

*THE BONDHOLDERS' PROTECTIVE  
COMMITTEE*

THE bankers had to deal with the St. Paul security-holders as well as with the receivership court. At the same time that the channels to the court were being arranged, as already described, the channels to the owners of the bonds and stocks were also under construction. They took the form of bondholders' and stockholders' committees.

Mr. Hanauer told Mr. Fisher, the Harkness director, what was customary. The following statement is Mr. Hanauer's:

"On the 9th of March, when Mr. Miller had definitely determined and advised the board of directors to that effect [that it should not pay the April 1 interest charges], I believe Mr. Fisher came in and talked over the situation as to what should be done in view of the immediate possibility of a receivership. I told him that the usual thing was that at the time of receivership the large security-holders formed committees; that naturally the banking houses who had placed over \$200,000,000 of these bonds were interested more than anybody else, and that the security-holders generally would expect us to do the best we could to safeguard their interest; that we would take it up with the bondholders. . . ."

One method of taking up matters with the bondholders was to do what Mr. Hanauer had testified was appropriate for bankers—to "step in in calling bondholders together." Bondholders'

meetings for the election of committees to represent them is what three members of the Interstate Commerce Commission urged as the appropriate method. They said: "Committees should be selected at meetings of the security-holders called for the purpose and ought not to be selected by the reorganization managers themselves or by other outside volunteers."

The State of Wisconsin, where the St. Paul company was incorporated, had a statute requiring that "whenever any corporation becomes involved in . . . foreclosure . . . a joint meeting of its stockholders and creditors shall immediately be called. . . . Committees shall be chosen. . . ." The Attorney General of Wisconsin called this to the attention of the receivership court. One of the lawyers present at the time was Mr. Swaine, the bankers' lawyer. The court brought up the question:

*Judge Wilkerson:* You are not concerned with that?

*Mr. Swaine:* We are not concerned at all.

A few men participated in the formation of the protective committees. It was done with greater precision and surer purpose than was depicted by Mr. Swaine's firm, Cravath, Henderson & de Gersdorff, who told one of the higher United States courts which dealt with an appeal in the receivership that "certain of the larger holders of the junior bonds had been gradually getting together toward the end of 1924 and the beginning of 1925, as the difficulties of the railway company increased. . . . As a result, at the time of the receivership, at the suggestion of the board of directors of the railway company . . . a bondholders' committee . . . was formed." The committee was organized in fact on March 16, and the board did not meet until March 17. It was organized by Mr. Hanauer. The attempt of one of the large bondholders to organize a committee early in February was opposed by Mr. Hanauer, but he himself then began making his contacts for the formation of a committee, more than a month before the receivership. He had selected the most important of its members and had taken steps to designate

who should fill the almost controlling post of committee counsel, even before the informal gathering of March 16.

Early in February, a large bondholder called together representatives of insurance companies which held blocks of the bonds. He did not invite the bankers to attend. Word was brought to Mr. Hanauer immediately afterwards—about February 11. He promptly talked to the interests that had been present at the meeting, to dissuade them from supporting the independent bondholder's proposal. Some of the testimony follows:

*Mr. Hanauer:* I then determined that perhaps I had better see some of these larger interests and talk to them. I do not remember just in which order I went to see these institutions. . . . I spoke to Mr. Steadman, vice-president of the Prudential Insurance Company, as to the situation, and he entirely agreed—

*Mr. Fisher:* Entirely agreed? What do you mean by that?

*Mr. Hanauer:* That it would be premature to form any committee at that time. . . .

One of the insurance-company officials whom Mr. Hanauer saw was Mr. Ecker, vice-president of Metropolitan Life Insurance Company. He became the choice for chairman of the bondholders' committee. Both Mr. Ecker and Mr. Hanauer were asked whether the choice had not been made by the latter.

*Mr. Fisher:* Did Mr. Hanauer suggest that you act as chairman of the protective committee for the bondholders . . . ?

*Mr. Ecker:* In just that definite way, perhaps not. I don't think we went so far [as] to actually discuss a committee. There wasn't a committee in existence nor had we any authority to suggest that I act as chairman of the committee. It would be a matter to be determined by a meeting when it was held. Nor was there anything in his manner that would indicate that he was proposing to dictate who should be chairman of the committee.

Much later Mr. Hanauer testified as follows:

*Mr. Anderson:* . . . You had asked Mr. Ecker to become chairman of the bondholders' committee and he had accepted?

*Mr. Hanauer:* Suggested. I would rather say suggested.

*Mr. Anderson:* All right, suggested, then.

*Mr. Hanauer:* Yes.

*Mr. Anderson:* And that bondholders' committee representing both of those issues of bonds had been substantially agreed upon as to personnel?

*Mr. Hanauer:* No, I think I said before that I think that was definitely settled the next day.

*Mr. Anderson:* The next day?

*Mr. Hanauer:* Yes; but I believe that is immaterial.

The materiality of Mr. Hanauer's evidence is, of course, that he had suggested Mr. Ecker as chairman before the membership of the committee was definitely settled. The relation between Mr. Ecker and the St. Paul bankers becomes pertinent. Mr. Ecker was the person, of all those at the early February meeting called by an independent bondholder, to whom Mr. Hanauer telephoned to ascertain what had taken place. And later in February, when there was a conference at which a voluntary readjustment plan was proposed, Mr. Hanauer was the man to whom Mr. Ecker telephoned the story of what had taken place. "I saw quite a lot of Mr. Ecker those days," said Mr. Hanauer. Mr. Ecker had been in two previous railroad reorganizations which Mr. Hanauer had managed. This led to certain questions.

*Mr. Prentice:* Mr. Ecker is what we may describe, may we not, as one of the regular Kuhn, Loeb committeemen?

*Mr. Hanauer:* Decidedly not, and there is not a man in the City of New York who knows anything about anything who would make such a statement.

*Mr. Prentice:* How many Kuhn, Loeb reorganization committees has he served on?

*Mr. Hanauer:* None. There is no such thing as a "Kuhn, Loeb & Company committee." Mr. Ecker stands higher than most any

man in the United States, certainly in the City of New York. He has been twice the chairman—President of the Chamber of Commerce of the State of New York; he is respected by everybody, and here in this building, where he has given us the courtesy of this room, it is an outrage to make such a statement.

*Mr. Prentice:* Mr. Hanauer, I did not mean to insult Mr. Ecker by suggesting a close connection with Kuhn, Loeb & Company.

*Mr. Hanauer:* You intimated that he wore somebody else's collar—and he does not. None of these men do.

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*Mr. Prentice:* How many reorganization committees sponsored by Kuhn, Loeb & Company has Mr. Ecker served on?

*Mr. Hanauer:* I only remember two, I think. Of course, you cannot use the word "sponsored." In every case where Mr. Ecker has served on a committee—and I only remember two or three—it was not because we asked him because he was Mr. Ecker, as much as we would have liked to, but because the Metropolitan Life Insurance Company, whose interest he was there to protect, had large holdings of those securities.

Besides Mr. Ecker, there were eight other members of the bondholders' committee. Mr. Hanauer was one of them. Mr. Mitchell, president of the National City Bank, the other banker of the road, was also a member of the committee. Efforts were made in the Commission investigation to ascertain who selected those two and the six remaining members. One of the witnesses on the subject was Mr. Samuel Fisher, St. Paul director and Harkness representative, who was examined by the Commission's special attorney, Mr. Walter L. Fisher.

*Walter L. Fisher:* But somebody was assuming the responsibility for the formation of those committees?

*Samuel Fisher:* Mr. Hanauer kept in touch with Mr. Ecker. . . .

*Walter L. Fisher:* Was Mr. Hanauer the one who was deciding

who was to go on those committees?

*Samuel Fisher:* Not entirely.

*Walter L. Fisher:* Was he the principal one?

*Samuel Fisher:* He was the principal one, I should say, from the bankers.

*Walter L. Fisher:* Who was the principal one who made that decision? Somebody had to decide.

*Samuel Fisher:* No, when we came to an agreement, then we acted on it. . . .

In February Mr. Hanauer had spoken to Mr. Peabody, president of the Mutual Life Insurance Company. The latter was a director of several large railroad companies for which Kuhn, Loeb & Company were bankers. Mr. Hanauer had first offered him the chairmanship of the bondholders' committee, but Mr. Peabody had declined on account of his age. He became a member of the committee, however. Mr. Hanauer also approached Mr. Cutler, connected with the John D. Rockefeller interests, and a member of the board of the Equitable Trust Company, the Rockefeller bank. One of the Kuhn, Loeb partners, Mr. Otto Kahn, and one of their attorneys, Mr. Cravath, were also on the board of the Equitable Trust Company, and that bank and the Kuhn, Loeb firm had participated jointly in many financial transactions in the past. Mr. Hanauer invited Mr. Cutler to go on the bondholders' committee. Mr. Cutler accepted.

This left four more places to fill. Samuel Fisher wanted a place, to represent the bondholdings of the Harkness family and its philanthropic foundation, the Commonwealth Fund. He communicated his wish to Mr. Hanauer and became a member. The Prudential Insurance Company, with which Mr. Hanauer had talked on the subject in February, was invited to put a man on the committee and did so later. The Northwestern Mutual Life Insurance Company was asked to do the same, and put an out-of-town man on the bondholders' committee. The ninth place went to the president of a savings bank who was prominent in bankers' associations.

In most protective committees the attorneys for the committees, have a powerful voice. For this there are several reasons. Reorganization matters seem to many committee members technical and of a legal nature. The lawyers who secure the post of committee counsel can usually speak with the authority of experience, and it is convenient for many committee members to leave things to the lawyers, who are willing to carry the burden because they receive far larger fees than any single member. The post of counsel for the St. Paul bondholders' committee was therefore, in the eyes of any person concerned, an important one to influence or control the committee.

In the far-off days when "Lord John" Sterling, head of the firm of Shearman & Sterling, was the close companion of James Stillman, head of the National City Bank, Shearman & Sterling had become invariably the lawyers of the bank. The lawyers had their offices in the bank building. So ingrained and almost inter-cellular had become the connection between the firm and the bank that mention of the bank would immediately bring the lawyers' name to the mind of any attorney acquainted in Wall Street; and mention of the law firm's name would at once call to a financier's mind the name of the bank. Mr. Hanauer had been in Wall Street thirty-four years when he was testifying before the Interstate Commerce Commission. But when reference was made, in the Commission investigation, to the use of the National City Bank lawyers, Mr. Hanauer said:

" . . . Because the same counsel that the City Bank sometimes employ happened to have been chosen by the bondholders' committee has nothing to do with this situation. . . ."

When Mr. Hanauer proposed to Mr. Ecker that Shearman & Sterling be retained, Mr. Hanauer gave as his reason one which fitted in with the principle guiding Mr. Ecker from the outset. He had said: "If I am going to have anything to do with this reorganization, it must be based on . . . the utmost economy." Mr. Hanauer told Mr. Ecker, so the latter testified, that "he believed it [the appointment of Shearman & Sterling] would result in important economies with that firm, as they were well

acquainted with the St. Paul situation, they would probably be better qualified than a firm that would have to acquire the information they had through a great deal of examination of facts and conditions, and that he suggested it in the interest of saving money." The saving thus accomplished was not estimated by any of the witnesses, but the fee to be paid to the City Bank attorneys was estimated by Mr. Hanauer when he appeared before the United States Senate committee, at a minimum of \$200,000, and he indicated that it might be \$300,000.

A committee post of less importance than that of counsel, but of considerable importance nevertheless, is that of secretary. Correspondence between security-holders and committees is largely through the secretaries of the latter. The committees themselves rarely meet, and in consequence it is usually the secretary who determines what a committee says through correspondence with individual security-holders. To some extent, in important communications, the secretary consults the committee's lawyers. The man chosen for secretary of the St. Paul bondholders' committee was a lawyer in the firm of Shearman & Sterling.

After Mr. Hanauer had had his talks with the men he was inviting to membership on the committee, and arrangements had been made as to committee counsel, a meeting had to be held. The meeting was called after the decision to go into receivership was taken. Mr. Hanauer's testimony follows:

*Mr. Hanauer:* . . . I then immediately telephoned to Mr. Ecker, who had gone to Augusta, Georgia, and told him that the situation had become more imminent than had been expected, and said that the question of receivership was very imminent.

*Mr. Fisher:* This was on what date?

*Mr. Hanauer:* This was the 9th of March. I told him that the bondholders would be getting together, the larger ones, to discuss the question of a committee within a few days, and when was he coming back? He said that he was not coming back for some time, but that he would come back specially, because this was a very important thing, in which his company was very

largely interested, and said he will be back on the next Monday morning, the 16th, and to save time, "I wish you would arrange to have those largely interested meet at my office early in the morning."

Mr. Hanauer arranged to have at the meeting, in addition to Mr. Ecker, the following: Mr. Mitchell and himself, the bankers; Mr. Peabody, the life-insurance president to whom Mr. Hanauer had first offered the chairmanship; Mr. Fisher, the Harkness attorney who had been working closely with the bankers in the preceding weeks; the attorneys for the two bankers, including Mr. Swaine of the lawyers for Kuhn, Loeb firm, and Mr. Cary of the lawyers for the National City Company; and the two men who had already been selected as chairmen of the two stockholders' committees which were to be organized. The last-mentioned, as testified by one of them, Mr. Buckner, were there "representing the stock as listeners." The men present on the business of organizing a bondholders' committee were, thus, the bankers, their lawyers, and three other men—Messrs. Ecker, Peabody and Fisher. What apparently stood out in Mr. Buckner's recollection of the meeting was the attendance of "a big array of counsel." This was on the day after the lawyers' meeting in Mr. Swaine's room.

Mr. Hanauer said that at the meeting of March 15 the members of the bondholders' committee were decided upon. The following is some of the testimony:

*Mr. Grady:* . . . Who recommended all these men?

*Mr. Hanauer:* I testified that there was a meeting on the 16th of March when Mr. Ecker returned from Augusta.

*Mr. Grady:* I get that. But who suggested the names, that is what I want to get at?

*Mr. Hanauer:* There was a list presented, that I presented, showing the larger holdings, that we knew of, and it was from that list that these names were suggested.

*Mr. Grady:* Who suggested the name of Mr. Ecker?

*Mr. Hanauer:* The insurance company of which Mr. Ecker is vice-president in charge of finances, held and has held for a long time—

*Mr. Grady:* You have told us that. I am asking you who suggested his name. That is a very simple question.

*Mr. Hanauer:* That has already been testified to. Mr. Peabody was the first one, of the Mutual Life.

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*Mr. Grady:* And then who suggested Mr. Cutler on behalf of the Rockefeller interests?

*Mr. Hanauer:* I suggested Mr. Cutler. I had put Mr. Cutler on the list as showing that the Rockefeller interests owned a large amount of securities.

*Mr. Grady:* That is John D. Rockefeller, Junior or Senior?

*Mr. Hanauer:* I think it is the Rockefeller Foundation. I really do not know.

*Mr. Grady:* Who suggested Mr. Duffield?

*Mr. Hanauer:* Mr. Duffield was president of an insurance company.

*Mr. Grady:* I am not asking you that.

*Mr. Hanauer:* Nobody suggested these men. There was a list presented showing large holdings.

*Mr. Grady:* Who presented that list?

*Mr. Hanauer:* I furnished the list.

*Mr. Grady:* Who suggested the men?

*Mr. Hanauer:* I do not know who individually selected particular persons.

Mr. Buckner, who had been somewhat of an unofficial observer at the March 16 meeting, was asked about it.

*Mr. Buckner:* . . . We sat around there and I think there was just a general discussion. . . . Mr. Ecker . . . had just come north. He cut his vacation short and came up there to be brought up to date as to what was going on.

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*Mr. Fisher:* What, if anything, did Mr. Hanauer say that you can recall, at this meeting to which you have just referred?

*Mr. Buckner:* I think he outlined the general thought of the organization of a bondholders' committee, and stated that the bondholders of a certain percentage of the bonds were represented there and perhaps he asked Mr. Ecker to act as chairman of it, and I think Mr. Ecker before that time had accepted, and discussed in a general way what he thought was a good way to move forward to conserve the best interests of the property.

*Mr. Fisher:* You are now speaking of what Mr. Hanauer said?

*Mr. Buckner:* Yes. I think he was the principal speaker at that meeting. . . . Mr. Ecker listened in, because he was being brought up to date on it.

The Interstate Commerce Commission reported that "the bankers . . . framed up the committees favorably to themselves, put themselves on the bondholders' protective committee and constituted themselves reorganization managers." Quotations from this report were later submitted to the United States Supreme Court, when the bankers were engaged in preventing scrutiny of their fees by the Commission. To this the bankers' attorneys objected, on the ground that the Commission's report was being used "to create the impression that the managers controlled the entire situation, including the appointment of the committees. . . ."

These lawyers told the Supreme Court that "protective committees were formed by certain of the preferred stockholders, common stockholders, and bondholders."