act. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: L. 1937, ch. 2, § 27; C. 1943, 2-0-45.

3-1-28. Short title. This act may be cited as the Uniform Agricultural Co-operative Association Act.

History: L. 1937, ch. 2, § 28; C. 1943, 2-0-46.

Comparable Provisions.

The National Conference of Commissioners on Uniform State Laws withdrew the Uniform Agricultural Cooperative Association Act in 1943.

3-1-29. Inconsistent acts repealed — Existing associations continued. All acts and parts of acts which are inconsistent with the provisions of this act are repealed. It is intended by the enactment of this measure to continue in good standing all existing associations organized under similar acts heretofore existing, and in no way to detract from or interfere with the continued operations of such associations, and it is intended that this act shall supersede Title 2, Revised Statutes of Utah, 1933, in the interest of the further aid, encouragement, strengthening, and stabilizing of all such associations.

History: L. 1937, ch. 2, § 29; C. 1943, 2-0-47.

Effective Date.

Section 31 provided that the act should take effect upon approval Approved March 18, 1937.

Repealing Clause.

Section 30 of Laws 1937, ch 2 repealed Title 2 of Revised Statutes of 1933.

with other associations corporation. Any agricultural one or more agricultural corporations governed by the domestic corporations Co-operative Association associations or corporations, a party to the merger, as provided by this act, under the Uniform Agricultural Nonprofit Corporation

the corporation surviving said the members and shareholders to the merger. — Laws 1965,

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reserve of the surviving corporation, including any changes to be made in the time and manner of payment of any such certificates or interests.

(6) A statement electing whether the surviving corporation shall be governed by the Uniform Agricultural Co-operative Association Act or by the Utah Nonprofit Corporation and Co-operative Association Act. The surviving corporation shall not be governed by the Utah Business Corporation Act.

(7) A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger, including such changes required by the law under which the surviving corporation is to be governed.

(8) Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

History: C. 1953, 3-1-31, enacted by L. 1965, ch. 2, § 1.

3-1-32. Merger — Notice to members and shareholders of meeting to vote on plan of merger. The board of directors, board of trustees or other governing board by whatever name designated of each party to the merger, upon approving such plan of merger shall, by resolution, direct that the plan be submitted to a vote at a meeting of members or shareholders, or members and shareholders, as the case may be, which may be either an annual or special meeting. Written or printed notice stating the place, day and hour of the meeting and, whether the meeting be an annual or a special meeting, that the purpose or one of the purposes of the meeting is to consider and vote upon the plan of merger naming the associations and corporations parties to the merger, shall be delivered not less than twenty nor more than ninety days before the date of the meeting, either personally or by mail, by or at the direction of the president or secretary of the association or corporation, (1) to each member of record, whether or not entitled to vote under the articles of incorporation or bylaws, of each party to the merger having members and (2) to each shareholder of record, whether or not entitled to vote under the articles of incorporation or bylaws, of each party to the merger having shareholders or stockholders. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member or shareholder at his address as it appears on the membership books or stock transfer books, as the case may be, of the association or corporation, with postage thereon prepaid. A copy or a summary of the plan of merger shall be included in or enclosed with such notice and, if a summary only is given, the notice shall state that a copy will be furnished to any member or shareholder upon request and without charge.

History: C. 1953, 3-1-32, enacted by L. 1965, ch. 2, § 1.

For the purposes of this act, persons holding certificates of interests, patronage refund certificates or other interest by whatever name designated as members, patrons or otherwise in any fund, capital investment, savings or reserve of any party to the merger shall not be considered members, shareholders or stockholders if the aggregate of such holdings have a stated or face value of less than \$50, unless designated a member, shareholder or stockholder by the articles of incorporation of the association or corporation in which they have such holdings; but, if the aggregate of such holdings have a stated or face value of \$50 or more, such persons shall be considered members even though not otherwise designated a member or shareholder or stockholder by the articles of incorporation or bylaws of the association or corporation in which they have such holdings and shall be entitled to all rights of members under this act.

3-1-34. Merger — Quorum at meeting to vote on plan of merger. Notwithstanding any different provision in the law governing or in the articles of incorporation or bylaws of an association or corporation a party to the merger, the members, present in person or by proxy or by delegate, of each association or corporation a party to the merger having members and the shareholders, present in person or by proxy or by delegate, of each association or corporation a party to the merger having stock or shares shall constitute a quorum at the meeting called to consider and vote upon the plan of merger unless the plan of merger requires a greater number to constitute a quorum at such meeting.

3-1-35. Merger — Procedure at meeting to vote on plan of merger — Abandonment of merger prior to filing articles. At each such meeting, a vote of the members of each party to the merger having members

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3-1-36. Merger — A
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and a vote of the shareholders of each party to the merger having stock or shares shall be taken on the proposed plan of merger. Each member of each party to the merger having members and each outstanding share of each party to the merger having stock or shareholders shall be entitled to vote on the proposed plan of merger, whether or not such member or share has voting rights under the provisions of the articles of incorporation or bylaws of such association or corporation, except that if the articles of incorporation or bylaws of any party to the merger provide for the election by members or shareholders or any class or classes thereof at district meetings of delegates to vote at annual or special meetings of the association or corporation, such procedures shall be followed for such association or corporation as to such class or classes and the vote of such delegates at the meeting where the plan of merger is voted on shall be counted in the same way and entitled to the same weight as a vote of such delegates at any other meeting of such association or corporation. Members or shareholders or delegates of members or shareholders may vote in person or by written proxy. The plan of merger shall be approved upon receiving the affirmative vote of at least a majority of the members or delegates of members voting thereon and of at least a majority of the holders or delegates of holders of the outstanding shares of each such association or corporation voting thereon.

After such approval by a vote of the members and shareholders of each party to the merger and at any time prior to the filing of the articles of merger, the merger may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger.

History: C. 1953, 3-1-35, enacted by L. 1965, ch. 2, § 1.

3-1-36. Merger — Articles of merger — Execution, contents and filing of articles — Issuance of certificate of merger by secretary of state. Upon such approval, articles of merger shall be executed in duplicate by each party to the merger by its president or a vice-president and by its secretary or an assistant secretary and verified by one of the officers of each association and corporation signing such articles and shall set forth:

- (1) The plan of merger.
- (2) As to each party to the merger, a statement of the date of the meeting at which the plan of merger was considered and voted upon, that a quorum was present at such meeting and that notice of such meeting was given to all members and shareholders entitled to notice thereof.
- (3) As to each party to the merger, the number of members entitled to vote thereon and the number of shares outstanding entitled to vote thereon.
- (4) As to each party to the merger, the number of members and delegates of members who voted for and against such plan, respectively, and the number of shares voted for and against such plan, respectively.

Duplicate originals of the articles of merger shall be delivered to the secretary of state and his fee in the amount of \$25 shall be paid. If the secretary of state finds that such articles conform to law he shall, when all fees have been paid as in this act prescribed:

(1) Endorse on each of such duplicate originals the word "filed" and the month, day and year of the filing thereof.

(2) File one of such duplicate originals in his office.

(3) Issue a certificate of merger to which he shall affix the other duplicate original and return the same to the surviving corporation or its representative.

History: C. 1953, 3-1-36, enacted by L. 1965, ch. 2, § 1; L. 1977, ch. 7, § 8.

Compiler's Notes.

The 1977 amendment substituted "duplicate" for "triplicate" throughout the section; increased the secretary of state's fee from

\$20 to \$25; deleted from the second paragraph a subd. (3), requiring delivery of a copy of the articles of merger to the office of the state board of agriculture; and redesignated former subd. (4) of the second paragraph as (3).

3-1-37. Merger — Effect of merger. Upon the issuance of the certificate of merger by the secretary of state, the merger shall be effected.

When such merger has been effected:

(1) The several associations or corporations parties to the plan of merger shall be a single corporation and that corporation designated in the plan of merger as the surviving corporation.

(2) The separate existence of all associations and corporations parties to the merger, except the surviving corporation, shall cease.

(3) Such surviving corporation shall have all of the rights, privileges, immunities and powers and be subject to all the duties and liabilities of a corporation organized under the Uniform Agricultural Co-operative Association Act or under the Utah Nonprofit Corporation and Co-operative Association Act, whichever act is so designated in the plan of merger.

(4) Such surviving corporation shall thereupon and thereafter possess all rights, privileges, immunities and franchises, as well of a public as of a private nature, of each of the merging associations and corporations; and all property, real, personal and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and all and every other interest of or belonging to or due to each of the associations and corporations so merged, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate or any interest therein vested in any of such associations or corporations shall not revert or be in any way impaired by reason of such merger.

(5) Such surviving corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the associations and corporations so merged; and any claim existing or action or proceeding pending by or against any of such associations and corporations may be prosecuted as if such merger had not taken place, or such surviving corporation may be substituted in its place. Neither the rights of creditors nor

any liens upon the property shall be impaired by such merger.

(6) The articles of incorporation deemed to be amended to of incorporation are stated

History: C. 1953, 3-1-37, enacted by L. 1965, ch. 2, § 1.

3-1-38. Merger — Private and domestic corporations or associations and
 (2) one or more domestic corporations may be merged in total by the laws of the state organized and if the surviving corporation be governed by laws similar to the Association Act or the Utah Nonprofit Corporation Act:

(1) Each domestic association or corporation shall be governed by the provisions of this act with respect to the organization and operation of such association or corporation and each shall be subject to the applicable provisions of this act.

(2) If the surviving corporation is organized in a state other than this state, the provisions of this act with respect to the organization and operation of such association or corporation shall be deemed to be the law of this state:

(a) An agreement that the surviving corporation shall be governed by the provisions of this act with respect to the organization and operation of such association or corporation shall be deemed to be the law of this state:

(b) An irrevocable agreement that the surviving corporation shall be governed by the provisions of this act with respect to the organization and operation of such association or corporation shall be deemed to be the law of this state:

(c) An agreement that the surviving corporation shall be governed by the provisions of this act with respect to the organization and operation of such association or corporation shall be deemed to be the law of this state:

The effect of such merger shall be deemed to be the law of this state with respect to the organization and operation of such association or corporation.

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any liens upon the property of any such association or corporation shall
be impaired by such merger.

(6) The articles of incorporation of the surviving corporation shall be
deemed to be amended to the extent, if any, that changes in the articles
of incorporation are stated in the plan of merger.

History: C. 1953, 3-1-37, enacted by L.
1965, ch. 2, § 1.

**3-1-38. Merger — Procedure for and effect of merger of foreign
and domestic corporations or associations.** One or more foreign corpora-
tions or associations and (1) either one or more domestic associations or
(2) one or more domestic associations and one or more domestic corpora-
tions may be merged in the following manner, if such merger is permitted
by the laws of the state under which each such foreign corporation is
organized and if the surviving corporation, if a foreign corporation, will
be governed by laws similar to the Uniform Agricultural Co-operative
Association Act or the Utah Nonprofit Corporation and Co-operative Asso-
ciation Act:

(1) Each domestic association and corporation shall comply with the
provisions of this act with respect to the merger of domestic associations
and corporations and each foreign association or corporation shall comply
with the applicable provisions of the laws of the state under which it is
organized.

(2) If the surviving corporation is to be governed by the laws of any
state other than this state, it shall comply with the provisions of the laws
of this state with respect to foreign corporations if it is to transact busi-
ness in this state, and in every case it shall file with the secretary of state
of this state:

(a) An agreement that it may be served with process in this state in
any proceeding for the enforcement of any obligation of any domestic asso-
ciation or corporation which is a party to the merger and in any proceeding
for the enforcement of the rights of a dissenting member or shareholder
of any such domestic association or corporation against the surviving cor-
poration;

(b) An irrevocable appointment of the secretary of state of this state
as its agent to accept service of process in any such proceeding; and

(c) An agreement that it will promptly pay to the dissenting members
and shareholders of any such domestic association or corporation the
amount, if any, to which they shall be entitled under the provisions of this
act with respect to the rights of dissenting members and shareholders.

The effect of such merger shall be the same as in the case of the merger
of domestic associations and corporations, if the surviving corporation is
to be governed by the laws of this state. If the surviving corporation is
to be governed by the laws of any state other than this state, the effect
of such merger shall be the same as in the case of the merger of domestic

associations or corporations except in so far as the laws of such other state provide otherwise.

At any time prior to the filing of the articles of merger, the merger may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger.

History: C. 1953, 3-1-38, enacted by L. 1965, ch. 2, § 1.

3-1-39. Merger — Dissent from plan by member or shareholder — Dissent as to less than all of memberships or shares. Any member or shareholder of a domestic association or corporation shall have the right to dissent from any plan of merger to which the association or corporation is a party in accordance with the procedure and at the times set forth in this act. A member or shareholder may dissent as to less than all of the memberships or shares registered in his name and, in that event, his rights shall be determined as if the membership or shares as to which he has dissented and his other memberships or shares were registered in the names of different members or shareholders.

History: C. 1953, 3-1-39, enacted by L. 1965, ch. 2, § 1.

3-1-40. Merger — Dissent from plan by member or shareholder — Filing objection to plan — Demand for payment for membership or shares and procedure for payment. Any member or shareholder electing to exercise such right of dissent shall file with the association or corporation, prior to or at the meeting at which the plan of merger is submitted to a vote, a written objection to the plan of merger. If the plan of merger be approved by the required vote and if, but only if, such member or shareholder shall not have voted in favor thereof, such member or shareholder may, within ten days after the date on which vote was taken, make written demand on the surviving corporation for payment of the fair value of the interest of such member or for payment of the fair value of such shareholder's shares, as the case may be, and, if the merger is effected, such corporation shall pay to such member or shareholder, upon surrender of any certificate or certificates representing such membership or such shares, the fair value thereof as of the day prior to the date on which the vote was taken approving the plan of merger, excluding any appreciation or depreciation in anticipation of such merger. Any member or shareholder failing to make such written objection prior to or at such meeting and failing to make such demand within the ten-day period shall be bound by the terms of the plan of merger. Any member or shareholder making such objection and demand shall thereafter be entitled only to payment as in this section provided and shall not be entitled to vote or to exercise any other rights of a member or shareholder.

No such demand may be withdrawn unless the surviving corporation shall consent thereto. If, however, such demand shall be withdrawn upon

consent, or if the merger shall be effected or the members or shareholders shall consent to such merger or if on the date of the merger the surviving corporation is the owner of all the shares of the other association or corporation, no demand or payment shall be made or a court shall have been made or if a court of competent jurisdiction shall determine that the rights of such member or shareholder is not affected by the merger, then the rights of such member or shareholder shall be restored to the same as if no proceedings which may have been had had not been had.

Within ten days after such merger, the surviving domestic or foreign, shall give to such member or shareholder who has made such demand, provided, and shall make a writ to pay for such membership by such corporation to be the same as if accompanied by a balance sheet of such membership or shares of such corporation, as of the latest available date prior to the making of such merger, and a copy of such association or corporation of such balance sheet.

If within thirty days after the date of the merger the fair value of such membership or shares of any such dissenting member or shareholder for payment thereof shall be the same as if the merger was effected, or if, but only if, such member or shareholder, if any, representing such dissenting interest in such membership or shares, shall be entitled to payment of the fair value of such membership or shares, as the case may be, and, if the merger is effected, such corporation shall pay to such member or shareholder, upon surrender of any certificate or certificates representing such membership or such shares, the fair value thereof as of the day prior to the date on which the vote was taken approving the plan of merger, excluding any appreciation or depreciation in anticipation of such merger.

Any member or shareholder failing to make such written objection prior to or at such meeting and failing to make such demand within the ten-day period shall be bound by the terms of the plan of merger. Any member or shareholder making such objection and demand shall thereafter be entitled only to payment as in this section provided and shall not be entitled to vote or to exercise any other rights of a member or shareholder. No such demand may be withdrawn unless the surviving corporation shall consent thereto. If, however, such demand shall be withdrawn upon

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consent, or if the merger shall be abandoned or rescinded or shall not be effected or the members or shareholders shall revoke the authority to effect such merger or if on the date of the filing of the articles of merger the surviving corporation is the owner of all the outstanding memberships and shares of the other associations and corporations that are parties to the merger or if no demand or petition for the determination of fair value by a court shall have been made or filed within the time provided in this section or if a court of competent jurisdiction shall determine that such member or shareholder is not entitled to the relief provided by this section, then the rights of such member or shareholder to be paid the fair value of his membership or of his shares shall cease and his status as a member or shareholder shall be restored, without prejudice to any corporate proceedings which may have been taken during the interim.

Within ten days after such merger is effected, the surviving corporation, domestic or foreign, shall give written notice thereof to each dissenting member or shareholder who has made objection and demand as herein provided, and shall make a written offer to each such member and shareholder to pay for such membership and for such shares at a specified price deemed by such corporation to be the fair value thereof. Such notice and offer shall be accompanied by a balance sheet of the association or corporation, the membership or shares of which the dissenting member or shareholder holds, as of the latest available date and not more than twelve months prior to the making of such offer, and a profit and loss statement of such association or corporation for the twelve months' period ended on the date of such balance sheet.

If within thirty days after the date on which the merger was effected, the fair value of such memberships or such shares is agreed upon between any such dissenting member or shareholder and the surviving corporation, payment therefor shall be made within ninety days after the date on which the merger was effected, upon surrender of the certificate or certificates, if any, representing such memberships or shares. Upon payment of the agreed value, the dissenting member or shareholder shall cease to have any interest in such memberships or in such shares.

If within such period of thirty days a dissenting member or shareholder and the surviving corporation do not agree, then the surviving corporation, within thirty days after receipt of written demand from any dissenting member or shareholder given within sixty days after the date on which the merger was effected shall, or at its election at any time within such period of sixty days may, file a petition in any court of competent jurisdiction in the county in this state where the registered office of the surviving corporation is located, or if such corporation has no registered office, in the county where the principal office and place of business in this state of such corporation is located, praying that the fair value of such memberships or shares, as the case may be, be found and determined. If the surviving corporation is a foreign corporation without a registered office in this

state, such petition shall be filed in the county where the registered office of the domestic association or corporation was last located, or if the domestic association or corporation had no registered office, in the county where the principal office and place of business in this state of such association or corporation was last located. If the surviving corporation shall fail to institute the proceeding as herein provided, any dissenting member or shareholder may do so in the name of the corporation. All dissenting members and shareholders, wherever residing, shall be made parties to the proceeding as an action against their memberships or shares quasi in rem. A copy of the petition shall be served on each dissenting member and shareholder who is a resident of this state and shall be served by registered or certified mail on each dissenting member and shareholder who is a nonresident. Service on nonresidents shall also be made by publication as provided by law. The jurisdiction of the court shall be plenary and exclusive. All members and shareholders who are parties to the proceeding shall be entitled to judgment against the surviving corporation for the amount of the fair value of their memberships or shares. The court may, if it so elects, appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have such power and authority as shall be specified in the order of their appointment or an amendment thereof. The judgment shall be payable only upon and concurrently with the surrender to the surviving corporation of the certificate or certificates, if any, representing such memberships or shares. Upon payment of the judgment, the dissenting member shall cease to be a member and the dissenting shareholder shall cease to have any interest in such shares.

The judgment shall include an allowance for interest at such rate as the court may find to be fair and equitable in all the circumstances, from the date on which the vote was taken on the plan of merger to the date of payment.

The costs and expenses of any such proceeding shall be determined by the court and shall be assessed against the surviving corporation, but all or any part of such costs and expenses may be apportioned and assessed as the court may deem equitable against any or all of the dissenting members or shareholders who are parties to the proceeding to whom the surviving corporation shall have made an offer to pay for the memberships or for the shares if the court shall find that the action of such members or shareholders in failing to accept such offer was arbitrary or vexatious or not in good faith. Such expenses shall include reasonable compensation for and reasonable expenses of the appraisers, but shall exclude the fees and expenses of counsel for and experts employed by any party; but, if the fair value of the shares as determined materially exceeds the amount which the surviving corporation offered to pay therefor, or if no offer was made, the court in its discretion may award to any member or shareholder who is a party to the proceeding such sum as the court may determine to be

reasonable compensation to or shareholder in the proceeding.

Within twenty days after his shares, each member at the certificate or certificate shares to the association demand has been made. If surviving corporation, the court of competent jurisdiction otherwise direct. If membership which notation has been issued therefor shall bear original dissenting holder of such membership or share the surviving corporation member or shareholder his value thereof.

Memberships acquired of the agreed value therefor as in this section providing corporation pursuant payment of the judgment be held and disposed of by shares, except as otherwise

History: C 1953, 3-1-40, 1965, ch. 2, § 1.

3-1-41. Merger — Plan of merger —

A Utah cooperative association each class of a foreign such other corporation the shareholders or managing board shall, by resolution

(a) The name of the of the corporation or association is hereafter designated

(b) The manner and subsidiary corporation securities of the surviving corporation or association

A copy of the plan or shareholder of the surviving

(2) Articles of merger or vice-president and managing corporation or association

ere the registered office located, or if the domicile, in the county where state of such association corporation shall fail to dissenting member or on. All dissenting member-made parties to the proposed shares quasi in rem. dissenting member and shall be served by registered and shareholder who is be made by publication t shall be plenary and parties to the proceeding ng corporation for the shares. The court may, isers to receive evidence r value. The appraisers pecified in the order of judgment shall be pay- to the surviving corporation, representing such judgment, the dissenting ntng shareholder shall

rest at such rate as the circumstances, from the merger to the date of

shall be determined by ng corporation, but all portioned and assessed of the dissenting member to whom the survivor the memberships or on of such members or oitrary or vexatious or able compensation for ll exclude the fees and / party; but, if the fair eds the amount which if no offer was made, er or shareholder who may determine to be

reasonable compensation to any expert or experts employed by the member or shareholder in the proceeding.

Within twenty days after demanding payment for his membership or for his shares, each member and shareholder demanding payment shall submit the certificate or certificates, if any, representing his memberships or his shares to the association or corporation for notation thereon that such demand has been made. His failure to do so shall, at the option of the surviving corporation, terminate his rights under this section unless a court of competent jurisdiction for good and sufficient cause shown, shall otherwise direct. If memberships or shares represented by a certificate on which notation has been made shall be transferred, each new certificate issued therefor shall bear similar notation, together with the name of the original dissenting holder of such membership or shares, and a transferee of such membership or shares shall acquire by such transfer no rights in the surviving corporation other than those which the original dissenting member or shareholder had after making demand for payment of the fair value thereof.

Memberships acquired by the surviving corporation pursuant to payment of the agreed value therefor or to payment of the judgment entered therefor as in this section provided, shall be canceled. Shares acquired by a surviving corporation pursuant to payment of the agreed value therefor or to payment of the judgment entered therefor as in this section provided, may be held and disposed of by such corporation as in the case of other treasury shares, except as otherwise provided in the plan of merger.

History: C. 1953, 3-1-40, enacted by L. 1965, ch. 2, § 1.

3-1-41. Merger — Domestic or foreign corporations or associations — Plan of merger — Articles of merger — Certificate of merger. (1)

A Utah cooperative association owning 90% of the outstanding shares of each class of a foreign or domestic corporation or association may merge such other corporation or association into itself without the approval of the shareholders or members of either corporation or association. The governing board shall, by resolution, approve a plan of merger setting forth:

(a) The name of the subsidiary corporation or association and the name of the corporation or association owning 90% or more of its shares, which is hereafter designated as the surviving corporation or association; and

(b) The manner and basis for converting each class of shares of the subsidiary corporation or association into shares, obligations, or other securities of the surviving corporation or association, or of any other corporation or association, in whole or in part, into cash or other property.

A copy of the plan of merger shall be mailed to each record member or shareholder of the subsidiary corporation or association.

(2) Articles of merger shall be executed in triplicate by the president or vice-president and the secretary or an assistant secretary of the surviving corporation or association and verified by one of its officers.

The articles of merger shall set forth:

- (a) The plan of merger;
 - (b) The number of outstanding shares of each class of the subsidiary corporation or association and the number of such shares of each class owned by the surviving corporation or association; and
 - (c) The date a copy of the plan of merger was mailed to shareholders or members of the subsidiary corporation or association.
- (3) Triplicate originals of the articles of merger shall be delivered to the secretary of state on the 30th day after mailing a copy of the plan to shareholders or members. If the secretary of state finds such articles conform to law and that all fees prescribed by this act have been paid, the secretary of state shall:
- (a) Endorse on each of said triplicate originals the word "filed", together with the month, date and year of filing;
 - (b) File one of the triplicate originals in the office of the secretary of state and forward another triplicate original to the state department of agriculture;
 - (c) Issue a certificate of merger with the remaining triplicate original affixed.

The certificate of merger, together with a triplicate original of the articles of merger affixed by the secretary of state, shall be returned to the surviving corporation or association or its representative.

- (4) The merger of a foreign corporation or association into a Utah cooperative association shall conform to the laws of the state under which each such foreign corporation or association is organized.

History: L. 1977, ch. 13, § 1.

Title of Act.

An act relating to agricultural cooperative associations; providing for the merger of

domestic or foreign corporations or associations into a Utah cooperative association. — Laws 1977, ch. 13.

AGRICULTURE

Compiler's Notes.

Title 4, Agricultural Department March 20, 1979 and new Title 4, the

STATE DEPARTMENT

(Repealed by

4-1-1 to 4-1-17. Repealed

Repeal.

Sections 4-1-1 to 4-1-17 (L. 1965 to 17; 1975, ch. 7, § 9; 1977, ch. 8, § to the department of agriculture; ment and duties of the commis

4-1-18 to 4-1-22. Repealed

Repeal.

Sections 4-1-18 to 4-1-22 (L. §§ 10, 14 to 16; C. 1943, 3-1-2 3-1-31, Supp., 19-18a-1; L. 1943, ch. 2, § 1; 1945, ch. 1, § 1; 19

4-1-23, 4-1-24. Repealed

Repeal.

Sections 4-1-23, 4-1-24 (L. 196 19), relating to the budget, res

(R

4-2-1 to 4-2-14. Repealed

Repeal.

Sections 4-2-1 to 4-2-14 (L. 1 to 12; C. 1943, Supp., 3-2-14 to ch. 2, § 1; 1967, ch. 2, §§ 1, 2;