UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 72-3193

In the Matter of

TMT TRAILER FERRY, INC., et al.,

Debtor,

PROTECTIVE COMMITTEE FOR INDEPENDENT
STOCKHOLDERS OF TMT TRAILER FERRY, INC.,

Appellant.

Appeal from the United States District Court
for the Southern District of Florida

BRIEF OF THE SECURITIES AND EXCHANGE COMMISSION

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Appeal from the United States District Court
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BRIEF OF THE SECURITIES AND EXCHANGE COMMISSION

ISSUE PRESENTED

Whether an order exceeded the bounds of the district court's discretion and should be reversed which directed a stockholders committee, which had effectively represented the interests of stockholders in a lengthy and complicated reorganization proceeding under Chapter X of the Bankruptcy Act, to file an amended statement pursuant to Section 211 of Chapter X where

--The district court has, for several years, condoned a pattern of activity by the Chapter X trustee's counsel which this Court has found to be harassing and which this Court on several occasions has directed be stopped;

--The order required that the Committee obtain, presumably at its or its counsel's expense, new authorizations from stockholders already represented by it, together with extensive information concerning the acquisition of shares by such stockholders at least fifteen years ago when it is still not yet known to what extent, if at all, stockholders will be entitled to participate in the reorganized company; and

--There was no indication of any material change in the financial or business interests of the Committee nor of any transaction by any Committee member or counsel in securities of the debtor.

STATEMENT OF THE CASE

The Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. ("Committee") appeals from an order of the United States District Court for the Southern District of Florida, entered sua sponte without hearing or notice on August 2, 1972 (OR 1680),[1/] in a proceeding pending in that court pursuant to Chapter X of the Bankruptcy Act, 11 U.S.C. 501 et seq., for the reorganization of TMT Trailer Ferry, Inc. ("debtor").

1/ "OR ____" (for "Original Record") refers to the number of the document filed in the docket of this Chapter X reorganization proceeding in the Office of the Clerk of the United States District Court for the Southern District of Florida under docket No. 3659-M-Bk-WM in that court, according to entries made by the clerk in the district court docket.

On October 25, 1972, this Court granted the Committee's motion to dispense with the requirement of an appendix and to proceed on the original record.

That order directed the Committee to file an amended statement under Section 211 of Chapter X, 11 U.S.C. 611[2/] (dealing, inter alia, with authorizations given to the Committee; see p. 11, infra). In essence, the order required:

1. That the Committee obtain new authorizations from those individual shareholders already represented by it (pursuant to authorizations previously given to the Committee and never revoked);
2. that each shareholder authorizing the Committee to represent him supply extensive information concerning the circumstances of the acquisition of his shares in the debtor; and
3. that the Committee submit all soliciting material for the new authorizations to the district court twenty days prior to the time for filing the amended Section 211 statement, together with a list of shareholders to be solicited, and a statement of any change in the holdings of each Committee member.

The Securities and Exchange Commission, a party to the proceeding in the district court pursuant to Section 208 of Chapter X, and thus a party to this appeal, files this brief in support of the appellant Committee and urges reversal of the order appealed from.

2/ In Title 11 of the United States Code, the numbers of the section of the Bankruptcy Act comprising Chapter X are higher by 400 than in the Bankruptcy Act itself, e.g., Section 211 of that Act is Section 611 of Title 11. We shall use the Bankruptcy Act rather than the Code section numbers.

Background

The Committee entered its appearance shortly after the commencement of the proceeding in the summer of 1957 (OR 15).[3/] For the past fifteen years, the Committee has actively and effectively represented the interests of stockholders in this proceeding in the court below, in this Court and in the Supreme Court. During the first eleven years of this proceeding, the Committee opposed several plans of reorganization approved by the district court which had excluded stockholders from participation in the reorganized debtor by valuing the reorganized debtor on an improper basis.[4/] The Committee also opposed the embodiment in the plans of compromises of disputed substantial claims which the trustee had entered into and the district court had approved without sufficient investigation into the merits of the claims and the objections thereto made by the Committee and the Commission. The efforts of the Committee in this direction were successfully culminated in 1968, when the Supreme Court reversed a decision of this Court affirming the district court's approval of a third plan of reorganization, which excluded stockholders from participating in the reorganized debtor without a proper valuation hearing and which plan embodied

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3/ Similarly, the Commission entered its appearance in the proceeding shortly after its inception and has participated actively since that time (OR 97).

4/ TMT Trailer Ferry, Inc. v. Anderson, 292 F. 2d 455 (C.A. 5, 1961), certiorari denied sub nom. Shaffer v. Anderson, 368 U.S. 956 (1962); In re TMT Trailer Ferry, Inc., 334 F. 2d 118 (C.A. 5, 1964); and Protective Committee v. Anderson, 364 F. 2d 936 (C.A. 5, 1966), reversed, 390 U.S. 414 (1968).

"compromises" allowing the disputed claims almost in full.[5/] The Supreme Court ordered the district court to conduct valuation hearings along the lines which had long been urged by the Committee and the Commission[6/] and to conduct an investigation into the merits of the objections to the disputed claims before approving any compromise of the claims.[7/]

Nor, more than four years after the Supreme Court decision, there have still been no valuation hearings and the Committee, instead of having been able to devote all of its efforts toward helping investors achieve participation in a reorganized company, has been forced to waste much of its time, energy, and limited resources in defending its right to continue to participate in this proceeding.

After the Supreme Court's remand, the case was assigned to a different district judge, Judge Mehrtens (OR 883). The Committee soon thereafter brought on a motion for the removal of the trustee (OR 888), who resigned before the issue was resolved (OR 978). In August 1968 Committee counsel filed an application for allowances of $100,000 in interim fees and $22,000 in reimbursement of expenses for the eleven-year period from 1957 to June 30, 1968 (OR 895, 934). Judge Mehrtens announced from the bench at the conclusion of an evidentiary hearing on the fee requests in December 1968 that he would grant an award and

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5/ Protective Committee v. Anderson, 390 U.S. 414 (1968).

6/ Id. at 453.

7/ Id. at 441.

requested that the Commission file a memorandum giving its views on what amount would be appropriate (OR 1217, Tr. 88-89). The Commission, in January 1969, made its recommendation of interim compensation for Committee counsel of $60,000 on account of services rendered and $10,000 toward reimbursement of expenses (OR 987). Judge Mehrtens had not passed upon the amount of fees to be awarded to Committee counsel, when, in January 1969, he appointed a successor trustee (OR 981) and successor trustee's counsel (OR 984).

In the spring of that year the successor trustee filed a report with the district court, which alleged numerous unsupported charges of misconduct by the Committee and its counsel (OR 1063) and urged that no compensation be paid to Committee counsel until those charges should be fully explored (id. at p. 57). During the spring and summer of 1969, trustee's counsel, over the objections of the Committee and its counsel (OR 1115) and of the Commission (OR 1119), sought to explore the unsubstantiated charges made in the report (OR 1094-1099). In October 1969, Judge Mehrtens awarded Committee counsel only $10,000 interim compensation for more than 8,000 hours of services rendered over the eleven-year period. In the same order he authorized the trustee's counsel to initiate discovery proceedings in connection with trustee's counsel's unsupported charges against the Committee and its counsel (OR 1163).

The Committee and its counsel appealed. During the course of the appeals, the trustee's counsel filed a plethora of briefs, memoranda, motions, etc., reiterating the former charges against the Committee and

its counsel and setting forth a host of new charges, also unsubstantiated or clearly irrelevant. In October 1970, this Court reversed the decision of the court below.[8] It awarded Committee counsel $60,000 interim compensation and $10,000 reimbursement of expenses. It quashed the proposed discovery procedures in connection with trustee's counsel's charges "to prevent undue harassment."[9] In its decision, this Court directed that the district judge, "in the firmest and most emphatic manner possible, state to the Trustee and its counsel the absolute need of cooperation and harmony with the Protective Committee and its counsel to insure a proper determination and final wind-up of this reorganization."[10] This Court made clear that it rejected trustee's counsel's charges against the Committee and its counsel.[11]

Trustee's counsel unsuccessfully sought Supreme Court review of this Court's decision.

Upon remand, after the Supreme Court denied a petition for a writ of certiorari,[12] as this Court subsequently found, "no attention . . .

8/ Protective Committee v. Kirkland, 434 F. 2d 804 (1970), certiorari denied, 402 U.S. 907 (1971).

9/ Id. at 807.

10/ Ibid.

11/ Id. at 808; Protective Committee v. Mehrtens, 457 F. 2d 104, 105, certiorari denied, 41 U.S.L.W. 1384 (October 10, 1972).

12/ Kirkland v. Protective Committee, 402 U.S. 907 (1971).

[was] paid to . . . [its] salutory injunction" for harmony and cooperation.[13/] Instead Judge Mehrtens attached onerous conditions to this Court's mandate as to the award of interim compensation and reimbursement to Committee counsel, excluding one lawyer in toto from that award, authorizing trustee's counsel to initiate disqualification proceedings against the Committee and its counsel based on the unsupported charges which counsel had previously raised unsuccessfully in the earlier appeal, and allowing the trustee's counsel to pursue discovery in connection with these charges (OR 1472).

Once again, the Committee and its counsel sought relief from this Court--this time by way of petition for a writ of mandamus and prohibition to have the district court comply with this Court's earlier decision. This Court granted the Committee and its counsel the relief it sought.[14/] With respect to the continued failure of the district court to stop the continued harassing by trustee's counsel this Court stated:

> "Nor do we think it proper for the District Court to have authorized discovery proceedings to obtain evidence of testimony 'in connection with any and all matters dealing with disqualification of the Committee and its counsel'. This opens the door to the type of harassment in which the Trustee's attorney has engaged in his dealings with the Committee's counsel. In our view at this late date in the reorganization, it serves no useful purpose and must

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13/ Protective Committee v. Wolff, 457 F. 2d 100, 102, certiorari denied, 41 U.S.L.W. 1384 (October 10, 1972).

14/ Protective Committee v. Mehrtens, supra, 457 F. 2d at 106.

> be ended. Many of the matters about which Trustee's counsel is attempting to inquire were the subject of the former appeal in this case and were resolved adversely to his contentions. See 434 F. 2d at 808. We cannot allow him or the District Court to retry that case." 15/

This Court directed the district court to pay the interim fees and expenses previously allowed Committee counsel without restriction and to cancel the discovery proceedings looking toward ousting the Committee and its counsel from the proceeding.

Despite this Court's clear direction, there has been little change in the state of affairs in the court below. Judge Mehrtens did indeed order payment without restriction of the interim fees and expenses allowed and did cancel the discovery proceedings relating to the trustee's counsel's disqualification motion. But he directed trustee's counsel (at the expense of the estate) to seek review of this Court's decision in the Supreme Court. (OR 1639). The petition for a writ of certiorari was filed on the last possible day, which had the effect of precluding action by the Supreme Court until after that Court's summer recess, so that the petition was not denied until last month.[16/] The effect of these tactics was to delay Committee counsel's use of their fee award for seven months following the denial of rehearing by this Court.[17/] In all, trustee's

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15/ Id. at 105.

16/ 41 U.S.L.W. 1384 (October 10, 1972).

17/ Cf., In the Matter of Imperial '400' National, Inc., 456 F. 2d 926, 930 (C.A. 3, 1972).

counsel, with at least the tacit consent of Judge Mehrtens, has managed to tie up the award to Committee counsel for two years after this Court's decision in October 1970, and for four years after the initial application for interim fees had been filed in August 1968 for services commencing in 1957.

Judge Mehrtens' failure to follow the clear and unmistakeable will of this Court is also illustrated in his handling of the matter of interim compensation to trustee's counsel. The same day this Court granted the Committee's request for extraordinary relief, it also directed the district judge to reduce substantially awards of interim compensation which the district court had made to trustee's counsel.[18/] This Court's decision noted the fact that trustee's counsel had wasted a major portion of his time pursuing the Committee and its counsel, so that he had devoted insufficient effort toward reorganizing the debtor.[19/] This Court, presumably to discourage further procrastination and wasteful harassment of the Committee and its counsel, instructed the district court to award trustee's counsel no more than $30,000 interim compensation in any one year and to order him to return $59,020 of the $89,020 he had received as interim compensation for 1970.

18/ Protective Committee v. Wolff, supra, 457 F. 2d at 100.

19/ Id. at 102.

Upon remand, although Judge Mehrtens in late March, 1972, directed the return of the $59,020 (OR 1611), three days later he awarded trustee's counsel $30,000 for services rendered in 1971 and, over the objection of this Commission (OR 1616), $30,000 additional for services to be rendered in 1972, leaving a net balance of $980 owing to trustee's counsel (OR 1617).

Notwithstanding this Court's repeated directions to the contrary (see pp. 7-9, supra), trustee's counsel still is attempting to take the depositions in Miami, Florida, of the individual Committee members, who live in New York, Connecticut and California. The latest attempt to take their depositions--in connection with a proposed compromise of the $1.6 million Merrill-Stevens claim--was quashed by Judge Fay of the court below, sitting in Judge Mehrtens' absence (OR 1714).

Section 211 of Chapter X and the Committee's Compliance With Its Requirements.

Section 211, set forth in the footnote,[20/] requires, inter alia, that a committee representing more than twelve stockholders file with

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20/ Sec. 211. Every person or committee, representing more than twelve creditors or stockholders, and every indenture trustee, who appears in the proceeding shall file with the court a statement, under oath, which shall include--

(1) a copy of the instrument, if any, whereby such person, committee, or indenture trustee is empowered to act on behalf of creditors or stockholders;

(2) a recital of the pertinent facts and circumstances in connection with the employment of such person or indenture trustee, and, in the case of a committee, the name or names of the person or persons at whose instance, directly or indirectly, such employment was arranged or the committee was organized or formed or agreed to act;

(continued)

the reorganization court a statement including details of the formation of the committee, of the authorizations given to it, and of the stock held by the members of the committee and by the stockholders represented by the committee. The Committee in this case filed such a statement in the summer of 1957 (OR 15), upon its entrance into the proceeding, and the district court approved such statement (OR 42). The Committee was a subject of an investigation by the then trustee in 1960, and the results of that investigation were contained in a report filed on July 1, 1960. An updated statement was filed in February 1969, advising that no changes had occurred in the composition of the Committee and that no stockholder had withdrawn any authorization (OR 1000). The Committee has supplied additional information in other forms from time to time, including a list of current addresses of Committee members and a list of names and addresses of stockholders authorizing the Committee to represent them with the dates of acquisition of their stock; this was submitted to the district court in October 1971. We are informed by Committee counsel that they will detail the foregoing in the Committee's brief.

20/ (Continued)

> (3) with reference to the time of the employment of such person, or the organization or formation of such committee, or the appearance in the proceeding of any indenture turstee, a showing of the amounts of claims or stock owned by such person, the members of such committee or such indenture trustee, the times when acquired, the amounts paid therefor, and any sales or other disposition thereof; and
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> (4) a showing of the claims or stock represented by such person or committee and the respective amounts thereof, with an averment that each holder of such claims or stock acquired them at least one year before the filing of the petition or with a showing of the times of acquisition thereof.

The Order Appealed From

The order which is the subject of this appeal was entered by the district court, sua sponte, on August 2, 1972. It directed that the Committee file an amended statement under Section 211 of Chapter X within sixty days. The statement was to have annexed to it new authorizations from stockholders who previously had given the Committee authority to represent their interests in the reorganization proceeding. Each stockholder executing a new authorization was to sign a statement containing:

"(a) The name and present address of the stockholder.

(b) The number of shares held by the stockholder.

(c) The certificate number(s) held by the stockholder.

(d) The date the said shares held by the stockholder were acquired.

(e) The sum paid for said shares.

(f) Whether said shares were purchased on the open market through a brokerage firm or whether said shares were the result of a private transaction.

(1) If purchased through a brokerage firm, the name and address of the firm.

(2) If purchased from a private individual, the name and address of said individual.

(g) Whether or not the stock was acquired by gift or bequest.

(1) If by gift, the name and address of the donor.

(2) If bequeathed, the name and address of the deceased."

The order required the Committee to advise stockholders from whom it would solicit these new authorizations as to "the present financial position of the Committee" and as to whether any Committee member had traded in the debtor's securities. Finally, it required that, twenty days before the time for filing the new Section 211 statement, the Committee file with the court:

(a) A reproduction of the form of the new authorization tendered to stockholders;

(b) A list of all stockholders being resolicited by the Committee in connection with obtaining the new authorizations;

(c) The Committee's advice to stockholders being resolicited in connection with the present financial position of the Committee, and whether or not any individual Committee member had experienced any change of status as to any outstanding claims or securities issued by the debtor.

The order recited that the record did not permit the district court to determine whether any changes of a material nature had occurred "which would bear upon the right of the Committee and its counsel to be heard" and that the district court desired to determine, among other things, "whether or not such Committee does in fact represent members of a homogeneous class."

The Committee partially complied with that order by furnishing information readily available to it, that is, the information concerning the stockholdings of the members of the Committee and of its counsel and advised the Court that there had been no change in ownership of the debtor's securities by these persons. In its response and motion for a stay of the order pending appeal to this Court,[21/] the Committee stated that the portion of the order calling for new solicitations, at considerable expense to the Committee and to the probable annoyance of the shareholders concerned, who have, to date, received nothing in this fifteen year-old reorganization proceeding, would largely duplicate information already filed with the Court, would call for information immaterial to the proceeding at this stage, and would constitute a fishing expedition and harassment of the sort forbidden several times by this Court.

21/ So far as we are aware, the district court has made no disposition of the motion for a stay. No motion for a stay has been made to this Court.

ARGUMENT

UNDER THE CIRCUMSTANCES OF THIS CASE, THE ORDER APPEALED FROM EXCEEDS THE BREADTH OF THE DISTRICT COURT'S DISCRETION.

While the order appealed from is couched in terms of a court's inherent power to require disclosure from committees as to their activities and the nature of the interests they represent, because of the harassment to which the Stockholders Committee and their counsel have been subjected during the last three and one-half years of this proceeding and because the order appears to serve no useful purpose at this time, we submit that the order constitutes reversible error.

Trustee's counsel has repeatedly charged that the Committee does not really exist and the that the interests that the Committee purports to represent contain an inherent conflict of interest.[22/] This Court has determined that the charges are not such as to justify a waste of the estate's resources in exploring them. Yet, it is apparent that the court below is seeking still again to do, indirectly, exactly that which this Court has said "serves no useful purpose and must be ended,"[23/] that is, to explore trustee's counsel's charges against the Committee and its counsel, presumably with a view to disqualification of the Committee.

22/ See e.g., Trustee's Report, April 30, 1969, pp. 53-54 (OR 1163); Brief of Appellee No. 29089, pp. 74-78; Brief of Appellee Nos. 71-1277, 71-1951, pp. 15, 38; Response of Trustee, No. 71-2328, passim; Response of William O. Mehrtens, District Judge, No. 71-2328, pp. 12, 15.

23/ Protective Committee v. Mehrtens, supra, 457 F. 2d at 105.

The Committee, as such, has no financial resources.[24] To the extent the Committee or its counsel are to pay the costs of resolicitation, the order tends to be unduly burdensome when it is considered that there has been no allowance to the Committee or its counsel for the services rendered or expenses incurred over a period of fifteen years, except through the award directed by this Court to counsel--an award which is substantially less than the value of the services they performed, repays only a fraction of their out-of-pocket expenses,[25] and which has been subject to the possibility of recapture up to the denial of certiorari last month.

The order would also require public investors to search for detailed information with respect to transactions which presumably occurred at least fifteen years ago, even though the reorganization has not proceeded to the point where they can be given information as to what, if anything, they are likely to receive when it is concluded. Since the proceeding has not yet reached the stage where a reorganization plan is under

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24/ The Committee was informed early in this proceeding of the Commission's policy to oppose solicitation by committees for funds from the public security holders they represent, in light of the abuses prevalent in equity receiverships prior to the reforms of Chapter X. See, e.g., Securities and Exchange Commission, 30th Annual Report 100 (1965) and 31st Annual Report 98 (1966).

25/ The Commission's memorandum recommending the amounts which were allowed by this Court pointed out that payment on account, well below the requested amounts, would avoid the necessity of determining at that time which of the services and expenses had been devoted to matters clearly compensable. See Protective Committee v. Kirkland, supra, 434 F. 2d at 807.

consideration, any such indication would be premature. Stockholders who may long ago have given up hope of receiving anything from the reorganization may be unwilling to take the trouble to ferret out the information requested about the circumstances of their acquisition of the debtor's stock. On the other hand, the mere inquiry may mislead some stockholders to believe that they will receive substantial value out of the reorganization, when this is not yet known.

As of this time, when no plan has yet been filed, the information which the court asks that the investors produce is irrelevant.[26/] It might be that information about price paid, number of shares and so on, will be relevant to a specific plan. If the information should become relevant, then all stockholders, not just those who gave the Committee authorizations, will be required to file it, and the estate will be required to pay for the expenses involved.

Nor is there any justification for the requirement that the Commission obtain new authorizations from investors. There is no suggestion that investors have indicated any dissatisfaction with the quality of the Committee's representation of their interests nor that any authorizations have been revoked. The record affirmatively shows that no individual Committee member has bought or sold securities of or claims against the debtor (see p. 15, supra). In short, there has been no activity which

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26/ See In re Pittsburgh Railways, 159 F. 2d 630, 633 (C.A. 3, 1946), certiorari denied, 331 U.S. 819 (1947).

would justify a court of equity requiring the Committee and its counsel at this time to go to the time and expense of resoliciting after fifteen years.

It is true that the Committee has urged that stockholders who purchased their shares on the basis of misrepresentations by the debtor or its former management have claims as creditors against the debtor. Should it appear that the assets of the estate are sufficiently valuable that the claims of those now qualified as creditors would be satisfied in full. it is possible that the interests of stockholders who would urge that they have claims as creditors would conflict with the interests of those who have no basis for such a contention--such as those, for example, who may have purchased their shares subsequent to the initiation of this proceeding. Until a value of the estate has been found which would indicate that this point has been reached, there would appear to be no reason why the Committee should not be able to represent all stockholders that it now purports to represent, that is, all those not associated with former management. When and should a real conflict arise, the Committee necessarily will have to advise the sub-class of shareholders it cannot continue to represent.[27/] To date, however, the Committee's actions have looked

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27/ Cf., Katz v. Kilsheimer, 327 F. 2d 633 (C.A. 2, 1964); In the Matter of General Economics Corporation, 360 F. 2d 762, 766 (C.A. 2, 1966); In re Electric Bond & Share Co., 95 F. Supp. 492, 499 (S.D. N.Y.), certiorari denied sub nom. Electric Bond & Share Co. v. Securities and Exchange Commission, 341 U.S. 950 (1951); Silbiger v. Prudence Bonds Corporation, 180 F. 2d 917, 922 (C.A. 2), certiorari denied, 340 U.S. 813, 831 (1950).

toward defeating steps which would eliminate all stockholders from participation.

In terms of the right of the Committee to appear in the proceeding as a representative for public investors, the actual number of investors from whom the Committee receives authorization is basically irrelevant.[28/] There is no "official" committee in a Chapter X proceeding as there is, for instance, in a proceeding under Chapter XI.[29/] A stockholder may appear in person, by counsel, by an agent, or through a committee,[30/] and if he chooses to be represented through a committee, it can be heard,[31/] even if another committee representing the same class of investors is already participating in the proceeding.[32/] There is no question that the Committee here represents at least three actual

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28/ 6A Collier on Bankruptcy 967 (14th edition, 1971 revision). The number of investors represented or the circumstances of acquisition might be of some moment in determining the weight to be given to the Committee's objections to a given plan. In re Midland United Co., 58 F. Supp. 667, 681 (D. Del., 1944).

29/ See Section 338, 11 U.S.C. 738. See also Section 44b, 11 U.S.C. 72b, providing for appointment of an official creditors committee in straight bankruptcy. Section 44b is inconsistent and conflicts with Section 209 of Chapter X. Hence, it does not apply in Chapter X proceedings by virture of Section 102.

30/ Section 206 of Chapter X.

31/ Section 209 of Chapter X.

32/ See In re Flour Mills of America, Inc., 27 F. Supp. 559 (W.D. Mo., 1939).

stockholders of this debtor;[33] and even if it did not represent any other stockholder, the representation of these three holders would justify the existence of the Committee.[34] And whether or not they become a committee, any security holders can appear in the proceeding and, irrespective of their designation as a committee, may be held to fiduciary duties concerning the interests of fellow investors of the same class.[35]

Formation of committees in Chapter X proceedings is facilitated by the fact that a committee can be a very loosely structured organization. Technical and procedural requirements for participation in the proceeding are minimized in order to foster the avowed policy of Chapter X to encourage, not discourage, investor participation.[36] The conditioning of the right to participation on technical and unnecessarily detailed

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33/ Committee members Irwin Mason and Raymond Bukaty and Committee counsel Irma Mason.

Committee member Nathan Lobell has never owned any of the debtor's stock and has no claims against the debtor. There is, of course, no requirement of law that a stockholders' committee member be a stockholder. Committee counsel Langbein owns no stock.

34/ If the Committee represented only three holders, Section 211 would not apply since that section covers only committees representing more than twelve stockholders or creditors. See 6A Collier on Bankruptcy 345.

35/ Young v. Higbee, 324 U.S. 204 (1945).

36/ 6A Collier on Bankruptcy 967.

disclosure requirements is contrary to that purpose.[37] The policy of the act giving the district court broad powers to regulate and require disclosure from protective committees[38] must be balanced with, not used to overcome, the act's basic philosophies of democratization and encouragement of investor participation.

This Committee has been the effective representative of the interests of some seven thousand public investors in this proceeding for more than fifteen years.[39] There has, finally, been a glimmer of progress in the proceeding below. A compromise of the $1.6 million Merrill-Stevens claim

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37/ 6A Collier on Bankruptcy 301. Cf., Horowitz v. Kaplan, 193 F. 2d 64, 66 (C.A. 1, 1951), certiorari denied, 342 U.S. 946 (1952).

38/ Chapter X of the Bankruptcy Act was passed in large measure to correct the abuses which had been occasioned by the unregulated activities of investor protective committees under prior insolvency reorganization procedures. Part VIII, Securities and Exchange Commission, Report on the Study and Investigation of the Work, Activities, Personnel, and Functions of Protective and Reorganization Committees, pp. 162-278 (1940). Therefore, Congress gave the district court, in addition to its inherent powers as a court of equity, In re Philadelphia & Reading Coal and Iron Co., 27 F. Supp. 256, 257 (E.D. Pa., 1939), broad powers in Sections 210-213 of Chapter X to require disclosure from and to regulate the activities of protective committees and their counsel. Senate Report No. 1916 on H.R. 8046, 75th Cong., 3rd Sess., pp. 33-34 (1938). See also In re Realty Associates Securities Corp., 56 F. Supp. 1008, 1009 (E.D. N.Y., 1944). The sweeping disclosure requirements of Section 211 are an important part of that regulatory framework.

39/ No other stockholders (except those who were either affiliated with old management or had claims as trade creditors in addition to their stock) have ever participated. With the exception of this Commission, the Committee has been the sole voice for investors in this proceeding.

on terms decidedly more favorable to the estate than the terms of the compromise of that claim upset by the Supreme Court has been proposed (OR 1692). The initial stages of valuation have begun with the retention of experts. If the predictions of counsel for the trustee that there will be an equity should prove true, the Committee will have been largely responsible for participation of present stockholders in the reorganized debtor. 40/

CONCLUSION

For the foregoing reasons, the order appealed from should be reversed.

Respectfully submitted,

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40/ This Court has had occasion to note the Committee's achievements. See Travelers Insurance Co. v. Anderson, 394 F. 2d 929, 932 (1968); Protective Committee v. Kirkland, supra, 434 F. 2d at 807.