

# Will dairymen bid on creamery?

As of Wednesday morning, creamery leadership say bid offer moving forward; firm bids due June 15, auction August 10

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With nervous and cash-strapped dairymen hurrying to the bank to cash their milk checks this week, membership of the Humboldt Creamery Association appeared to get back on the same page and plan on moving ahead with a bid to retain some share of ownership in the 80-year-old cooperative.

After a lengthy Tuesday night producers' meeting at Ferndale Town Hall, where the 40 members heard from creamery directors and the association's attorney, creamery board member Dennis Leonardi said the association is plowing ahead.

"I can't say for sure we're going to make a bid, but we are putting together a package," he said. "This is a difficult process and we're trying to be as forthcoming as humanly possible with producers and the community."

Fellow board member Blake Alexandre said Tuesday night's meeting was a chance for producers to "talk it all through."

Alexandre said there are "a couple of different directions" the association is looking at, some of which include investors and/or "industry partners"

"We're hoping we can pull something together that is good for the farmers," he said.

Producers, some of whom have expressed frustrations with increasing legal fees and wonder

whether an outside buyer rather than member ownership is the answer to a stable home for their milk, had another stressful week after milk checks were held back last Friday until Monday morning.

The unexpected delay in payment occurred after a Thursday night dinner at Eureka's Lost Coast Brewery, when the Humboldt Creamery LLC's acting Chief Executive Officer Len Mayer sat down with Philip Von Burg of Tiburon's Castle Gate Advisors.

Von Burg — a turnaround professional crisis manager and investment manager who is attempting to put together a bid for the producers using funds from New York based Blue Wolf investment group, which looks for opportunities in financially distressed companies — informed Mayer, who now technically works on behalf of all the creamery's creditors, including the banks, that creamery directors wanted him to take over management of the creamery, this according to Mayer.

"I didn't argue with him that night," said Mayer. "I needed to talk to the banks, but it didn't seem like it made sense or was even possible from a legal standpoint."

Mayer contacted the attorneys immediately and told them, "You'll never believe the dinner I just had."

"I knew the answer even before I brought it up," he said.

Immediately, Co-Bank's attorney fired back,

asserting that the terms of the \$3 million in "Debtor in Possession" financing were in jeopardy of being violated. Milk checks were held back and producers waited through the weekend, until on Monday agreement was reached between all entities and the association rescinded its plan.

The banks, according to Mayer, were willing to press the issue.

"They were prepared to use a number of significant remedies to get their \$54 million back," explained Mayer, including suing the directors individually on allegations of "piercing the corporate veil" — a term used when directors of a corporation are held personally liable.

Mayer said he believes the attempt to rid the creamery of current management was "simply an attempt . . . to gain an advantage."

"You'd have to convince all parties that allowing one bidder group to take over a company is in the best interest of all, a tough case to make," he said. "There is always the possibility, I suppose, that Castle Gate is not pleased with a sale going forward quickly which results in a good price. I guess all buyers would rather buy low rather than the alternative, and I guess we can't blame them for trying."

Prior to bankruptcy filing and the overnight departure of long-time CEO Rich Ghilarducci, the creamery's board of directors was the manager of the creamery corporation, of

which Dairy Farmers of America holds a 25 percent share. The board, however, resigned as manager and Mayer was appointed as manager of the corporation.

"The board did it for a couple of reasons," he explained. "In order for them to advocate on behalf of farmers, they couldn't be also still managing what was soon to be an estate in bankruptcy. In order to manage that, you have to treat everyone equal and look out for banks, creditors and everyone. (The resignation) also allows them to advocate from a strong position for the farmers."

However, Von Burg, speaking to *The Enterprise* on Tuesday, said that his pitch to take over management was made after directors asked that a crisis management team be put in place "over three weeks ago." Von Burg said directors are concerned about the viability of the company, that business has deteriorated and that management credibility has been lost. Other creamery directors have also raised concerns about quality control at the plant. Von Burg also said that "broadly speaking" fraud "rarely involves just one guy."

"And, even if it was just one guy, I think management was either complicit or oblivious and, so, which is worse?" he asked.

"The only way you can address that is to bring in a new third party to run the show," he said. "It didn't have to be me. It could have been anyone . . . all we want is someone to manage this process."

Von Burg said the move last week to replace management was "merely the farmers exerting their

right as 75 percent shareholders of the business.

"I believe the producers have a vested interest in the long term viability of the business," he explained. "It's in their best interest the company survives in whatever form that may be. They need a creamery as a home for their milk."

Von Burg said a bid on behalf of the producers involving his investment group would involve some sort of owner partnership.

"It's fair to say we're not interested in doing a deal with the farmers unless we're welcome," he said. "My belief is we're the only interested party open and sympathetic to the producers' desire to have an initial ownership in the new entity and to have the opportunity to have them complete ownership."

Von Burg was referring to an investment model that would eventually turn the keys over to producers after several years of joint ownership and returns with outside investors.

Meanwhile, Mayer questioned Von Burg's approach to due diligence, calling it "non-standard."

"His representatives have been unwilling or unable in many cases to follow the rules set out for the sales process, and he's the principal of a bidder," alleged Mayer in an email to *The Enterprise*.

"Our group takes seriously the requirements of the bidding process," responded Von Burg, "one of which is that we not comment on our participation in the bidding process. This is the first I've heard from Mr. Mayer, or anyone from the company, that he feels we haven't followed the bidding process. I can't imagine what he's talking about but wonder

if it has something to do with the fact that the majority owners of the business thought it was time that he be replaced."

Mayer also referred to the timing of a lawsuit filed last week by former employees and managers seeking reimbursement of unpaid benefits and damages of Washington state's Western RV — a company bought by equity firm Monomoy Capital Partners of New York City in 2006. Von Burg was listed as vice president when the company closed its doors in 2008.

Von Burg would not respond to specific allegations by Mayer, but responded to questions posed by *The Enterprise* about the company and lawsuit by stating that he has not been legally served and he has "little knowledge about what's being alleged."

"I can assure everyone that I acted properly," he said, noting that in his 20 years in the investment business, he has never been sued. "I'm not worried about it," he said.

As to the company closing its doors a short time after Von Burg took over, he noted "the beating" the RV industry has taken in the last two years.

"I can name ten RV businesses that have been around 40 years and are now all extinct due to the downturn in the economy," he said.

Meanwhile, a handful of creamery association directors and producers met last Friday with Dairy Farmers of America and Foster Farms, both of which are lining up, it appears, to make a bid.