

FINANCE DOCKET No. 11681
NEW YORK, SUSQUEHANNA & WESTERN RAILROAD
COMPANY REORGANIZATION

Submitted July 1, 1941. Decided August 5, 1941

Upon application, William Graves Smith, Stephen P. Toadvine, and Robert Cresswell authorized to serve as a protective committee for holders of first-mortgage refunding 5-percent bonds of the New York, Susquehanna & Western Railroad Company pursuant to section 77 (p) of the Uniform Bankruptcy Act, as amended, and to solicit authorizations to represent the holders of these bonds, without the deposit thereof, in accordance with the rules of the committee and the provisions of such authorizations. Conditions prescribed.¹

William M. Smith and Leo V. McLaughlin for applicants.
Ira W. Hirshfeld for himself and other bondholders.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS PORTER, MAHAFFIE, AND MILLER

BY DIVISION 4:

By application filed on April 1, 1941, as amended at the hearing on April 22, 1941, William Graves Smith, Stephen P. Toadvine, and Robert Cresswell, as a protective committee for holders of first-mortgage refunding 5-percent bonds, matured January 1, 1937, of the New York, Susquehanna and Western Railroad Company, debtor, in proceedings for reorganization of that company in accordance with the provisions of section 77 of the Uniform Bankruptcy Act, as amended, now pending in the United States District Court for the District of New Jersey, seek authority under the provisions of subsection (p) of that section to solicit from holders of those bonds authorizations to represent the holders, without the deposit of the bonds, and to use, employ, and act under such authorizations in connection with the consummation of a plan of reorganization in these proceedings, or in any receivership proceedings against the debtor which may follow such bankruptcy proceedings but preceding the consummation of a reorganization of the debtor, or in any matters relating thereto now pending or hereafter instituted. A hearing

¹ Previous reports, 230 I. C. C. 437 and 236 I. C. C. 425.

was held on April 22, 1941, and Ira W. Hirshfield, on behalf of himself and others, objected to the granting of the authority sought, and, as a result thereof, a further hearing was held on July 1, 1941.

There are \$3,774,000, principal amount, of the bonds outstanding in the hands of the public. The payment of the principal amount was defaulted on January 1, 1937, and the payment of interest thereon was first defaulted on July 1, 1937, and on each due date thereafter. The committee expects to represent holders of approximately \$2,500,000 of the bonds. There are about \$800,000 of the bonds held by fiduciaries, and the committee does not know whether or not these holders will authorize it to represent them.

Smith, of New York, N. Y., since 1931 has been and is now an executive of the Meyer & Brown Corporation, dealers in, and importers of, crude rubber. His wife owns \$15,000 of the bonds, which were purchased within the past 6 months. He has acted for a number of years as financial adviser to members of the Meyer family. During 1936 he purchased for the account of members of that family \$41,000 of the bonds, which they still own.

Toadvine, of Syracuse, N. Y., since 1931 has been professor of finance, Syracuse University, and divisional manager of the Syracuse Chamber of Commerce. He also has been financial editor of the Syracuse Telegram and the Syracuse Herald, president of the National Association of Better Business Bureaus, and an expert and departmental head for the Securities and Exchange Commission.

Cresswell, of Philadelphia, Pa., since 1931 has been publisher of the Philadelphia Public Ledger, president, treasurer, and director of Public Ledger, Incorporated, and director of American Gas & Electric Company, Childhood, Incorporated, and Work-in-Wood, Incorporated. He also was a trustee of the Excelsior Savings Bank, of New York, and a director of a street-railway company in Philadelphia.

Except as noted, neither the applicants nor any members of their immediate families now own, either directly or indirectly, any bonds or other obligations of the debtor, or of any of its affiliated interests, nor have they within the past 6 months purchased or sold such securities or obligations.

Dwight F. Faulkner, Jr., of New York, N. Y., who is connected with Cyrus J. Lawrence & Company, security brokers of New York, N. Y., had a considerable part in the formation of the committee. His brother-in-law, Donald N. Gilbert, of the firm of D. N. Gilbert & Company, of Syracuse, N. Y., a securities investment firm specializing in railroad bonds, suggested Toadvine as a member of the committee. Clients of Faulkner own about \$685,000 of the first-mortgage refunding bonds and about \$39,000 of the second-mortgage 4½-percent bonds

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of the debtor, and clients of Gilbert own about \$265,000 of the first-mortgage bonds and \$17,000 of the second-mortgage bonds. Gilbert selected the members of the protective committee for holders of the second-mortgage bonds.

At the further hearing, Hirshfield, representing himself and others as holders of the bonds, stated, in substance, that his objection to the committee was based on the fact that it was formed at the instance and suggestion of Faulkner and Gilbert; that they were arranging for a committee to represent the holders of the second-mortgage bonds whose interests conflict with those of the holders of the first-mortgage refunding bonds; and that the committee members would be influenced, controlled, or dominated by Faulkner and Gilbert.

Faulkner suggested to his client, Smith, that he form a committee to represent the first-mortgage refunding bondholders, and later they agreed to request Henry K. Norton, executive officer of the debtor, to suggest the names of other parties to serve on the committee. Norton suggested Cresswell, and Faulkner, after consulting Smith, obtained his consent to serve. Faulkner then requested Gilbert to suggest someone to represent the bonds for which he felt responsible, and he submitted Toadvine's name. Faulkner and Gilbert testified that they would not be able to influence, control, or dominate the committee, and Cresswell and Toadvine expressed the same views. Smith was not present at the further hearing.

Solicitation of authorizations will be governed by the rules of the committee and the terms of the bondholders' authorizations. The rules of the committee provide that a majority of the committee would constitute a quorum. The committee would have authority to appoint a secretary and counsel. The addition of members to the committee would be made by a majority vote of the committee, and vacancies on the committee would be filled by the unanimous vote of the remaining members of the committee, subject to the approval of this Commission or of any other regulatory body or tribunal having jurisdiction in the matter. The committee would cease to function 3 months after the adoption of a plan of reorganization for the debtor.

The committee could amend, alter, or repeal its rules by a majority vote, but such action would be subject to the approval of this Commission or of any other regulatory body or tribunal having jurisdiction in the matter. Other rules of the committee are similar to those adopted by other committees heretofore approved by this Commission.

The members of the committee as such will not seek compensation for their services, except such amounts, if any, as may be allowed by the court within the maximum limits fixed by us. As we have heretofore pointed out, section 77 contains no provision for payment of compensation to committee members out of the estate of the debtor. The com-

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mittee will look to the estate of the debtor for reimbursement of its expenses, and counsel to the committee have agreed to look solely to the estate of the debtor for compensation for their services and reimbursement of their expenses. The committee estimates that its expenses will not exceed \$2,475, exclusive of compensation for service of its secretary and of any interim circular letters. Each member of the committee will advance as a loan his ratable portion of such expenditures.

Form of bondholders' authorization.—The applicants filed with the Commission, as a part of their application, a form of authorization which they will mail to the bondholders for their signatures. The form of authorization was amended at the hearing on April 22, 1941, and the amended authorization is herein referred to as the authorization. Bondholders signing the authorization would authorize the committee, as agent and attorney in fact, to represent them in the proceedings specified in the first paragraph of this report. It expressly provides that no deposit of the bonds is required; that the bonds are not subject to any lien for the costs, fees, and expenses of the committee; and that the committee is not empowered to bind the bondholders to any plan of reorganization without the prior consent or approval of the authorizing bondholders. The authorization could be revoked at any time by the bondholder signing it, or surrendered by the committee, by giving notice in writing.

Under the general terms of the authorization, the committee could vote for acceptance or rejection of any plan of reorganization for the debtor approved under section 77 of the Uniform Bankruptcy Act. The authorization should be amended to provide specifically that the committee shall have no such power.

Conclusions.—Upon consideration of the statements contained in the verified application and the evidence adduced at the hearing, we conclude and find that the terms and conditions upon which the committee proposes to solicit authorizations and to use, employ, or act under such authorizations are fair, reasonable, and in the public interest; and that we should authorize William Graves Smith, Stephen P. Toadvine, and Robert Cresswell, as a protective committee, to solicit from holders of the bonds referred to herein then authorizations for the applicants to represent them, without the deposit of the bonds, pursuant to the terms and conditions of such authorizations, in connection with the consummation of a plan of reorganization of the debtor in the proceedings now pending under section 77 of the Uniform Bankruptcy Act, as amended, or in any receivership proceeding against the debtor which may follow such bankruptcy proceedings but preceding the consummation of a reorganization of the debtor, or in any matters relating thereto now pending or hereafter insti-

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tuted, and to use, employ, or act under or pursuant to such authorizations as the representative of such holders, subject to the following conditions:

1. That the form of authorization which the committee seeks be amended in the manner specified herein, and that a copy of such authorization so amended be filed with us and receipt thereof acknowledged before the protective committee proceeds to solicit authorizations.

2. That all activities of the committee pursuant to authorization granted by us conform and be subject to any rules and regulations with respect thereto which we may hereafter promulgate.

3. That, unless and until we otherwise direct, the committee shall keep minutes of all of its proceedings and records of all actions taken, of moneys received and disbursed, and of all obligations entered into by it, and report in detail thereon to us on the first day of each month.

4. That the committee shall include in its letter of solicitation a brief biographical statement of each member of the committee and of its secretary.

An appropriate order will be entered.

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FINANCE DOCKET No. 11681
NEW YORK, SUSQUEHANNA & WESTERN RAILROAD
COMPANY REORGANIZATION

Submitted July 8, 1941. Decided August 9, 1941

Upon application, Knox B. Phagan, Paul C. Andersen, and Robert E. Treman authorized to serve as a protective committee for holders of second-mortgage 4½-percent bonds of the New York, Susquehanna & Western Railroad Company, debtor, pursuant to section 77 (p) of the Uniform Bankruptcy Act, as amended, and to solicit authorizations to represent the holders of these bonds, without the deposit thereof, in accordance with the rules of the committee and the provisions of such authorizations. Conditions prescribed.¹

Bernard S. Barron for applicants.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS PORTER, MAHAFFIE, AND MILLER

BY DIVISION 4:

By application filed on June 16, 1941, as amended on July 1, 1941, Knox B. Phagan, Paul C. Andersen, and Robert E. Treman, as a protective committee for holders of second-mortgage 4½-percent bonds, matured February 1, 1937, of the New York, Susquehanna and Western Railroad Company, debtor, in proceedings for reorganization in accordance with the provisions of section 77 of the Uniform Bankruptcy Act, as amended, now pending in the United States District Court for the District of New Jersey, seek authority under the provisions of subsection (p) of that section to solicit from holders of these bonds authorizations to represent them, without the deposit of the bonds, and to use, employ, and act under such authorizations in connection with the consummation of a plan of reorganization of the debtor in such proceedings, or in any receivership proceedings against the debtor which may follow such proceedings but preceding consummation of its reorganization, or in matters relating thereto now pending or hereafter instituted. A hearing has been held, and no objection to the granting of the application has been presented.

The principal amount of bonds issued under the second mortgage of the debtor was \$1,000,000, of which \$552,000 is on deposit with the New York Trust Company, trustee, as collateral security for the

¹ Previous reports, 230 I. C. C. 437 and 236 I. C. C. 425.
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general-mortgage 5-percent bonds, due 1940, of the debtor, \$1,000 is held in the debtor's treasury, and \$447,000 is outstanding in the hands of the public. The committee expects to represent holders owning approximately \$224,000.

Phagan, of New York, N. Y., since 1931 has been the senior member of the firm of Phagan, Tillison & Tremble, certified public accountants. He is a director and a member of the executive committee of the Morris Plan Bank, of New York, N. Y.

Andersen, of New York, N. Y., was vice president and director of R. W. Halsey & Company, Incorporated, investment counselors, from 1932 to March 30, 1941, and has been a partner in the successor firm of Halsey, Andersen & Company since April 1, 1941.

Treman, of Ithaca, N. Y., since 1930 has been president and director of Treman, King & Company, a real-estate holding company; was vice president and director of the Tompkins County National Bank from 1925 to 1935; has been president and director of the Cayuga Motors Corporation and the Lynwood Slater Corporation (the latter a building corporation) since 1938; and a trustee of Cornell University since 1931, having been a member of the executive committee of that university since 1937.

Neither the applicants nor any members of their immediate families now own, either directly or indirectly, any bonds or obligations of the debtor or of any of its affiliated interests, nor have they within the past 6 months purchased or sold such securities or obligations.

Solicitation of authorizations will be governed by the rules of the committee and the terms of the bondholders' authorizations. The committee would have authority to select a member of the committee as treasurer and to appoint a secretary and counsel. The addition of members to the committee would be made by the unanimous vote of the committee, and vacancies would be filled by a majority vote of the remaining members, subject to the approval of this Commission or of any other regulatory body or tribunal having jurisdiction in the matter.

The members of the committee as such, the secretary, and counsel will not make any charge against the bondholders for their services or expenses. They will look solely to the estate of the debtor for their compensation, if any, and reimbursement of their expenses, all such allowances to be within the maximum limits fixed by us. Section 77 contains no provision for allowance out of the debtor's estate of compensation to committee members. The committee estimates that its expenses will not exceed \$1,000. It could incur financial obligations only upon the unanimous consent of its members, and each member would advance his pro rata share of such expenditures.

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The committee could amend or alter its rules by a majority vote, but such action would be subject to the approval of this Commission or of any other regulatory body or tribunal having jurisdiction in the matter. Other rules of the committee are similar to those established by other committees heretofore approved by this Commission.

Form of bondholders' authorization.—The applicants filed with the Commission, as a part of their application, a form of authorization which they will mail to the bondholders for their signatures. The form of authorization was amended on July 1, 1941, and the amended authorization is herein referred to as the authorization. Bondholders signing the authorization would authorize the committee, as agent and attorney in fact, to represent them in the proceedings specified in the first paragraph of this report. It expressly provides that no deposit of the bonds is required; that the bonds are not subject to any lien for the cost, fees, or expenses of the committee; and that the committee is not empowered to bind the bondholders to any plan of reorganization without the prior consent or approval of authorizing bondholders. The authorization could be revoked at any time by the bondholders signing it, or surrendered by the committee, by giving notice in writing.

Under the general terms of the authorization, the committee could vote for the acceptance or rejection of any plan of reorganization for the debtor approved under section 77 of the Uniform Bankruptcy Act. The authorization should be amended to specifically provide that the committee shall have no such power.

Conclusions.—Upon consideration of the statements contained in the verified application and the evidence adduced at the hearing, we conclude and find that the terms and conditions upon which the committee proposes to solicit authorizations and to use, employ, or act under such authorizations when modified as provided by us herein, are fair, reasonable, and in the public interest; and that we should authorize Knox B. Phagan, Paul C. Andersen, and Robert E. Treman, as a protective committee, to solicit from the holders of the bonds referred to herein their authorizations for the applicants to represent them, without the deposit of the bonds, pursuant to the terms and conditions of such authorizations, in connection with the consummation of a plan of reorganization of the debtor in the proceedings now pending under section 77 of the Uniform Bankruptcy Act, as amended, or in any receivership proceedings against the debtor which may follow the bankruptcy proceedings but precede the consummation of the reorganization of the debtor, or in any matters relating thereto now pending or hereafter instituted, and to use, employ, or act under or pursuant to such authorizations as the representatives of such holders, subject to the following conditions:

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1. That a copy of the authorization as amended on July 1, 1941, and amended in the manner specified herein, be filed with us and receipt thereof acknowledged before the protective committee proceeds to solicit authorizations.

2. That all activities of the committee pursuant to the authorization granted by us conform and be subject to any rules and regulations with respect thereto which we may hereafter promulgate.

3. That, unless and until we otherwise direct, the committee shall keep minutes of all of its proceedings and records of all actions taken, of moneys received and disbursed, and of all other obligations entered into by it, and report in detail thereon to us on the first day of each month.

4. That the committee shall include in its letter of solicitation a brief biographical statement of each member of the committee and of its secretary.

An appropriate order will be entered.

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