AFTERNOON SESSION

The subcommittee resumed at 1:30 p. m. on the expiration of the recess.

Senator TRUMAN (presiding). We will resume.

TESTIMONY OF JEROME J. HANAUER, FORMERLY A PARTNER OF KUHN, LOEB & CO., 52 WILLIAM STREET, NEW YORK CITY; TESTIMONY OF MARK W. POTTER, FORMER RECEIVER OF CHICAGO, MILWAUKEE & ST. PAUL RAILWAY CO.; TESTIMONY OF BENJAMIN J. BUTTENWIESER, MEMBER OF KUHN, LOEB & & CO., INVESTMENT BANKERS, NEW YORK CITY; TESTIMONY OF H. A. SCANDRETT, TRUSTEE OF THE CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD CO. AND PRESIDENT OF THE CORPORATION, CHICAGO, ILL.; AND STATEMENT OF ROBERT T. SWAINE, OF CRAVATH, De GERSDORFF, SWAINE & WOOD, ATTORNEYS AT LAW, NEW YORK CITY—Resumed

Senator TRUMAN. You may proceed.

Mr. SCANDRETT. Mr. Chairman, during the noon recess I was given an opportunity to read over the file of letters that were offered here,[1] and I would like, with your permission, to make a brief comment on them if I may?

Senator TRUMAN. You may proceed.

Mr. SCANDRETT. This is the file that was offered dealing with my correspondence with Mr. Canton, the committee's investigator in Chicago. It begins with his letter to me of April 20, 1936, and ends with my letter to him of August 19, 1936.

The correspondence shows that on May 13, 1936, he left with me copies of letters interchanged between me and Mr. Hanauer beginning on December 29, 1927, and ending on January 18, 1928. I wrote to him that day saying [reading from "Exhibit No. 1993"]:

> Since you were in this morning I have examined my files and find no letters from Mr. Wood antedating my meeting with Mr. Hanauer in regard to my coming to the Milwaukee road. As I told you, Mr. Wood has been a close friend of mine for many years, and I knew he had recommended me for the position.

And I enclosed copies of two wires he sent me on December 9, 1927, and of my replies of the same date. I also enclosed copy of my wire of that date to Mr. W. W. Colpitts, who is the Walter referred to in Mr. Wood's wires. I said that Mr. Colpitts is also and was then an old-time friend. I wound up with this:

> If I can be of any further service, please call on me.

I did not hear again from Mr. Canton until July 1, 1936, when he asked me if I would advise him if I had located the files we had discussed when he was in my office.

He wrote to me on May 13, 1936, listing copies of telegrams and letters left with me that day. On May 15 I acknowledged his letter, upon my return from Washington. I think the file contained most, if not all, of this correspondence that you obtained from the offices of Kuhn, Loeb & Co. In my letter of May 15 to Mr. Canton I said [reading from "Exhibit No. 1994"]:

> As I mentioned when you were in the office, all of this correspondence was subsequent to the date the presidency of the Milwaukee road was tendered to me.

[1] See "Exhibits Nos. 1990 to 2003", pp. 7052–7059, inclusive.

I had assumed that my letter of May 13 covered the situation, but I said to him if he wished to examine the file himself he was at perfect liberty to do so. He did that. Then he wrote me a letter on July 18, 1936, requesting that I furnish him copies of letters listed in his letter of July 18, and asked that we make copies in our office. He added [reading from "Exhibit No. 1997"]:

> Ordinarily this work would have been done by our typists, but they are now on leave.

That was sent to him with my letter of July 21, 1936, which he acknowledged July 23, 1936, closing his letter by saying [reading from "Exhibit No. 1999"]:

> Once again, this office wishes to express appreciation for the courtesies you have extended.

I read that latter statement because the inference was made this morning that while Mr. Canton expressed appreciation in April, that that was prior to the time he received these other letters from me.

I should like to say again that all these letters which have been filed here this morning, are subsequent to the date that the presidency of the Milwaukee road was offered to me by Mr. Hanauer, which as I recall was somewhere around December 10, and my recollection is, also having been refreshed during the noon hour, to the effect that while the actual election was not until January 11, 1928, the press on December 30, 1927, reported that I was to be the head of the new Milwaukee Railroad Co., and that I had confirmed that announcement.

Mr. ROSIER. In the first letter that Mr. Canton wrote to you, dated April 20, 1936, he said [reading from "Exhibit No. 1990"]:

> I am writing you concerning your election as president of the above company in the year 1928.

And then referring back to his conversation with you December 3, 1935, he states:

> Then I spoke of correspondence, wires and/or memoranda between yourself and those responsible for your appointment as president. You had no recollection of such documents, stating that the same was brought about by talks had either in person or over the telephone.

He was specifically referring to the kind of documents introduced in evidence this morning.

Mr. SCANDRETT. I did not think so at the time, and do not now. I thought he was referring to the correspondence with Mr. Hanauer, who was the one who had tendered me this position.

Mr. ROSIER. I think these letters speak for themselves.

Mr. SCANDRETT. I think so too.

Senator TRUMAN. You may proceed now, Mr. Kaplan.

CONCERNING NEED FOR AMENDMENT OF SEC. 77 OF THE BANKRUPTCY ACT

Mr. KAPLAN. Mr. Hanauer, the chairman has given me a very brief time to discuss section 77 of the Bankruptcy Act, as to amendments suggested by some testimony you gave yesterday. In view of the brief time allotted to me I will appreciate it very much if your answers can be as brief as possible, and I will try to make my questions as brief and direct as possible.

Mr. HANAUER. What particular testimony do you refer to?

Mr. KAPLAN. The testimony relating to the compromise reached between the proponents of the original plan for the reorganization of the Milwaukee Railroad, and the opposition, resulting in the modified plan, which increased the fixed charges by some $2,300,000. I believe your testimony yesterday contained an expression of opinion that had not the plan been modified as the result of compromise, the railroad might have been carried through the depression?[1] And I think there was testimony a week or two ago by Mr. Swaine expressing a similar opinion.[2]

Mr. HANAUER. All right, I understand now what you have reference to.

Mr. KAPLAN. Section 77 of the Bankruptcy Act is a section designed more specifically to reorganize railroad corporations, being railroads engaged in interstate commerce. Will it be fair to say that the reorganization of a railroad differs from the reorganization of the ordinary industrial corporation, in that the railroad is engaged in business affected by the public interest, whereas the ordinary industrial corporation may or may not be engaged in a business so affected?

Mr. HANAUER. (Witness simply nods his head.)

Mr. KAPLAN. Mr. Hanauer, if you will just speak up instead of nodding your head we will get it in the record.

Mr. HANAUER. I had not understood as yet that you have asked me any questions. I was only nodding my head to indicate that I understood you or was following you.

Mr. KAPLAN. Would you agree with that comment?

Mr. HANAUER. Yes; with this addition, that railroads are generally different in other aspects, in that they have a more complicated financial structure, such for instance as general mortgages, upon the whole property, or sometimes mortgages on branches or other property, which make it more difficult for the various security holders to come to agreement.

Mr. KAPLAN. A railroad being a public utility, serving a public interest, is it not especially important that a railroad have the kind of sound capitalization which will serve that public interest?

Mr. HANAUER. Yes.

Mr. KAPLAN. And the soundness of the capitalization of a railroad will affect its efficient operation. Would you agree to that?

Mr. HANAUER. The margin of earnings over fixed charges would affect efficient operation, because naturally the moment it gets down anywhere near to the point where it may not have enough cash to pay its fixed charges, there is the tendency to reduce maintenance and things of that sort.

Mr. KAPLAN. Again, the capitalization itself may well affect a railroad's credit?

Mr. HANAUER. Yes.

Mr. KAPLAN. And may well affect its ability to finance its new needs?

Mr. HANAUER. Yes.

Mr. KAPLAN. And on such ability will depend, in part at least, the safety of a railroad from the point of view of the public?

Mr. HANAUER. Possibly.

Mr. KAPLAN. And the ability of a railroad to engage in new construction, and to maintain its ways and structures?

[1] See supra, p. 6791.
[2] Hearings, Part XV, p. 6635 et seq.

Mr. HANAUER. Yes; I have said that.

Mr. KAPLAN. And the ability of a railroad to keep abreast of the times in line with modern technological development?

Mr. HANAUER. Yes. And might I interpose here, that quite naturally, having retired from Kuhn, Loeb & Co. 5 years ago, these are merely expressions of my own personal opinion.

Mr. KAPLAN. But these are opinions based upon long experience in the past?

Mr. HANAUER. Yes.

Mr. KAPLAN. And at the present time you do hold directorships in other railroads?

Mr. HANAUER. Yes. And may I give answer now to the part of your statement in which you spoke about the relationship of the St. Paul Railroad under the compromise to section 77?

Mr. KAPLAN. I will come to that. Mr. Buttenwieser, you would agree in general to what Mr. Hanauer has stated in reference to his opinions, would you not?

Mr. BUTTENWIESER. Well, I will say that I would be very slow to dissent from practically anything Mr. Hanauer might state based on his long experience.

Mr. KAPLAN. But in this case you do not dissent?

Mr. BUTTENWIESER. No; and I quite agree with what he has expressed.

Mr. KAPLAN. The soundness of the capitalization of a railroad will affect its labor policy, or may make for the kind of labor policy that would not be the policy in the case of a railroad soundly capitalized?

Mr. HANAUER. I do not quite get that question.

Mr. KAPLAN. I say, the soundness of the capitalization of a railroad will affect its labor policy. In other words, a railroad unsoundly capitalized might make for a kind of labor policy that would not be the same as in the case of a railroad soundly capitalized?

Mr. HANAUER. I would not say that would be so, because the matter of labor policy is set down by an entirely different body, and by other people, and is pretty general throughout the United States for the successful railroads and the unsuccessful ones. I do not believe I could agree with that statement.

Mr. KAPLAN. You would not feel——

Mr. HANAUER (continuing). I think the general result of railroads, as a whole, has an effect upon what it is possible to do, but I do not think that the capitalization of one particular road, or of two particular railroads, would affect that situation, because it is not possible to have different rates of pay on different railroads.

Mr. KAPLAN. But you do feel, I take it, that as to the country as a whole the capitalization of railroads will affect the labor policy of railroads in general?

Mr. HANAUER. Capitalization and the rates allowed for freight and passengers.

Mr. KAPLAN. Would you say that in reorganizing a railroad there are two functions. The first, the function of setting up a capitalization for a new company in an attempt to give the new company a sound capitalization; and the second function is one of distributing interests in the new company to those persons who were creditors or security holders of the old company?

Mr. HANAUER. Equitably; yes.

Mr. KAPLAN. The two functions——

Mr. HANAUER (interposing). I would not say they are the only functions, but those are naturally two of the functions.

Mr. KAPLAN. Those are two distinct and separate functions that must be given consideration in the reorganization of a railroad?

Mr. HANAUER. They are two functions necessary to consider.

Mr. KAPLAN. And those are important functions?

Mr. HANAUER. Yes; they are important functions.

Mr. KAPLAN. You feel that those two functions should be given separate consideration or at least distinct consideration?

Mr. HANAUER. Oh, certainly. Do you mean the capitalization of a new railroad?

Mr. KAPLAN. Yes.

Mr. HANAUER. I do not quite understand what you mean. Do you mean capitalization in the matter of amount, or the particular kind of capitalization as to division between bonds and shares? That is what I have in mind.

Mr. KAPLAN. In reorganizing a railroad it must be determined what the fixed charges of the railroad will be?

Mr. HANAUER. Yes.

Mr. KAPLAN. And what the contingent charges of the railroad will be?

Mr. HANAUER. Yes.

Mr. KAPLAN. And what the cumulative and the noncumulative charges will be?

Mr. HANAUER. Yes.

Mr. KAPLAN. And what the dividend requirements will be?

Mr. HANAUER. Yes.

Mr. KAPLAN. And what the face amount of the debt will be and what the par value of the stock will be, or what number of no-par shares will be issued?

Mr. HANAUER. The entire structure.

Mr. KAPLAN. In an effort to arrive at a sound financial structure?

Mr. HANAUER. That is correct.

Mr. KAPLAN. And that is a separate and distinct matter from the question of distributing the resulting securities?

Mr. HANAUER. Well, it would be very nice if it could be done, but it cannot be done; because, after all, in a reorganization of a railroad security holders have the last word.

Mr. KAPLAN. Do you feel that would be a very nice thing if it could be done?

Mr. HANAUER. How was that question?

Mr. KAPLAN. If you could separate those functions?

Mr. HANAUER. I am not so sure that it would be either fair or nice.

Mr. KAPLAN. I thought that was what you said just a moment before Mr. Swaine turned and whispered to you. You said something to the effect that "it would be very nice if it could be done." [1]

Mr. SWAINE. I simply said to him, "Not under section 77." Your question propounded to Mr. Hanauer was with reference to security holders' getting less or more, and I said, "Not under section 77 as it is today."

Mr. KAPLAN. Do you feel, Mr. Swaine, it would be nice if those two functions could be separated?

Mr. SWAINE. I do not know what you mean by "nice." I think they are entirely different functions. I think one is a function having

[1] Ten lines supra, this page.

to do with public interest, and that the other is a function having to do with private rights. One of the mistakes of section 77 is that the two are placed together.

Senator TRUMAN. And do you think it would be well if they were separated?

Mr. SWAINE. Yes; but that is a question of legal procedure and not of banking policy.

Mr. KAPLAN. If a banker is negotiating toward reorganization of a railroad he has to take into consideration whether the functions are separated or not, both problems; he must approach both problems together?

Mr. SWAINE. No; but the two things have to be accommodated to each other. While separate, yet they are overlapping.

Mr. KAPLAN. Isn't that the thing that happened in the *St. Paul Railroad case*, that the two functions were considered together, and the result was that in order to accommodate a group of security holders, the railroad was provided with the kind of capitalization which brought it back into bankruptcy, and the kind of capitalization which was against the best judgment of the bankers who reorganized the railroad?

Mr. SWAINE. No; I do not think so at all.[1]

Mr. KAPLAN. Have you any opinion on that matter, Mr. Hanauer?

Mr. HANAUER. That is what I meant by saying that a compromise was compelled to be made by a large minority. I mean under section 77 a certain percentage control. If that had been the law at the time of the reorganization of the St. Paul Railroad, while probably there would have been a great deal of criticism anyhow, as there has been, about everything done, yet it would have been possible for the great majority to put through a more conservative reorganization. The only thing I differ about in reference to this particular matter, in connection with section 77, is that I am not sure that the percentage mentioned is right. It might have given too great power to too small a percentage. As I recall the percentage it was two-thirds. For two-thirds to force in one-third might be too much. But if a fair percentage could be arrived at, so as to let the overwhelming majority of creditors put through a conservative plan, without being subjected to pressure to make it more suitable to the minority, who might or might not be old and legitimate investors, or who might possibly be those who had purchased in receivership and without being subjected to pressure from the stockholders, any more than in the case where a bank holds a mortgage on a house; the owner of the house should have a large voice as to what would happen after foreclosure. But the principle of section 77 that some percentage of bondholders should be able to control, I think is very good.

Mr. KAPLAN. Turning back now to what happened in the compromise between the reorganization managers and the Roosevelt committee: The Roosevelt committee represented a more junior security?

Mr. SWAINE. No.

Mr. HANAUER. No; represented a percentage of the same security.

Mr. KAPLAN. Can you see people holding junior securities who would not be bound by a majority vote, or a two-thirds vote, or whatever was the percentage of the senior class, dissenting from the plan and insisting on a plan which resulted in an unsound capital structure?

[1] Cf. "Exhibits Nos. 2046 and 2047," and testimony in connection therewith; infra, p. 6941 et seq.

Mr. HANAUER. If that is correct, then I am mistaken in what I understand section 77 to say. I believe it is a percentage of each class.

Mr. KAPLAN. I am putting the question to you: Has it been your experience in reorganizing railroads that frequently the junior class of securities will insist on a capitalization which would be unsound?

Mr. HANAUER. I wouldn't say that I have had any particular experience where a large body of junior security holders have endeavored to insist upon something that was unsound. It has usually been a case, except for some small holders, of a difference of opinion as to what might be sound.

Mr. KAPLAN. In those situations, Mr. Hanauer, isn't the process one whereby a particular class of security holders, in order to get as much participation in the new company as possible, will ask for a kind of plan which may set up an unsound capital structure?

Mr. HANAUER. That, of course, depends on whose the opinion is.

Mr. KAPLAN. The question is, whether that is what they tend to negotiate and bargain for.

Mr. HANAUER. That has not been the practice, or at least my experience, in all these years, because in practically every case it has been put in the hands of people who were experienced, who were looking forward to protecting the railroad company in the future, and largely controlled by the very large institutional holders, such as savings banks and others.

Mr. KAPLAN. Mr. Swaine, wouldn't you say that those very large security holders, who have senior obligations of the old company, are faced by considerable difficulties by reason of the action of individual junior security holders, attempting to get as much as possible out of the new company, even to the extent of working for a plan which would set up an unsound structure?

Mr. SWAINE. I do not think there is any general rule. I do not think their inclination is as much to set up an unfair capital structure as it may be to ask unfair sacrifices on the part of senior security holders. In other words, the difficulty, as far as my experience goes under section 77, has been that the second phase of the problem is much more pressed than the first phase of it.

Mr. KAPLAN. Now, in the case of the St. Paul Railroad, for one reason or another the fixed charges were some $2,300,000 higher a year than you really thought was sound, Mr. Hanauer?

Mr. HANAUER. Than what our original plan had provided; yes.

Mr. KAPLAN. And that increase of fixed charges in the modified plan was the result of bargaining and negotiations with a dissenting group of security holders?

Mr. HANAUER. Yes.

Mr. KAPLAN. But the bankers acquiesced in that modification because they did not see its importance. Or did they acquiesce because they did not have the power to block such a modification?

Mr. HANAUER. Well, if they had had the power to block the modification they certainly would have done so. What happened was this: Here was an objector, a minority in this case, representing fairly large holdings of their own as well as of Massachusetts savings banks; and when they put out their plan, which provided for still greater fixed charges than the modification which was eventually agreed upon, the question was again referred to Coverdale and Colpitts, and to the committees, and after considerable discussion it was the belief: "Well, this is probably safe."[1] And that even though our argument always was: "Well, if the earnings are there you will get them, whether in the way of fixed-charge bonds or income-earning bonds." But from a market standpoint naturally 20 percent more of 5-percent fixed-charge bonds would sell higher than 20 percent more of adjustment bonds. And I might say that it seemed for about 2 years that this action was perfectly justified, because there was no difficulty in earning the full interest on the additional $46,000,000 of bonds. But later on, as it turned out, it was not sufficient. Therefore it was regrettable that the other was not done.

Mr. KAPLAN. So it resulted in an unsound plan of capitalization because of the bargaining?

Mr. SWAINE. No. It should be pointed out that the fixed charges of the Milwaukee Railroad, even after the compromise, were well within the past earnings experience. My recollection is that there were only 2 years in the past earnings experience of the property when the new fixed charges had not been covered, and in one of those years they were approximately covered. So there was only 1 year in the prior earnings history of the property when the fixed charges, after adding $2,300,000, had not been covered by what was regarded as a conservative margin. The difficulty was not that it seemed unsound in the light of the facts we then had, but that it became unsound in the light of subsequent facts, which no one could anticipate.

Mr. KAPLAN. And the thing that caused that situation was the bargaining process?

Mr. SWAINE. That happened to be a coincidence only.

Mr. KAPLAN. Wasn't it more than a coincidence?

Mr. SWAINE. I do not think so.

Mr. KAPLAN. You see it prevented the railroad company from having a sound financial structure.

Mr. SWAINE. If the railroad's earnings continue to go on their present trend the original plan would not have been sound. The original plan, while I think the property would be alive today, and there is a reasonable chance it would have been alive today, yet I think it is quite clear that it would not be alive next year if the trend continues as it is now.

Mr. KAPLAN. What was at stake was the matter of fixed charges, which was a matter of public interest. That is a matter you think of public interest and not of private interest?

Mr. SWAINE. It is a matter on which the Interstate Commerce Commission should and does pass.

Mr. KAPLAN. You feel that the Interstate Commerce Commission should have the widest powers to protect that public interest, do you not?

Mr. SWAINE. It has now, and always has had even before section 77.

Mr. KAPLAN. You feel that in the process of bargaining for the distribution of interests in the new company there should be at stake the soundness of the capitalization?

Mr. SWAINE. No. On the contrary, I said that the public interest was the primary consideration in determining the total of the capital structure, and that the division of that structure was then a matter of private rights.

[1] Cf. "Exhibits Nos. 2046, 2047," and testimony in connection therewith, infra, p. 6039 et seq.

Mr. KAPLAN. If it were possible to protect the public interest in the matter of sound railroad capitalization, protect it from the bargaining process, if there were some way by which that could be done, would that be a purpose of which you would approve?

Mr. SWAINE. Yes. But, on the other hand, as I said, the two things are somewhat interdependent. After all, we live in a practical world and it would be a foolish thing to lay down a round amount of senior bonds, which would produce $111.19, we will say, for each thousand-dollar bond. Under those circumstances there should be a degree of tolerance to allow of the finding of multiples, to bring them up, say, to $125, or to take them down to $110. The two things have to be looked at simultaneously, but they are a distinct problem; nevertheless they have their interreactions.

Mr. KAPLAN. It is not a question of the technique, but the question is whether the objective is desirable if it could be worked out.

Mr. SWAINE. Yes. If you will read the arguments made before the Interstate Commerce Commission about 2 weeks ago you will find that numerous counsel urged that it take into consideration just that problem in connection with certain reorganizations pending, that it set them within limits.

Mr. KAPLAN. For instance, to take an outside limit, beyond which the fixed charges cannot go?

Mr. SWAINE. How much the fixed charges, how much the income charges, and whether it would be cumulative, and to what degree, and whether they would permit no-par-value stock. And then within those principles there are private interests——

Mr. KAPLAN. And within those limits let the private interests bargain, do you mean?

Mr. SWAINE. That was urged upon the Commission, but the main urging of the Commission was to pass upon the results of bargaining. Primarily it is a private problem and not a public problem.

Mr. KAPLAN. Bargaining, you say, is a private problem?

Mr. SWAINE. I think so.

Mr. KAPLAN. But the setting up of a sound railroad capitalization is a public problem.

Mr. SWAINE. I would agree, but there comes in——

Mr. KAPLAN (continuing). And a public body, either the Interstate Commerce Commission or some other body should have the power effectively to limit the type of capitalization of a new company to one which will serve the public interest, and leave to private parties the bargaining and litigation over the distribution of interests in the new company, in that kind of sound company.

Mr. SWAINE. Are you asking me?

Mr. KAPLAN. Do I perfectly express your thought on that subject?

Mr. SWAINE. Yes; and I should like to say——

Mr. KAPLAN (interposing). Do you feel the same way, Mr. Hanauer?

Mr. HANAUER. I will say that my experience has been more in the matter of equity receiverships. Has any receivership been completed under section 77, Mr. Swaine?

Mr. SWAINE. I think one little railroad, or maybe two.

Mr. HANAUER. Might I clarify one thing: There is no fault to be found with bargaining; in fact, there always should be bargaining between different classes of security holders in order to get to what the

real justice is. The thing that makes it difficult is, after a very large percentage of a particular issue has come together and agreed, that the remainder of the percentage should have the power to delay or upset or appeal and hold things up indefinitely, and by that means have the power to force compromises.

Mr. KAPLAN. And to force the kind of compromise which may result in an unsound financial structure?

Mr. HANAUER. Which may result in any kind of compromise. Whatever the percentage is, and it must be fair of course, it should have the right to control; and that is what section 77 does, subject, of course, to the approval of the plan by the Interstate Commerce Commission.

Mr. KAPLAN. And if the particular compromise jeopardizes the public interest in the way of an unsound capitalization, that is the kind of subject matter in which the Congress should be interested, and which the Congress should legislate upon?

Mr. HANAUER. And in which the Interstate Commerce Commission should be interested. They might well say: "Your fixed charges are too high."

Mr. KAPLAN. There is evidence on our record in which bargaining over the distribution of interest in new companies has resulted in the promulgating of plans of reorganization that provided for unsound capital structures, particularly I will say in the case of the Chicago & Eastern Illinois Railroad.[1]

Mr. HANAUER. Under section 77?

Mr. KAPLAN. Yes.

Mr. HANAUER. That brings me to another point, if you would like my opinion: And that is, the rest of section 77, which gives, subject to the right of the court and of the Commission eventually, the right to override them all, but that is a long delay—I mean it gives the power to stockholders and to junior security holders to hold up a reorganization way beyond their rights.

Mr. SWAINE. I should like to say——

Mr. KAPLAN (interposing). And, Mr. Hanauer, even when they are worthless?

Mr. HANAUER. Yes; and I think you can prove it. Unless the court will possibly say, or the Commission will say that they will take it into their own hands—and I have not read section 77 recently, but since section 77, stockholders have made extravagant demands in respect of sacrifices on the part of senior security holders, in order to keep their equity, or some part of it——

Mr. KAPLAN (interposing). I know, but——

Mr. SWAINE (interposing). I know, Mr. Kaplan, you are trying to stop this, but I want to record my dissent on that, and to say there is quite adequate provision in section 77 if the Commission will cooperate, to cut off any junior security that may make an unreasonable demand. That machinery has been pointed out to the Commission.

Mr. KAPLAN. Do you mean the machinery for a sale at an upset price?

Mr. SWAINE. Yes.

Mr. KAPLAN. That has to be within a plan of reorganization.

Mr. SWAINE. And that furnishes adequate protection, for sale at an upset price. And I want to say, as showing that lawyers do not

[1] See Hearings, Part VIII, for a discussion of the C. & E. I. reorganization.

always agree with their bankers, that I think that criticism of section 77 is wrong.

Mr. HANAUER. I do not dissent from Mr. Swaine on that, but I think the court or the Commission would take a long time.

Mr. BROWN. Do I understand that the Commission construes the law as you do, Mr. Swaine?

Mr. SWAINE. The Bureau of Finance has rendered a report in which it does not construe the law as I do. On the other hand, in the argument on the matter before the full Commission, Mr. Craven, who actually prepared the provision, and it was the subject matter of dispute, said to the full Commission that he agreed to my construction that that was what he intended when he wrote the provision. And I am hopeful that the Commission itself may agree on that construction.

Mr. BROWN. Is it your belief that procedure along that line eliminates valuation?

Mr. SWAINE. Yes.

Mr. BROWN. Are there other lawyers who disagree with you?

Mr. SWAINE. I think that Mr. Craven thinks the valuation proceeding would be better than the sale provision. I would not want to rely on a valuation proceeding. I agree that a valuation proceeding is one method of doing it, but I do not think it is satisfactory. A valuation proceeding in connection with a railroad is a very long-drawn-out process and so likely to be full of possible errors.

Mr. BROWN. Do you believe that the procedure you outline eliminates the necessity of valuation?

Mr. SWAINE. Yes.

Mr. BROWN. Do you know whether there is anyone who disagrees with you on that point, and who would possibly be willing to litigate that very issue?

Mr. SWAINE. The very fact that you have to fix an upset price involves some element of valuation. But that is the old well-established procedure in equity.

Mr. BROWN. The procedure under section 77 is different?

Mr. SWAINE. It says to fix a sale at a fair upset price. That is a word of art and comes out of the old equity practice.

Mr. KAPLAN. How about there being any ambiguity there?

Mr. SWAINE. Any ambiguity there ought to be eliminated by amendment. The very fact that people have disputed it, and the Bureau of Finance finds that way, necessitates in my judgment an amendment. I do not think there should be unreasonable and unnecessary delay in reorganizations, or that junior securities should be enabled to make unreasonable demands.

Mr. LOWENTHAL. Mr. Swaine, the view that you place on the record is the same as given when this subcommittee was sitting on November 18, is it not, at or about the time we were heretofore discussing this subject?[1] Do you remember that you were then asked about it?

Mr. SWAINE. Yes.

Mr. LOWENTHAL. And do you remember that your expression of view was welcomed at that hearing? That you were asked for your views on that subject?

Mr. SWAINE. I was asked; yes.

[1] See Hearings, Part XV, p. 6630 et seq.

THE BANKERS AND THEIR COUNSEL PREPARE FOR THE 1925 RECEIVERSHIP—EMPLOYMENT OF COVERDALE & COLPITTS

Mr. TAYLOR. Mr. Hanauer, like Mr. Kaplan I want to be as brief as possible, and there are only one or two matters I wish to touch upon. I think you mentioned, both yesterday and this morning, and again this afternoon, the report prepared by Coverdale & Colpitts on the condition of the St. Paul Railroad just prior to the old receivership. The engineers were retained by the St. Paul Railroad to make that report at your suggestion, were they not? That is, it was your suggestion that Coverdale & Colpitts should be the engineers in question?

Mr. HANAUER. We simply said we had had good experience with them. They had considered some other people, I believe, however; but they eventually selected them.

Mr. TAYLOR. Prior to the time when Mr. Colpitts went out over the St. Paul property as the basis for making his report, you and Mr. Mitchell of the National City Bank of New York provided him with memoranda indicating certain specific phases of it, did you not?

Mr. HANAUER. Yes.

Mr. TAYLOR. In which you and the other bankers were particularly interested?

Mr. HANAUER. Yes.

Mr. TAYLOR. Mr. Chairman, I want to offer for the record these two memoranda in question, one by Mr. Mitchell and the other by Mr. Hanauer, taken from the files of Mr. Colpitts.

Senator TRUMAN. They will be received in evidence.

(The memoranda referred to were marked "Exhibit No. 2006" and are included in the appendix on p. 7066.)

Mr. HANAUER. That is all in my previous testimony.

Mr. TAYLOR. Yes. The general purpose of these memoranda was to enable you and the National City Bank, as the potential bankers in the reorganization, or as the previous bankers for the property, to ascertain what could be done about refunding that June of 1925 maturity?

Mr. HANAUER. Yes.

Mr. TAYLOR. Do you recall whether any representatives of either your house or the National City Bank accompanied Mr. Colpitts on that trip?

(Mr. Hanauer shakes his head.)

Mr. TAYLOR. If you do not recall, I will say that I believe you testified before the Commission——

Mr. HANAUER (interposing). I did not, and do not know that anybody else did.

Mr. TAYLOR. Mr. Chairman, I have here an extract from Mr. Colpitts' testimony before the Commission, in which he makes reference to Mr. Hoyt, representing the National City Co., as accompanying him on the trip of inspection. I should like to read, just briefly, from this extract of testimony before Examiner Miller. The question asked Mr. Colpitts was [reading from "Exhibit No. 2007"]:

Whom did you first advise of that conclusion?

And his reply was:

I don't remember. I think possibly the first intimation that I gave to anybody that I did not feel that the condition of the property—by condition I mean every-

thing concerning it—was what it appeared to be, was on the night before we reached Chicago on the return trip.

And then in response to another question he replied:

I asked Mr. Hoyt who represented the National City Company on the trip of inspection, and Mr. Mason, to come back into the car with me, that I wanted to have a talk with them, and I indicated to them roughly, not a definite conclusion at all, but the way my mind was running concerning the condition of the company.

And I wish to offer these entire extracts for the record.

Senator TRUMAN. They will be received in evidence.

(The documents referred to were marked "Exhibit No. 2007" and are included in the appendix on p. 7068.)

Mr. TAYLOR. Mr. Hanauer, do you recall whether the Commission, in its investigation of the St. Paul properties, made a finding that while Coverdale & Colpitts had been retained and reimbursed for their services by the St. Paul, they were acting primarily under the direction of the bankers for the property?

Mr. HANAUER. I do not remember that. It might very well be that they did, because by the time it came before the Commission, of course, the receivership had taken place, and by that time Coverdale & Colpitts, being recognized experts, were really employed by the whole situation, to advise, and they might readily have gotten that impression. But up to the time of the receivership they represented only the company, and, with the company's knowledge—because they had been conferring with the bankers in reference to the possibility of a refunding or extension of those notes—they were given these two memoranda as to the kind of information that would be valuable for that purpose.

Mr. TAYLOR. Mr. Chairman, I offer for the record an excerpt from the Interstate Commerce Commission's report in the investigation of the St. Paul.

Senator TRUMAN. It may be received.

(The document referred to was marked "Exhibit No. 2008" and is included in the appendix on p. 7069.)

Mr. TAYLOR. This excerpt reads as follows [reading]:

The appointment of Coverdale & Colpitts was authorized at a meeting of the directors on January 7, 1925, and the resolution recites that the action was taken at the request of the company's bankers. It was at this meeting that the confidential special report of the road's officers was presented to the directors. Ostensibly Coverdale & Colpitts were retained by the railroad; as an actual matter they were working for the bankers, who prepared a questionnaire for them.

Mr. Hanauer, that does clearly refer to the time we are speaking of, does it not, the time of the initial employment to make a survey of the problem, and not to any subsequent time when they were employed in connection with the reorganization, whether you agree with the finding or not?

Mr. HANAUER. It would seem to. I think that covers a remark I made yesterday, that some of the Commission's findings, after weeks of voluminous testimony——

Mr. TAYLOR. Do you agree with the finding?

Mr. HANAUER. That they were working for us at that time?

Mr. TAYLOR. That they were acting under your direction.

Mr. HANAUER. They were not acting under our direction. They were simply furnishing me with a list of the kind of information necessary to have the bankers decide whether they could do anything about refunding these notes. I might say that there never was any question

in anybody's mind at that time that one could go out and sell a new St. Paul obligation to the public, but just a little time before that the New Haven had a similar situation——

Mr. TAYLOR. And they had been retained in that case?

Mr. HANAUER. We were instrumental in doing that, and we were in hopes that that report would justify going to those noteholders and saying, "If you extend for 3 or 4 or 5 years, there is a good chance of getting your money and your interest in the meantime." It had been done successfully in the New Haven case, and also on the report of Coverdale & Colpitts.

Mr. TAYLOR. By the time that report of Coverdale & Colpitts was completed and printed, the St. Paul company had been for several weeks, at least, in the hands of receivers, had it not?

Mr. HANAUER. I do not know when it was printed.

Mr. TAYLOR. I have the report here. I believe it is dated March 16

Mr. HANAUER. Yes, sir.

Mr. TAYLOR. Two days before the receivership. But I think there is other evidence that the printing was not completed until some days after the company was in receivership. This report is addressed to Mr. Byram, as president of the Chicago, Milwaukee & St. Paul, and it states at the outset:

Acting under the authority of the Board of Directors we have made an examination of the affairs of the St. Paul.

The company being in the hands of receivers when this was gotten out in final form, was it for the receivers who were then in control of the property or for the old director, or for Mr. Byram, to make distribution of the copies of that report? Who controlled the distribution of the copies of that report?

Mr. HANAUER. They were employed by the board of directors. This was simply the physical completion of that report. The public statement on the subject was made by the directors on March 17, 1925.

Mr. TAYLOR. Yes. My only question is: When copies of the report were finally embodied in this volume, who controlled the distribution of the copies of that report?

Mr. HANAUER. I cannot remember who controlled it. I know that I was able to get copies, and anyone else could who had a legitimate reason for wanting them.

Mr. TAYLOR. Mr. Chairman, I offer for the record a copy of a typewritten list from the files of Kuhn, Loeb & Co., indicating that 1 typewritten original and 99 printed copies were received by Kuhn, Loeb & Co., from Coverdale & Colpitts, apparently about the end of April 1925.

Senator TRUMAN. It may be received.

(The list referred to was marked "Exhibit No. 2009" and is included in the appendix on p. 7069.)

Mr. TAYLOR. Mr. Hanauer, I will ask——

Mr. HANAUER. To save you time, I have not even read this, but I will take it, because there was not any secret about it at that time.

Mr. TAYLOR. The report at this time was not public property, was it?

Mr. HANAUER. I would not say exactly that it was public property, because you could not give it to everybody, who had no interest, but

anybody with any reasonable interest—if you are referring to the Jameson matter, let us get right to it.

Mr. TAYLOR. Can I get to it in a second, Mr. Hanauer? I believe I will get there expeditiously. But I will ask you if it does not appear from the list that the distribution of these copies was under Kuhn, Loeb & Co.?

Mr. HANAUER. I have not the least idea who else got them from the source—maybe many and maybe nobody. All I know is that these are the ones we distributed.

Mr. TAYLOR. I also offer for the record, Mr. Chairman, a copy of a telegram from Mr. Colpitts to Mr. W. R. Freeman, of Denver, Colo., dated June 13, 1925.

Senator TRUMAN. It may be received.

(The telegram referred to was marked "Exhibit No. 2010" and is included in the appendix on p. 7070.)

Mr. TAYLOR. This telegram reads as follows:

All copies report in hands of bankers for distribution when they see fit will ask they give you consideration.

I will ask whether that refreshes your recollection as to whether your house did not control the distribution of all the copies of the Coverdale & Colpitts report.

Mr. HANAUER. If 100 were all that were printed, we did.

Mr. TAYLOR. Mr. Colpitts says, "All."

Mr. HANAUER. I am perfectly willing to take Mr. Colpitt's word. This list shows, of course, that Mr. Jameson did get one, according to that list.

Mr. TAYLOR. Yes; this does show that.

Mr. SWAINE. Has this list gone in the record?

Mr. TAYLOR. I have offered it.

Mr. SWAINE. It ought to appear that it went right to the Interstate Commerce Commission and to the President, among others.

Mr. TAYLOR. At that time was Mr. Hoover President of the United States?

Mr. SWAINE. No; he was Secretary of Commerce.

Mr. TAYLOR. Did a copy also go to the President, Mr. Swaine? I see you have noted here "May 20th, 1925, two sent to Cravath, Henderson & de Gersdorff, for Washington."

Mr. SWAINE. I had a vague recollection that the Executive office asked for one.

Mr. HANAUER. I think they went to the Treasury, because they owed them $55,000,000, and we thought they ought to have it.

Mr. SWAINE. My recollection is that I got one pursuant to some request from the Executive office, and sent one. But you are right. Mr. Hoover was Secretary of Commerce, not President.

Mr. TAYLOR. Mr. Hanauer, I want to ask why it was, if this report was addressed to Mr. Byram, who was formerly president and then a receiver, with the authority of the board of directors, that apparently all the copies of the report, when it was printed, were put into the hands of the bankers for them to determine who should get copies.

Mr. HANAUER. I can only guess at it at this late date, but I can only imagine that the company, being in the hands of the receiver, and having by letter asked us to cummunicate with security holders

and try to bring them together, Mr. Colpitts thought that was the proper place to send them.

Mr. TAYLOR. Mr. Chairman, I also offer for the record a copy of a letter dated June 23, 1925, from Mr. Colpitts to Mr. Howard Elliott, chairman of the Northern Pacific Railway Co.

Senator TRUMAN. It may be received.

(The letter referred to was marked "Exhibit No. 2011" and is included in the appendix on p. 7070.)

Mr. TAYLOR. This letter reads as follows [reading]:

I have just returned to the city and find your letter of the 15th instant.

Unfortunately my hands have been completely tied by the bankers in respect to the distribution of our report on the Milwaukee and we have not been permitted to give out a single copy. I think myself there are items in the report that would be of interest particularly to you and nothing would please me more than to reciprocate the kindness you showed us in giving us your figures in advance of publication by presenting you with a copy of our Milwaukee report.

Perhaps if you would yourself make the request of Mr. Hanauer he would give you a copy for your confidential use.

Mr. HANAUER. Did he make the request?

Mr. TAYLOR. I do not think his name is on the list.

Mr. HANAUER. He probably never asked for it. That simply shows that the thing was being centralized.

Mr. LOWENTHAL. Would you be inclined to think that perhaps your earlier recollection or intimation that there may have been copies other than those——

Mr. HANAUER. I have already testified to this. If 100 were all, we must have gotten them all. I do not remember whether there were 100 or 200.

Mr. TAYLOR. Mr. Chairman, I also offer for the record two letters, one being dated May 7, 1925, and the other being undated——

Mr. HANAUER. The gist of this was given to the press.

Mr. TAYLOR (continuing). To and from Mr. Samuel H. Fisher, a director of the property.

Senator TRUMAN. They may be received.

(The letters referred to were marked "Exhibits Nos. 2012 and 2013" and are included in the appendix on p. 7070.)

Mr. TAYLOR. Mr. Hanauer, you have made reference to the efforts of Mr. Jameson to obtain a copy of that report.

Mr. HANAUER. Yes.

Mr. TAYLOR. Mr. Chairman, I offer for the record a copy of a letter dated April 22, 1925, from Mr. Jameson to Mr. Byram or Mr. R. J. Marony.

Senator TRUMAN. It may be received.

(The letter referred to was marked "Exhibit No. 2014" and is included in the appendix on p. 7071.)

Mr. TAYLOR. This letter reads as follows [reading]:

I am informed that the Coverdale and Colpitts report on the St. Paul property is in type and will shortly be finished. Representing one of the largest interests I beg to ask how I can obtain a copy of this report as soon as it is presented.

I also offer a copy of a telegram from Mr. Byram to Mr. Jameson, dated April 30, 1925.

Senator TRUMAN. It may be received.

(The telegram referred to was marked "Exhibit No. 2015" and is included in the appendix on p. 7071.)

Mr. TAYLOR. This telegram reads as follows [reading]:

Please give my letter of April 22 regarding Coverdale report immediate attention. Would like to have it by Monday.

Mr. HANAUER. What was that date?

Mr. TAYLOR. April 30, 1925. That was about a week after the first letter. And I also offer, Mr. Chairman, a copy of a telegram from Mr. Byram to Mr. Jameson, dated May 1, 1925.

Senator TRUMAN. It may be received.

(The telegram referred to was marked "Exhibit No. 2016" and is included in the appendix on p. 7071.)

Mr. TAYLOR. This telegram reads as follows [reading]:

New York, N. Y., letter and telegram regarding Coverdale report received am writing you today.

I also offer, Mr. Chairman, a copy of a letter from Mr. Byram to Mr. Jameson, dated May 1, 1925.

Senator TRUMAN. It may be received.

(The letter referred to was marked "Exhibit No. 2017" and is included in the appendix on p. 7071.)

Mr. TAYLOR. This letter reads as follows [reading]:

Referring to your letter of April 22nd and telegram date in regard to the Coverdale & Colpitts report: I have only received one typewritten copy of same.

I believe it is not the intention to make a general distribution of the report in question at the present time, but understand a few proof copies of same have been printed and turned over to the bondholders' committee for consideration and study.

I suggest you confer with Mr. Frederick H. Ecker, Chairman of the above committee, who will, no doubt, be in a position to furnish you with a copy or satisfactory information in regard to it.

I also offer, Mr. Chairman, a copy of a telegram dated May 5, 1925, from Mr. Jameson to Mr. Byram.

Senator TRUMAN. It may be received.

(The telegram referred to was marked "Exhibit No. 2018" and is included in the appendix on p. 7072.)

Mr. TAYLOR. This telegram reads:

Ecker says he has only one copy and politely refuses inspection where are other copies. Please wire Coverdale to furnish me copy.

I also offer, Mr. Chairman, a copy of a telegram dated May 6, 1925, from Mr. Byram to Mr. Hanauer.

Senator TRUMAN. It may be received.

(The telegram referred to was marked "Exhibit No. 2019" and is included in the appendix on p. 7072.)

Mr. TAYLOR. This telegram reads as follows [reading]:

Jameson insists on having copy Colpitts report. Says Ecker declined let him have it but claims has legal right be furnished with copy because we have furnished other bondholders with same. Threatens form another committee. Have promised him definite answer tomorrow. Please advise.

Mr. HANAUER. What is the date of that?

Mr. TAYLOR. May 6, 1925.

I also offer, Mr. Chairman, a copy of a telegram dated May 7, 1925, from Mr. Hanauer to Mr. Byram.

Senator TRUMAN. It may be received.

(The telegram referred to was marked "Exhibit No. 2020" and is included in the appendix on p. 7072.)

Mr. TAYLOR. This telegram reads as follows [reading]:

Have spoken to Ecker who tells me he and you have discussed matter by telephone whatever he arranges will be agreeable to me.

I also offer, Mr. Chairman, copies of two letters, dated, respectively, May 8, 1925, and May 15, 1925, between Mr. Byram and Mr. Jameson, indicating that Mr. Jameson got his copy.

Senator TRUMAN. They may be received.

(The letters referred to were marked "Exhibits Nos. 2021 and 2022" and are included in the appendix on pp. 7072–7073.)

Mr. HANAUER. These letters show that the first I knew about it was on May 6, and on May 8 he got his copy. All these copies were not sent to us at one time, and it is quite true that there were only a few available at first. I see here a memorandum, the date of which does not show, to the effect that first a certain number were received, and then, at the end, 75 were received.

Mr. TAYLOR. Yes.

Mr. HANAUER. So, there was no delay after I heard about it, in Mr. Jameson getting a copy.

Mr. SWAINE. This memorandum would seem to indicate—I do not know whether it is a fact—that we did not get the real supply until May 7.

Mr. TAYLOR. Seventy-five copies.

Mr. SWAINE. Yes. We did not get the real supply until that date; and that Mr. Jameson got his copy the day after we got our real supply of printed copies.

Mr. TAYLOR. Mr. Hanauer, does it not appear from the correspondence in regard to furnishing Mr. Jameson a copy, that although the report was addressed to Mr. Byram and made under authority of the St. Paul board, he felt that the decision as to whether Mr. Jameson should get one or not was up to you?

Mr. HANAUER. He evidently felt that way, according to these letters.

Mr. TAYLOR. You referred the matter to Mr. Ecker, did you not? You did not tell Mr. Byram that that was within his discretion to decide.

Mr. HANAUER. No; but very evidently, from what you have read—I cannot remember exactly what happened—Mr. Jameson first had approached Mr. Ecker, and then I called up Mr. Ecker. Evidently I must have said, "I do not see why he should not get one," because immediately he did get one.

Mr. TAYLOR. Your telegram to Mr. Byram said that if it was all right with Mr. Ecker it was all right with you.

Mr. HANAUER. That is the answer; and undoubtedly I spoke to Mr. Ecker about it. He may have asked what I thought about it, and I said I did not see why he should not get one. The fact is that on May 6 I got the telegram, and on May 8th he got his copy. I am sorry if anybody else had any misgivings about it. I do not remember just how many were available on those particular days, but the fact is without any delay at all, after I heard about it Mr. Jameson got his copy.

Mr. TAYLOR. Mr. Chairman, I also offer a letter dated February 6, 1925, to Mr. Samuel H. Fisher, from New York Trust Co.

Senator TRUMAN. It may be received.

(The letter referred to was marked "Exhibit No. 2023" and is included in the appendix on p. 7073.)

Senator TRUMAN. We are through with this group temporarily now.

FURTHER TESTIMONY OF MERREL P. CALLAWAY, VICE PRESIDENT, GUARANTY TRUST CO., NEW YORK, AND STATEMENT OF EDWIN S. S. SUNDERLAND, A MEMBER OF THE LAW FIRM OF DAVIS, POLK, WARDWELL, GARDINER & REED, NEW YORK

Senator TRUMAN. Mr. Callaway, will you please give the name of the gentleman with you to the reporter?

Mr. CALLAWAY. Mr. Edwin S. S. Sunderland, a member of the law firm of Davis, Polk, Wardwell, Gardiner & Reed.

Senator TRUMAN. You have been sworn, Mr. Callaway?

Mr. CALLAWAY. I have appeared a number of times.

Mr. LOWENTHAL. Mr. Callaway, will you please state your official position?

Mr. CALLAWAY. I am a vice president of the Guaranty Trust Co. of New York, and my particular position is head of the trust department.

Mr. LOWENTHAL. During the period of the previous receivership of the St. Paul Railway, from March 1925 to January 1928, what was your official position?

Mr. CALLAWAY. That was my position at that time.

Mr. LOWENTHAL. In charge of the corporate trust department?

Mr. CALLAWAY. In charge of the trust department, which includes the corporate trust department.

Mr. LOWENTHAL. That includes the work of Guaranty Trust Co. as trustee under corporate mortgages, as registrar, and in similar capacities?

Mr. CALLAWAY. That is right; the fiduciary capacities.

Mr. LOWENTHAL. Mr. Callaway, at the time that the St. Paul Railway went into receivership in 1925, the Guaranty Trust Co. was corporate trustee for the holders of one of the bond issues of that railway?

Mr. CALLAWAY. Yes, sir.

Mr. LOWENTHAL. And you were individual trustee?

Mr. CALLAWAY. I was an individual trustee.

Mr. LOWENTHAL. Were you appointed as individual trustee at a time when you were an officer of the Guaranty Trust Co.?

Mr. CALLAWAY. Yes. I succeeded Mr. Hemphill, the president of the bank, who died about 1921, I think. I was shortly thereafter made the individual trustee.

Mr. LOWENTHAL. When matters were taken up with the Guaranty Trust Co. on the subject of the receivership of 1925, or by Guaranty Trust Co. in its capacity as corporate trustee under that mortgage, they were taken up either with you, as the head of the trust department, or with some one of your subordinates, is that correct?

Mr. CALLAWAY. Yes. They were very largely taken up with me.

Mr. LOWENTHAL. Or with the counsel of Guaranty Trust Co.?

Mr. CALLAWAY. Yes. Some things would be with counsel of the Guaranty Trust Co., but most of the business matters came to me.

Mr. LOWENTHAL. Counsel for the Guaranty Trust Co. in that matter were who?

Mr. CALLAWAY. Davis Polk Wardwell Gardiner & Reed; and the matter was handled by Mr. Sunderland, of that firm, who is here with me now.

Mr. LOWENTHAL. Mr. Callaway, had you heard at all of some testimony here yesterday—I think in part or in whole by Mr. Swaine—on the question of law firms which have the largest present participation in railroad reorganizations? [1]

Mr. CALLAWAY. No. I think I should make a statement at this point in justice to myself and in justice to this committee. I knew nothing whatever about the fact that I or anyone of our bank might be called down here until Saturday afternoon, when one of your associates telephoned Mr. Burke, of our office, and said that they were going to reach this afternoon that part of the St. Paul investigation that would touch the Guaranty Trust Co., and perhaps we would like to be present. Of course, that was after banking hours. I was not there. They reached me late that afternoon. Mr. Sunderland had gone out to the funeral of Lansing Reed, one of his partners, so there was nothing we could do. We got Mr. Burke to get up some of the papers, which Mr. Sunderland wished to go over on Sunday. We could not both go over them, and on Monday we undertook to find out what we could, but we did not know what line we were going to be examined on. About 2 o'clock, again one of your associates, Mr. Hilmer, asked me definitely to come. They had stated that it would be optional with us, but they would like for me to be down here, and would ask me to come. I said to him, "I have only a few hours, and this was 12 years ago. I would like to know, as much as I can, what you are going to talk about." He was very courteous about it. He said that he would try to get it. Late that afternoon he telephoned me two or three special subjects. I merely mention that because I do not want to be put in the attitude of not trying to answer, or of having forgotten something. I want to tell you the whole thing. I did not hear that testimony. I was not here.

Mr. LOWENTHAL. Your comments followed my question with respect to the testimony of yesterday. I assumed that probably you had not heard it.

Mr. CALLAWAY. I have not heard it.

Mr. LOWENTHAL. In brief, as I remember the testimony, it was to the effect that perhaps the law firm of Davis Polk Wardwell Gardiner & Reed is connected with or has a participation in more railroad receiverships at the present time than any other law firm that was mentioned in the course of the testimony, and more, perhaps, than the law firm of Cravath, de Gersdorff, Swaine & Wood.

Mr. CALLAWAY. I suspect that is true. I would not like to answer for Mr. Sunderland, but I think probably that is true.

Mr. LOWENTHAL. I think there was an indication that that was partly due to the fact that the same law firm are attorneys for J. P. Morgan & Co., and especially for the Guaranty Trust Co. of New York.

Mr. CALLAWAY. I think it dates back to the fact that perhaps one of the greatest corporation lawyers in the country was Mr. Stetson.

[1] See supra, p. 6785.

He was the head of this firm, and naturally that work had grown up around that office.

Mr. LOWENTHAL. Mr. Sunderland, would your own impression of the extent to which your law firm and such other law firms as you know of are participating in railroad reorganizations at the present time, be generally in accord with what I said a moment or two ago, as to what I remembered the testimony of yesterday showed?

Mr. SUNDERLAND. I rather think so, as you have been speaking. I did not hear the testimony, or hear about the testimony of yesterday. I think that that is probably so, for the reason that the Guaranty Trust Co., particularly, was in the field of acting under railroad corporate indentures for a very long time, or companies that were merged with it, and naturally, as a result of those relationships, and our acting generally for them, I should say that we were drawn into an activity that was generally as active as that of any other firm. I never have thought about it on a comparative basis with other firms. I have never given the subject any real consideration.

Mr. LOWENTHAL. Would it be much trouble to you, Mr. Sunderland, to supply for the record at your convenience a list of the railroads in connection with the reorganization of which your law firm is participating or acting?

Mr. SUNDERLAND. At the present time?

Mr. LOWENTHAL. Yes; during the present period.

Mr. SUNDERLAND. Yes; I shall be very glad to do that.

Mr. LOWENTHAL. Thank you.

FEES OF GUARANTY TRUST CO. AND ITS COUNSEL IN CONNECTION WITH 1925–1928 RECEIVERSHIP AND REORGANIZATION OF THE ST. PAUL

Mr. LOWENTHAL. Mr. Callaway, the Guaranty Trust Co., as corporate trustee under the mortgage you mentioned a little while ago, and yourself as individual trustee, participated in the court proceedings in connection with the receivership and reorganization of the St. Paul Railway in the period from 1925 to 1928.

Mr. CALLAWAY. Yes; we filed a bill for foreclosure on the general refunding mortgage and the various mortgages under it, and, of course, followed right on through.

Mr. LOWENTHAL. Mr. Callaway, do you remember in what capacities, if any, the Guaranty Trust Co. participated in any way in connection with the reorganization which became effective in 1928, of the St. Paul Railway?

Mr. CALLAWAY. Exactly what do you mean, Mr. Lowenthal? Of course, we were the moving bond trustee, as far as the proceedings to a final decree were concerned. I am not quite sure that I understand the scope of your question, as to what part we took in the reorganization.

Mr. LOWENTHAL. Specifically, in the proceedings to bring the property to foreclosure so that it could be turned over to a reorganized company, the Guaranty Trust Co. and yourself as individual trustee took the principal part. Is that a fair statement?

Mr. CALLAWAY. We did not in the reorganization plan. We had nothing to do with that.

Mr. LOWENTHAL. But in the receivership proceeding you took the leading part in bringing the property to foreclosure.

Mr. CALLAWAY. We did.

Mr. LOWENTHAL. At which foreclosure it was bought in for the purposes of effectuating the Kuhn, Loeb-National City Co. reorganization plan.

Mr. CALLAWAY. It was put up for sale and sold at public outcry. It was what you referred to as the Kuhn, Loeb-National City plan under which the property was bought in, and the final distributions made, but it was not pitched with any idea—the scope of our proceedings had nothing to do with the plan.

Mr. LOWENTHAL. Your bank acted as depositary for the so-called Ecker bondholders' committee, which was supporting the Kuhn, Loeb-National City Co. plan; is that correct?

Mr. CALLAWAY. Yes, sir. I think we acted in two capacities, did we not? You have gotten some papers from our files——

Mr. LOWENTHAL. You acted as registrar——

Mr. CALLAWAY. My recollection is that we were first asked to act as depositary by Mr. Ecker's bondholders' committee. They were the committee of the particular general and refunding bonds of which we were trustee, and there were no bonds deposited under that, I think, if I recall correctly. Later, when the plan came out, the reorganization managers had the disposition of that matter, did they not? I am not sure, but they then appointed us as depositary for bonds under the plan, under which the deposit of bonds was called for.

Mr. LOWENTHAL. I should like to have noted for the record, Mr Callaway, certain figures with respect to the fees in connection with the activities of the Guaranty Trust Co. and yourself and your counsel. Specifically, the Guaranty Trust Co., for its work in that receivership, was allowed a fee of $125,000. Am I correct in that?

Mr. CALLAWAY. That is right.

Mr. LOWENTHAL. As trustee under the mortgage which had been in existence prior to the receivership, and which was being foreclosed in the receivership.

Mr. CALLAWAY. That is correct.

Mr. LOWENTHAL. For your services as individual trustee under that same mortgage you were allowed a fee of $25,000.

Mr. CALLAWAY. Yes, sir.

Mr. LOWENTHAL. Counsel for the Guaranty Trust Co., as corporate trustee under that mortgage, and for yourself as individual trustee, were several in number; is that correct—one in New York, one in Chicago——

Mr. CALLAWAY. And one in four other, I think, of the various judicial circuits.

Mr. LOWENTHAL. Do you remember that the fees for the firm of Davis Polk Wardwell Gardiner & Reed, as counsel for the foreclosing mortgage trustees in that receivership, were fixed at $250,000?

Mr. CALLAWAY. To the best of my recollection that is correct.

Mr. LOWENTHAL. And the fees for your Chicago law firm, the firm that was representing you in Chicago, were fixed at $75,000.

Mr. CALLAWAY. As to the fees of the other counsel, if you have a memorandum you might read it into the record, because I do not remember what they got.

Mr. SUNDERLAND. That is my recollection of the correct amount.

Mr. LOWENTHAL. I will not trouble for the moment with the other counsel who represented the Guaranty Trust Co. in some of the other jurisdictions. In addition to that the Guaranty Trust Co. received

fees as depositary of the Ecker bondholders' committee, which was supporting the Kuhn, Loeb-National City Co. reorganization plan; is that correct?

Mr. CALLAWAY. Yes, sir.

Mr. LOWENTHAL. Our figures show that the fees received by Guaranty Trust Co. as depositary were $139,629.07. Would that conform to your general recollection?

Mr. CALLAWAY. That must be approximately right. I think we got about $1.85 a bond, or something like that.

Mr. LOWENTHAL. You were paid on the basis of so much per bond deposited in support of the reorganization plan?

Mr. CALLAWAY. Not quite that. I am only speaking from recollection, because I had nothing to do with that depositary fee. My recollection is that it was taken up by the reorganization managers with Mr. B. W. Jones, who was then vice president of the Bankers Trust Co., and he took it up with us, and from that time on he rather handled the matter, and when it came to the question of fixing those fees by getting an agreement with the reorganization managers who, under that plan, had charge of that particular thing, the various services we performed were cast up. There was what you might call a schedule——

Mr. LOWENTHAL. In general, was it not based upon the volume of deposits of bonds?

Mr. CALLAWAY. And the amount of work that was done, because there is a great deal of work that goes on on those things. Each one of these banks cast up the amount of work that was done, and that was translated into a round figure, for mere convenience, which, in our case, amounted to $1.85 a bond.

Mr. LOWENTHAL. Other New York banks were depositaries in connection with the Kuhn, Loeb-National City Co. reorganization plan, is that correct?

Mr. CALLAWAY. The other banks were depositaries of the issues for which they happened to be trustees, as we were. That is the general custom.

Mr. LOWENTHAL. Do you remember whether or not the Guaranty Trust Co. received the largest depositary fee that any bank received for depositary work under that plan?

Mr. CALLAWAY. We should have. We represented over 400 million dollars of bonds.

Mr. LOWENTHAL. When you say you represented them, you mean——

Mr. CALLAWAY. That much came under our mortgage.

Mr. LOWENTHAL. You were not paid, were you, as trustee under the mortgage when you were paid as depositary?

Mr. CALLAWAY. No; but what I meant to say was that it would produce more bonds. Naturally, the biggest issue was going to have more bonds deposited, and there was going to be more work done.

Mr. LOWENTHAL. The point is that the Guaranty Trust Co., as depositary, having received more bonds under the Kuhn, Loeb-National City Co. plan than any of the other depositaries, would naturally receive larger compensation.

Mr. CALLAWAY. And probably did.

Mr. LOWENTHAL. As depositary.

Mr. CALLAWAY. And probably did. I have not the figures available.

Mr. LOWENTHAL. In addition to the fees as trustee under the mortgage that was being foreclosed, and as depositary, the Guaranty Trust Co. received fees as one of the registrars of certificates of deposit issued in connection with the Kuhn, Loeb-National City Co. reorganization plan, is that correct?

Mr. CALLAWAY. I do not recollect that, sir.

Mr. LOWENTHAL. Our figures show—and these are all subject to your correction, which we will be very glad to have if you find any errors——

Mr. CALLAWAY. I assume you are right.

Mr. LOWENTHAL. Our figures show that as one of the registrars under the reorganization plan the Guaranty Trust Co. received $11,318.43.

Mr. CALLAWAY. It may be on certificates of deposit issued by some other bank. Under the New York rule, with which you are very familiar, in order to have these certificates traded in, they must be not only issued and signed by the trustee, but must be registered, and we probably were registrar for the Bankers or some of these other trustees—I do not know which one. But I had forgotten it, sir.

Mr. LOWENTHAL. Mr. Callaway, when the property was reorganized in 1928 the Guaranty Trust Co. was appointed trustee under a new mortgage created under that reorganization plan.

Mr. CALLAWAY. Yes, sir.

Mr. LOWENTHAL. And it received a fee—I do not know whether you would call it an initial fee or what—as trustee under that mortgage, is that correct?

Mr. CALLAWAY. Yes. Under the new mortgage we received our primary fee, as it is technically known, as an authentication fee, for the preparation and the issue of the new bonds.

Mr. LOWENTHAL. That is the first fee received when a new mortgage is created.

Mr. CALLAWAY. That is right.

Mr. LOWENTHAL. And thereafter the trustee under the mortgage receives further compensation from time to time for further work.

Mr. CALLAWAY. For annual services.

Mr. LOWENTHAL. Are we correct in stating that the fee for the primary service was $62,190?

Mr. CALLAWAY. That ought to be right.

Mr. LOWENTHAL. Mr. Callaway, you may be much quicker at computing——

Mr. CALLAWAY. We got 50 cents apiece, and there were a little over $100,000,000 of those bonds.

Mr. LOWENTHAL. Everything else being equal, the larger the bond issue the larger the amount of the fee for the primary or authenticating service.

Mr. CALLAWAY. Yes, sir. Of course, we did not have the largest issue on the reorganization, by any means.

Mr. LOWENTHAL. We are coming to that, Mr. Callaway. That was a regrettable circumstance.

Mr. CALLAWAY. That was our hard luck; yes.

Mr. LOWENTHAL. You sometimes get hard luck in these things and sometimes better luck.

Mr. CALLAWAY. Yes; of course.

Mr. LOWENTHAL. You sometimes get the best issue of a reorganization.

Mr. CALLAWAY. We had it before. We had the best issue under the old set-up. We had the largest mortgage, but we did not under the reorganization.

Mr. LOWENTHAL. You got the second best issue on the reorganization.

Senator TRUMAN. Who got the best one?

Mr. CALLAWAY. It went to the National City Bank, I think.

Mr. LOWENTHAL. We will come to that, Mr. Callaway, and there will be some indication of the grief involved in that situation.

Perhaps you would care to follow me as I compute the fees. As trustee under the mortgage which was being foreclosed, Guaranty Trust received $125,000. As depositary for the bondholders committee in aid of the Kuhn, Loeb-National City Co. reorganization plan, Guaranty Trust received approximately $139,600.

Mr. CALLAWAY. I thought you said it was $156,000.

Mr. LOWENTHAL. $139,629.07.

Mr. CALLAWAY. I beg your pardon—for the depositary fee, including out of pocket expenses of $4,974.29.

Mr. LOWENTHAL. As one of the registrars in aid of that plan of reorganization the Guaranty Trust received some $11,300; and for a primary fee as trustee under one of the newly created mortgages, created under that reorganization plan, the Guaranty received a little over $62,000. I total those figures at approximately a third of a million dollars. You were not taking notes.

Mr. CALLAWAY. If it is three hundred thousand-and-odd dollars it would be a third of a million.

Mr. LOWENTHAL. About $335,000 or $340,000, or something like that.

Mr. CALLAWAY. That is about right.

Mr. LOWENTHAL. Excluding the fees paid to counsel for the Guaranty Trust Co. in the ancillary jurisdictions, and taking only the fees paid to what perhaps might be called the primary or principal counsel for Guaranty, and the fees to their Chicago counsel, the total payments for their services in connection with the reorganization as counsel for Guaranty Trust Co., and yourself, Mr. Callaway, under the mortgage which was being foreclosed, were $325,000.

Mr. CALLAWAY. That is correct, sir.

Mr. LOWENTHAL. And including the fees in the ancillary jurisdictions paid to Guaranty Trust counsel, the total would be in the neightborhood of a third of a million for counsel.

Mr. CALLAWAY. I do not know what those others got, but if you have the figures there you can very quickly put them down.

THE ADDITIONAL $25,000 FEE TO AN OFFICER OF GUARANTY TRUST CO. AS INDIVIDUAL TRUSTEE

Mr. LOWENTHAL. In addition, Mr. Callaway, I think you testified a few minutes ago that you received individually $25,000 as the individual trustee under the mortgage which was being foreclosed.

Mr. CALLAWAY. That is right.

Mr. LOWENTHAL. Or perhaps you did not testify to it.

Mr. CALLAWAY. I did receive $25,000.

Mr. LOWENTHAL. Mr. Callaway, is there any rule or practice among New York banks or other banks doing this class of corporate trust work or is there any rule at the Guaranty, under which those fees received by officers of the banks as individual trustees are turned over to the banks?

Mr. CALLAWAY. No, sir. This fee came absolutely straight to me. It was paid to me and I received it and kept it.

Mr. LOWENTHAL. You kept all of it?

Mr. CALLAWAY. Yes. They were paid their fee.

Mr. LOWENTHAL. And no officer of the bank or no employee received any of that $25,000?

Mr. CALLAWAY. None whatever.

Mr. LOWENTHAL. Mr. Callaway, is that the practice, in general, of New York banks performing this class of service?

Mr. CALLAWAY. It would be, I take it, where one of the officers happens to be an individual trustee.

Mr. LOWENTHAL. Is it correct to say that the reason there is an individual trustee is that under the laws of some States through which the railroads run it is sometimes necessary to have title in an individual?

Mr. CALLAWAY. That is correct.

Mr. LOWENTHAL. And the reason, therefore, for some bank official being named as individual trustee, along with his bank as corporate trustee, is to meet that problem under State statutes?

Mr. CALLAWAY. Yes. They are more frequently outsiders than officers of a bank, but frequently some individual trustee is an officer of the bank.

Mr. LOWENTHAL. In the case of the big issues in which the Guaranty Trust Co. has been appointed as trustee within the last one or two or three decades, in general has it been the case that if there was an individual trustee it was an officer of the Guaranty Trust Co.?

Mr. CALLAWAY. If it was, it was only because the corporation asked. We have never asked for that; and I am not prepared to say whether under the existing indentures there are as many officers of banks who are trustees as there are outsiders. I would think it was the contrary, but I am not sure about that.

Mr. LOWENTHAL. Did you perform any substantial amount of service as an individual trustee which was additional to the services that you performed or could have performed as an officer of the Guaranty Trust Co. acting as corporate trustee?

Mr. CALLAWAY. I should say so. I am glad to get a chance to tell you, sir.

Mr. LOWENTHAL. Will you, please?

Mr. CALLAWAY. Yes. The Guaranty Trust Co. did not assume any particular responsibility. I was just as responsible for everything that happened as an individual trustee as the Guaranty Trust Co. was, and I made it my business to go over personally everything that was done and every matter of policy that was adopted, whereas under ordinary circumstances that would have been done more largely by some of my colleagues. Of course, you appreciate the fact that in a bank like ours I do not handle ordinarily any matter from the beginning to the end. All I know about it is with respect to the matter of policy we adopt. Those matters are handled by the other officers. But in this case I was the individual trustee, and I was just as responsible as the bank was, and I personally went over every item that affected the policy, because I was an individual trustee, and I was

just as responsible as the bank was from the very beginning. We had to go over this tremendous amount of work to try to determine, in getting up our bill of complaint, where there had been changes in the property and additional property taken on, and in order to see what sort of title we had, because finally getting down to the title is the main thing in an equity proceeding, and the trustees are directed to see that you finally get an absolutely correct title to the property that is to be foreclosed, so it can be sold. And I assure you, Mr. Lowenthal, that feeling my own responsibility in that business, I personally made that my job, to handle that from the beginning to the end. Whatever I did in one case, of course, was done——

Mr. LOWENTHAL (interposing). Now, Mr. Callaway, I want to get that clear, that whatever you did as individual trustee you did also for the Guaranty Trust Co. as corporate trustee?

Mr. CALLAWAY. In an entirely separate capacity.

Mr. LOWENTHAL. But the work and the results were the same for both; is that it?

Mr. CALLAWAY. I would not have had to do it if I had not been trustee, only in a small degree.

Mr. LOWENTHAL. Who would have done it?

Mr. CALLAWAY. Mr. Burke. I would not have had to go through all that. But there was my responsibility as a trustee. And bear this in mind, that under the indenture itself it provides that up until the time of default the work of administration is done by the corporate trustee; and if you will examine that indenture you will see that it provides that after default all of those duties shall be performed by the trustees and that the trustees shall be compensated for that work, the individual trustee just as much as the corporate trustee. Any one that had a high sense of duty would have done it, the bank or the individual trustee. If I had not been individual trustee it would have been handled by somebody else in the bank——

Mr. LOWENTHAL. That is, one of your subordinates?

Mr. CALLAWAY. Yes.

Mr. LOWENTHAL. It was a discharge of the duty of the bank of which you were the head? Is that a fair statement?

Mr. CALLAWAY. Yes; so far as the bank was concerned.

Mr. LOWENTHAL. Whatever any subordinate of yours did was being done for the bank, and what you did was being done by you as individual trustee?

Mr. CALLAWAY. Except that I do not direct. I cannot direct the things that are done by my subordinates.

Mr. LOWENTHAL. Are you in charge of the trust department?

Mr. CALLAWAY. I am.

Mr. LOWENTHAL. And men like Mr. Burke are subordinates in the trust department?

Mr. CALLAWAY. They are. But please remember this, that we have much more than a thousand corporate trusts in the bank. It takes 1,200 employees to attend to that business; and as for my giving them directions what to do with reference to a particular thing, unless it involved a matter of policy, unless it is a matter where they are trained to believe that it is of sufficient importance to bring to me, or to be referred to the president or the chairman, I do not have to handle those individual things, and I do not know what goes on.

Mr. LOWENTHAL. Let us take the case of the discharge of some important duty in connection with one of these corporate trusteeships. Suppose it is so important that the head of the trust department will have to be consulted. Then some subordinate would take it up to you, would he not?

Mr. CALLAWAY. That is right.

Mr. LOWENTHAL. And you would pass upon it as head of the trust department of the bank?

Mr. CALLAWAY. And I may or may not take it up with the president or the chairman.

Mr. LOWENTHAL. At the same time you would pass upon it as individual trustee?

Mr. CALLAWAY. Yes.

Mr. LOWENTHAL. Were you appointed the individual trustee under the mortgage or one of the mortgages in connection with the reorganization of the St. Paul?

Mr. CALLAWAY. Have you the papers here? I don't remember.

Mr. SUNDERLAND. Yes; he was.

Mr. LOWENTHAL. And the bank was appointed under these new reorganization mortgages?

Mr. CALLAWAY. What is known as the 50-year 5-percent bond.

Mr. LOWENTHAL. The Guaranty was appointed as corporate trustee and you as individual trustee?

Mr. CALLAWAY. That is right.

Mr. LOWENTHAL. Do you remember whether the mortgage in that case contained provisions that would prevent the individual trustee from getting a fee in case of a foreclosure of the mortgage?

Mr. CALLAWAY. If it does, I am not aware of it.

Mr. LOWENTHAL. Do you remember that, Mr. Sunderland?

Mr. SUNDERLAND. No; I do not recall it.

Mr. CALLAWAY. I wonder if Mr. Swaine is still in the room?

Mr. SWAINE. Yes.

Mr. LOWENTHAL. Do you remember whether there was such a provision in that mortgage?

Mr. SWAINE. I do not remember.

Mr. LOWENTHAL. Do you remember, Mr. Hanauer?

Mr. HANAUER. I would not like to testify with reference to that. I have no copy of the mortgage here now.

Mr. LOWENTHAL. If there was a provision which cut down or cut out the opportunities of an individual trustee, yourself, as individual trustee, to receive fees in case of a foreclosure of that mortgage, would you regard that as an unfair provision?

Mr. CALLAWAY. I would have a chance to accept it or not if I saw fit.

Mr. LOWENTHAL. Would you regard that as an unfair provision?

Mr. CALLAWAY. I would regard it as an unfair provision if they are going to expect that individual trustee to discharge his individual duties and assume his individual responsibilities. Don't forget this fact. Here we were confronted with a situation in which there was a mortgage of over $400,000,000, and it had under it collateral of $156,000,000 more of the Puget Sound Road. So there we were with nearly $600,000,000 of bonds under those indentures of which I was individual trustee. Just as soon as it appeared inevitable from the reports that there was going to be a default in April on one of their

issues, we realized that we probably would have to have receivers appointed, and immediately took up with counsel the question of what the duties were going to be.

Mr. LOWENTHAL. In what capacity did you take it up?

Mr. CALLAWAY. Both.

Mr. LOWENTHAL. That is, you took it up as corporate trustee and as individual trustee?

Mr. CALLAWAY. Yes, both. I was concerned about what our duties were, and I found what I believed to be the fact, until the foreclosure proceeding was started, that the entire income from these railroads went into the general fund, but that under the provisions of these indentures, as soon as the proceeding was started by the trustees, then the income was to be allocated over to the benefit of the bonds.

Mr. LOWENTHAL. You moved along as individual trustee?

Mr. CALLAWAY. I had to move.

Mr. LOWENTHAL. You were moving for the corporate trustee?

Mr. CALLAWAY. I did not make the appointments. The bondholders bought the bonds under that condition, and therefore we moved. I moved in both capacities, and I moved in either, as you say. The Guaranty Trust Co. was not responsible. If I failed to do anything, I was the one that would have been sued.

Mr. LOWENTHAL. It would be a help to the record if you could let us have for the record word as to whether the newly created mortgage, created under the reorganization plan of which the Guaranty Trust Co. is corporate trustee, provides that the opportunity of the individual trustee to receive as individual trustee separate fees, in case of foreclosure, were cut down or cut out.

Mr. CALLAWAY. All right, sir.[1]

Mr. LOWENTHAL. Mr. Callaway, have you received fees as individual trustee in many cases, or was this an unusual case?

Mr. CALLAWAY. That is the only case in which I happened to be an individual trustee. That went through the courts. You evidently seem to have it in mind that because I was an officer of the company I was not entitled to anything. That matter was specifically passed upon by the court.

Mr. LOWENTHAL. I realize that; and passed on by the reorganization managers?

Mr. CALLAWAY. Yes.

Mr. LOWENTHAL. And passed on by the bank?

Mr. CALLAWAY. No.

Mr. LOWENTHAL. It was not passed on by the Guaranty Trust Co.?

Mr. CALLAWAY. You have an idea that apparently we had some way of agreeing on all these things. Not on your life! Here is what happened about those fees. Mr. Hanauer is here and he will remember all about it. I had never met him up to that time, strange as it may seem. But I had not. And when this matter came up about the question of the fees, I went down to see him at his request. This was after the foreclosure had taken place.

Mr. LOWENTHAL. Was this after the property had been taken over?

Mr. CALLAWAY. After it had been sold, even.

Mr. LOWENTHAL. After the reorganization had been completed?

Mr. CALLAWAY. Yes.

[1] Mr. Callaway subsequently informed the committee that the mortgage referred to expressly provides that the individual trustee be compensated.

Mr. LOWENTHAL. Was this after the court had made its order fixing the fee?

Mr. CALLAWAY. No. That is what I am going to tell you about. I went down to see Mr. Hanauer and saw him about our fees. He asked me to come down, and as I recall it now he asked me what fees I thought I was entitled to. I said, "I think the corporate trustee ought to have $150,000 and the individual trustee ought to have $40,000." Hanauer doesn't waste many words, you know. He said, "Now, here; $100,000 has been allotted." I suppose he meant by the reorganization managers to the Guaranty Trust Co. He said, "They can divide it with you; but $100,000 is our figure."

I said, "We just simply will not do it. We are entitled to more, and we won't do it."

He said, "All right. There is nothing to do about it but go to court." I said, "You are right; and that is what we will do. We will go to the court."

Then on some other occasion, perhaps a few days later, I saw him and I said, "I have spoken to our people about it, and if you will pay the Guaranty Trust Co. $125,000 and pay me $25,000, we will agree to that figure." He said, "No; this other figure is all we will do."

So we did go to the court, and we had the fullest sort of a hearing. A number of people were there, and it took some time. I testified. Mr. Sunderland presented it and Mr. Swaine opposed it.

Mr. LOWENTHAL. Mr. Swaine opposed your fee?

Mr. CALLAWAY. Yes.

Mr. LOWENTHAL. And the Guaranty Trust Co.'s fee?

Mr. CALLAWAY. Yes; he did. He opposed their fee and opposed mine. He said he did not think I was entitled to anything. He said the Guaranty Trust Co. ought to get $100,000.

Mr. LOWENTHAL. Why did he think you were not entitled to anything?

Mr. CALLAWAY. I will tell you, Mr. Lowenthal, just what he said. Let us understand this; let the committee understand this, that I did not agree with him.

Mr. LOWENTHAL. You and Mr. Swaine disagreed?

Mr. CALLAWAY. Mr. Swaine and I disagreed; and the only place I know of on a justiciable question is to take it to the place where, By George! we will all go if we have a question of that sort; and I took it to the court.

Mr. LOWENTHAL. Mr. Sunderland took it to the court for you?

Mr. CALLAWAY. I went with him. I was a witness.

Mr. LOWENTHAL. Did anybody else support your application?

Mr. CALLAWAY. Another individual trustee and counsel for one of the other trust companies made an application for a fee and was paid one without any opposition. I have never known why they opposed mine.

Mr. LOWENTHAL. What was he paid?

Mr. CALLAWAY. He was William Nelson Cromwell. He was paid $15,000.

Mr. LOWENTHAL. He was a lawyer?

Mr. CALLAWAY. Yes. He was a lawyer for the bank.

Mr. LOWENTHAL. He was paid as trustee?

Mr. CALLAWAY. He was paid as trustee, and so was I.

Mr. LOWENTHAL. He is in the practice of the law?

Mr. CALLAWAY. Oh, yes. I would like to have this committee understand that we did not agree on this thing. The question of whether I was entitled to a fee or not, and whether the Guaranty Trust Co. was entitled to a fee or not, we took to the court. The court heard it fully. The testimony was given and the court decided that I was entitled to it. It must have made an impression on Mr. Swaine and the others, because a few days later, after the hearing, they came to us and said, "If you want to settle this and you want to take $100,000 for the Guaranty Trust Co. and $20,000 for yourself, we will do it." I said, "The matter has been submitted to the court. We are either entitled to it or we are not. We will leave it to the court."

Some time later the court handed down its opinion and the fees were allowed.

Mr. LOWENTHAL. Who was the judge?

Mr. CALLAWAY. Judge Wilkerson. If there is any question about the right or the propriety of an officer of that bank, who was a full-fledged trustee himself and tried to do his duty, that whole thing was tried out before the court on opposition made by the reorganization managers.

Mr. LOWENTHAL. Let me ask you whether your board of directors passed upon the desirability of an individual officer's receiving a fee?

Mr. CALLAWAY. I do not know. There is no question in my mind that we were entitled to it. Mr. Potter knew what I was going to get; they all knew it. I talked to them about the amount I was going to ask for the bank.

Mr. LOWENTHAL. You talked to whom?

Mr. CALLAWAY. Mr. Potter.

Mr. LOWENTHAL. Not to the directors of the bank?

Mr. CALLAWAY. No.

Mr. LOWENTHAL. Do you remember Mr. William Nelson Cromwell who received a fee as individual trustee? Do you remember his law firm also getting a fee?

Mr. CALLAWAY. They represented him.

Mr. LOWENTHAL. Sullivan & Cromwell; was it not?

Mr. CALLAWAY. Yes.

Mr. LOWENTHAL. Do you remember how much they got?

Mr. CALLAWAY. He was certainly entitled to it; there is no question about that.

Mr. LOWENTHAL. Do you remember there was an individual trustee, a bank officer, who declined to take a fee?

Mr. CALLAWAY. I heard that afterward. He had a right to do whatever he wanted to.

Mr. LOWENTHAL. What was his name?

Mr. CALLAWAY. Sheldon. The Guaranty Trust Co. under this mortgage by which he was a trustee held all those bonds for which he was trustee except a few, and $150,000,000 of those bonds were put up as collateral.

Mr. LOWENTHAL. In view of the testimony about the opposition to the individual trustee getting a fee, Mr. Swaine, does that refresh your recollection as to what was put into the new corporate mortgage on that subject?

Mr. SWAINE. I am not going to testify from personal recollection about a document when you can obtain the document.

Mr. LOWENTHAL. You do not remember, Mr. Swaine?

Mr. SWAINE. No; I have no recollection about it.

Mr. LOWENTHAL. Did you hear there was a rule of the insurance department of New York State requiring insurance officials who got fees as members of committees turning those fees over to their insurance companies?

Mr. CALLAWAY. I should think that would be so if it was something completely dissociated from them. It may be that some banks have a rule that money that might be earned by directors, or under a bonus plan, or something of that kind, might be paid in. We have not.

Mr. LOWENTHAL. You have no doubt that Mr. Ecker did a great deal of work?

Mr. CALLAWAY. No.

Mr. LOWENTHAL. Have you heard that he received a fee as chairman of the committee?

Mr. CALLAWAY. No.

Mr. LOWENTHAL. Mr. Hanauer, do you remember whether Mr. Ecker received a fee?

Mr. HANAUER. He did.

Mr. LOWENTHAL. Have you ever heard whether that was turned over to the Metropolitan Life Insurance Co. by Mr. Ecker?

Mr. HANAUER. No.

Mr. LOWENTHAL. You do not know?

Mr. HANAUER. No. I remember there was some discussion about it, but I could not testify as to what was eventually done. I think it is not unlikely, but I do not know.

Mr. CALLAWAY. I want to repeat this, that whatever Mr. Ecker did or whatever Mr. Sheldon did has no bearing on it, because we took it to the only place provided in this country to try out such matters. It was carried before a judge whom I had never even seen in my life. The matter was tried out in full and it was heard fully, as far as I know, and the judge decided that I was right about it and that I was entitled to it.

Mr. LOWENTHAL. By the way: That day you were in court did you hear whether there was any opposition by the reorganization managers or anybody else to the fees of counsel for the Guaranty Trust and yourself?

Mr. CALLAWAY. There was none.

Mr. LOWENTHAL. That fee was just agreed to in advance?

Mr. CALLAWAY. I do not know whether it was agreed to or not.

Mr. LOWENTHAL. But there was no opposition to the application?

Mr. CALLAWAY. No. I will ask Mr. Sunderland. I don't think there was.

Mr. SUNDERLAND. I don't think so.

Mr. HANAUER. It occurs to me, Mr. Chairman, that the gentlemen who are officials of insurance companies and who may have turned over their fees to the insurance companies, did not do it because they thought it was wrong to take a personal fee, but I believe the superintendent of insurance of the State of New York—I will not say whether he suggested it——

Mr. LOWENTHAL (interposing). Has there been a similar rule of the New York superintendent of banks?

Mr. CALLAWAY. Not that I know of. If there had been any such rule and I had known anything about it, I would not have taken it, of course.

Mr. LOWENTHAL. Let me say for your information, Mr. Callaway, that it is helpful in connection with a subject of this kind to have the various views as to what is desirable practice developed, because you perhaps have heard of a report made public by Mr. Eastman as Federal Coordinator of Transportation on the subject of fiscal agencies of railroads?

Mr. CALLAWAY. I am afraid I have not seen it.

Mr. LOWENTHAL. We will come to that later.

BANKERS SELECT MORTGAGE TRUSTEES FOR NEW COMPANY—GUARANTY TRUST CO. SOLICITS TRUSTEESHIP

Mr. LOWENTHAL. On this hard-luck story, I would like to offer for the record, Mr. Chairman, a copy of a memorandum written by Mr. H. Stanley to Mr. M. P. Callaway under date of June 9, 1925.

(The memorandum referred to was marked "Exhibit No. 2024" and is included in the appendix on p. 7075.)

Mr. LOWENTHAL. Who is Mr. H. Stanley, Mr. Callaway?

Mr. CALLAWAY. At that time he was head of our bond department.

Mr. LOWENTHAL. That is Harold Stanley?

Mr. CALLAWAY. Yes.

Mr. LOWENTHAL. He left the Guaranty to become a partner in J. P. Morgan & Co.?

Mr. CALLAWAY. Yes, sir.

Mr. LOWENTHAL. And he left J. P. Morgan & Co. to become vice president—or is it president—of Morgan, Stanley & Co., Inc.?

Mr. CALLAWAY. I think he is president of it.

Mr. LOWENTHAL. I would like to read this, Mr. Chairman.

Senator TRUMAN. Proceed.

Mr. LOWENTHAL (reading from "Exhibit No. 2024"):

I had a talk with Hanauer, who has told me that he cannot make any promises now but that after the City Bank is satisfied on the trusteeships of the reorganization of the St. Paul, we are next in line.

You had the largest mortgage that was in existence when the road went into receivership. That was the choicest mortgage from the point of view of the trust company in its corporate work?

Mr. CALLAWAY. Do you want an explanation of this that you read?

Mr. LOWENTHAL. Yes, please.

Mr. CALLAWAY. What happened was just this. The reorganization plan came out about June 1, and as I recall it the reorganization plan provided that the reorganization managers were going to place the trusteeships. I did not know Mr. Hanauer, as I told you, at that time, I had never met him. I have known him since, and he is a friend of mine, but at that time I did not know him; and I spoke to Harold Stanley, who was in the same business that he was——

Mr. LOWENTHAL (interposing). The same business that Mr. Hanauer was in?

Mr. CALLAWAY. Yes. He was head of the Guaranty Co. It was a bond-selling and underwriting house, and he knew Mr. Hanauer, and I did not. It has always been the custom in New York that the previous trustees succeed to a trusteeship, or some part of it. There is no rule about it. They do not always do it, and so sometimes you do not get in. But when the reorganization plan came out and we saw what securities they proposed to issue——

Mr. LOWENTHAL (interposing). What mortgages?

Mr. CALLAWAY. Yes; and what mortgages—that matter would be in the hands of the reorganization committee; and I asked Mr. Stanley to speak to Mr. Hanauer to find out whether or not we would be in line for one of those issues, and as he stated, here, the City Bank was going to get the first pick.

Mr. LOWENTHAL. You were going to explain that. I do not quite get the phrase "after the City Bank is satisfied."

Mr CALLAWAY. They would have a choice. There were three.

Mr. LOWENTHAL. Why was the City Bank to get a choice over your bank which already was the trustee under the largest mortgage?

Mr. CALLAWAY. That was Mr. Hanauer's disposition.

Mr. LOWENTHAL. Oh. He decided that?

Mr. CALLAWAY. The reorganization managers decided that.

Mr. LOWENTHAL. When you say "City Bank," you mean the National City Bank of New York?

Mr. CALLAWAY. Yes.

Mr. LOWENTHAL. And their affiliate at that time was the National City Co.?

Mr. CALLAWAY. Yes.

Mr. LOWENTHAL. The National City Co. was one of the bankers of the St. Paul road?

Mr. CALLAWAY. Yes.

Mr. LOWENTHAL. And was one of the reorganization managers?

Mr. CALLAWAY. Yes.

Mr. LOWENTHAL. That is, they were 50 percent of the reorganization managers and Kuhn, Loeb & Co. were the other 50 percent?

Mr. CALLAWAY. I cannot tell you about that.

Mr. LOWENTHAL. So the bank affiliated with one of the reorganization managers got the choicest trusteeship?

Mr. CALLAWAY. Yes. They were probably entitled to it.

Mr. LOWENTHAL. Why?

Mr. CALLAWAY. I did not fight it very hard. They did an immense amount of work and they had the responsibility of trying to see it go on through afterwards; and if Mr. Hanauer and the reorganization managers felt that they were going to give them the first choice, I was glad to get one of them.

Mr. LOWENTHAL. Was not the National City Co. going to get $500,000 for its services?

Mr. CALLAWAY. This was in 1925. I did not know whether they would get anything. I couldn't tell anything about it.

Mr. LOWENTHAL. Was it your idea that the choicest trusteeship was given to the National City Bank as part of the compensation for the services of the National City Co.?

Mr. CALLAWAY. I do not know anything about it. Mr. Stanley spoke to Mr. Hanauer about it, and he told me they were going to give the National City Bank their choice, and the National City Bank would take any one it pleased. That is what the memorandum says.

Mr. LOWENTHAL. I thought you said there was some justification for giving them the first choice.

Mr. CALLAWAY. I think, from my standpoint, that the National City Bank might be entitled to it.

Mr. LOWENTHAL. Why?

Mr. CALLAWAY. They were in this whole situation, and whatever trusteeship might be given to any of these people doesn't have a

God's thing to do with what they were going to do. It would not have any effect on our bank. If he knew they had been there, what was to prevent his giving it to them? I did not know Mr. Hanauer. If I had I would have been there and asked him for it.

Mr. LOWENTHAL. I call attention to the fact, Mr. Callaway, that the reorganization plan itself,[1] drawn by Mr. Hanauer and his attorneys and presumably by the National City Co. as well, specifically provided what the compensation for the reorganization managers should be.

Mr. CALLAWAY. I do not recall what that was.

Mr. LOWENTHAL. Continuing reading, Mr. Chairman [reading further from "Exhibit No. 2024"]:

> He asked which trusteeship we would prefer, whether the $60,000,000 closed issue or the proposed financing vehicle which will not be issued at present. He said there was no hurry about settling this now. I told him we would communicate with him later.

I skip to the last sentence, referring to some court proceeding in the Rock Island matter, I presume. Is that correct, Mr. Callaway or Mr. Sunderland?

Mr. CALLAWAY. It apparently does; yes.

Mr. LOWENTHAL (reading further from "Exhibit No. 2024"):

> It was because of this situation that Kuhn, Loeb & Company says they did not want anybody from the Guaranty on the St. Paul protective committee.

Was it your understanding, Mr. Callaway, that Kuhn, Loeb & Co. were the ones who were deciding whether one particular person or another should go on the bondholders' committee?

Mr. CALLAWAY. I do not remember the occasion of this, but I just give you my idea about it. It had been rather the custom, Mr. Lowenthal, in New York that representatives of the trustees of these large issues frequently serve on the committees; and I just assume from what he says there that it was because of this situation that Kuhn, Loeb & Co. said they did not want anybody from the Guaranty on the St. Paul protective committee. Or I may have asked Stanley why it was that nobody from the Guaranty was put on. I may have asked. I do not know.

Mr. LOWENTHAL. Mr. Stanley reports that Mr. Hanauer says there was no hurry about settling this. The plan was announced about June 1, 1925, Mr. Callaway?

Mr. CALLAWAY. Yes.

Mr. LOWENTHAL. And was there a possibility that if the Guaranty Trust Co. had not gotten in touch with the reorganization managers promptly somebody else would have gotten there?

Mr. CALLAWAY. Yes.

Mr. LOWENTHAL. You had to move pretty fast if you were not to be shut out?

Mr. CALLAWAY. Yes.

Mr. LOWENTHAL. There was a good deal of keen competition?

Mr. CALLAWAY. Yes; from New York banks and outside banks, too. New York has to compete with Boston, Philadelphia, Chicago, and so forth.

Mr. LOWENTHAL. I offer for the record a copy of a memorandum dated July 24, 1925, to Mr. Callaway, from Mr. C. H. Platner, corporate trust officer. Mr. Platner was vice president of the Guaranty Trust Co. Mr. Callaway?

[1] Subsequently entered as "Exhibit No. 2280", Hearings, Part XVII, p. 7492.

Mr. CALLAWAY. Yes, sir.

Mr. LOWENTHAL. He was a subordinate of yours?

Mr. CALLAWAY. Yes, sir.

Senator TRUMAN. The memorandum will be received.

(The memorandum referred to was marked "Exhibit No. 2025" and is included in the appendix on p. 7076.)

Mr. LOWENTHAL. I would like to just refer briefly, without reading—because you have a copy before you, Mr. Callaway—to three different bond issues to be created under the reorganization plan. One was the first and refunding mortgage?

Mr. CALLAWAY. That is right.

Mr. LOWENTHAL. One was the 50-year 5-percent mortgage?

Mr. CALLAWAY. Yes, sir.

Mr. LOWENTHAL. One was the 5 percent adjustment mortgage?

Mr. CALLAWAY. Yes, sir.

Mr. LOWENTHAL. Now, to refer back to the memorandum of June 9, 1925, the National City Bank was to get its pick of the three?

Mr. CALLAWAY. That is what I understand that memorandum to mean.

Mr. LOWENTHAL. I will read the last paragraph, Mr. Chairman, of the memorandum of July 24, 1925 [reading from "Exhibit No. 2025"]:

> From the standpoint of receiving immediate compensation, the Adjustment Mortgage 5% bonds look most attractive and after that the Fifty Year 5% mortgage. However, if this reorganization puts the company on a firm financial footing, the First and Refunding Mortgage is the most desirable business, due to the size and its position in any future readjustment of the financial structure of the company—

Let me ask in that connection: The bonds under the first and refunding mortgage were to be issued from time to time after the reorganization?

Mr. CALLAWAY. Yes, sir; with a limit of $634,000,000.

Mr. LOWENTHAL. The adjustment mortgage was to be issued from time to time, or was it in bulk, when the reorganization was completed?

Mr. CALLAWAY. Yes; $262,000,000.

Mr. LOWENTHAL. The latter? Is that it?

Mr. CALLAWAY. Yes, sir.

Mr. LOWENTHAL. Therefore the first and refunding mortgage might be the most desirable if the company was to go on and issue more bonds under that mortgage?

Mr. CALLAWAY. You may have it among your papers there, but my recollection is that at first when the matter came up we decided that we would take the first and refunding mortgage because——

Mr. LOWENTHAL. We are coming to that, Mr. Callaway.

Mr. CALLAWAY. I will finish in just a minute.

Mr. LOWENTHAL. We just wanted to bring out this date.

Mr. CALLAWAY. It was subsequently increased to $100,000,000.

Mr. LOWENTHAL. We are coming to that.

At the moment, on July 24, 1925, what Mr. Platner was concerned with was the fact that although the adjustment mortgage might have the larger amount of bonds at the outset, the first and refunding mortgage might have many more bonds outstanding as the years went on?

Mr. CALLAWAY. Yes.

Mr. LOWENTHAL. You thought, therefore, that if the company was on a firm financial footing, so it would be likely to issue more first and refunding mortgage bonds, that would be a more desirable issue? Is that correct?

Mr. CALLAWAY. Yes, sir; on the long view we thought that.

Mr. LOWENTHAL. The larger the number of bonds under the mortgage the better it is from the point of view of the trust company acting as trustee?

Mr. CALLAWAY. You get paid for what you do.

Mr. LOWENTHAL. And as there are more bonds you get paid more?

Mr. CALLAWAY. Yes.

Mr. LOWENTHAL. I would like to offer for the record, Mr. Chairman, a copy of a memorandum from Mr. Callaway to Mr. Harold Stanley, dated June 18, 1926.

Senator TRUMAN. It will be received.

(The memorandum referred to was marked "Exhibit No. 2026" and is included in the appendix on p. 7077.)

Mr. LOWENTHAL. By the way, Mr. Callaway: Between the time of the memoranda we have just discussed and the time of the memorandum of June 18, 1926, there had been a modification of the Kuhn, Loeb-National City Bank reorganization plan, had there not?

Mr. CALLAWAY. Yes.

Mr. LOWENTHAL. And that modification provided for a larger bond issue under one of the mortgages than had been provided under the original Kuhn, Loeb-National City plan?

Mr. CALLAWAY. Yes. It advanced the 50-year 5's from 60 million to slightly over 100 million dollars.

Mr. LOWENTHAL. And that made the 50-year 5's a more desirable issue immediately?

Mr. CALLAWAY. Yes, sir.

Mr. LOWENTHAL. After that modification was made, making one of those proposed issues more desirable from the point of view of a trust company as trustee than it had been prior to the modification, the Guaranty having the second choice concluded that that modified mortgage would be the better one from its point of view?

Mr. CALLAWAY. Yes, sir; and I asked Mr. Stanley to speak about it.

Mr. LOWENTHAL. And as to which of the mortgages was the better piece of business, that was the final decision of the matter?

Mr. CALLAWAY. So far as Guaranty was concerned; yes.

Mr. LOWENTHAL. That was a change in position from that which you had taken prior to the modification of the reorganization plan?

Mr. CALLAWAY. Yes.

Mr. LOWENTHAL. I offer in evidence, Mr. Chairman, a copy of a memorandum to Mr. Callaway, dated June 25, 1926, signed "H. S." That was Mr. Harold Stanley?

Mr. CALLAWAY. Yes.

Senator TRUMAN. The memorandum will be received.

(The memorandum referred to was marked "Exhibit No. 2027" and is included in the appendix on p. 7077.)

Mr. LOWENTHAL. This memorandum reads:

I am returning your memorandum about Chicago, Milwaukee & St. Paul. This is to remind you that Mr. Hanauer expects you will see him some time and discuss this matter further.

You did see Mr. Hanauer thereafter?

Mr. CALLAWAY. A year or so later.

Mr. LOWENTHAL. Some time in 1927, I think, Mr. Platner died, did he not?

Mr. CALLAWAY. I do not remember exactly, Mr. Lowenthal, but about that time, somewhere along there

Mr. LOWENTHAL. Was he one of the older or junior vice presidents?

Mr. CALLAWAY. He was a vice president when he died. You will notice that he signs this memorandum as corporate trust officer. He was only a vice president for a year or two before he died.

Mr. LOWENTHAL. Was he one of the men of long experience in the bank or of lesser experience?

Mr. CALLAWAY. He had had long experience there. He was the immediate superior of Mr. Burke.

Mr. LOWENTHAL. Then he was the superior of the man in charge of the corporate-trust department?

Mr. CALLAWAY. At that time; he was at that time himself corporate-trust officer.

Mr. LOWENTHAL. I offer for the record, Mr. Chairman, an excerpt from a copy of a memorandum from Mr. Callaway dated January 5, 1927, reading as follows [reading from "Exhibit No. 2028"]:

Memorandum as to fees for issue of 50-Yr. 5% Mortgage Gold Bonds of Chicago, Milwaukee, St. Paul & Pacific Railway Company.

That was the mortgage that you had chosen for Guaranty? Is that correct, Mr. Callaway?

Mr. CALLAWAY. Yes, sir.

Mr. LOWENTHAL (reading further):

Mr. Jerome J. Hanauer, of Kuhn, Loeb & Company, at conferences held on January 3rd and 5th at his office stated that the National City Bank would be appointed trustee of the 5% Adjustment Mortgage Bonds aggregating approximately $184,000,000 and that Guaranty Trust Company might have its choice of the 50-Yr. 5% Mortgage Gold Bonds aggregating approximately $106,000,000, or the First and Refunding Mortgage under which no bonds were to be issued at this time but which would be used for financing purposes in the future. I selected the 50-Yr. 5% mortgage bonds to which Mr. Hanauer agreed.

Senator TRUMAN. The memorandum will be received.

(The memorandum referred to was marked "Exhibit No. 2028" and is included in the appendix on p. 7077.)

Mr. CALLAWAY. This was after the foreclosure; this was the first time that I had ever gotten in touch with Mr. Hanauer myself.

Mr. LOWENTHAL. Do you remember, Mr. Callaway, that the Bankers Trust Co. was one of the corporate trustees in connection with the reorganization of the Chicago, Milwaukee & St. Paul during that period?

Mr. CALLAWAY. They had one of the bond issues; I forget which.

Mr. LOWENTHAL. I should like to offer for the record, Mr. Chairman, a memorandum from J. J. Hanauer to Frederick H. Ecker, dated January 13, 1928, which illustrates, I think, Mr. Chairman, that other banks either did not move fast enough or did not have quite the midway luck that the Guaranty had in this matter.

Senator TRUMAN. It will be received.

(The memorandum referred to was marked "Exhibit No. 2029" and is included in the appendix on p. 7078.)

Mr. LOWENTHAL. The memorandum is as follows [reading]:

I have your letter enclosing one from Frank Close—

He was an officer of Bankers Trust Co., Mr. Callaway?

Mr. CALLAWAY. Yes.

Mr. LOWENTHAL (reading further):

which I return to you herewith.

Mr. Close also spoke to me some time ago and I told him that I was afraid there would be nothing available. The National City Bank took one trusteeship—

Perhaps that is the answer to a question that I put to you a while ago—

the National City Bank took one trusteeship.

Mr. CALLAWAY. That depends on what you mean by the word "took." They did not grab it.

Mr. LOWENTHAL. Well, they took it.

Mr. CALLAWAY. They did not steal it.

Mr. LOWENTHAL. Oh, I am not suggesting that. But they took it.

Mr. CALLAWAY. They were appointed to one of them; yes.

Mr. LOWENTHAL. That is not what Mr. Hanauer writes to Mr. Ecker.

Mr. CALLAWAY. That is what he meant.

Mr. LOWENTHAL (reading further from "Exhibit No. 2029"):

the Guaranty Trust Company was naturally entitled to one, and the third we gave to the United States Mortgage & Trust Company.

Why were they naturally entitled to it, Mr. Callaway?

Mr. CALLAWAY. Because we had had the largest of all of the issues before.

Mr. LOWENTHAL. A traditional or historic right?

Mr. CALLAWAY. Maybe so; yes.

Mr. LOWENTHAL. Somewhat comparable to the fact that if a banking firm does an investment banking business for a corporation and wants to continue to do it, it ordinarily has the right to that business as a matter of custom?

Mr. CALLAWAY. Of course they have learned a tremendous amount by experience. They are familiar with the business of the company, with the road, and all of that.

Mr. LOWENTHAL. Did the National City Bank have familiarity as trustee with this class of business entitling it to the choicest trusteeship?

Mr. CALLAWAY. The Guaranty Trust Co. certainly had.

Mr. LOWENTHAL. But I am asking you about the National City Bank.

Mr. CALLAWAY. I take it the National City Bank had a great deal of information about it; yes, sir.

Mr. LOWENTHAL. Do you think that one of the other New York banks, the Bankers Trust Co., the Chemical Bank, the Manufacturers Trust, the Central Hanover, or any of the other big banks there could not have done this work as well as the Guaranty was doing it?

Mr. CALLAWAY. No, sir. If we had all started evenly they could, but we had been experienced with this road for twenty-odd years.

Mr. LOWENTHAL. Mr. Hanauer says [reading further from "Exhibit No. 2029"]:

I think you can see the reasons for all of these appointments without any explanation from me.

Do you see the reasons, Mr. Callaway?

Mr. CALLAWAY. I do not know what was in his mind; but, speaking for our own company, our long experience in that situation as trustee, I am sure it was a very natural thing to appoint us to one of them.

Mr. LOWENTHAL. Mr. Chairman, I would like to offer for the record, without reading, unless on perusal it is desired that they be read, a copy of a letter from Mr. Close to Mr. Ecker, dated January 11, 1928; copy of a letter to Mr. Hanauer, apparently from Mr. Ecker, dated January 12, 1928; copy of a letter to Mr. Close from Mr. Ecker, dated January 12, 1928; copy of a letter from Mr. Ecker to Mr. Close, dated January 14, 1928, and copy of a letter from Mr. Close to Mr. Ecker, dated January 17, 1928.

Senator TRUMAN. They will be received.

(The letters referred to were marked "Exhibit Nos. 2030 to 2034," inclusive, and are included in the appendix on pp. 7078 to 7080.)

Mr. LOWENTHAL. Mr. Callaway, I should like to take up with you one passage in the memorandum of July 24, 1925, a copy of which has already been introduced into the record, the memorandum from C. H. Platner, corporate trust officer in charge of this work, to you, his superior. In the last paragraph, in commenting on the desirability of taking one of the two remaining mortgages or selecting it insofar as the choice was given to Guaranty, rather than the other, he notes, among the factors making the one that he recognized more valuable than the other, these words [reading from "Exhibit No. 2025"]:

due to the size—

I suppose he means the size of the bond issue under that mortgage; does he not, Mr. Callaway?

Mr. CALLAWAY. Yes.

Mr. LOWENTHAL. He refers to its being more desirable, due to the size. That means the size of the bond issue under that mortgage?

Mr. CALLAWAY. The possible issue under the mortgage.

Mr. LOWENTHAL. And also

its position in any future readjustment of the financial structure of the company—

He was referring to the possibility of another receivership; was he not?

Mr. CALLAWAY. No; he had no idea there was going to be another receivership.

Mr. LOWENTHAL. What is the future readjustment of the financial structure?

Mr. CALLAWAY. I would assume he meant a very natural thing that we have seen in this country over 20 or 30 or 40 years. There have been a good many receiverships. We did not know one was coming so soon. We would have had the first mortgage and our position, if there should be a reorganization, would be better. I am sure he never had in mind the thought that there was going to be a failure of the thing.

Mr. LOWENTHAL. I do not quite get what you meant when you said that in case there was a situation of that kind the Guaranty was in a better position with the first mortgage.

Mr. CALLAWAY. If we had not had a high position in the rank of mortgages and been experienced in the handling of the affairs of the

trusteeship, I do not think that Mr. Hanauer would have given us the position.

Mr. LOWENTHAL. That is to say, the higher the position of the mortgage of the company that is being reorganized by way of foreclosure, the better the position of the corporate trustee under that mortgage with respect to the future business coming out of the reorganization?

Mr. CALLAWAY. It had some effect, I think. It does not control it at all.

Mr. LOWENTHAL. It helps it?

Mr. CALLAWAY. Yes.

Mr. LOWENTHAL. Is there also a help in having a trusteeship in a court proceeding? Which is the most important trusteeship with respect to the seniority of the mortgage involved?

Mr. CALLAWAY. From what standpoint do you mean?

Mr. LOWENTHAL. The standpoint of the position of the corporate trustee with respect to influence and appropriate power in the court foreclosure proceedings.

Mr. CALLAWAY. I would not say so, because the first ranking issues are generally undisturbed. In this particular case there was $185,000,000 of first-mortgage bonds. We had nothing to do with it.

Mr. LOWENTHAL. You spoke a little while ago about the seniority of position. If you had a mortgage which was not being foreclosed at all, you are not as likely to be in line for a new mortgage as if you had one that was being foreclosed?

Mr. CALLAWAY. No. We have got the trusteeship.

Mr. LOWENTHAL. Let me put it this way: The larger and more important the mortgage which is being foreclosed the more important the position of the foreclosing trustee in the receivership proceeding?

Mr. CALLAWAY. I would not say in the foreclosure, I would say in the reorganization.

Mr. LOWENTHAL. Both foreclosure and reorganization?

Mr. CALLAWAY. In the reorganization. If you have an important trusteeship and there is a recasting of the trusteeship, at least to my way of thinking you have certainly got more ground to go to the company or to the reorganization managers or whoever is handling the reorganization when you undertake to get new business. At least you have a greater argument by saying to them that you are perfectly familiar with the affairs of the company. I would not say that the fact that you might have foreclosed is going to give you any position. It might well be to the contrary. You do not always agree with everybody when you foreclose.

Mr. LOWENTHAL. Would you not say, Mr. Callaway, that Mr. Platner was very properly foresighted in trying to estimate which would be the better of the two mortgages for the Guaranty Trust Co.?

Mr. CALLAWAY. Not unless you think he had some foresight that would lead him to believe that we were going to have this depression.

Mr. LOWENTHAL. I had not finished my question. Would you not say that he was foresighted in reckoning to be among the factors that ought to govern the Guaranty Trust Co. in determining which of the mortgages it would prefer, the circumstances that there might be another receivership in the future and that it was desirable to have in that connection a trusteeship of the mortgage that would be the better in a future receivership?

Mr. CALLAWAY. He might have thought so. I had the final thought about it and I decided differently.

Mr. LOWENTHAL. You decided differently?

Mr. CALLAWAY. After it was raised to $106,000,000.

Mr. LOWENTHAL. When the nature of the other mortgage had been changed?

Mr. CALLAWAY. Yes.

Mr. LOWENTHAL. You did not decide differently from Mr. Platner prior to that modification, did you?

Mr. CALLAWAY. No. That had nothing to do with any possibility of the future, except that there was a possibility of having $634,822,600 of bonds issued under the first and refunding mortgage. That is what I had in mind. It could not have happened if it had gone in receivership.

Mr. LOWENTHAL. I would like to call attention to the fact that approximately 7 or 8 weeks after the issuance of the plan in one of the biggest railroad receiverships in American history, a responsible officer of the Guaranty Trust Co. was already writing memoranda with respect to what was good business for the trust company, considering the possibility of still another receivership by reason of the failure—necessarily by reason of the failure—of this particular reorganization plan that had been put out in June 1925.

Mr. CALLAWAY. I deny that construction most emphatically. I do not believe it is true, and I do not believe this memorandum is susceptible of that construction. What he was talking about was that in all human affairs, in these long trusteeships that run 20 or 30 or 40 years—why, we have had them as high as 200 years.

Mr. LOWENTHAL. The Guaranty Trust Co. does not have them.

Mr. CALLAWAY. Yes.

Mr. LOWENTHAL. You mean, 200 years into the future?

Mr. CALLAWAY. Yes. You cannot tell what is going to happen; and we do like to have an issue up as near the top or, as the expression is, as near the rails as possible. He had no more thought, in my judgment, that this plan was going to fail than he had of dying at that time—although the poor boy was dead in a year. In 5 years or in 8 years after this time conditions had so changed that you did have a receivership, but he did not foresee that.

Mr. LOWENTHAL. We will have to come to certain of these aspects tomorrow; but I would like to ask you this: has the Guaranty Trust Co. accepted a corporate trusteeship under any mortgage securing bonds which are not payable until 200 years from the present time.

Mr. CALLAWAY. Due in 200 years?

Mr. LOWENTHAL. Yes.

Mr. CALLAWAY. My recollection is that one of the issues of the New York Central is either 100 years or 200 years. I might ask some of these gentlemen over here [indicating] who would know better than I. I will get you that information as to the exact time.

Senator TRUMAN. That is a long time to issue bonds for.

Mr. CALLAWAY. Yes.

Senator TRUMAN. Do you think it is sound business to issue bonds for a hundred years or 200 years?

Mr. CALLAWAY. They thought so at the time. So did the public.

Mr. LOWENTHAL. Some of the bonds would be payable about the year 2,000 under this plan?

Mr. CALLAWAY. I do not remember.

Mr. LOWENTHAL. They did not last that long?

Mr. CALLAWAY. No, sir.

Mr. LOWENTHAL. Do you think that the phrase "any future readjustment" does not refer to any future receivership, or do you merely mean that he was just contemplating that that was always a possibility in the future?

Mr. CALLAWAY. That is what I meant to say, that he had no thought in the world, in my judgment, that this plan had any weakness. That is not what led him to suggest to me that we had better take that mortgage, because it would come out better. He had no such thought as that in mind.

Mr. LOWENTHAL. Do you not think that any trust company or any banker that knows the course of American economic history and financial history and knows, as Mr. Ecker testified here a few weeks ago, that there has been one depression in every decade of the five decades that he has been in the Metropolitan Life [1]—that any banker would naturally assume, if I may use Mr. Hanauer's adverb, that depressions are to be expected by any cautious banker and that further receiverships and breakdowns and railroad reorganizations are likely to follow?

Mr. CALLAWAY. If you follow that statement to its logical conclusion it would mean, in my opinion, that no business should be done and that no reorganization could ever take place because there might be another depression or another receivership.

Mr. LOWENTHAL. Unless you had another type of reorganization different from those that have been produced in New York in recent decades.

Mr. CALLAWAY. I do not know that New York was responsible for this depression.

Mr. LOWENTHAL. It was responsible for this reorganization plan.

Mr. CALLAWAY. Yes; but I thought I heard testimony here a few minutes ago that for several years after this company was reorganized, and when conditions were normal, they more than met all the fixed charges. But I know nothing about that; I cannot advise you about that.

Senator TRUMAN. The subcommittee will adjourn until 10 o'clock tomorrow morning.

(Whereupon, at 3:55 p. m., an adjournment was taken until the following day, Wednesday, Dec. 8. 1937, at 10 a.m.)

[1] See Hearings, Part XV, p. 6621.