

**Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Anderson Dairy, Inc.; Clark County Dairymen, Inc.; Hi-Land Dairyman's Association; Lloyd Foremaster, d. b. a. Arden Milk Distributor; Bert O'Donnell; H. D. Zigtema, d.b.a. Hinie's Select Dairy; Blaine Allan; Elmer Bowman; John Fetherston; Ty Gillins; Harold Gottfriedson; Norman Grimshaw; Bill Marshall; M. K. Stewart; Wilson Stewart; Dan Waite; Vern Waite; M. J. Warr; and Murray Webb., U.S. District Court, D. Nevada, 1956 Trade Cases ¶68,284, (Feb. 20, 1956)**

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United States v. Anderson Dairy, Inc.; Clark County Dairymen, Inc.; Hi-Land Dairyman's Association; Lloyd Foremaster, d. b. a. Arden Milk Distributor; Bert O'Donnell; H. D. Zigtema, d.b.a. Hinie's Select Dairy; Blaine Allan; Elmer Bowman; John Fetherston; Ty Gillins; Harold Gottfriedson; Norman Grimshaw; Bill Marshall; M. K. Stewart; Wilson Stewart; Dan Waite; Vern Waite; M. J. Warr; and Murray Webb.

1956 Trade Cases ¶68,284. U.S. District Court, D. Nevada. Civil Action No. 133. Filed February 20, 1956. Case No. 1255 in the Antitrust Division of the Department of Justice.

**Sherman Antitrust Act**

**Combinations and Conspiracies—Consent Decree—Practices Enjoined—Price Fixing —Milk Producers and Distributors.**—Milk distributors were prohibited by a consent decree from entering into any understanding to fix, adopt, or maintain prices, terms, and conditions at which (1) distributors will purchase raw milk from producers, (2) distributors will sell bottled milk and other fluid milk products to retailers, home buyers, and other purchasers, or (3) bottled milk and other fluid milk products will be resold by purchasers. Also, they were prohibited from fixing or maintaining prices at which raw milk, bottled milk, and other fluid milk products will be bid or sold to city, county, state, federal, and other government agencies.

Milk producers, representing other producers who were class defendants, were prohibited from knowingly participating in any understanding among distributors to fix the prices which distributors will pay or will offer to pay producers for raw milk and from entering into any understanding with any distributor to fix or maintain prices, terms, and conditions at which a distributor will sell bottled milk and other fluid milk products.

**Department of Justice Enforcement and Procedure—Consent Decrees—Permissive Provisions—Capper-Volstead Act.**—A consent decree, prohibiting milk producers from fixing milk prices, provided that nothing contained in the decree shall be deemed to prohibit the producers from doing any lawful act authorized by the Capper-Volstead Act.

For the plaintiff: Stanley N. Barnes, Assistant Attorney General; Franklin P. Rittenhouse, United States Attorney; and W. D. Kilgore, Jr., Geo. L. Derr, Lyle L. Jones, Marquis L. Smith, Arthur H. Tibbits, and John H. Burgess, Attorneys.

For the consenting defendants: Herbert M. Jones for Anderson Dairy, Inc., and Bill Marshall and Murray Webb, individually, and as representatives of the defendant class of producers, in accordance with Rule 23 of the Federal Rules of Civil Procedure. Rulon A. Earl for Clark County Dairymen, Inc. and Hi-Land Dairyman's Association. V. Gray Gubler for Lloyd Foremaster, d.b.a. Arden Milk Distributor. W. Bruce Beckley for H. D. Zigtema, d.b.a. Hinie's Select Dairy. Elwin C. Leavitt for John Fetherston, Ty Gillins, Harold Gottfriedson, Norman Grimshaw, M. K. Stewart, Wilson Stewart, Dan Waite, Vern Waite, M. J. Warr, and Blaine Allan, individually, and as representatives of the defendant class of producers, in accordance with Rule 23 of the Federal Rules of Civil Procedure. Howard W. Cannon for Elmer Bowman, individually, and as a representative of the defendant class of producers, in accordance with Rule 23 of the Federal Rules of Civil Procedure.

## Final Judgment

JOHN R. Ross, District Judge [ *In full text*]: Plaintiff, United States of America, having filed its complaint herein on September 8, 1955, and the consenting defendants having appeared by their respective counsel, and plaintiff and said defendants having sever ally consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without admission by any party in respect of any such issue:

Now, therefore, before any testimony has been taken and without trial or adjudication of any issue of fact or law herein and upon consent of the plaintiff and consenting defendants, it is hereby ordered, adjudged and decreed as follows:

### I

#### [ *Sherman Act*]

The Court has jurisdiction of the subject matter hereof and of the plaintiff and consenting defendants. The complaint states a cause of action against the consenting defendants under Section 1 of the Act of Congress of July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended.

### II

#### [ *Definitions*]

As used in this Final Judgment:

(A) "Consenting defendants" shall mean each and all of the following: Anderson Dairy, Inc.; Clark County Dairymen, Inc.; Hi-Land Dairyman's Association; Lloyd Foremaster, d.b.a. Arden Milk Distributor; H. D. Zigtema, d.b.a. Hinie's Select Dairy; Blaine Allan; Elmer Bowman; John Fetherston; Ty Gillins; Harold Gottfriedson; Norman Grimshaw ; Bill Marshall ; M. K. Stewart ; Wilson Stewart: Dan Waite; Vern Waite; M. Warr; and Murray Webb;

(B) "Consenting defendant distributors" shall mean each and all of the following aforementioned consenting defendants: Anderson Dairy, Inc.; Clark County Dairymen, Inc.; Hi-Land Dairyman's Association; Lloyd Foremaster, d.b.a. Arden Milk Distributor; and H. D. Zigtema, d.b.a. Hinie's Select Dairy;

(C) "Consenting defendant producers" shall mean each and all of the aforementioned consenting defendants except consenting defendant distributors, and in addition, the class of approximately 215 producers, of which they are members, located in Nye, Lincoln and Clark Counties in the State of Nevada, and Beaver, Iron, Piute and Washington Counties in the State of Utah;

(D) "person" shall mean an individual, partnership, firm, association, corporation, or other business or legal entity;

(E) "Producer" shall mean a person having cows and selling to or through distributors a part or all of the raw milk produced by such cows;

(F) "Distributor" shall mean a person engaged in the business of purchasing or acquiring raw milk from producers, and processing, bottling, selling and distributing bottled milk and other fluid milk products to retailers, homes, and other purchasers;

(G) "Raw milk" means cow's milk sold or delivered by producers to distributors for processing into bottled milk and other fluid milk products;

(H) "Bottled milk" means raw milk which has been processed for sale as regular and homogenized, bottled and packaged, milk;

(I) "Other fluid milk products" means products processed from raw milk, other than bottled milk, for consumption in fluid form, and includes cream, half and half, skimmed milk and chocolate milk.

### III

[ *Applicability of Judgment*]

The provisions of this Final Judgment applicable to any consenting defendant shall apply to such defendant, its or his partners, officers, directors, managers, agents, servants, employees, successors and assigns, and to those persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

[ *Pricing Practices—Distributors*]

The consenting defendant distributors are jointly and severally enjoined and restrained from adhering to, renewing, maintaining or furthering, directly or indirectly, or inducing others to adhere to, renew, maintain or further any contract, agreement, understanding, plan, program or common course of action, if any now exist, among themselves or with any other distributor to:

(A) Fix, adopt, stabilize or maintain prices, terms and conditions at which distributors will purchase raw milk from producers, or from any association of producers;

(B) Fix, adopt, stabilize or maintain prices, terms and conditions at which distributors will sell bottled milk and other fluid milk products, to retailers, home buyers, and other purchasers;

(C) Fix, adopt, stabilize or maintain mark-ups, prices, terms and conditions at which bottled milk and other fluid milk products will be resold by purchasers;

(D) Fix, adopt, stabilize or maintain prices at which raw milk, bottled milk and other fluid milk products will be bid or sold to city, county, state, federal, and other government agencies; and consenting defendant distributors are jointly and severally enjoined and restrained from at any time hereafter entering into, adhering to, maintaining or furthering, directly or indirectly, or inducing others to enter into any contract, agreement, understanding, plan, program or common course of action among themselves or with any other distributor, to do any of the acts or things set forth in subparagraphs (A), (B), (C) and (D) of this Section IV.

Nothing in this Section IV shall be deemed to prohibit bona fide sales of raw milk, bottled milk, and other fluid products by one distributor to another in the regular course of business.

V

[ *Pricing Practices—Producers*]

Consenting defendant producers are jointly and severally enjoined and restrained:

(A) From knowingly aiding, abetting or participating in, any agreement, understanding or meeting between or among distributors to fix the prices which distributors will pay or will offer to pay producers for raw milk;

(B) From adhering to, renewing, maintaining or furthering, directly or indirectly, or inducing others to adhere to, renew, maintain or further any contract, agreement, understanding, plan, program or common course of action, if any now exist, with any distributor, to fix, establish, stabilize or maintain prices, terms and conditions at which a distributor will sell bottled milk and other fluid milk products; and from at any time hereafter entering into, adhering to, maintaining or furthering directly or indirectly, or inducing others to enter into any contract, agreement, understanding, plan, program or common course of action with any distributor to fix, establish, stabilize or maintain prices, terms and conditions at which a distributor will sell bottled milk and other fluid milk products.

Nothing in this Section V shall be deemed to enjoin said consenting defendant producers from doing any lawful act authorized by the Capper-Volstead Act.

VI

[ *Inspection and Compliance*]

For the purpose of securing compliance with this Final Judgment, duly authorized representatives of the Department of Justice shall, on written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any consenting defendant, be permitted, subject to any legally recognized privilege, (a) access, during the office hours of such consenting defendant, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of such consenting defendant, relating to any of the matters contained in this Final Judgment, and (b) subject to the reasonable convenience of such consenting defendant, and without restraint or interference from it, to interview officers or employees of such consenting defendant, who may have counsel present, regarding any such matters. Upon written request of the Attorney General, or the Assistant Attorney General in charge of the Antitrust Division, such consenting defendant shall submit such written reports with respect to any of the matters contained in this Final Judgment as from time to time may be necessary for the purpose of the enforcement of this Final Judgment. No information obtained by the means permitted in this Section VI shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Department, except in the course of legal proceedings in which the United States is a party for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

## VII

### *[ Jurisdiction Retained]*

Jurisdiction is retained by this Court for the purpose of enabling any of the parties signatory to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the amendment or modification of any of the provisions, for the enforcement of compliance therewith, and for the punishment of violation thereof that may occur.