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States Court of Appeals
for the Third Circuit

7-31-1996

Sani-Dairy v. Sec Agri

Precedential or Non-Precedential:

Docket 95-3304,95-3304

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 95-3304

SANI-DAIRY, a division of Penn Traffic Co., Inc.;
JOHN P. STRITTMATTER, d/b/a Strittmatters Dairy;
DELBERT THOMAS; ED THOMAS; LOWELL FRIEDLIN;
ARTHUR BLOOM; JAMES L. HARTEIS

v.

CLAYTON YEUTTER, Secretary of Agriculture, United
States Department of Agriculture; COMMISSIONER OF
AGRICULTURE AND MARKETS, STATE OF NEW YORK

(D.C. Civil No. 90-cv-00222)

MILK MARKETING, INC.

v.

CLAYTON YEUTTER, Secretary of Agriculture,
United States Department of Agriculture

(D.C. Civil No. 90-cv-00236)

CLAYTON YEUTTER, Secretary of Agriculture,
United States Department of Agriculture;
DAN GLICKMAN, Secretary of Agriculture,
United States Department of Agriculture
and UNITED STATES OF AMERICA,*
Appellants
(*Pursuant to Rule 12(a), F.R.A.P.)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Submitted under Third Circuit LAR 34.1(a) on March 15, 1996

Before: NYGAARD, SAROKIN and ALDISERT, Circuit Judges.

(Opinion Filed: July 31, 1996)

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OPINION OF THE COURT

PER CURIAM.

Several Pennsylvania dairy farmers and a dairy cooperative challenge the validity of the Secretary of Agriculture's regulations governing the marketing of fluid milk in the New York-New Jersey milk marketing area. Plaintiffs allege that the Secretary's regulations, promulgated under the Agricultural Marketing Agreement Act of 1937, 7 U.S.C. § 601 et seq., violate 7 U.S.C. § 608c(5)(G), which states:
No marketing agreement or order applicable to milk and its products in any marketing area shall prohibit or in any manner limit, in the case of the products of milk, the marketing in that area of any milk or product thereof produced in any production area in the United States.

The district court found that the Secretary's regulations

governing the marketing of fluid milk in the New York-New Jersey milk marketing area, as applied to plaintiffs, constituted a prohibited economic trade barrier to milk producers and sellers outside the New York-New Jersey milk marketing area. See *Lehigh Valley Cooperative Farmers, Inc. v. United States*, 370 U.S. 76, 91-98, 82 S.Ct. 1168, 1175-1180 (1962). The district court awarded plaintiffs restitution and interest. We will now affirm, and in so doing adopt the reasoning of the district court expressed in *Sani-Dairy v. Yeutter*, F.Supp. , No. CIV.A.90-222J, 1995 WL 848950 (W.D. Pa. Mar. 27, 1995) and *Sani-Dairy v. Espy*, F.Supp. , NO. CIV.A. 90-222J, CIV.A. 90-236J, 1993 WL 832147 (W.D. Pa. Dec. 30, 1993).