

IN THE MATTER OF  
AMWAY CORPORATION, INC., ET AL.

FINAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED  
VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

*Docket 9023. Complaint, March 25, 1975 — Final Order, May 8, 1979*

This order, among other things, requires two Michigan corporations engaged in the door-to-door marketing of various household products, and two corporate officers, to cease allocating customers among their distributors; fixing wholesale and retail prices for their products; taking retaliatory action against recalcitrants; and disseminating price-listing data which fail to advise that price adherence is not obligatory. Respondents are additionally prohibited from misrepresenting potential earnings and other relevants to prospective distributors.

*Appearances*

For the Commission: *Joseph S. Brownman, D. Stuart Cameron, Mary Lou Steptoe, B. Milele Archibald and Michael Goldenberg.*

For the respondents: *Lee Loevinger, Philip C. Larson and Robert J. Kenney, Jr., Hogan & Hartson, Washington, D.C. and John E. Stephen, Ada, Mich.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (15 U.S.C. 41, *et seq.*) and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that the parties listed in the caption hereof and more particularly described and referred to hereinafter as respondents, have violated the provisions of Section 5 of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the interest of the public, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Amway Corporation, Inc. is a corporation organized on or about September 6, 1949, under the name Ja-Ri Corporation, Inc. Its name was formally changed to Amway Corporation in November 1963. On or about January 1, 1964, Amway Sales Corporation, Amway Services Corporation and Amway Manufacturing Corporation, all of which were Michigan corporations, were merged into Amway Corporation, Inc. Respondent corporation maintains its home office and principal place of business at 7575 East Fulton Rd., Ada, Michigan. [2]

PAR. 2. Respondent Amway Distributors Association of the United

States is an association of Amway distributors and dealers, which maintains its home office and principal place of business at 7575 East Fulton Rd., Ada, Michigan. Among the functions and duties of the Amway Distributors Association are to make recommendations to respondent corporation with respect to the standing, termination or suspension of individual distributors or dealers, and to recommend changes or other action on various restrictions upon distributors or dealers.

PAR. 3. Respondent Jay Van Anandel is Chairman of the Board of Directors of respondent corporation, and was one of its founders. Together with others, respondent Van Anandel instituted the Amway marketing plan and distribution policies, and has been and continues to be responsible for establishing, supervising, directing and controlling the business activities and practices of corporate respondent. Mr. Van Anandel's office address is the same as that of respondent corporation.

PAR. 4. Respondent Richard M. DeVos is President of respondent corporation, and was one of its founders. Together with others, respondent DeVos instituted the Amway marketing plan and distribution policies, and has been and continues to be responsible for establishing, supervising, directing and controlling the business activities and practices of corporate respondent. Mr. DeVos' office address is the same as that of respondent corporation.

PAR. 5. Respondent corporation is engaged in the manufacture, distribution, offering for sale and sale of more than 150 kinds of home-care, car-care and personal-care products, as well as vitamins and food supplements, under its own labels and trademarks, to distributors and dealers located throughout the United States. In addition, respondent corporation sells over 300 products manufactured by and bearing the name and label of other manufacturers. These products are of a wide variety including clothing, household appliances, furnishings, tools, luggage, watches, cameras and other items. Sales of products by the respondent corporation is more than \$150,000,000 at retail levels, and over 200,000 persons are actively engaged in the resale of Amway products throughout the United States. [3]

PAR. 6. In the course and conduct of its business of manufacturing and distributing its products, respondent corporation ships or causes such products to be shipped from the state in which they are manufactured and warehoused to distributors or dealers located in various other States throughout the United States. These distributors in turn resell to other distributors, dealers or to members of the general public. There is now and has been for several years last past a constant, substantial, and increasing flow of such products in or

affecting "commerce" as that term is defined in the Federal Trade Commission Act.

PAR. 7. Except to the extent that actual and potential competition has been lessened, hampered, restricted and restrained by reason of the practices hereinafter alleged, respondent corporation's distributors and dealers, in the course and conduct of their business of distributing, offering for sale, and selling their products are in substantial actual competition or potential competition in commerce with one another, and corporate respondent is in substantial actual or potential competition in commerce with other persons or firms engaged in the manufacture, sale and distribution of similar merchandise.

PAR. 8. Respondents have formulated a distribution system which has been published in various manuals, bulletins, pamphlets and other literature and material. To effectuate and carry out the policies of this distribution system, corporate respondent has entered into contracts, agreements, combinations or common understandings with its distributors and dealers; and has adopted, placed into effect, enforced and carried out, by various methods and means, said distribution system, which hinders, frustrates, restrains, suppresses and eliminates competition in the offering for sale, distribution and sale of its various products.

PAR. 9. Distributors and dealers of respondent corporation are independent contractors who sell or attempt to sell at retail to members of the consuming public, and at wholesale to other distributors and dealers recruited and/or sponsored into their respective sales organizations. Except for "Direct Distributors," distributors or dealers generally purchase their product needs directly from their sponsors. [4]

Distributors buying directly from respondent corporation are denoted "Direct Distributors," of which there are approximately fifteen hundred (1500) throughout the United States. Other distributors or dealers may purchase directly from Amway Corporation after meeting certain conditions.

In concert and combination with their network of distributors and dealers, respondents police, enforce and carry out the various rules, regulations and policies, including those alleged hereinafter as unfair methods of competition and unfair or deceptive acts or practices.

#### COUNT I

Paragraphs One through Nine are incorporated by reference herein as if fully set forth verbatim.

PAR. 10. The acts, practices and methods of competition engaged in, followed, pursued or adopted by respondents, and the combination, conspiracy, agreement or common understanding entered into or reached between and among the respondents, respondent corporation's distributors or dealers, or others not parties hereto tend to, and do, fix, maintain, control or tamper with the resale prices at which respondent corporation's products are or may be sold.

PAR. 11. For example, distributors and dealers have entered into contracts, agreements, combinations or understandings with respondents, or have been and continue to be required and coerced by respondents to sell to other distributors or dealers at other wholesale levels of distribution at the same prices which they paid for their products from other distributors or dealers or from respondent Amway Corporation. Distributors or dealers must thereafter rely upon the implementation of and adherence to respondents' purchase volume refund schedule for wholesale profits.

Under this purchase volume refund plan, refunds are paid by respondent Amway Corporation to its direct buying "Direct Distributors" on a monthly basis at the rate of 25% of the monthly dollar volume of purchases figured at the retail price. These sponsoring distributors, in turn, pay rebates to their wholesale customers of from 0 to 25%, based upon their own monthly dollar volume of purchases, and so on, to all wholesale levels of distribution. [5]

PAR. 12. By way of further example, distributors and dealers have also agreed to sell to church, service, civic or charitable selling organizations at specified prices, and to in turn request these organizations to adhere to these same retail prices when selling to the ultimate consumer. Thereafter the distributor or dealer will pay the selling organization a sum of money which will become its gross income on the aforesaid sales.

Said acts, practices and methods of competition, and the adverse competitive effects resulting therefrom, constitute unreasonable restraints of trade and unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

#### COUNT II

Paragraphs One through Nine are incorporated by reference herein as if fully set forth verbatim.

PAR. 13. The acts, practices and methods of competition engaged in, followed, pursued or adopted by respondents, and the combination, conspiracy, agreements or common understandings entered into or reached between and among the respondents, respondent

corporation's distributors or dealers, or others not parties hereto tend to, and do, restrict the customers to whom respondent corporation's distributors or dealers may resell their products; restrict distributors and dealers as to the source of their product needs; restrict the retail outlets through which distributors and dealers may resell their products; and allocate retail customers between and among the various distributors or dealers.

PAR. 14. Distributors and dealers have entered into contracts, agreements, combinations or understandings with respondents, or have been and continue to be required and coerced by respondents to adhere to practices whereby absent prior approval to the contrary, purchases of product needs must be made either directly from respondent corporation or from the distributor or dealer who recruited and/or [6] sponsored the would-be purchasing distributor or dealer. Distributors and dealers may not resell their products at wholesale except to those other distributors or dealers they had recruited and/or sponsored, and who are recognized as such by respondents. Distributors or dealers who drop out of the program are replaced in the chain of distribution by other distributors or dealers to whom the former had previously been selling.

PAR. 15. Distributors and dealers have also entered into contracts, agreements, combinations or understandings with respondents, or have been and continue to be required and coerced by respondents to refrain from selling from or through any business office, retail store, military store, ship's store, service station, barber shop, beauty salon, show booth, fair or the like, and to refrain from selling to proprietors of such establishments for resale at the retail level.

PAR. 16. Distributors and dealers have also entered into contracts, agreements, combinations or understandings with respondents, or have been required and coerced by respondents to refrain from soliciting the business of retail customers and commercial accounts of other distributors or dealers.

Said acts, practices and methods of competition, and the adverse competitive effects resulting therefrom, constitute unreasonable restraints of trade and unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

### COUNT III

Paragraphs One through Nine are incorporated by reference herein as if fully set forth verbatim.

PAR. 17. The acts, practices and methods of competition engaged in, followed, pursued or adopted by respondents, and the combina-

tion, conspiracy, agreements or common understandings entered into or reached between and among the respondents, respondent corporation's distributors or dealers, or others not parties hereto tend to, and do, restrict the advertising and promotional activities in which distributors and dealers may or would otherwise engage. [7]

PAR. 18. Distributors and dealers have entered into contracts, agreements, combinations or understandings with respondents, or have been required and coerced by respondents to refrain from engaging in or limiting advertising activities as follows:

1. Distributors and dealers may not display literature or merchandise in the locations from which retail sales activities are prohibited.

2. "Direct Distributors" only may display the "Amway" trade-name, trademarks or logos on the exterior of their places of business; provided that in addition thereto the place of business is a commercial type building, the place of business is an exclusively Amway business, no displays appear in any show windows, a view from the outside looking in is obscured, and "Wholesale Only" must appear on the door leading in.

3. Distributors and dealers other than "Direct Distributors" must obtain the permission of the Direct Distributors from whose chain of distribution they purchase merchandise before the Amway logo may be displayed on business vehicles.

4. "Direct Distributors," with prior permission, may advertise in the "white pages" of the telephone directory under the "Amway" tradename, whereas other distributors or dealers may not.

5. Distributors and dealers may not utilize display ads in "yellow pages" telephone directories wherein it is indicated that the distributor or dealer deals in Amway merchandise.

6. Distributors and dealers may not set up displays at fairs, home shows or other special events unless they do so in concert, and under the direction of a "Direct Distributor." [8]

7. "Direct Distributors" only may utilize roadside advertising.

8. Distributors and dealers other than "Direct Distributors" may not advertise in newspapers, magazines or on the radio or television.

9. Distributors and dealers may only place recruiting ads which do not mention the name "Amway."

10. Distributors and dealers may not advertise specific Amway products in the media.

Said acts, practices and methods of competition, and the adverse competitive effects resulting therefrom, constitute unreasonable restraints of trade and unfair methods of competition in commerce

within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

## COUNT IV

Paragraphs One through Nine are incorporated by reference herein as if fully set forth verbatim.

PAR. 19. By and through the use of written or oral representations, respondents or their representatives represent and have represented, directly or by implication that:

1. Substantial income or profit as a result of wholesale or retail sales activities from "multiplication," "duplication" or geometrical increases in the number of distributors at lower functional levels of distribution is likely.
2. Substantial income or profit as a result of wholesale or retail sales activities from unlimited recruiting activities or endless chain recruiting activities is likely. [9]

PAR. 20. In truth and in fact the distributors and dealers are not long likely to recruit other distributors in multiplication, duplication, geometrically increasing, unlimited or endless chain fashion, or to profit from sales to other distributors at lower functional levels in geometrically increasing, unlimited, or endless chain fashion because:

(a) The participants may be, and in a substantial number of instances will be, unable to find additional participants, by the time they enter respondents' marketing program. As to each of the individual participants, recruitment of additional participants must of necessity ultimately collapse when the number of persons theretofore recruited has so saturated the area with distributors or dealers as to render it virtually impossible to recruit others.

(b) Profits resulting from respondents' recruitment program must of necessity ultimately collapse when the number of potentially available persons who can be recruited to serve a particular area is exhausted. The greater the number of distributors or dealers previously recruited, the lower the chances of a profitable distributorship or dealership operation.

(c) Regardless of the number of distributors or dealers previously recruited to serve in a particular market area, profits and therefore recruitment must of necessity ultimately collapse when distributors or dealers at lower functional levels of distribution are unable to operate their wholesale businesses at a profit by selling to lower functional levels at prices greater than paid for. The greater the

number of levels of distribution, the more inefficient the distribution system becomes, and the less profitable it is likely to be at the lower levels. [10]

For the foregoing reasons and others, respondents' representations that substantial income or profit may be predicated through multiplication, duplication, and geometrical, unlimited or endless chain increases in the number of distributors or dealers recruited, either at the same or lower functional levels of distribution, in connection with the manufacture, sale and distribution of their merchandise, was and is false, misleading and deceptive, and was and is an unfair method of competition and an unfair act and practice within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

#### COUNT V

Paragraphs One through Nine and Paragraphs Nineteen and Twenty are incorporated by reference herein as if fully set forth verbatim.

PAR. 21. In the course and conduct of their business, and for the purpose of inducing the purchase of their products and the participation of persons as dealers or distributors of respondents' products, the respondents and their representatives or agents have made and are continuing to make oral and written statements and representations to distributors, dealers and prospective participants regarding the sale of their merchandise, the profitability of a dealership or distributorship and the recruitment of still additional participants. Typical and illustrative of said statements and representations, but not all inclusive thereof, are the following (with emphasis omitted):

1. Sponsoring is profitable, regardless of whether you do it on a limited basis as a part-time distributor, or "all-out" as a full-time distributor.
2. Sponsoring is easy! Recruiting new Amway Distributors is not difficult, just as selling Amway products is not difficult. . . .When you have learned to sponsor one, then you simply repeat the process and sponsor two. . . .From that point on, it is just simple multiplication!
3. . . .[T]here is no known limit to how big your business can grow when you sponsor other distributors, who in turn sell products and sponsor still other distributors.
4. With the proven Amway Opportunity success will be yours. . .act now. . . .
5. To build a big business you, plus your 10 distributors-each sponsoring 4 people (total 51 distributors) with everyone selling one hour per day you will earn. . .your total monthly profit \$1,368.00. Excellent income for one hour per day. [11]
6. To build a larger business. . .you simply sponsor 10 distributors who work. . .one hour per day. . .You will earn. . .Your total monthly profit . . .\$264.00. Great income for one hour per day.



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7. By working just one hour per day and making 2 average sales of \$4.00 PV each, . . . your total monthly profit . . . \$52.80. Good extra income for one hour per day."

8. How much can I earn? As much as you desire.

9. Amway six year plan for financial independence. Step 1 - become a direct distributor. . . Step 2 - develop one direct distributor per year. . . Annual income after 6 years \$24,300.00.

10. Assuming that you become a Direct Distributor within a year's time and that you develop a Direct Distributor each year for the next five years, at the end of six years you can be earning in Direct Distributor bonuses \$225 x 5, or a total of \$1,125 a month. . . The \$1,069 a month which you receive on your personal group and the 3% refund bonuses of \$1,125 on the 5 Direct Distributors whom you personally sponsor will amount to \$2,194 a month or a total of \$26,328 a year. This is gross income for managing a business of your own. This can be your six-year plan for financial independence.

11. You can realize the achievement of your dreams through the Amway Opportunity. The Amway Opportunity is broad enough for you to achieve whatever your goal is.

12. An Amway pattern for success. . . duplicate yourself. You sponsor 1 distributor each month . . . each of your personally sponsored distributors sponsor 1 distributor each month - up to 6 . . . at the end of one year. . . Your personal group would consist of 64 distributors.

13. To build a still bigger business. . . You, plus your 6 distributors each sponsoring 4 people (total 31 distributors) with everyone selling \$5.00 PV per day. . . you will earn. . . your total monthly income. . . \$408. Excellent income for only a few hours per day.

14. With Amway, you start earning money right away with no large inventory investment.

15. The market potential for Amway products is spectacular.

16. Let's say that six of your personally sponsored distributors sponsor four distributors each, and that everyone makes a sale a day. . . [12]

17. Let's say you have sponsored six distributors. . . Your distributor organization can look like this:

Your Sponsor  
1  
You \$200 (Retailing)  
1  
A \$300  
B \$100  
C \$150  
D \$50  
E \$200  
F \$100

Your total group PV \$1,100.00

Total monthly gross income \$157.50

As your business continues to grow and as you train and motivate your personally sponsored distributors to retail and to duplicate themselves by sponsoring new distributors, here is how your total PV and income can increase:

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Your Sponsor  
 1  
 You \$200 (Retailing)  
 1  
 Dist A and his group \$600  
 Dist B and his group \$300  
 Dist C and his group \$200  
 Dist D and his group \$250  
 Dist E and his group \$300  
 Dist F and his group \$400

Your total group PV \$2,250.00  
 Total monthly gross income: \$270.00

At this point, your business has started to bring you good returns. Although you should have sponsored additional distributors in the meantime, for the purposes of simplification, we will show only six distributors personally sponsored by you. Your part-time business can expand rapidly from this point onward.

. . . Your income picture for the month can now look like this:

Your Sponsor  
 1  
 You \$200 (Retailing)  
 1  
 Dist A and his group \$1,000  
 Dist B and his group \$1,500  
 Dist C and his group \$800  
 Dist D and his group \$500  
 Dist E and his group \$300  
 Dist F and his group \$800

Your total group PV \$5,100.00  
 Total monthly gross income \$594.00

[13] 18. The income picture! Let's take a look at your income picture for the month. . . . Immediate income on your personal sales of \$200. . . . \$60. Income on refund: . . . \$114. Total earnings \$174.

If you save \$174 a month for six months, you'd have a total of \$1,044 toward a Carribean or a South Seas vacation. . . . So for example, five of your distributors sponsor four distributors who each sell \$200 for the month. Now the total of your group has grown to 26, and your monthly purchase volume is \$5,200. . . . However, your earnings picture for the month can now look like this: Immediate income on your personal sales \$60. Refund income . . . \$492. Total earnings \$552. Thus, you now have an attractive part-time income, and yet this is just the beginning.

PAR. 22. By and through the use of the above quoted statements and representations, as well as other oral and written statements and representations as found in various promotional materials not expressly set out herein, respondents and their representatives or agents represent, and have represented, directly or by implication, to distributors, dealers and prospective participants, that:

1. It is easy for distributors or dealers to recruit and/or retain

persons to participate in the program as distributors, dealers or sales personnel.

2. Distributors or dealers in the program can anticipate receiving or will receive substantial profits or earnings.

PAR. 23. In truth and in fact:

1. It is not as easy as respondents represent for distributors or dealers to recruit and/or retain as distributors, dealers or sales personnel persons who will participate in the sales program.

2. Distributors or dealers in the sales program do not receive nor are likely to receive the substantial profits or earnings that respondents represent that they will receive or are likely to receive.

[14]

PAR. 24. The following statements constitute material facts with respect to the making of claims or representations regarding the potential for recruitment of prospective distributors or dealers and/or the profitability of a distributorship or dealership:

1. There is a substantial turnover or dropout rate of distributors, dealers, wholesale and retail sales personnel, and a constant recruitment effort must be made simply to maintain a constant number of sub-distributors, sub-dealers, or sales personnel.

2. There are substantial business expenses associated with an active Amway distributorship or dealership.

PAR. 25. The statements and representations contained in Paragraph Twenty-One, along with other statements and representations not expressly referred to therein, contain claims regarding the potential for recruitment of prospective distributors, dealers or sales personnel and the profitability of a distributorship or dealership; but fail to disclose the material facts set forth in Paragraph Twenty-Four.

The dissemination by respondents of the aforesaid statements and representations, and others, has had, and continues to have, the capacity and tendency to mislead distributors, dealers and prospective participants into the erroneous and mistaken belief that:

1. There is no substantial turnover of distributors, dealers or sales personnel.

2. The turnover of distributors, dealers or sales personnel is not as substantial as they would otherwise have been led to believe.

3. There are no substantial business expenses incurred by distributors or dealers.

4. The business expenses of distributors or dealers are not as substantial as they would otherwise have been led to believe. [15]

PAR. 26. For all of the foregoing reasons, and others, respondents' statements and representations as set forth in Paragraph Twenty-One, as well as others not expressly referred to therein, in connection with the manufacture, sale and distribution of their merchandise, are false, misleading and deceptive, and were and are unfair methods of competition and unfair or deceptive acts or practices within the intent and meaning of Section 5 of the Federal Trade Commission Act, as amended.

INITIAL DECISION BY JAMES P. TIMONY, ADMINISTRATIVE LAW  
JUDGE

JUNE 23, 1978

#### PRELIMINARY STATEMENT

By a Federal Trade Commission complaint issued on March 25, 1975, respondents Amway Corporation ("Amway"), Amway Distributors Association of the United States ("ADA"), Jay Van Andel and Richard M. DeVos are charged in five counts with violations of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. [2]

Respondent Amway is a corporation organized less than twenty years ago by respondents Van Andel and DeVos. Amway manufactures, distributes and sells with its own trademarks over 150 products, including primarily cleaning and personal care products, and food supplements. While Amway started with soap and other cleaning products, it now sells a wide variety of low cost consumer products, including catalog sales of over 300 products manufactured by and bearing the names of other manufacturers, such as clothing, household appliances, furnishings, tools, luggage, watches and cameras. Amway sells such products through more than 300,000 independent distributors throughout the country. These distributors engage in direct, house-to-house sales to consumers, with total sales amounting to over \$200 million in fiscal 1976. The distributors also seek new distributors to build a sales organization. As an incentive to the distributors' sales, Amway offers, *inter alia*, volume discounts based on the total sales of a distributor's sales organization, ranging from 3% on monthly sales over \$100 to 25% on sales of about \$8,500 and over. Once the distributors reach the top discount bracket, they become "Direct Distributors," receiving such benefits as dealing directly with Amway (rather than through the distributors which

sponsored them), and voting membership in the distributors' association, ADA.

The ADA is an association of about 2,500 Amway Direct Distributors, acting as a consultant to Amway on proposed changes in basic sales policies of Amway and as a board of arbitration in disputes between and among distributors and as an appeal board with respect to action by Amway which may affect the rights of distributors.

Amway has a distribution plan published in various manuals, bulletins, pamphlets and other literature and material. This plan, known as the Amway Sales and Marketing Plan, imposes certain limitations upon the distributors' resale of products purchased from Amway and upon the method of recruiting new distributors. The complaint in this case attacks these limitations. Count I of the complaint alleges that respondents engage in resale price maintenance. [3] Count II alleges that respondents allocate customers among distributors and restrict the distributors' source of supply as well as the retail outlets through which they may resell. Count III alleges that respondents restrict the distributors' advertising. Count IV alleges that respondents misrepresent that substantial income may be obtained from geometrical increases in the number of distributors in the chain recruiting operation of the Amway distribution plan. Count V alleges that respondents misrepresent the profitability of a distributorship and the potential for recruiting new distributors and fail to disclose the substantial business expense involved and the high turnover of distributors.

By an answer filed on August 28, 1975, respondents admitted in part and denied in part the various allegations of the complaint. Respondents moved to dismiss the complaint on the grounds that: (1) evidence was improperly obtained by the staff during the course of the pre-complaint investigation, and (2) respondents were not afforded an opportunity to negotiate a settlement prior to the issuance of the complaint. The motion was certified to the Commission by an order dated September 16, 1975; the motion was denied. By an order dated April 12, 1976, I was substituted as administrative law judge because of the heavy workload of the former administrative law judge. An active motion practice ensued, with some thirty contested pretrial orders being issued on a number of procedural questions.<sup>1</sup> [4]

Discovery was extensive, involving depositions, interrogatories, requests for admission, and pretrial subpoenas. Counsel filed lists of

<sup>1</sup> Many of respondents' allegations of procedural misconduct were repeated by respondents' counsel on the first day of the trial and are the subject of an additional order, recently entered herein, denying respondents' motion to dismiss.

