

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

Submitted November 14, 1941. Decided December 12, 1941

Upon application, G. Leonhard Boveroux, Alden Sherry, and John S. Sickels authorized to serve as a protective committee for holders of general-mortgage 50-year 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

Coleman Burke for applicants.

J. H. O'Connell for mortgage trustee and certain bondholders.

REPORT OF THE COMMISSION

DIVISION 4, COMMISSIONERS PORTER, MAHAFFIE, AND MILLER

BY DIVISION 4:

By application filed on October 22, 1941, G. Leonhard Boveroux, Alden Sherry, and John S. Sickels, as a protective committee for holders of general-mortgage 50-year 5-percent bonds, matured August 1, 1940, of the New York, Susquehanna & 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 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 precede consummation of a reorganization of the debtor, or in any matters relating thereto now pending or hereafter instituted. A hearing was

¹ Previous reports in this proceeding on various matters: 230 I. C. C. 437; 236 I. C. C. 425; and 247 I. C. C. 422 and 427.

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held on October 14, 1941, and no objection to the granting of the application has been presented.

There are \$2,551,000, principal amount, of the bonds outstanding in the hands of the public. The payment of interest thereon was first defaulted on August 1, 1937, and no payment of interest has been made since that date. The payment of the principal of the bonds was defaulted on August 1, 1940. The committee expects to represent holders of approximately \$1,000,000 of the bonds.

A group of less than 25 bondholders has been and is now representing about \$440,000 of the bonds, and holders of approximately \$700,000 of the bonds are cooperating with this group. The counsel for the group is also counsel for the New York Trust Company, the mortgage trustee, and he represents a holder of \$200,000 of the bonds.

Boveroux, of New York, N. Y., since 1931 has been associated with Minsch, Monnell & Company, Incorporated, investment dealers.

Sherry, of Syracuse, N. Y., was manager of the Syracuse office of Dillon, Read & Company from 1930 to 1933, and thereafter president of the Morris Plan Industrial Bank of Syracuse.

Sickels, since 1931, has been a member of the law firm of Clark, Sickels & Barton. A member of his immediate family now owns \$12,000, principal amount, of the bonds, purchased on or about July 14, 1941.

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.

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 treasurer, secretary, and counsel. The addition of members to the committee would be made by the unanimous vote of the committee, and vacancies on the committee would be filled by a majority vote of the remaining members of the committee, subject to the approval of this Commission or any other regulatory body or tribunal having jurisdiction in the matter.

The committee could alter or amend its rules by a majority vote, but such action would be subject to the approval of this Commission or 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.

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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 committee will look to the estate of the debtor for reimbursement of its expenses. 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, not including counsel fees and expenses, will not exceed \$2,000. The committee could incur obligations only by the unanimous consent of all its members, and each member would advance his ratable share thereof.

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. 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. The form expressly provides that no deposit of bonds is required; that the bonds are not subject to any lien for the costs, fees, and expenses of the committee; 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; and that the committee is not empowered to accept or reject any plan of reorganization for the debtor approved under section 77 of the Uniform Bankruptcy Act, as amended. The authorization could be revoked at any time by the bondholder signing it, or surrendered by the committee, by giving notice in writing.

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 G. Leonhard Boveroux, Alden Sherry, and John S. Sickels, as a protective committee, to solicit from holders of the bonds referred to herein their authorizations for the applicants to represent them, without the deposit of 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 precede the consummation of a reorganization of

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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:

1. 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.

2. 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.

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

An appropriate order will be entered.

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