Commodity Futures Trading Commission
CEA CASES

**NAME:** G. H. MILLER AND COMPANY, GILBERT H. MILLER, HOWARD RANDOLPH, REFRIGERATED PRODUCTS, INC., J. W. HARDING, CENTRAL IOWA POULTRY AND EGG COMPANY, JOHN H. SNOWGREN, ALLEN HEADLEE, E. E. HUMMEL, K. HUMMEL, ALBERT SCHIRM, LEO HAGEN, A. L. MYRICK, LEWIS R. VAN SANT, AND ROY ROUNTREE

**CITATION:** 15 Agric. Dec. 1015

**DOCKET NUMBER:** 60

**DATE:** SEPTEMBER 25, 1956

**DOCUMENT TYPE:** DECISION AND ORDER

(No. 4797)

*In re* G. H. MILLER AND COMPANY, GILBERT H. MILLER, HOWARD RANDOLPH, REFRIGERATED PRODUCTS, INC., J. W. HARDING, CENTRAL IOWA POULTRY AND EGG COMPANY, JOHN H. SNOWGREN, ALLEN HEADLEE, E. E. HUMMEL, K. HUMMEL, ALBERT SCHIRM, LEO HAGEN, A. L. MYRICK, LEWIS R. VAN SANT, AND ROY ROUNTREE. CEA Docket No. 60. Decided September 25, 1956.

**Evidence -- Manipulation -- Corner -- Denial of Trading Privileges -- Revocation of Registration**

Evidence is held to establish (1) that there was agreement or understanding among respondents to corner, and to manipulate prices of, eggs and egg futures on the Chicago Mercantile Exchange in December 1952 and (2) that the respondents attempted to and did so corner and manipulate.

**Substantive Violations by Group -- Aggregation of Acts and Declarations of Respondents -- Declarations Made After Alleged Concert of Action**

(1) In a proceeding charging substantive violations by a group, pursuant to understanding or agreement, acts and declarations of respondents can be lawfully aggregated as in a proceeding involving conspiracy *per se.*

(2) Declarations of some respondents made after the alleged concert of action had ceased were not utilized against respondents not making the declarations.

**Evidence -- Statements to Investigator in Lieu of Testimony**

Respondents' answers to questions by investigator and investigator's impressions as to veracity do not take the place of sworn testimony at a hearing and a hearing examiner's evaluation of such testimony.

*Mr. Benj. M. Holstein,* for Commodity Exchange Authority. *Mr. Lee A. Freeman,* of Chicago, Illinois, for respondents G. H. Miller and Company, Gilbert H. Miller, Refrigerated Products, Inc., and J. W. Harding. *Mr. Robert E. Newton,* of Stuart, Iowa, for respondents Howard Randolph, Allen Headlee, Albert Schirm, Leo Hagen, E. E. Hummel, and K. Hummel. *Mr. K. K. Smith,* of Fort Worth, Texas, for respondents A. L. Myrick, Lewis R. Van Sant and Roy Rountree. *Messrs. Roy L. Pell and Joe B. Tye,* of Marshalltown, Iowa, for respondents John H. Snowgren and Central Iowa Poultry and Egg Company. *Mr. Jack W. Bain,* Referee.

*Decision by Thomas J. Flavin, Judicial Officer*

**PRELIMINARY STATEMENT**

This is a disciplinary proceeding under the Commodity Exchange Act (7 U.S.C. Chapter 1) instituted by a complaint filed by John H. Davis, Assistant Secretary of Agriculture, on September 1, 1953. In the complaint it was charged that the

respondents, acting collectively and in a uniform manner pursuant to an understanding or agreement, attempted to and did corner, and attempted to and did manipulate the price of, eggs and egg futures on the Chicago Mercantile Exchange in December 1952.

Most of the respondents filed motions to dismiss the complaint, motions for severance, and requests for separate hearings, some in Iowa and Texas. Reasons given were that there was a misjoinder of parties because the words "conspiracy" and "collusive" were not used in the complaint, that appeals to different courts might be necessary because of the different residences of respondents, and that no offense was charged under section 6(b) of the act. After oral argument, the referee denied the motions.

Answers were filed by ten of the respondents within the time allowed and by the other five after the hearing opened. In general, the respondents admitted the trading transactions alleged but denied participation in any manipulation or corner.

At a prehearing conference in Chicago on May 11, 1954, agreements were made concerning presentation of certain documentary evidence. The oral hearing opened before the referee in Chicago on July 7, 1954. Benjamin M. Holstein, Office of the General Counsel, United States Department of Agriculture, appeared as counsel for the complainant. Lee A. Freeman, Attorney at Law, Chicago, Illinois, appeared as counsel for respondents G. H. Miller and Company, Gilbert H. Miller, Refrigerated Products, Inc., and John W. Harding. Hobart E. Newton, Attorney at Law, Stuart, Iowa, appeared for respondents Howard Randolph, Allen Headlee, E. E. Hummel, K. Hummel, Albert Schirm, and Leo Hagen. Joe B. Tye, Attorney at Law, Marshalltown, Iowa, appeared for respondents Central Iowa Poultry and Egg Company and John H. Snowgren. K. K. Smith, Attorney at Law, Fort Worth, Texas, appeared for respondents A. L. Myrick, Lewis R. Van Sant, and Roy Rountree. Respondents' counsel argued that the motions to dismiss should be granted because the allegations in the complaint were insufficient to charge a conspiracy or manipulation and corner, but the referee saw no reason to change his December 1953 denial of the motions. Motions to strike parts of the complaint were also denied.

At the hearing, the complainant called 15 witnesses and introduced 68 exhibits. The transcript contains 1,841 pages. When complainant rested, respondents filed written motions to dismiss and requested that briefs be ordered and oral argument set on the motions. The motions to dismiss stated that complainant had presented no evidence that respondents had acted together and no evidence of any manipulation or corner. The referee denied the motions to dismiss. Respondents offered no evidence. After the hearing, the parties filed suggested findings and conclusions and supporting briefs.

The referee's report, favorable to the complainant, was issued on December 1, 1955. The respondents filed 88 pages of exceptions to the report. Oral argument was held before the Judicial Officer on April 30, 1956. The transcript of oral argument contains 198 pages.

The material facts will be shown below in the Findings of Fact and the issues and evidence will be discussed in the Conclusions. A brief description of the hearing might be helpful at this stage, however, and is given below.

Arthur R. Grosstephan, in charge of compliance in the Chicago office of the Commodity Exchange Authority, testified about the techniques of trading in egg futures upon the Chicago Mercantile Exchange and also as to his part in the investigation preceding the issuance of the complaint including an interview with respondent Gilbert H. Miller on December 22, 1952. Alex C. Caldwell, an investigator for the Commodity Exchange Authority, also testified concerning interviews he had with all the individual respondents except Miller during the course of the investigation and submitted in evidence memoranda of such conversations. Douglas B. Bagnell, Assistant Administrator of the Commodity Exchange Authority, on the basis of surveys and studies made by him concluded that the December 1952 egg futures price was advanced to an artificial level

during the latter part of December 1952 as the result of the trading by respondents and that they traded as a group under common influence, control or agreement.

Dr. W. Edwards Beach, Director, Trading and Reports Division, Commodity Exchange Authority, and a professional economist, testified for the complainant and upon the basis of analyses presented concluded that the respondents had attempted to corner and did corner the storage egg market in December 1952 and that they had attempted to and did manipulate the December 1952 egg futures price.

Two floor brokers, Frank M. Darby and Edwin J. Guerkink, testified as to buying and selling orders given by respondent Miller, and Marlowe King, another floor broker, testified as to buying and selling orders on December 22, 1952, by respondents Randolph and Hagen. Several traders who required eggs for delivery upon short contracts testified concerning their efforts to purchase deliverable eggs from respondent Miller. The complainant also introduced market news letters which reported the market situation during the pertinent period in terms of a group operation, a technical situation, a "squeeze," etc. Three editors or authors of these letters, Howard Biel, of Merrill Lynch, Pierce, Fenner & Beane, Orville O'Neil, of Shearson, Hammill and Company, and Harvey S. Williams, of Harris, Upham and Company, were called as Witnesses for the complainant. Oscar W. Olson, Executive Vice President of the Chicago Mercantile Exchange, testified as to the steps taken by the Chicago Mercantile Exchange in connection with the defaults by shorts in the December 1952 future, that he questioned respondent Miller on December 22 as to whether there was collusion among Miller's long customers, that he was assured by Miller there was not, that he suggested to Miller he not increase his long commitments as a clearing member and that Miller cooperated.

No testimony was offered in behalf of the respondents but their cross-examination of the complainant's witnesses was intensive and exhaustive. The position of the respondents is in brief that the complainant has failed to establish the charges in the complaint. They contend that each respondent bought futures independently of the other respondents without manipulative motive, held the futures a few days and sold out; that respondent Miller did not even do this much but sold futures during the period in issue; that there was no corner or manipulation; that the price of fresh eggs during the period in question justified the futures price; that short traders had depressed the price of the December future early in December and the rise that occurred subsequently merely constituted the return of the price to its proper level; that ample supplies both of futures and cash eggs were available to short traders; that defaults had occurred merely because short traders sought to take advantage of market machinery; that the deliverable supply of eggs in satisfaction of December futures contracts includes fresh eggs and storage eggs located outside of Chicago as well as storage eggs in Chicago; that the conclusions of complainant's witnesses that the respondents cornered the market and manipulated the price are untenable because they are not based upon a study of all market factors in Chicago and elsewhere; that the complainant's statistics are erroneous and without significance and do not reflect the market situation; and finally, that each of the respondents, acting as an individual and without any understanding or agreement with any other respondent, had merely bought futures because he felt that the market was due to advance, held his long position for a short time, and then sold at a profit.

**FINDINGS OF FACT**

1. Respondent G. H. Miller and Company is an Illinois corporation whose principal place of business is at 1136 West Fulton Street, Chicago, Illinois. It deals in eggs and egg futures for its own account and for customers, is registered as a futures commission merchant under the Commodity Exchange Act, and is a clearing member of the Chicago Mercantile Exchange. Respondent Gilbert

H. Miller is president of G. H. Miller and Company, manages and controls its business, and is registered as a floor broker under the Commodity Exchange Act.

2. Respondent Howard Randolph, doing business as Randolph and Company, of Guthrie Center, Iowa, is a dealer in eggs and egg futures, is a member of the Chicago Mercantile Exchange, and is an associate broker for G. H. Miller and Company authorized to solicit orders for egg futures contracts to be executed on the Exchange by G. H. Miller and Company.

3. Respondent Refrigerated Products, Inc., a Texas corporation, whose principal place of business is at 1109 Jones Street, Fort Worth, Texas, is a dealer in eggs. Respondent John W. Harding is its president and principal stockholder and manages and controls its business.

4. Respondent Central Iowa Poultry and Egg Company, an Iowa corporation, whose principal place of business is at Marshalltown, Iowa, is a dealer in poultry and eggs. Respondent John H. Snowgren is its president and manages and controls its business.

5. Respondent Allen Headlee, doing business as Headlee Produce Company in Coon Rapids, Iowa, is a packer and shipper of eggs.

6. Respondents E. E. Hummel and K. Hummel are partners doing business as Hummel Produce Company in Oakland, Iowa. The partnership is in the egg and produce business.

7. Respondent Albert Schirm, doing business as Schirm Produce Company in Walnut, Iowa, is a packer and shipper of eggs.

8. Respondent Leo Hagen is in the automobile business in Guthrie Center, Iowa, and is the only respondent not in the egg business.

9. Respondent A. L. Myrick, doing business as Market Produce Company at 315 East First Street, Fort Worth, Texas, is a dealer in eggs and poultry.

10. Respondents Lewis R. Van Sant and Roy Rountree are partners doing business as Dated Egg Company at 321 Franklin Street, Houston, Texas. The partnership is a dealer in eggs. Lewis R. Van Sant is a member of the Chicago Mercantile Exchange.

11. The fifteen persons and corporations named as respondents in Findings 1 through 10, above, are the respondents in this proceeding, as named in the complaint. The descriptions of their organizations, addresses, businesses, memberships, registrations, etc., stated in the present tense are applicable to all times material herein.

12. The Chicago Mercantile Exchange is a duly designated contract market under the Commodity Exchange Act.

13. Trading in egg futures on the Chicago Mercantile Exchange occurs on "business days," Monday through Friday of each week, except for holidays occurring on those days. During the closing month of a future, *e.g.,* the month of December for the December future, there is no trading during the last five business days. Accordingly, the trading days in December 1952 for the December 1952 egg future were December 1-5, 8-12, 15-19, 22, and 23. The last five business days were December 24, 26, 29, 30, and 31, on which there was no trading in the future, but on which contracts previously made in it could be settled by delivery and receipt of eggs.

14. During the first twelve trading days in December 1952, December 1-5, 8-12, 15, and 16, the net change in the price of the December 1952 egg future on the Chicago Mercantile Exchange at the close of the day in comparison with the close on the preceding

day, in cents per dozen eggs, was down on seven days and up on five, the largest decline being 1.50 cents on December 4 and the largest gain being .66 of a cent

on December 9. Thereafter, however, the change was up every day, being up 1.08, 1.97, 1.97, 2.03, and 1.80 cents, respectively, on the last five days of trading. Such a progressive rise over so many days is unusual.

15. Prices fluctuate in egg futures on the Chicago Mercantile Exchange in five point units, a point being .01 of a cent. The opening and closing prices of the opening flurry and the last minute of trading are often recorded as a range, *e.g.,* the opening on December 19 was "42.00-43.25" and' the close was "43.70-75." In computing the change in price from the close on the day before, which was 41.75 for December 18, the mid-point of the closing range was used, so that the price increase from close to close was computed as 1.97 instead of 1.95 or 2.00 or 1.95-2.00. Under the rules of the Exchange, the price may not go more than 2 cents ("2.00") above or below the close on the preceding day.

16. Prior to December 1952 respondent Randolph had done substantial trading in Chicago egg futures through respondent Miller and Company. Examination of Miller and Company's books for a period of 13 months prior to December 1952 shows that during such period the maximum positions in Chicago egg futures held through Miller and Company by respondents Headlee Produce Company, Hummel Produce Company and Schirm Produce Company were 12 carlots, 6 carlots and 5 carlots, respectively, and that the remaining respondents (except Randolph) had not traded in Chicago egg futures through Miller and Company during such period.

17. At the close of trading on December 16, 1952, through G. H. Miller and Company, the company for itself held 22 long and 3 short Chicago December 1952 egg futures contracts, and Randolph and Company held 13 long. Through other commission firms, Market Produce Company was 5 long and Central Iowa Poultry and Egg Company was 6 long. No other respondent held a position. The total position of all respondents was 46 long and 3 short.

18. On December 17, Miller and Company bought 2 for itself, leaving it 22 long and 1 short. It also bought 19 for Refrigerated Products, Inc., 24 for Lewis R. Van Sant, 20 for Headlee Produce Company, and 1 each for Schirm Produce Company and

Hummel Produce Company. No other respondent traded that day. The total purchase of 67 left the total position of respondents at the close as 111 long and 1 short.

19. On December 18, Miller and Company bought and sold 2 for itself, leaving its position unchanged. It bought 31 for Refrigerated Products, 24 for Market Produce, and 30 for Randolph, to give them, respectively, 50, 24, and 43 long. It sold 1 each for Schirm and Hummel, closing them out. Central Iowa sold the 6 it held through two other firms, to leave it with no position. No other respondent traded. These total purchases of 87 and sales of 10 left the total position of respondents as 188 long and 1 short.

20. On December 19, Miller and Company sold 14 and took delivery on 2 for itself, leaving it 6 long and 1 short. It bought 7 for Randolph to give him 50 long, and bought 9 each for Schirm and Hummel and 24 for Central Iowa, to put them back into the market. Market Produce Company sold the 5 it held through another firm, leaving it long 24, all through Miller and Company. These 49 purchases, 19 sales, and 2 receipts of delivery left respondents' total position as 216 long and 1 short.

21. On December 22, Miller and Company for itself sold 8 and received delivery on 6, leaving it 9 short. It received delivery on 11 for Randolph, leaving him 39 long through Miller. It sold 10 for Headlee, leaving him 10 long, and sold 9 each for Schirm and Hummel, to close them out of the future finally. Through other firms, Hummel bought and sold 1, leaving it with no position; Randolph bought 11, to give him a total of 50 with the 39 he held through Miller; Hagen bought 10 to enter the market; and Central Iowa bought 8, to give it 32 with its 24 through Miller. These 30 purchases through others, 37

sales through Miller and another, and 17 receipts of delivery through Miller, left respondents' total position as 200 long and 9 short.

22. On December 23, the last day of trading, Miller and Company sold 12 and received 2 on delivery for Refrigerated Products, leaving the latter 36 long; sold 5 and received 14 on delivery for Van Sant, to leave him 5 long; sold 10 for Market Produce to leave him 14 long; sold 30 and received 2 for Randolph, leaving him 7 long through Miller; received 10 for Headlee, to get him out finally; and sold 20 for Central Iowa, to leave it 4 long through Miller. Through three other firms, Randolph and Central Iowa sold 11 and 8, respectively, leaving them with only their

positions through Miller, and Hagen sold 10, getting him out finally. These 106 sales through Miller and others and 28 receipts through Miller left respondents' total position 66 long and 9 short, all through Miller.

23. (a) At the close on December 16, the four respondents who were long had 5, 6, 13 and 22 contracts. The other longs in the market had contracts as follows: 85 had between 1 and 4 contracts each, 14 had between 10 and 14 contracts and 1 had 15 contracts. At the close on December 19, 1 respondent had 6 contracts, two respondents had 9 contracts each, 4 respondents had 24 contracts each and 2 respondents each had 50 contracts. On that date other longs had holdings as follows: 10 had between 1 and 4 contracts apiece, 2 had between 5 and 9 contracts and 2 had between 10 and 14 contracts. At the close on December 22 and December 23 the only longs were respondents.

(b) On the short side at the close on December 16 there were 92 short traders who had between 1 and 4 contracts each, 13 who had between 5 and 9 contracts, 2 who had between 10 and 14 contracts, 1 who had 19 contracts and 1 who had 20 contracts. At the close on December 19 there were 77 short traders who had between 1 and 4 contracts, 12 who had between 5 and 9 contracts, 2 who had between 10 and 14 contracts and 2 who had between 20 and 24 contracts. At the close on December 22 there were 65 traders who had between 1 and 4 contracts, 8 who had between 5 and 9 contracts, 1 who had 10 contracts and 1 who had 15 contracts. At the close on December 23 there were 16 traders who had between 1 and 4 contracts and 4 who had between 5 and 9 contracts.

24. Of respondents' purchases of futures on the last five days of trading, respectively, 65, 85, 49, 29, and 0 contracts represented new purchases, or resulted in long positions, while their purchases of only 2 contracts were covering purchases, or resulted in closing out short positions. For all other traders, the figures for new purchases were 26, 11, 8, 0, and 0 for the five days, and for covering purchases the figures were 55, 70, 80, 84, and 122. Respondents' new sales for the five days were 8, all on one day, while other traders' were 48, 59, 63, 34, and 16. Respondents made 0, 8, 19, 28, and 106 covering or liquidating sales, while others made 100, 99, 55, 43, and 0. Respondents made only 3 in-and-out trades (not resulting in positions held at the close), while others made 65, 35, 39, 4, and 11.

25. At the close on the last six trading days, the number of traders on the long side were, respectively: 108, 80, 47, 23, 7, and 5. They were from the following number of States (counting the District of Columbia and three foreign countries as States for this purpose): 28, 22, 14, 7, 2, and 2. For the short side, the number of traders were: 110, 101, 103, 94, 76, and 21 respectively and they were located in 20, 18, 21, 25, 21, and 7 States, respectively.

26. The 36 sales made on December 22 by Miller and Company for respondents, mentioned in Finding 21, and 10 sales for customers other than respondents were all at 45.75, the maximum price permitted for that day. Hummel's sale of 1 through another firm was at 45.50. Liquidating sales of 33 by 18 other traders through other firms ranged from 1 at 44.00, 3 at 44.50, 2 at 44.75, to 2 at 45.65, 13 at 45.70, and 2 at 45.75. Of the 77 sales through Miller and Company on December 23, mentioned in Finding 22, 7 were 47.50 and 70 were at 47.55, the

highest price registered that day. Respondents' 29 sales through three other firms were all at 47.50.

27. On December 17, the order of Miller and Company, given by telephone by Gilbert H. Miller, with some other unnamed person also on the line, to its broker, Frank M. Darby, for purchases of the December future, was "Buy all can at 39.75." On December 19, the order of Miller and Company, given by telephone by Gilbert H. Miller, to a broker acting for it, Edwin J. Geurkink, was to buy all he could up to within five points of the limit. These orders authorized the brokers to buy unlimited quantities at or below the prices specified. On December 23, Darby received an order from Miller and Company to sell all he could at 47.60. He was unable to sell at that price.

28. On the morning of December 22, 1955, by telephone, Howard Randolph gave an order to Marlowe King, a floor broker, to buy 11 of the December future at the market price. Randolph then put Leo Hagen on the telephone, and Hagen gave King an order to buy 10. King filled the orders and confirmed. That afternoon, King telephoned Randolph about other things, and during the conversation Randolph instructed King that, in the absence of further contact before the opening the next morning, King had an open order to sell his 11 and Hagen's 10 at 47.50. King sold the 21 at 47.50 on December 23.

29. During the last three days prior to the close of trading in the December future, the quantity of long December futures held by the respondents was approximately twice as large as total stocks of deliverable refrigerator eggs in Chicago, including deliverable eggs in the bands of the respondents, and from two and one-half to three times as large as stocks of deliverable refrigerator eggs owned by persons other than the respondents. The following table shows total stocks of deliverable refrigerator eggs in warehouses in Chicago during the latter half of December, stocks of such eggs owned by the respondents and by other persons, the respondents' percentage of such total stocks, and the respondents' long futures position in relation to such stocks.

| Date | Total Stocks Del. Eggs (Approx. Carlots) | Owned by Resps. (Approx. Carlots) | Owned by Other Persons (Approx. Carlots) | Resps.'% of Deliverable Stocks | Resps.' Long Futures (Carlots) | Resps.' Long Position as a % of Del. Stocks Owned by Others |
|---|---|---|---|---|---|---|
| Dec. 16 | 120 | 23 | 97 | 19.5 | 46 | 47.4 |
| " 17 | 114 | 23 | 91 | 20.5 | 111 | 122.0 |
| " 18 | 109 | 20 | 89 | 18.5 | 188 | 211.0 |
| " 19 | 103 | 22 | 81 | 21.6 | 216 | 266.6 |
| " 22 | 97 | 34 | 63 | 35.4 | 200 | 317.5 |
| " 23 | 84 | 60 | 24 | 72.1 | 66 | 275.0 |
| " 24 | 84 | 77 | 7 | 91.5 | 50 | 714.3 |
| " 26 | 81 | 68 | 13 | 83.6 n1 | 48 | 369.2 n1 |
| " 29 | 80 | 70 | 10 | 87.3 n2 | 40 | 400.0 n2 |
| " 30 | 80 | 79 | 1 | 98.7 | 21 | 2100.0 |
| " 31 | 79 | 78 | 1 | 98.7 | 21 | 2100.0 |

n1 Eight carlots sold to shorts for delivery purposes. If considered under the control of the respondents, total percentages would be 93.6 and 960.0, respectively.

n2 Five carlots sold to shorts for delivery purposes. If considered under the control of the respondents, total percentages would be 93.6 and 800.0, respectively.

30. At all times during the last four trading days, the combined deliverable cash stocks and long futures holdings of the respondents exceeded total deliverable stocks in Chicago and long futures holdings in the hands of all other persons, and during the last two trading days the respondents held approximately four to five times as many deliverable cash eggs and long futures

as all others persons combined. The following table shows the deliverable cash and long futures holdings of the respondents and other persons:

| | December 18 | | December 19 | | December 22 | | December 23 | |
|---|---|---|---|---|---|---|---|---|
| | Resp. | Other | Resp. | Other | Resp. | Other | Resp. | Other |
| Del. Eggs | 20 | 89 | 22 | 81 | 34 | 63 | 60 | 24 |
| Long Fut. | 188 | 117 | 216 | 61 | 200 | 0 | 66 | 0 |
| Total | 208 | 206 | 238 | 142 | 234 | 63 | 126 | 24 |

31. On December 31, 1952, it is estimated that there were approximately 90 carlots of refrigerator eggs of deliverable quality in the area including Illinois, Indiana, Michigan, Wisconsin, Minnesota, Iowa, Missouri, North Dakota, and South Dakota. On the said date, the respondents owned 78 carlots of deliverable eggs in Chicago, as described above, and one carlot in Minnesota, or a total of 79 carlots, representing approximately 98.7 percent of the deliverable refrigerator eggs in Chicago, and approximately 88 percent of the refrigerator eggs of deliverable quality in this area. On the same date there were approximately 115 carlots of eggs of deliverable quality in the entire North Central region, which is comprised of the above area plus Ohio, Kansas and Nebraska, and on that date the respondents owned approximately 70 percent of such eggs.

32. At all times between December 17 and 23, 1952, the total of outstanding short contracts in the December 1952 future in the hands of persons other than the respondents, which had to be liquidated by the purchase of futures or the delivery of eggs and which represented demand by others, exceeded the total of outstanding long contracts in the December 1952 future held by persons other than the respondents plus deliverable refrigerator eggs in Chicago held by such persons -- the supply of others. The minus quantities in the following table represent carlot deficits which could not be satisfied by persons holding short contracts except by the purchase of futures or deliverable eggs from the respondents:

| Date | Deficit |
|---|---|
| 17 | 19 |
| 18 | -98 |
| 19 | -134 |
| 22 | -128 |
| 23 | -33 |

33. The average daily closing prices of the December 1952 and January 1953 futures on the Chicago Mercantile Exchange and the spread between these two prices (December over January) were as follows:

| Date | December Price | January Price | Spread |
|---|---|---|---|
| Dec. 1 | 41.72 | 40.30 | 1.42 |
| " 2 | 42.02 | 40.35 | 1.67 |
| " 3 | 41.27 | 39.85 | 1.42 |
| " 4 | 39.77 | 38.75 | 1.02 |
| " 5 | 38.70 | 38.05 | .70 |
| " 8 | 37.62 | 37.47 | .15 |
| " 9 | 38.27 | 38.27 | 0 |
| " 10 | 38.87 | 38.60 | .27 |
| " 11 | 39.47 | 38.87 | .60 |
| " 12 | 39.12 | 38.42 | .70 |
| " 15 | 39.37 | 38.45 | .92 |
| " 16 | 38.70 | 37.85 | .85 |
| " 17 | 39.77 | 38.22 | 1.55 |
| " 18 | 41.75 | 38.60 | 3.15 |
| " 19 | 43.72 | 39.32 | 4.40 |
| " 22 | 45.75 | 39.85 | 5.90 |
| " 23 | 47.55 | 39.50 | 8.05 |

34. During the last ten trading days in the December 1952 future, the December 1952-January 1953 spread increased about 7.75 cents. This increase was approximately twice as great as the largest similar increase during comparable 10-day periods in any other year between 1946 and 1953, both inclusive. About 7.20 cents of this increase took place within the last five trading days. The largest similar increase during the last five trading days in other years between 1946 and 1953, both inclusive, was 3.63 cents.

35. Daily market letters issued by various brokerage firms had the following comments with respect to the Chicago egg market on the dates indicated:

December 17, 1952, Harris, Upham and Company Morning Produce Letter: . . . *As the egg season is nearing its end there appears to be nothing but possible technical reasons for any substantial price advance* . . . The sharp advance in cash eggs yesterday was due to a sustained demand and rather scarce offerings . . . Failure of this strength in cash eggs to influence the futures market for refrigerators emphasizes the difference in the character of the two markets. [Emphasis supplied.]

December 17, 1952, Harris, Upham and Company Closing Produce Letter: The egg market has been a very erratic affair today and at this writing is showing pronounced strength. The opening was firm at about unchanged prices but selling developed immediately afterward and prices broke

about 125 points from the early high. *At the decline, aggressive buying came in through a broker with merchandising connections who absorbed heavy offerings and prices are up over 200 points from the low at this writing.* [Emphasis supplied.]

December 18, 1952, Harris, Upham and Company Closing Produce Letter: *The egg market has shown sustained strength all day, buying appearing to be a continuation of the same character as that which advanced prices so sharply yesterday.* One fairly good reaction followed a higher opening *but late in the day concentrated buying again appeared and prices advanced very sharply to a top of 41 cents for December* with total sales to this writing 172 cars. January have failed to follow to any extent as prices are up only 25 points on sales of 134 cars . . . *Chicago withdrawals 3,041 cases, leaving 64,016 cases on hand.* [Emphasis supplied.]

December 18, 1952, Merrill Lynch market letter: The market started off on a fairly even keel after the sharp run-up at the close yesterday. Earliest prices were only slightly higher and the market drifted along with small volume during the major portion of the session -- only 203 Decembers and 163 Januarys. *During the last hour of trading, new buying began to appear in the December contract which immediately caused a flurry of short covering and just before the closing bell prices in December were up the full daily limit of 2 cents.* At the close the December bid was 41.75 cents and inasmuch as this trading was in the pit, it was impossible to tell how many were wanted at that price but would judge at least 30 contracts were being bid for with no offers. The January contract gained also, but only 40 points for the day as compared to the 200 point gain in the December. It was not too many days ago that December-January were trading even. At the close tonight the spread is 315 points. *There does not seem to be anything in the market presently to warrant this tightness in the December.* There still are 64,000 cases of eggs in Chicago and while all these are not of deliverable grade, *that still leaves better than 60 cars available for delivery.* There is a rumor that a small group of merchandisers are the new buyers in December. [Emphasis supplied.]

December 19, 1952, Harris, Upham and Company Morning Produce Letter: The limit up close on December eggs yesterday

represented an advance of 4 cents from the low of Wednesday and apparently there was a sleeping short interest which was forced to cover. Such action is apt to

continue during the remaining days of trading which will end at the close on Tuesday. The advance was in the face of an easier feeling in the cash market which was called weaker for mediums in the afternoon with demand inadequate for the moderate receipts.

December 19, 1952, Harris, Upham and Company Closing Produce Letter: *The congestion which has suddenly developed in December eggs became acute today and shortly after the opening prices advanced the daily limit of 2 cents.* Offerings increased at that price and were hanging over the market all day. There was a reaction of a full cent from the early top but the market at this writing (12:45) is again strong and the December contract is 195 points higher on sales of 333 cars. The cash market was weaker, unchanged to 2 cents lower, the decline being on medium extras . . . Chicago withdrawals 2179 cases leaving 61,837 on hand. The talk in the trade is that many of the recent withdrawals have gone to Mexico and that others have been distributed in the southern trade. [Emphasis supplied.]

December 19, 1952, Harris, Upham and Company Weekly Produce Letter: *Acute congestion has developed in December egg contracts catching most of the trade by surprise,* as the commitment had gotten down to what had been believed to be reasonably safe proportions. The range for the week has been almost 6 cents a dozen, representing the advance from the low point of Tuesday to the close today. Total trade has amounted to only 821 cars and deliveries have been extremely small. *Aggressive and concentrated buying started about mid-session on Tuesday and has been sustained most of the time since.* The January contract has failed to keep pace with the December but has advanced 90 points for the week after covering a range of 225 points. *Strength in the cash market was the initial stimulus to the advance in futures but was not sustained throughout the week.* [Emphasis supplied.]

December 19, 1952, Merrill Lynch market letter: After a firm opening in the egg market, prices continued to move higher and soon were up the daily limit of 2 cents in the December which traded at 43.75 cents. *The same group that is believed to have been putting the market higher the past few days are still buyers again today.* A good deal of this buying is predicated on the fairly well substantiated rumor that the Mexican government is taking from 20,000 to 25,000 cases of storage eggs and it was also rumored that 5,000 cases would be shipped out of Chicago today or tomorrow on this order. Along with the strength in the December, January also moved higher, but only 75 points. [Emphasis supplied.]

December 22, 1952, Harris, Upham and Company Morning Produce Letter: Trading in the December futures will end at the close on Tuesday and judging by the action of eggs during the closing days of the week almost anything may be expected. *It is a purely technical situation* and although Friday's open interest figures are not yet available, it is probable that the commitment will be down to a point which can be satisfied by delivery before trading ends. Cash prices ran counter to the futures last week as demand was checked by the early advance but improved somewhat after the break on Friday. [Emphasis supplied.]

December 22, 1952, Merrill Lynch market letter: At the opening the bid on December was 43.00 cents and the best offer up the limit at 45.75. It was about ten minutes before a trade was made at 43.75 cents, up 5 points. However, from that time on the market jumped 25 points at a clip and it was not long before they had it back up in the 45.00 cents range. *During the last hour of trading, the December market held tightly to the limit of 45.75 cents, and at the close they were bidding for contracts at that price with no offers.* It looked like there was plenty of long liquidation today despite the difficulty of purchasing. *Some of this liquidation is believed to have stemmed from the group that has been instrumental in holding these prices so high . . .* The out-of-storage movement over the week end was small with only 2984 cases out. *That leaves 58,853 cases in Chicago and we still believe that only about one-half of these are deliverable eggs.* [Emphasis supplied.]

December 22, 1952, Shearson, Hammill and Company market letter: December egg futures moved sharply higher last week with gains aggregating some 600 points at the week end. The improved demand for storage goods in the south particularly Mexico, tended to channel eggs away from current delivery *and thus provide the basis for a squeeze in the December contract.* [Emphasis supplied.]

December 23, 1952, Harris, Upham and Company Closing Produce Letter: Interest in eggs naturally centered in the final liquidation of December contracts and at this writing (12:45) there is still a substantial commitment unsettled. At the close of business last night 202 cars were open, of which 28 were delivered today and trading so far has been only 51 cars. The market opened 15 to 175 points higher and held within a narrow range all day. *A broker believed to be acting for principal longs has been offering heavily all day long at 47.50* cents and there has been scattered bids in evidence throughout the day. [Emphasis supplied.]

December 23, 1952, Merrill Lynch market letter: The December eggs closed out at 47.55 up 180 points for the day with a trade of 131 contracts. The activity on both sides of the market was generally an evening up deal, *but it is assumed that the interests that have been heavy purchasers of these Decembers in the past few days have ended up with quite a long position, although brokers who are believed to have been operating for these people did sell some at the close.* [Emphasis supplied.]

36. On or about December 15 and 16, 1952, three carlots of deliverable refrigerator eggs were sold by persons other than the respondents at prices ranging from 38.25 to 39.75 cents per dozen. The price of the December future on those two days ranged between 38.50 and 39.50 cents. On December 19, 1952, a carlot of cash refrigerator eggs was offered for sale on the Chicago Mercantile Exchange at 35.50 cents per dozen. The said carlot was of a grade and quality which, under the rules of the Chicago Mercantile Exchange, would have qualified for delivery with an allowance of approximately five cents per dozen, except for the fact that one case out of 470 was below the minimum weight by one-half pound. One bid of 29.50 cents was entered for the said carlot, but it remained unsold at the close of trading. The price of the December 1952 future on that day ranged between 42 and 43.75 cents.

37. If a short egg futures contract is not offset by the purchase of a long contract in the same future before the close on the last day of trading, nor satisfied by the delivery of cash eggs by the last business day in the delivery month (prior to the last four business days for out-of-town refrigerator eggs), the contract is in default. Holders of 21 short contracts in December 1952 defaulted.

This was 32 percent of the 66 contracts remaining open at the close on the last day of trading. Defaults are uncommon and indicate high prices and difficulty in obtaining deliverable eggs.

38. Trading in egg futures on the Chicago Mercantile Exchange is conducted in contract units consisting of one carlot of 480 cases of eggs, with a tolerance of 5 percent. The December 1952 egg futures contract on the Chicago Mercantile Exchange was a refrigerator egg contract representing the purchase and sale of refrigerator eggs for delivery in December 1952, and the price of the December 1952 future should have reflected the price of refrigerator eggs. Under the rules of the Chicago Mercantile Exchange, such contracts could be satisfied by the delivery of refrigerator eggs in warehouses in Chicago or outside of Chicago approved for delivery by the Exchange, or by the delivery of fresh eggs in such warehouses or in refrigerator cars on track in Chicago. Under such rules, the delivery of eggs in warehouses outside of Chicago was subject to an allowance by the delivering party to the receiving party of freight from the point of delivery to Chicago. Under the rules, the delivery of eggs located in Chicago

in satisfaction of December 1952 futures contracts could be tendered up until 9:00 a.m. December 31, 1952, or, with special permission of the business manager of the Exchange, up until 12:00 noon on that day. The delivery of eggs located outside of Chicago in satisfaction of such contracts could not be tendered after 7:00 a.m. Wednesday, December 24, 1952.

39. Fresh eggs are more valuable than refrigerator eggs and the price of fresh eggs in December is generally higher than the price of refrigerator eggs or the price of December futures. This was true in December 1952. Under the rules of the Chicago Mercantile Exchange, fresh eggs were deliverable on the same basis as refrigerator eggs, which meant that the seller of a December 1952 futures contract who delivered fresh eggs in satisfaction thereof was not entitled to any premium by reason of such delivery.

40. Street stocks or floor stocks consist of stocks in the hands of merchants or dealers for the purpose of supplying their customers. Floor stocks were not deliverable as such in satisfaction of December 1952 futures contracts. To the extent that such stocks were composed of fresh eggs, such fresh eggs were deliverable but only if assembled in carlot units containing the minimum

number of individual lots of specified sizes, properly packaged, inspected and graded, and placed in an approved cold storage warehouse in Chicago, or in refrigerator cars on track in Chicago, at the expense of the delivering party. Refrigerator eggs included in floor stocks were not deliverable.

41. By reason of the factors described above, deliveries in satisfaction of refrigerator egg contracts are normally and usually made by delivering refrigerator eggs located in Chicago warehouses. This was true in December 1952. It was not the practice of the trade to deliver fresh eggs or eggs in warehouses outside of Chicago in satisfaction of December futures, and when such deliveries occur they indicate unusual market conditions.

42. By reason of the factors described above, the supply of eggs available for delivery in satisfaction of December 1952 futures contracts on the Chicago Mercantile Exchange must be considered as consisting of refrigerator eggs in Chicago warehouses, and not including eggs located outside of Chicago, fresh eggs, or street stocks.

43. In December 1952 respondent Miller and Company received, on behalf of itself and other respondents, 70 carlots out of a total of 76 carlots of eggs delivered to final receivers in satisfaction of December futures contracts. Such deliveries consisted of 75 carlots of refrigerator eggs in Chicago warehouses, and one carlot of refrigerator eggs in Minneapolis. No fresh eggs were delivered in December 1952. All final deliveries after December 15, 1952 were received by respondent Miller and Company.

44. At the close of business on November 30, 1952, respondent Miller and Company had 36 carlots of cash refrigerator eggs in inventory for its own or house account and none for the accounts of the other respondents. Respondent Miller and Company sold 32 carlots of the said inventory prior to December 17, 1952. On December 18, 1952, respondent Miller and Company sold three carlots of refrigerator eggs, of which one carlot was sold to another respondent, and one carlot was sold for shipment out of Chicago. During the next three trading days (December 19, 22, and 23) respondent Miller and Company received on delivery 47 carlots of refrigerator eggs in satisfaction of December futures held by itself and other respondents, but none of the respondents sold any of such eggs or any other deliverable refrigerator eggs in Chicago during these three days. After December 23, respondent

Miller and Company received 45 additional carlots of refrigerator eggs in December in satisfaction of December futures held by itself and other respondents. These 45 carlots consisted of 23 carlots being originally

delivered and 22 carlots which had been delivered previously and were now being redelivered. The 92 carlots received by the respondents on delivery during December 1952, plus one carlot which respondent Miller and Company had in inventory on November 30, were disposed of as follows: Between December 24 and December 31, 1952, 14 carlots were sold at 48.50 cents per dozen to traders who were short and who redelivered such eggs to the respondents, as described hereinafter. All other sales during this period (19 carlots) were to other respondents or for shipment out of Chicago. The remaining 60 carlots were disposed of in January 1953 by cash sales or by delivery on January short futures positions held by the respondents, at prices ranging from 39.85 to 44.50 cents.

45. On December 26, 1952, respondent Miller and Company sold nine carlots of eggs to a trader holding a short position. These nine carlots consisted of eight carlots previously received on delivery during December and one carlot carried over from the November inventory. The purchaser then redelivered eight of these nine carlots to respondent Miller and Company on December 29 and redelivered the remaining carlot on December 30. On December 29, respondent Miller and Company resold five carlots of such eggs to other short traders, two to Sol Weinger Company and three to Bauer Brokerage Company, who delivered the said five carlots back to respondent Miller and Company the next day. Respondent Miller demanded and received 48.50 cents per dozen on all such sales. Shortly after the close of the delivery period, the respondents resold the said nine carlots as cash eggs at prices ranging from 41 to 42.30 cents.

46. (a) In connection with the sale to Sol Weinger Company referred to above, Morris Weinger on December 30, 1952, called respondent Gilbert H. Miller and said, "Gil, you know I am short two cars of eggs and I understand you are the only one who has the eggs for delivery. I would like to purchase." Miller replied, "Are you in this deal? Gee, I'm sorry you happen to be in it." Miller said he wanted a cent over the closing option or 48 1/2 cents a dozen. Weinger protested the price as ridiculously high, saying, "Gil, how can you demand such a price?" and Miller replied, "Those are my instructions. I have to get a cent over the option."

Weinger bought the eggs from Miller to avoid default on his contracts.

(b) Sig Bauer of Bauer Brokerage Company, in connection with the sale described above, needed 3 cars of eggs to deliver on his short contracts and was directed to respondent Miller and Company. He called respondent Gilbert H. Miller on the telephone and said he was in trouble, that he needed eggs to deliver and as a clearing member did not want to default. Miller quoted a price of one cent over the closing futures price or 48.50 cents. Bauer said to Miller, "My gosh, it is so high." Miller told Bauer that he was not in a position to make the price any less and that it was not advisable for Bauer as a clearing member to default. Bauer bought the eggs at 48.50.

47. Harry H. Redfearn, a broker who had a customer short in the future, offered Miller and Company 47.50 for eggs to deliver after trading closed, but could not get them for less than 48.50. The customer refused to pay this, and defaulted on the future.

48. The respondents acquired and maintained control of the supply of eggs in Chicago available for delivery in satisfaction of December 1952 futures contracts on the Chicago Mercantile Exchange, and withheld such eggs from sale until after the close of trading in the December future. After the close of trading, the stocks of deliverable eggs in the hands of respondent Miller and Company for the account of itself and other respondents constituted the only available source of deliverable eggs in Chicago, and the respondents refused to sell such eggs except at prices which were at a premium in relation to the true market value of cash refrigerator eggs.

49. On December 31, 1952, a Fair Market Value Committee appointed by the Exchange in connection with the 21 defaults in the December future reported 47.5

cents as what they considered the fair market value of deliverable eggs. The Clearing House Committee did not accept this, but voted a price of 42.5 cents. The Penalty Committee recommended a penalty of 4 cents, but the Clearing House Committee voted to make this 5 cents. The Clearing House Committee's action was then reported to the Board of Governors, which declared the settling price to be 43.5 cents, with a 5-cent penalty. This meant that the settlement price for the defaulted contracts was 48.50, being 43.50 plus 5. On the same day Miller and Company sold 1 lot, received on delivery for

itself on December 30, to Heifer-King, Inc., New York, at 41.25, and sold 1 lot, received on delivery on December 29 for Refrigerated Products, at 41. On that day the January 1953 future closed at 40.45-40.50.

50. The acts and transactions described above were undertaken pursuant to an understanding or agreement among the respondents to act collectively and in a uniform manner through respondent Miller and his firm, with the intent that the combined holdings of all the respondents would cause an upward movement in the Chicago future and the refrigerator egg market and enable them to liquidate their holdings at a profit. Pursuant to such understanding or agreement, directions concerning the necessary transactions were transmitted to respondent Miller through respondents Randolph and Harding and were executed by respondent Miller.

51. The respondents realized an aggregate profit of about $ 162,000 as a result of the transactions described above.

52. The concentrated long position of the respondents in the December 1952 future together with their ownership of a substantial portion of deliverable eggs in Chicago and of eggs of deliverable quality in 12 mid-western States constituted a large, dominant, and controlling interest in the Chicago egg market during the latter part of December. Through action in concert, the respondents developed this position by aggressive and concentrated purchases of December futures, by standing for delivery of large quantities of cash eggs, and by temporarily withholding futures and cash eggs from sale, and they employed this dominant and controlling interest through action in concert to bring about a rise in the price of December 1952 egg futures on the Chicago Mercantile Exchange and a rise in the price of deliverable refrigerator eggs in Chicago.

53. Cash eggs bought and sold in the City of Chicago are produced in Illinois and other mid-western States, moved into Chicago for storage and consumption, and shipped from Chicago to points outside of Illinois.

**CONCLUSIONS**

**I**

It is clear from the complaint in this proceeding that the respondents are charged with substantive violations of the act, that is, that they are charged with attempting to corner and with

cornering a commodity in interstate commerce and for future delivery and with attempting to manipulate and manipulating the price of such commodity. An unintentional corner, or activities which bring about an artificial price, without manipulative intent present would, of course, not be violative of the act. The complaint, therefore, alleges in paragraph XIII that the respondents acted collectively and in a uniform manner, pursuant to an understanding or agreement, to corner and manipulate the egg market. The understanding or agreement is not the *gravamen* of the complaint, *i.e.,* the violation charged is not the understanding or agreement *per se* but the substantive offenses alleged to have been performed by the respondents pursuant to understanding or agreement.

There is nothing mysterious about the complaint and the referee correctly denied the motions to dismiss the complaint for failure to state a cause of action. Certainly it is just as much a violation of the act for a group of persons to act in concert or to combine in cornering and manipulating as it is for an individual to do so. *Great Western Food Distributors* v. *Brannan,* 201 F. 2d. 476, 478 (7th Cir. 1953), *cert. denied,* 345 U. S. 997 (1953).

The respondents are in error too when they seem to claim throughout the proceeding that it is only when unlawful conspiracy *per se* is involved that the acts and declarations of defendants or respondents can be lawfully aggregated. See *e.g.,* 4 Wigmore, Evidence § 1079 (3d ed. 1940), and Levie, *Hearsay and Conspiracy,* 52 Mich. L. Rev. 1159 (1954), for situations such as illegal combinations, joint tort feasors, etc., where the same principles of aggregation of activities and declarations apply as in civil or criminal prosecutions for unlawful conspiracy *per se.* See also, *e.g., United States* v. *Brown et al.,* 5 F. Supp. 81 (S.D. N.Y. 1933), *aff'd,* 79 F. 2d 321 (2d Cir. 1935), *cert. denied,* 296 U. S. 650 (1935), a criminal prosecution of a "pool" for substantive offenses as well as conspiracy in a manipulation of stock prices.

**II**

The basic and controlling issue is whether the respondents violated the act as charged. In order for the respondents to have done so the activities that took place in the way of trading, no matter what the results, must have been done with manipulative intent, that is, the respondents must have done what they did

pursuant to understanding or agreement, or, to put it in other language, they must have traded and acted in collusion or in concert for a manipulative end.

As is usual in cases involving illegal combinations or conspiracy there is no direct proof of understanding or agreement among the respondents. But there is a long chain of circumstances in support of the complaint's charges in this respect and it is, of course, familiar law that the existence of an understanding or agreement on the part of joint respondents can be established by circumstantial evidence. *American Tobacco Co.* v. *United States,* 328 U.S. 781, 809 (1946). We proceed then to review briefly the evidence.

December is a month almost at the end of the egg storage season when deliverable stocks are relatively low and thus offers a favorable opportunity for manipulation of futures prices on the long side. On December 16, 1952, Miller and Company had a long position of 22 contracts in the December future and a short position of 3 contracts and Randolph and Company had a long position of 13 contracts through Miller and Company. Market Produce Company and Central Iowa Poultry and Egg Company had long positions of 5 and 6 contracts, respectively, through commission firms other than Miller. No other respondents had positions in the future. There were only five trading days left in the December future and the market was in the process of liquidation as is the case at this stage in the life of the future. At the close of trading on December 19 we find that Randolph and Company had increased its position to 50 contracts, the maximum allowable, that Refrigerated Products also had a long position of 50 contracts, that Central Iowa, Van Sant and Market Produce Company each had 24 long contracts, that Headlee had 20 and Schirm and Hummel 9 contracts each. All these positions were held through Miller and Company which had 6 contracts, having sold 2 on December 18 and 14 on December 19. Market Produce Company and Central Iowa had closed out their positions held through other futures commission firms. While Randolph had done substantial egg futures trading through Miller prior to December 17, and Headlee, Hummel and Schirm had held futures positions not exceeding 6 contracts through Miller, the other respondents had not done egg futures trading through Miller. Nevertheless we find the respondents holding positions of unusual size through but one of the 107 registered futures commission merchants who are members of the Chicago Mercantile Exchange. *We find too*

*that the trading of the Iowa respondents was handled through Randolph and that the trading of the Texas respondents was handled through Harding.*

In addition, the evidence shows that in making some of the purchases involved, Miller gave buying orders to floor brokers Darby and Guerkink that were unlimited as to quantity and at a time when other longs were getting out of the market. The total long contracts held by others other than the respondents dropped from 218 to 61 and the total open interest dropped from 329 to 277. The respondents' proportion of the total open interest on the long side jumped from 14 percent on December 16 to about 78 percent on December 19. As shown by Finding of Fact 23, the make-up of the market drastically changed between December 16 and 19 from a wide distribution of relatively small holdings on the long side to substantial concentration of the long side in respondents with relatively large holdings by them.

The chain of supporting circumstances continues after December 19. At the close on the next trading day, December 22, the respondents had displaced all other longs in the market and were the only longs left. *All the longs were concentrated in two States and through one clearing member of the Exchange.* On December 22, Randolph bought 11 contracts through a brokerage house other than Miller after Olson had requested Miller not to increase its long commitments and Hagen also bought 10 at the same time through the same brokerage house. The prices were from 45.50 cents to 45.75 cents. On the same day, December 22, Randolph and Hagen instructed the broker to sell the next day at 47.50. The price of 47.50 was almost the maximum to which the price could rise on December 23 under the rules of the Exchange. Randolph and Hagen obviously expected nothing but a substantial price increase on December 23. The total long position of the respondents was reduced from 216 on December 19 by only 16 contracts at the close on December 22 and substantial selling was done only on the last day of trading when the respondents' total long position at the close was 66 contracts. In such sales for respondents by Miller on December 22 and 23, practically uniform prices were obtained and Miller gave floor broker Darby an order on December 23 to sell all he could at 47.60, a price which Darby could not get. The characteristics of a "team" operation instead of independent, individual trading transactions show up again in the facts that none of the 47 carlots of eggs received in delivery by respondents between December 19 and December 23, 1952, were

sold to shorts until December 26 or thereafter when they were sold to shorts at a uniform price of 48.50 or for shipment outside Chicago.

We reach the conclusion, in the light of the evidence, some of which we have described above, that the respondents traded and acted according to an agreed-upon plan, *i.e.,* that the respondents acted in concert, as the only reasonable inference from the facts. In arriving at this conclusion, we have not utilized the market news letters set out in Finding of Fact 35, nor have we considered any statement or declaration made by any respondent except the statements made by respondent Gilbert H. Miller to Grosstephan on December 22, 1952, during the course of the manipulative venture, to the effect that the trading orders of the Texas respondents came to Miller through Harding and those of the Iowa respondents through Randolph. These statements were part of the *res gestae* and would be admissible in a civil or criminal proceeding. Jones, Commentaries on Evidence § 943; Wigmore, Evidence §§ 1079, 1769. Patently this material is of more probative value than the indications by the Texas respondents to Caldwell in January 1953 that they traded direct with Miller rather than through Harding. The situation is not one, as contended by respondents, of equally-balanced contradictory pieces of evidence from which no inference can be made.While the respondents object to the use of any statements to Caldwell by any respondent against any other respondent because these were made after the alleged concert of action had ceased, and we have not so used the statements, the only reason for not so doing seems to be that this would constitute hearsay as to the

persons not making the statement. Hearsay as such is not inadmissible in administrative proceedings. Moreover, the respondents while objecting to the use of admissions in such statements invoke the self-serving declarations of legitimacy in trading contained in some of the statements and ignore the admissions of Randolph and Harding, and to some extent Schirm, that they traded long in the future because they believed deliverable supplies of refrigerator eggs in Chicago to be inadequate and that prices would be forced up accordingly. These statements were practically admissions of manipulative intent insofar as these respondents are concerned.

Respondents see a fatal blow to the existence of a team to manipulate and corner as charged in that the alleged captain of the "team," respondent Miller, sold 14 contracts on December 19

and 8 contracts on December 22 becoming short 9 contracts. Respondents claim that this proves the nonexistence of the manipulative scheme charged because Miller certainly would have cashed in by staying a substantial long if there had been such scheme afoot. In this connection, they also note the fact that respondents made some sales of futures during the period December 17-23. A somewhat similar argument was made in the *Great Western* case, *supra,* namely that the selling of any futures by a cornering interest so that optimum profits are not realized, means that there is no manipulative intent. The argument was of no avail there and is of little merit here in the face of all the evidence to the contrary. Miller made a profit of some $ 17,000 as the result of the operation. Moreover, by December 18, the respondents had 188 long contracts and by December 19, they had 216 or 77.98 percent of the total open interest on the long side. It might look very peculiar to the Chicago Mercantile Exchange and to the Commodity Exchange Authority if a clearing house member for his house account shared substantially with his customers in a complete monopoly of the long side of a future. We must expect, too, that in manipulations, as well as in other phases of life, progress of a sort will be made, that refinements and complexities will develop and that manipulations will be less crude and obvious than in past years. Whether or not the Miller respondents lent the trading of Miller and Company to the manipulative venture, G. H. Miller knew what he was doing and he was obviously the captain of the "team" that effectuated what he described to Morris Weinger as the "deal" in which he was sorry to find Weinger caught.

The respondents made much of the fact that Caldwell conceded, on cross-examination, he was of the opinion in interviewing the Texas and Iowa respondents that their statements expressing licit reasons for their trading ". . . were substantially as they felt were correct and truthful" (tr. pp. 683-684). Caldwell's interviews were made during the course of investigation and in a matter of this kind a good many pieces have to be fitted together after a great deal of study. The respondents would elevate the unsworn oral statements of some of the respondents to the level of sworn testimony in this proceeding and would equate Caldwell's impression at the time he interviewed the respondents to the evaluation by a hearing examiner of such statements as credible. Whatever Caldwell's opinion at the time, we note that Randolph told Caldwell that he, Randolph had discussed the

December 1952 egg situation with Harding but that Harding told Caldwell that he had not discussed it with Randolph. We note, too, that Miller had told Grosstephan on December 22, 1952, that the trading orders of the Texas respondents had come to Miller through Harding but that Myrick told Caldwell on January 15, 1953, that he had not discussed the December 1952 egg situation with Harding. Randolph gave Caldwell a different version of his futures purchase through a broker other than Miller on December 22, 1952, than that given by Miller to Grosstephan and testified to by Olson. The self-serving statements

hailed by the respondents are inconsistent with one another in several respects and in any event do not take the place of sworn testimony.

The respondents do not offer even in argument inferences alternative to those of agreement and concert on the part of all the respondents *except complete innocence on the part of each and every respondent.* True the Iowa respondents, other than Randolph and his company, and the Texas respondents, other than Harding and his company, held down positions on the team that were not the major ones. Nevertheless, they participated in the violations. This is true of Hagen also. He did not merely sit by to take advantage of illegal actions by other people. With the aid of Randolph, he too *participated* in the manipulation and he profited by the manipulation which his trading helped along.

If one were to utilize, on behalf of the complainant as showing understanding or agreement among the respondents, the oral declarations of the respondents to Caldwell which the respondents seek to use in defense, it would be seen that Randolph admitted that he had discussed the December 1952 egg situation with Miller and Harding, that Snowgren had discussed it with Randolph, that Hummel had discussed it with Randolph and Schirm, that Headlee had discussed the same subject with Randolph and that Myrick had discussed it with G. H. Miller.

The failure of the respondents to come forward and produce evidence cannot be regarded as insignificant in the light of the more than *prima facie* case made in support of the complaint. The respondents are in possession of the knowledge as to why they traded in the future and in deliverable supplies as they did and under the circumstances they run the risk of having unfavorable inferences drawn when they do not testify. *Interstate Circuit* v. *United States,* 306 U. S. 208, 225-227 (1939); *Bilokumsky* v. *Tod,* 263 U. S. 149, 154 (1923); *Montgomery Ward & Co.* v.

*National Labor Relations Board,* 107 F. 2d 555, 560 (7th Cir. 1939); *National Labor Relations Board* v. *Remington Rand,* 94 F. 2d 862, 868 (2d Cir. 1938). For a long list of additional supporting cases see 2 Wigmore, Evidence § 289 (3d ed. 1940).

**III**

The respondents defend also by claiming that in any event no violations of the act took place because the respondents did not attempt to manipulate or corner and because no manipulation or corner has been established. The respondents clearly attempted to manipulate and to corner. We conclude that they succeeded. The respondents had a dominant and controlling interest during the latter part of December 1952 in the Chicago refrigerator egg market by virtue of their futures holdings and their control over deliverable cash refrigerator eggs. Beach and Bagnell each testified that in his opinion the trading activities of the respondents caused the December future price to rise to an artificial level and gave analyses in support of his opinion. We shall review briefly the principal reasons for our agreement with their opinions.

*The manipulation here was a "blitz."* It started and was over in a few days except for the squeeze on the shorts after December 23 who needed eggs to deliver. The principal element in determining the soundness of price behavior December 16-23 was, as Beach opined, what was going on within the futures market itself. And what was going on December 17-19 was heavy purchasing, 170 contracts in 3 days, in relationship to known deliverable supplies of refrigerator eggs in Chicago and what was going on December 22 was relatively small liquidation of the heavy purchases at maximum or near maximum increases in prices with partial liquidation of purchases on December 23 again mainly at the high prices for the day. Under such circumstances, it was certainly sound for Beach and Bagnell to conclude that futures prices were pressured up by forces within the futures market and those forces were the respondents' trading tactics.

The artificiality of December futures prices during the period December 17-23 is reflected in the spread between prices for December 1952 future and the January 1953 future. The spread widened due to increases in prices for the Decembers to 8.05 cents from a zero differential on December 10. This was about double the largest similar increase during a comparable 10-day period in any other year between 1946 and 1953 inclusive and the

increase in price for Decembers during the last five days of trading was substantially greater than for a similar period during any such year.

Significant too was the maximum permissible increase of 2 cents allowed by Exchange rules which occurred on December 18, 19 and 22 and the near maximum rise on December 23. On December 23, Miller sought to get 47.60 for the respondents but had to be content with 47.55. A consecutive daily maximum price rise for 3 or more days in egg futures trading on the Exchange is rare and has occurred only on four other occasions over many years. Further illustrations of artificiality in futures prices is seen in the facts that Miller got 45.75 uniformly on December 22 for sales of respondents' futures whereas other commission firms got lower prices and also Miller on December 23 got 47.55, the top of the market on that day, for most of the sales of respondents' futures.

Cash deliverable refrigerator eggs follow futures prices and accordingly prices for such eggs December 17-23 were artificial as was, of course, the 48.50 price obtained by Miller for respondents' deliverable refrigerator eggs. The respondents justify the 48.50 as a price based upon a normal premium over the futures price of 47.50 at which trading closed on December 23 in the December future. We have concluded that the 47.50 represented an artificially enhanced level and trading in the December future was over. The January future which was the existing future related to deliverable refrigerator egg prices was selling at about 41 cents. The same eggs sold to shorts at 48.50 were sold commencing December 31, when shorts could no longer use them for delivery purposes, at about 41 cents. This demonstrates that the futures price and prices for cash Chicago deliverable refrigerator eggs had been held at an unreal and manipulated level. The respondents' explanation is their argument that the lower price from December 31 on reflected a decline on the fresh egg market about that time. It is true that *during the course of the day* on December 31, 1952, there was a decline on the fresh egg market of *3 to 4 cents* for the quality of eggs most nearly approaching that of par delivery refrigerator eggs. *On* December 31, 1952, some of the refrigerator eggs in question were sold for 41.25 or *at least 7 cents lower* than the 48.50 obtained on December 30.

The respondents complain that the complainant's expert witnesses should have gone into a large scale and exhaustive examination of factors underlying the egg market generally. Beach

testified that he considered the factors insisted upon as relevant by the respondents and that he saw nothing to change his opinion. The prevailing view of the trade, as shown by the market news letters quoted in Finding of Fact 35, was that the trading activities of a group of longs, whom this record shows were the respondents, caused a squeeze and artificially high prices in the future. While these letters have not been used in the drawing of any inference of collusion or agreement among the respondents and are not needed either for the conclusion that prices were arbitrarily raised by trading techniques, they illustrate the trade opinion that "technical" conditions rather than real and basic economic factors caused the price increases and, of course, they reveal that the respondents, at least Miller, Randolph and Harding, knew what the situation was and that their plan was succeeding.

The respondents produced no expert witnesses to testify and so we do not have the problem of the *Great Western* case, *supra,* namely, the evaluation and weighing of conflicting expert opinion. The respondents by means of cross-

examination of complainant's witnesses and *by argument,* and there are many factual statements by respondents' counsel throughout the proceeding which are not matters of evidence, seek to invalidate the complainant's case and to establish affirmatively the normalcy of prices for futures and deliverable refrigerator eggs during the period in issue. The respondents *argue* that December 1952 futures prices were due to "bullish" factors such as storms in Iowa, lowered receipts of fresh eggs, withdrawals of eggs from storage, holiday trade, the December future finding its proper relationship to fresh egg prices, etc. But as the respondents elicited from several witnesses, it is trading opinion of conditions that affect futures prices and the heavy longs, in fact the only longs at the close of trading on December 22 and 23, were respondents. Moreover, many of the so-called "bullish" factors invoked by the respondents as causes for futures price increases would have their direct effects upon the fresh egg market and *fresh egg prices did not rise significantly during the period December 16-23, 1952,* the time of the sharp advance in December futures prices. The January futures price did not increase significantly either during this time. The respondents' attempted rationalization of futures prices December 16-23 is so unrealistic as to admit no inflating influence upon prices by the respondents' trading even if manipulative intent should be considered absent. Sharp climbs in prices in the

closing days of the life of a future have occurred in times of concentration in the long holdings, whether or not the concentration was manipulative in intent.

The respondents have further grievance in that the same gauges of price artificiality used in the *Great Western* case, *supra,* were not used here and they claim that such criteria when applied here prove that prices were normal. *Great Western* had a corner for most of the month of December 1947. Here the manipulation in futures took just five days with its existence and effects apparent only after the plan was well under way. The average of the spread between December-January prices for the last seven days of trading in the December 1952 future, which is what the respondents say was used as a measure of price artificiality in the *Great Western* case would include the spreads for several days before the manipulation here was started or got under way. Obviously such a measure would be inappropriate here. Too, the spread between the closing futures price and fresh egg prices on December 23 advanced by the respondents here is not shown to be based upon the same kind of data used in the *Great Western* case since the respondents compare a closing futures price for par delivery on the future, that is, refrigerator eggs of 50% A quality, with wholesale (not first receiver) prices at Chicago for fresh eggs of minimum 60% A quality and with fresh egg prices in New York for an even higher quality.

**IV**

We conclude that by understanding or agreement and by concert of action the respondents manipulated prices of December 1952 egg futures on the Chicago Mercantile Exchange and deliverable cash refrigerator eggs in Chicago. In making this conclusion, it is immaterial, we think, whether fresh eggs or out-of-town refrigerator eggs were deliverable on the future. The fact is that futures prices and prices for deliverable refrigerator eggs in Chicago were manipulated whether or not out-of-town refrigerator eggs or fresh eggs were deliverable on the future. As we pointed out in our *Great Western* decision (10 Agric. Dec. 783, 809 (10 A.D. 783, 809) (1951)), the existence of supplies other than Chicago refrigerator eggs which are deliverable on the future means that there is merely a ceiling placed on the extent of manipulation possible. The availability of such supplies does not negate the existence of a manipulation. We think that all the voluminous materials in the

record on this question go only to the question as to whether there was a corner. Certainly futures prices can be manipulated, and they were manipulated

in this case by control over the futures and the cash deliverable refrigerator eggs in Chicago.

The respondents claim that there was no corner because fresh eggs were deliverable as well as out-of-town refrigerator eggs in approved warehouses, that the penalty of 221/2 cents for out-of-town delivery of refrigerator eggs present in the *Great Western* case had been abolished by the Chicago Mercantile Exchange prior to December 1952 and that therefore there were no "economic impediments" to the delivery of other than deliverable Chicago refrigerator eggs. There may exist a "corner" in one market just as monopoly of *any part* of interstate commerce is a violation of Section 2 of the Sherman Act. Fresh eggs are more valuable than refrigerator eggs and such was the case in December 1952. Impediments of cost and time also made it undesirable or impracticable to deliver fresh eggs or out-of-town refrigerator eggs. The manipulation took the market by surprise and, of course, after 7:00 a.m. on December 24, 1952, out-of-town refrigerator eggs could not be tendered.

The respondents find comfort in the fact that Olson did not believe that a manipulation and corner took place. Olson had asked Miller on December 22, 1952, if there was collusion among the respondents who were long through Miller. Upon being assured by Miller that there was not, Olson apparently was satisfied. The record shows that the Chicago Mercantile Exchange has never taken action for a corner and that there have been several successful criminal prosecutions for such an activity on the Exchange as well as the administrative findings upheld in the *Great Western* case, *supra.* The respondents urge also that they didn't go into the market to purchase cash refrigerator eggs and this shows lack of intent to corner. The respondents did not need to. They had control over the supply of deliverable refrigerator eggs in Chicago and tributary areas without the necessity of making open market purchases.

The respondents had a dominant and controlling long interest in the December future. They had control of the deliverable refrigerator eggs both in Chicago and in the areas tributary to Chicago and from December 17 through December 23, as shown by Finding of Fact 38, there were substantial numbers of short contracts which could not be satisfied except by recourse to the

respondents for futures or deliverable Chicago refrigerator eggs. During this period, the respondents withheld futures and Chicago deliverable refrigerator eggs from sale and pressured prices up by the scarcity of futures and Chicago deliverable refrigerator eggs thus created. This constituted a corner in violation of the act. *Great Western Food Distributors* v. *Brannan, supra.*

**V**

The respondents have evinced at times during the proceeding some dissatisfaction with the referee's handling of the proceeding and particularly with some rulings of his concerning the permissible limits of cross-examination of the complainant's witnesses. We find nothing of substantial merit in these grievances of the respondents.

Of course, all objections, exceptions, etc., of the respondents not specifically discussed herein which are inconsistent with this decision and order are overruled.

The violations of sections 6 (b) and 9 of the act found herein are of serious and far-reaching consequences. "Manipulations . . . for speculative profit, . . . exert a vicious influence and produce abnormal and disturbing temporary fluctuations of prices that are not responsive to actual supply and demand and discourage not only . . . justifiable hedging but disturb the normal flow of actual consignments." *Board of Trade* v. *Olsen,* 262 U.S. 1, 39 (1923). Accordingly, appropriate sanctions should be ordered taking into consideration the different degrees of participation by the several respondents.

**ORDER**

Effective November 1, 1956, the registration of G. H. Miller and Company as a futures commission merchant and the registration of Gilbert H. Miller as a floor broker are revoked.

Effective November 1, 1956, all contract markets shall refuse all trading privileges, direct or indirect, to G. H. Miller and Company, Gilbert H. Miller, Howard Randolph, Randolph and Company, Refrigerated Products, Inc., and J. W. Harding for a period of one year.

Effective November 1, 1956, all contract markets shall refuse all trading privileges, direct or indirect, to Central Iowa Poultry and Egg Company, John H. Snowgren, Allen Headlee, Headlee

Produce Company, A. L. Myrick, Market Produce Company, Lewis R. Van Sant, Roy Rountree, and Dated Egg Company, for a period of six months.

Effective November 1, 1956, all contract markets shall refuse all trading privileges, direct or indirect, to E. E. Hummel, K. Hummel, Hummel Produce Company, Albert Schirm, Schirm Produce Company, and Leo Hagen, for a period of sixty days.

Copies hereof shall be served on the parties or their counsel of record, and upon each contract market.

**LOAD-DATE:** June 8, 2008