

The Seventh Amendment and CFTC Reparations Proceedings

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In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.¹

The Commodity Futures Trading Commission (CFTC) Act of 1974² amended the Commodity Exchange Act³ to create the Commodity Futures Trading Commission,⁴ an independent federal regulatory agency with exclusive jurisdiction over all commodity futures transactions on exchanges such as the Chicago Board of Trade, all commodity options transactions, and all so-called leverage transactions.⁵ The CFTC Act also created a "reparations" procedure, pursuant to which persons injured by violations of the Commodity Exchange Act can seek redress before the CFTC.⁶ Since the creation of that reparations procedure, the number of complaints filed with the CFTC has increased from 6 complaints docketed in fiscal year 1976 to over 1200 in fiscal year 1981.⁷

The CFTC Act made the CFTC the adjudicative body for resolving

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1. U.S. CONST. amend. VII.

2. Pub. L. No. 93-463, 88 Stat. 1389 (1974) (codified in scattered sections of 5, 7 U.S.C. (1976)).

3. 7 U.S.C. §§ 1-24 (1976 & Supp. IV 1980).

4. Commodity Futures Trading Commission Act of 1974, Pub. L. No. 93-463, sec. 101(a), § 2(a), 88 Stat. 1389, 1389-91 (codified at 7 U.S.C. §§ 2, 4a (1976)).

5. See generally S. REP. NO. 850, 95th Cong., 2d Sess. (1978), reprinted in 1978 U.S. CODE CONG. & AD. NEWS 2087; S. REP. NO. 1194, 93d Cong., 2d Sess. (1974); S. REP. NO. 1131, 93d Cong., 2d Sess. (1974), reprinted in 1974 U.S. CODE CONG. & AD. NEWS 5843; H.R. REP. NO. 975, 93d Cong., 2d Sess. (1974); Schief & Markham, *The Nation's "Commodity Cops"—Efforts by the Commodity Futures Trading Commission to Enforce the Commodity Exchange Act*, 34 BUS. LAW. 19 (1978); *Regulation of Commodity Futures Trading*, 27 EMORY L.J. 847 (1978); *Symposium on Commodity Futures Regulation*, 6 HOFSTRA L. REV. 1 (1977).

6. CFTC Act of 1974, Pub. L. No. 93-463, sec. 106, § 14, 88 Stat. 1389, 1393-95 (codified at 7 U.S.C. § 18 (1976)).

7. Letter from James M. Bruchs, Special Counsel for the Complaints Section of the CFTC, to Jerry W. Markham (Aug. 13, 1981) (on file with the *Iowa Law Review*). Approx-

both questions of law and fact in its reparations procedure.⁸ Thus, while the CFTC's factual findings and holdings in reparations awards are subject to judicial review in courts of appeals,⁹ the CFTC Act makes no provision for a jury trial. Nor is a jury trial available when reparations awards are sought to be enforced in a federal district court, because the order of the CFTC awarding reparations in those actions is by statute "final and conclusive."¹⁰

This Article will begin by reviewing the historical background of the commodity futures industry¹¹ and, more specifically, the legislative background of the CFTC reparations procedure.¹² Then, the precise nature of CFTC reparations proceedings will be examined.¹³ Next, the jury trial guarantee of the seventh amendment will be analyzed,¹⁴ followed by an application of seventh amendment principles to the CFTC's reparations procedure.¹⁵ Finally, it will be concluded that the denial of the right to a jury trial in CFTC reparations proceedings violates the spirit and letter of the seventh amendment.

I. THE CFTC—BACKGROUND

The commodity futures industry dates back centuries,¹⁶ but modern futures trading on organized exchanges developed in Chicago in the mid-1800's as the result of the grain trade in the Midwest.¹⁷ At first, trading was conducted in "time contracts" for the sale of grain for deferred delivery.¹⁸ By the 1860's, however, this trading gradually evolved into futures trading on the Chicago Board of Trade,¹⁹ and in 1870 the New

imately 80% of the claims filed in fiscal year 1981 involved commodity futures transactions. *See id.*

8. *See* CFTC Act of 1974, Pub. L. No. 93-463, sec. 106, § 14(e), 88 Stat. 1389, 1393-94 (codified at 7 U.S.C. § 18(e) (1976)).

9. *See id.* sec. 106, § 14(g), 88 Stat. at 1394 (codified at 7 U.S.C. § 18(g) (1976)).
10. 7 U.S.C. § 18(f) (1976).

11. *See* text accompanying notes 16-71 *infra*.

12. *See* text accompanying notes 72-96 *infra*.

13. *See* text accompanying notes 97-141 *infra*.

14. *See* text accompanying notes 142-94 *infra*.

15. *See* text accompanying notes 195-294 *infra*.

16. CHICAGO BOARD OF TRADE, COMMODITY TRADING MANUAL 1-2 (1973); *see* H.R. REP. NO. 975, 93d Cong., 2d Sess. 33 (1974); T. HIERONYMUS, ECONOMICS OF FUTURES TRADING 71-72 (1971).

17. *See* T. HIERONYMUS, ECONOMICS OF FUTURES TRADING 72 (1971); G. HOFFMAN, HEDGING BY DEALING IN GRAIN FUTURES 13-15 (1925).

18. COMMODITY EXCHANGE ADMINISTRATION, TRADING IN COMMODITY FUTURES 2 (1938).

19. *See id.* at 2-3. "Speculation in futures contracts reached such vast proportions during the Civil War that the Chicago Board of Trade in 1865 adopted rules recognizing trading in grain futures as a distinct commercial practice." *Id.* at 3. *See also* S. REP. NO. 1131, 93d Cong., 2d Sess. 11-13 (1974), *reprinted in* 1974 U.S. CODE CONG. & AD. NEWS 5843, 5852-54; T. HIERONYMUS, ECONOMICS OF FUTURES TRADING 72-74 (1971).

