

BFK, Inc.

Board of Directors Minutes

The Essential Conflict of Interest

B. F. KNEUBUHL, INC.

P. O. BOX 39 - PAGO PAGO
AMERICAN SAMOA 96799

RADIO ADDRESS:
"KNEUBUHLINC" PAGO PAGO

November 18, 1978

MINUTES OF THE BOARD MEETING OF NOVEMBER 18, 1978

D.C. Kneubuhl opened the meeting at 10 a.m. The Secretary, M.K. Lanarigan, called the roll. Present at the meeting were: Lena P. Kneubuhl; Benjamin F. Kneubuhl, Jr.; Douglass C. Kneubuhl; Margaret K. Lanarigan, Frances K. Opelle; and John A. Kneubuhl. William C. Hitchcock, attorney, attended at the request of D.C. Kneubuhl, as permitted by section 3.15 of the bylaws of the corporation.

Status of John A. Kneubuhl:

A discussion took place concerning the status of JAK at the meeting. It was agreed among all persons present that John should be entitled to participate fully in the meeting as a Director. However, because of uncertainty as to who had the power to elect a Director, it was suggested that John's election as a director be confirmed by the upcoming shareholder's meeting to be held on Nov. 25, 1978. It was noted that there was some question concerning the validity of the shareholder's meeting at which John was elected to the board. This situation could be rectified at the Nov. 25, 1978 meeting.

NOTICE Provisions of the Bylaws:

Ben raised the point that the Bylaw provisions concerning notice seemed inconsistent, in that only 48 hours of actual notice is required for Directors meetings, while ten days' written notice is needed for shareholders meetings. It was felt that Directors residing in the United States cannot attend with the short notice in comparison to Directors on the Island who can attend. It was suggested that at the next shareholders meeting to take place, that an amendment to the bylaws be considered, allowing at least one week of notice by letter, personal delivery, or telegram to U.S. resident Directors prior to the holding of Directors meetings.

Approval of Minutes of Last Meeting:

At the request of the chairman, the Secretary of the Corporation read the minutes of the Board Meeting of July 15, 1978. It was moved by Frances K. Opelle, and seconded by BrK that the minutes be approved as written. All in favor.

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CONFIRMATIONS and Authorization to execute Pacifica Foods-Lomita Food Distributors Contract:

DCK opened the discussion with a brief history of the entry by the family into the canning area. The reasons for entering into the operations were discussed at length. Mentioned were the following:

- (1) There is a significant demand for canned cubed beef in the USA due to fast food outlets.
- (2) The American Samoa product is not subject to the quota system which presently restricts imports direct from Australia and from South America.
- (3) American Samoa has foreign exchange credits when buying meat from Australia or New Zealand. This makes American Samoan products cheaper than buying direct from Australia or New Zealand.
- (4) The USDA will not allow a U.S. approved plant to be constructed on foreign soil with products being shipped to the USA. Here in American Samoa a local inspector of the USDA is qualified to approve meat products and thus Pacifica Foods is in a unique situation.
- (5) It is anticipated that total plant installation cost will be between \$60,000 and \$70,000., which amounts to one-half of the normal figures.

The currently scheduled program for Pacifica Foods is to target January 5, 1979; as the date for testing product in the plant. It is anticipated that this testing will continue for three weeks. At the end of January, 1979, Mr. Augie Munoz of Dolores Canning will taste test the product. The deadline by which seller enter the Pacifica/Lomita contract must produce 1,000 cases of product has been extended until February 28, 1979.

At the request of DCK and the Board, Mr. Hitchcock of the law firm of Cummins, White, Robinson and Robinson explained the negotiations and described the contract in detail. It was pointed out that discussions had taken place between Mr. Hitchcock and James P. Kneubuhl and Wm. Nicholas, esq. concerning ways to strengthen the position of Pacifica Foods under the contract. Mr. Hitchcock agreed that many of the points raised in those meetings were valid, and should be incorporated into any resolution of the board authorizing executing of the contract.

After a lengthy discussion of the points raised by Mr. Hitchcock, F.K. Opelle moved that the following resolution of the Board be adopted, and that pending response by Lomita Food Distributors to the suggested changes, or any of them, the President of Pacifica Foods Corporation be authorized to sign the original draft agreement as submitted to the Board, provided that: Paragraph 13, p. 12 shall be changed to reflect the date of February 28, 1979,

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as agreed between DCK and Mr. Munoz. The motion was seconded by Margaret K. Landrigan, and the following resolution was adopted by majority vote (4-1) BfJ, Jr. opposed.

RESOLUTION CONCERNING LOMITA FOODS/PACIFICA FOODS CONTRACT

WHEREAS, The Board of Directors of BFK Inc. is firmly committed to the idea of entering into the production of canned cubed beef, by and thru its wholly owned subsidiary Pacifica Foods Corp., and

WHEREAS, the attorneys for the firm have negotiated a distributorship contract between Lomita Foods Distributors and Pacifica Foods Corp., which has been discussed at length at this Board Meeting, and

Whereas, The Board of Directors considers it desirable to enter into said contract with Lomita Foods Distributors, provided certain clarifications and modifications are sought,

THEREFORE BE IT RESOLVED, that the Board of Directors of BFK, Inc. hereby empower the President of Pacifica Foods Corp. to execute the distributorship contract, provided that the following clarifications and modifications are sought by DCK by and through the attorneys for the Corp:

- (1) The date by which seller must have shipped 1,000 cases to Distributor, as provided by para. 13, p. 12, shall be changed to February 28, 1979.
- (2) At para. 8 (e), appearing at p. 8 thereof, the sentence be modified to read as follows: add "provided that in such event, title to return product shall revert to seller upon the refund of said purchase price to Distributor".
- (3) Add to para. 9, p. 9, (obligations of distributor) language to the following effect; "purchase the monthly minimum purchase requirements for product hereunder for the first six months".
- (4) Add to paragraph 4, at the top of p.5, the following language: "which approval shall not be unreasonably withheld".
- (5) Change that portion of para. 4, p. 4 beginning at line 25 and continuing to page 5, line 3, to read as follows: add after sales price, the following "provided, however, if such approval is withheld for any purchase order during the first six months hereunder, seller shall have the right to establish the per case sales price for the product covered by said purchase order."
- (6) Add to "Recitals", the following: "Distributor understands that

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seller is entering into a new canning operation and that the first six months of operation are important to the success of the enterprise. Distributor therefore agrees to commit to purchase certain minimum amounts of product during the first six months hereunder, subject to the terms and conditions hereof."

Following the adoption of the foregoing resolution, John raised the question of whether the July 18, Board resolution had placed any limits upon the authority of D.C. "Mike" Kneubuhl to commit the company to purchases of equipment. A full discussion ensued, and all agreed it would be wise in the future to consider specific resolutions regarding the authority of any officer to enter into purchase agreements regarding expansion.

RESPONSES OF C.D. KNEUBUHL TO QUESTIONS POSED IN LETTER OF OCT. 16, 1978:

DCK made the following statement to the Board in response to the questions posed in the letter of October 16, 1978: I have received a copy of a letter dated Oct. 16, 1978, directed to the Board of Directors of BFK, Inc. by my brother, Jim Kneubuhl. That letter is apparently, an attempt by my brother to seek the Board to ask me certain questions for my response in writing. It seems obvious to me that the manner in which the questions are asked are very accusatory in nature, and presuppose that I have done something wrong or which was not in the best interest of the corporation. As all of you know, I have been since mid-1972 the managing officer of BFK, Inc., and Pacifica Foods Corp., and have tried to do the best I could to ensure the profitability of the companies. I have never intentionally acted in any way to jeopardize the interests of either company.

To date, the Board has not requested that I answer the questions submitted to me by Jim. However, in order that none of you are put in a situation where you feel you must ask me these questions, I will voluntarily answer them, and allow them to be incorporated in the minutes of this meeting. I do not believe that I can answer the questions specifically on a question for question basis in the order that they are phrased. These questions are the type of questions that however I answer them, they are indicative that I am in some way guilty of wrongdoings. I will attempt to the best of my ability to explain what I feel is the basis for all of the questions.

As all of you know, I became Chief Executive Officer of BFK, Inc., on February 4, 1972. At that time I already had my own company, Cal-Pacific Mercantile, Inc., which was in business as an import export broker. In that business I charged commissions for goods sold to BFK, Inc., just as I charged commissions to anyone else to whom I sold merchandise. On April 15, 1973, we agreed at the Board of Directors meeting that Cal-Pacific Mercantile would no longer charge any commission on sales of merchandise to BFK, Inc. As time went on, I was required to devote more and more time to the work of BFK, Inc., and away from my own company. At that time, my wife, Suzie, undertook the

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running of Cal-Pacific, and since the first of 1974 I have had only a little involvement with the affairs and activities undertaken by that Company.

After the April, 1973 Board Meeting, Suzie started spending a considerable amount of time running Cal-Pacific Mercantile. With regard to all of those sales to BFK, Inc., she was earning nothing for her time. In fact, she also spent much time working for BFK without pay.

I went and talked to Jim and reminded him that as a result of the meeting that Cal-Pacific was no longer taking any commissions and I did not feel the amount of compensation I was getting was enough. I told him that we had a new operation we were starting where I would like to take some meat commissions. Jim said that he did not feel salary increases were warranted as we were "just coming out of the woods" and go ahead and take the meat commissions.

I have discussed the subject of meat commissions as recently at a meeting at the Jonathan club with Bill Nicholas. At that meeting I specifically said that Jim knew all about the meat commissions and he never denied it. At the meeting which was held in Honolulu in February at the lobby of the Surf Rider Hotel, Jim approached me and showed me a letter enclosing a commission check, which was addressed to me. I recall that I said to Jim at that time, why didn't you bring this up to the board.. these are the meat commissions that we discussed before. He then said he felt it was best that it just be left this way, or words to that effect. He has also had several conversations with my wife on this subject; we have never tried to hide the fact of these meat commissions from anyone in the family. In fact, my wife has spoken both to Jim (on at least two occasions) and to Sandy Batson on this subject. I do not understand the reason that Jim does not remember these conversations. I wish that he would search his memory and his heart and see if he may recall the conversations to which I have referred.

With regard to the questions concerning the conflict of interest between Cal-Pacific Mercantile and BFK and its subsidiaries, I feel it is appropriate that my wife Suzie (who has been sent to the meeting by the board of Cal-Pacific), give a complete report concerning this subject.

THE WRITTEN STATEMENT OF SUZANNE KNEUBUHL IS ATTACHED HERETO AND INCORPORATED HEREIN BY THIS REFERENCE.

Concerning the way in which I, DCK have filed my income tax returns for the years 1972-74, I really do not see why this should be of any concern to BFK. I have never questioned the manner in which any of you have filed your own tax returns. I consulted with Bill Nicholas, and my accountant and my attorneys, and have also consulted and talked with Jim concerning this subject, and have filed the returns in a way that was most advantageous to me. The manner in

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which I filed my tax returns was not meant in any way to prejudice or to jeopardize BFK's position. It was meant to save me as much money as possible, on tax, within the law, which is the same tactic that I am sure all the rest of you would take.

On the subject of the Salala property: it is my feeling that the property belongs to Mother, and she should be free to dispose of it as she sees it.

Questions were posed by members of the Board. MKL asked if DCK has continued to receive commissions beyond the King meat commissions. DCK responded yes: to the best of his recollection it was in the approximate amount of \$7,000 for the year 1976; for the year 1977 ~~it was approx. \$12,000~~. Since the time that it became apparent to me that the meat commissions would not be considered in the same light, or that a question had arisen concerning them, I have taken no more commissions, and I will take no such commissions in the future.

At this point, a lengthy discussion ensued where John asked whether DCK, in light of past discussions concerning conflict of interest, had considered the possibility that his taking of the commissions might be illegal, or whether DCK might have merely been naive. DCK responded that he would not have taken the commissions had he not considered them compensation.

At this point, Mr. Hitchcock gave a brief report concerning the status of the USDA proceedings, and indicated that in the view of his firm, the maximum penalty that would be assessed against DCK would be that he would have to repay the \$7,300 in commission which he had received. It was pointed out that the USDA had printed a retraction concerning the erroneous press report which had implicated DCK as part of a bribery scheme. It was further indicated that DCK had expressed his willingness to repay the meat commissions in order to resolve the USDA lawsuit.

There being no further questions from the floor, the next item on the agenda was called.

REQUEST FOR CERTIFIED AUDIT OF TRUST:

Francis made a motion that a certified audit of the trust be undertaken as soon as possible, and that a yearly audit be conducted from now on. Ben seconded the motion. All in favor, except John who abstained. (5-0, one abstention.) The reason for seeking the audit was that trust assets have in the past been pledged for business borrowing, and that the Board should know what is now available for this purpose.

Division of Responsibility among Attorneys;

DCK raised the point that BFK, Inc. now uses several attorneys for different purposes. He stated, for example, that the company now employed Roy Hall locally, Jackson in Western Samoa, Latham & Watkins in Los Angeles in connection with

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Trust matters, and Dick Higbie as a personal and family business counsel. It was indicated that all of the foregoing associations were contemplated to continue. DCK added that the company had begun to use Cummins, White, Robinson and Robinson as attorneys for various corporate and business matters, including the Pacifica Foods/Lomita Foods contract, and it was intended to continue to use their services also. There were no questions from the floor.

There being not any further business to come before the meeting, it was moved by Ben and seconded by DCK that the meeting be adjourned: all in favor. Meeting adjourned at 1:30 P.M.

Respectfully submitted

Margaret K Landrigan

Margaret K. Landrigan

MKL/ndd