

# STOCK EXCHANGE PRACTICES

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## HEARINGS

BEFORE THE

### COMMITTEE ON BANKING AND CURRENCY UNITED STATES SENATE

SEVENTY-THIRD CONGRESS

SECOND SESSION

ON

#### S. Res. 84

(72d CONGRESS)

A RESOLUTION TO INVESTIGATE PRACTICES OF STOCK  
EXCHANGES WITH RESPECT TO THE BUYING AND  
SELLING AND THE BORROWING AND LENDING  
OF LISTED SECURITIES

AND

#### S. Res. 56 and S. Res. 97

(73d CONGRESS)

RESOLUTIONS TO INVESTIGATE THE MATTER OF BANKING  
OPERATIONS AND PRACTICES, TRANSACTIONS RELATING TO  
ANY SALE, EXCHANGE, PURCHASE, ACQUISITION, BORROW-  
ING, LENDING, FINANCING, ISSUING, DISTRIBUTING, OR  
OTHER DISPOSITION OF, OR DEALING IN, SECURITIES OR  
CREDIT BY ANY PERSON OR FIRM, PARTNERSHIP, COMPANY,  
ASSOCIATION, CORPORATION, OR OTHER ENTITY, WITH A  
VIEW TO RECOMMENDING NECESSARY LEGISLATION, UNDER  
THE TAXING POWER OR OTHER FEDERAL POWERS

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#### PART 18

Reports on Cleveland Banking Investigation

MAY 3 AND 4, 1934

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Printed for the use of the Committee on Banking and Currency



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## STOCK EXCHANGE PRACTICES

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THURSDAY, MAY 3, 1934

UNITED STATES SENATE,  
SUBCOMMITTEE OF THE  
COMMITTEE ON BANKING AND CURRENCY,  
*Washington, D.C*

The subcommittee met at 10 30 a m , following adjournment on Tuesday, May 1, 1934, in room 301 of the Senate Office Building, Senator Duncan U Fletcher presiding

Present Senators Fletcher (chairman), Costigan, Adams, Norbeck, and Townsend

Present also Ferdinand Pecora, counsel to the committee; David Saperstein, associate counsel to the committee, and Frank J. Meehan, chief statistician to the committee

The CHAIRMAN The subcommittee will come to order, please. Mr Pecora, have you something to submit to the subcommittee this morning?

Mr PECORA Yes, Mr Chairman You will recall that sometime last November, I believe it was, I was instructed by the committee to make an investigation into banking practices and methods pursued by the Detroit banks that had been closed, and by certain banks in Cleveland that also, at the time, were closed

In pursuance of those instructions members of the investigating staff repaired to the cities of Detroit and Cleveland, respectively, and pursued their fieldwork and investigations in those cities under the immediate supervision of Mr. Frank J. Meehan, who is a member of the investigating staff of this committee The evidence collected with respect to the Detroit banks has already been presented to the committee through the medium of the examination of witnesses and the introduction of evidence by way of documents

We have completed our investigation of the Cleveland banks that were the subject of inquiry and have collated and marshaled all the facts gathered by the members of the investigating staff in the form of reports which have been made, after considerable care, by the members of the staff who actually conducted the field investigations

Introduction of this evidence to the committee through the usual medium of subpoenaing and examination of witnesses before the committee would probably require 6 weeks of daily hearings. In order to save the time and also the expense that would be entailed in that method of presenting these facts—and I understand it is the desire of the committee to save both the time and the expense in connection therewith—I would now suggest that this evidence or that these facts collected by the investigators be put into the record of this committee's hearings through the medium of the reports that have been prepared by the investigators and which we have here now in typewritten form

If there is no objection to that procedure I will now authenticate the reports through the testimony of Mr Meehan, who is here and will submit them, one by one, for the record

The CHAIRMAN Is that agreeable to the subcommittee?

Senator ADAMS Of course, Mr Chairman, I do not know anything about what is in these reports. But as I gathered from the suggestion made by Mr Pecora, it is that there be submitted really the reports made by the investigators covering their investigations rather than to proceed to the taking of testimony

Mr PECORA Yes, Senator Adams, receive the reports that the investigators have prepared, covering what they claim to be the facts that have come to light as a result of their investigations

Senator ADAMS My inquiry is that the reports, as I understand, come in authenticated by the investigators, and they say We have investigated and found these facts, rather than to put in the facts in the form of testimony, as has heretofore been the case

Mr PECORA Yes

Senator ADAMS That is, just as if someone were sent out by a department to investigate a certain problem and comes back and makes a report and says I have found this, that, and the other, and it is in that case authenticated in that way

Mr PECORA Yes

Senator ADAMS All right I just wanted to understand the situation

The CHAIRMAN Very well You may proceed, Mr Pecora

Mr PECORA The reports that I will offer to the committee—

Senator ADAMS (interposing) I am asking to find out, of course, if back of the reports is your approval of each report coming in That is, that you think it is the thing that ought to be done

Mr PECORA Of course, it is an exceedingly informal way of presenting so-called "evidence" to the committee, but it has been thought that—

Senator ADAMS (interposing) Well, Mr Pecora, I might say that we do practically this very thing almost every day in the matter of bills that come up The committee writes a report on the bill that somebody, perhaps under the Secretary of the Interior or the Comptroller of the Currency, has gone into the matter and brought in a report so and so Rarely, if ever, is the evidence brought in the case of hundreds of bills that come for consideration The report is based upon an examination made by somebody that perhaps we never see

Mr PECORA I understand that that informal method is pursued by legislative committees in some cases

Senator ADAMS But this investigation was made, of course, by our own investigators

Mr PECORA Yes I would suggest, however, that announcement be made on the record to the effect that if anyone desires to present any evidence controverting or qualifying in any way, or bearing on the matters set forth in these reports, that opportunity will be given to such persons desiring so to do

The CHAIRMAN I think that can be arranged all right

Senator ADAMS I do not know what is in these reports, but assuming that there might be something reflecting upon somebody's business activities, I think they ought to have a chance to explain in event they desire so to do.

Mr PECORA. Yes. I think that full opportunity ought to be given to them, and I suggest that the subcommittee now so indicate.

The CHAIRMAN If we had to call all the witnesses necessary to testify to these specific facts, I mean the facts mentioned in these reports, it would take a great deal of time and entail a great deal of expense and, I think, unnecessary trouble. And these investigators here will say that these are the facts, won't they, Mr Pecora?

Mr PECORA Yes.

The CHAIRMAN I think we can proceed in that way. And if somebody complains that the record shows something that is incorrect or erroneous and they want to correct it, we can give them an opportunity to do so.

Mr PECORA Yes, Mr Chairman, I would suggest that that be done.

The CHAIRMAN. With that understanding you may proceed, Mr. Pecora

Mr PECORA I ask that Mr. Meehan be sworn

The CHAIRMAN. Mr Meehan, will you please stand, hold up your right hand, and be sworn.

You do solemnly swear that the testimony you are now about to give in connection with this investigation will be the truth, the whole truth, and nothing but the truth, so help you God

Mr MEEHAN I do

#### TESTIMONY OF FRANK J. MEEHAN, BROOKLYN, N.Y.

Mr PECORA Mr Meehan, will you please give your full name and address?

Mr MEEHAN Frank J Meehan, 215 East Fourth Street, Brooklyn, N Y

Mr PECORA Are you connected officially with the office of the attorney general of the State of New York?

Mr MEEHAN I am

Mr PECORA What is your official title or position in that office?

Mr MEEHAN Chief statistician of the department

Mr PECORA How long have you been connected in that official capacity with the office of the attorney general of New York State?

Mr MEEHAN Seven years

Mr PECORA Prior to that were you connected with any other governmental or State agency or department?

Mr MEEHAN Immediately prior to that I was with the Department of Justice for approximately 4 or 5 years as an accountant

Mr PECORA Have your services also been loaned to this committee at my request, by the attorney general of the State of New York?

Mr MEEHAN Yes

Mr PECORA Have you been rendering service as a member of the investigating staff of this committee since January of 1933, or since I became counsel to this committee?

Mr MEEHAN I have, as its chief statistician

Mr PECORA Now, during the latter part of the year 1933 did you, at my suggestion, go to the city of Cleveland, Ohio, with other members of the investigating staff of this committee, for the purpose of inquiring into the banking methods and practices prevalent in the banks of that city?

Mr MEEHAN I did.

Mr PECORA And how many members of the investigating staff of the committee worked under your immediate supervision for the purpose of such inquiry in Cleveland?

Mr MEEHAN. The number of our people in Cleveland varied all the way from 5 to 25—25 being the peak

Mr PECORA Did they include accountants and auditors?

Mr MEEHAN Yes, sir; and stenographers

Mr PECORA You personally went to Cleveland at times to supervise their work, did you?

Mr MEEHAN I did

Mr PECORA And reported the results to me from time to time?

Mr MEEHAN. Yes, sir

Mr PECORA. Have there been prepared by the members of the investigating staff of this committee written reports setting forth the results of their investigations?

Mr MEEHAN There have been

Mr PECORA Have you got such written reports here?

Mr MEEHAN Yes, I have

Mr PECORA Will you please produce those of them which relate to the bank called "Guardian Trust Co of Cleveland, Ohio"?

Senator ADAMS May I ask at that point as to what was the method of the investigation, having in mind how far it was made up of an examination of individuals connected with the banks and how far made up by an examination of bank records?

Mr MEEHAN Our men in Cleveland had to depend upon the receivers to get access to the actual books, records, and files. Where in certain cases—and there were quite a few of them—essential records were missing, they would then go to the men most interested in that particular phase of the investigation, former directors of the banks, former officers, assistants of the superintendent of banking of Ohio, in order to get the factual information which they needed and upon which they have commented in their reports. Following an investigation, wherever any statement of fact is made in a report, it is backed up by a photostatic copy of the document or letter, or transcript of the record. Such photostats are in the original report. So that all of our statements of facts are supported by documentary evidence

Senator ADAMS Then am I to understand that no part of your report is based merely on oral statements made to you?

Mr. MEEHAN No, sir.

Senator ADAMS But that it is all documentary

Mr MEEHAN. All documentary

Senator ADAMS And I gather from what you say you have a basic accumulation of all the data, and then you have made a summary of it, which you are now putting before the committee

Mr MEEHAN A summary of each phase

Senator ADAMS But not a full accumulation of all the data compiled

Mr MEEHAN Well, we have two summary reports, one on the Guardian Trust Co and one on the Union Trust Co. Each of these summary reports summarizes the results of all the different phases of that particular investigation. The main investigation was devoted to two different groups, two principal groups, the Guardian Trust Co.

group and the Union Trust Co group So that these two summary reports, which are not documented you understand, will furnish a sketch of the whole story as it relates to these two main groups. We have particularized by preparing a report on each specific phase of each group, and it is in those reports that we have the documentation.

Senator ADAMS All right

The CHAIRMAN In other words, these reports are not based on hearsay or rumors but on the records of the banks themselves

Mr MEEHAN Yes, sir

The CHAIRMAN And, of course, other sources of data referred to

Mr. MEEHAN Yes, sir

Mr PECORA. And I might say that the references in these reports to such documentations are not only set forth in the text of the reports but also in the marginal notes that appear on the face of each report.

Mr MEEHAN. Yes; in the marginal notes of the summary reports, that will be found by way of reference to the exhibits And the exhibit will be found subheaded on the left-hand side of the folder containing the report

Senator COSTIGAN Has it been the practice to make indexes for these reports? Are they so arranged that there is an index in each instance?

Mr. MEEHAN No, sir. We have not prepared an index That could be done, however, at very little time and trouble.

Senator ADAMS. But they are indentifiable by numbers or some symbol?

Mr MEEHAN Yes, sir.

The CHAIRMAN. Have you identified these papers that you now have here before the subcommittee?

Mr MEEHAN Yes, Mr. Chairman.

Mr PECORA. Senator Adams, you might see just how they are prepared in the matter of form by referring to this folder. Here is the text of the report This is the reference to the documentary evidence supporting the statements in the text And all these exhibits will be made a part of the record of the hearing. I might explain that the exhibits are now in the hands of the Government Printing Office.

Senator ADAMS. All right.

The CHAIRMAN. You may proceed, Mr. Pecora.

Mr. PECORA. Mr Meehan, I show you a report produced by you and entitled "Guardian Trust Co.—Summary" It is addressed to you by Walter H. Seymour, senior examiner, bearing date April 27, 1934, and relates to the Guardian Trust Co. of Cleveland, Ohio Will you look at it and tell me if you recognize it as being a copy of one of the reports submitted to you by Mr. Seymour, who was one of the members of the investigating staff who worked in Cleveland under your direction?

Mr. MEEHAN Yes; I do.

Mr PECORA Mr. Chairman, I now offer that report in evidence, together with the supporting exhibits, which exhibits we do not have here at this time. I might explain that the exhibits are now physically in the possession of the Government Printing Office. They were delivered to the Government Printing Office yesterday in order to save time incidental to the printing of the record.

The CHAIRMAN. The report and exhibits will be received in evidence

(The report entitled "Guardian Trust Co —Summary", together with the exhibits now at the Government Printing Office, were received in evidence and marked "Committee Exhibit No. 1, May 3, 1934", and are as follows )

COMMITTEE EXHIBIT No 1—MAY 3, 1934

## GUARDIAN TRUST CO., CLEVELAND, OHIO

### SUMMARY

The closing of the Guardian Trust Co , like that of the Union Trust, was not the result of the "Michigan bank holiday" nor the "National bank holiday", but was the result of unsound practices and mismanagement

In the individual reports written in connection with each phase of the bank's activities we have reported in detail This report will simply be a summary of the information disclosed in the individual reports.

The Guardian Trust Co and its subsidiaries comprise 26 separate corporations

(Report re Corporate History)

As will be shown later in this report, the Guardian Trust Co , through the medium of its accounting methods, has never issued a statement of condition which has shown the true facts These 25 subsidiaries were used by the bank management to cover up those activities of the Trust Co. other than of the banking business.

(Report re Corporate History, p 5)<sup>1</sup>

The largest and most important subsidiary is the New England Co , a corporation formed originally to take title to the main bank building Later, stock ownership of the Hotel Hollenden Co and the DeWitt Hotels Co were transferred to the New England Co

In the acquirement and formation of the following companies, we find evidence of subterfuge for four different reasons

(Report re Corporate History, p 3)

1 *New England Co* —To invest in a banking building in an amount beyond that permitted by law.

2 *The Guardian Securities Co* —To permit the bank to speculate in mortgages and, subsequently, stocks and securities.

3. *4400 Superior Co.*—To conceal and to attempt to recuperate a loss incurred through an unwise loan

4 *Harrison County Investment Co* —To attempt to protect a loss sustained through a bad investment, the bank indirectly entered the coal-mining business.

(Report re Corporate History, p 4)

From 1928 until the closing of the bank, the formation of subsidiaries became a common occurrence, 4 being formed in 1928, 1 in 1929, 2 in 1930, 7 in 1931, and 6 in 1932. Naturally, all these sub-

<sup>1</sup> See explanatory note, table of contents

subsidiaries required financing, and the Guardian was milked by means of "loans" and "investments", all of which were carried on the various books at full value, although many of them were obviously not worth the paper on which they were recorded.

(Report re Corporate History)

From a summary of the activities of these subsidiaries we find that the Guardian Trust Co, besides being a bank, was actually engaged in the following businesses

1. The operation of an office building
2. The operation of a chain of hotels
3. The operation of a coal mine
4. The ownership of a produce market house
5. The operation of residential, apartment, and business property.
6. The holding of vacant allotment property
7. Speculation in stocks and bonds

### MANAGEMENT

The affairs of the Guardian Trust Co were dictated and managed almost wholly by Mr J Arthur House, president, and Mr H C Robinson, executive vice president. Associated with these 2 were 4 or 5 of the other senior officers, however, all important questions and final decisions were left to the Messrs House and Robinson

(Report re Compensation Paid to Officers)

A review of the pay roll shows that in the years 1928 to 1932 inclusive, salaries and bonuses of the seven highest paid officers were as follows.

	1928	1929	1930	1931	1932
J A House, president.....	\$98,333 33	\$107,083 33	\$108,750 00	\$90,000	\$75,350 00
H C Robinson, executive vice president.....	72,500 00	76,375 00	77,708 50	65,000	54,925 00
H P McIntosh, Jr, vice president.....	36,450 00	36,375 00	36,775 00	33,000	27,791 67
T E Monks, vice president.....	36,450 00	36,275 00	36,175 00	33,000	29,375 00
H I Shepherd, vice president.....	32,750 00	35,375 00	35,575 00	33,000	17,125 00
A G Stucky, vice president.....	27,000 00	30,625 00	30,125 00	27,000	23,708 33
H F Young, vice president.....	27,000 00	31,625 00	30,125 00	27,000	23,708 33

(Report re Compensation to Officers)

At the end of each year the board of directors voted a sum of money to be paid as a bonus to the officers of the Trust Co, and left the distribution to the discretion of Mr House. After taking the lion's share for himself and allowing Robinson a large portion of the remainder, Mr House distributed the bonus money to the various officers.

Our report regarding Compensation Paid to Officers shows in detail the value placed on his services by Mr House. In fact, in answer to an inquiry, Mr House stated

(Report re Compensation Paid to Officers, p 6)

I am coming more and more to the conclusion that executives in banks, who are responsible for the success of the institution and who are really the money makers, should be paid, in addition to their salaries, a percentage of the net earnings

## FINANCIAL HISTORY

(Report re Financial History, p 1)

The management of the Guardian Trust Co , in order to conceal from the stockholders the true facts regarding the bank's condition, resorted to methods of accounting and preparation of reports designed to conceal losses which were constantly sustained, due to poor judgment and speculative tendencies

(Report re Financial History, p 2)

The Guardian Trust Co. has never issued a report to stockholders which showed the earnings for any period. The stockholders were apprised of the company's earnings through the medium of a report read at the annual meeting of stockholders. None of the published annual reports or statements of the bank disclosed the earnings

(Report re Financial History, pp 1, 2)

Earnings were reported greatly in excess of their actual amount, as a result of which excessive dividends and bonuses were paid. The entire method of reporting earnings and the condition of the bank was misleading and contrary to sound principles of accounting.

(Report re Financial History, p 2)

Transfers of semi-worthless assets were made to subsidiary companies at their book value in order to prevent showing losses which would have occurred had the assets been written off to their true value.

(Report re Financial History, p 4)

The profits of the Guardian Trust Co were exaggerated in the annual report, due to the fact that in preparing the consolidated statement, only the operations of certain subsidiaries were included, these being companies that were making money, while losing companies were completely ignored

(Report re Financial History, pp 7 and 9)

In the case of the Guardian Trust Co , the term "Reserve for Depreciation Account" was a misnomer, as the account was at all times entirely inadequate to take care of the occurring losses. As a result of the general inadequacy of the reserve and the failure to provide for losses, it was necessary to transfer from undivided profits at the end of each year, sufficient to take care of the balance of the losses. This transfer from prior year's profits did not affect the current year's operations

(Report re. Financial History, p 10)

Through the confusing method employed by the bank in running losses through the reserve accounts, it was enabled to show earnings of \$7,573,470 51 in excess of the actual earnings after deducting losses, for the 10-year period from 1923 to 1932 inclusive. The earnings of the bank as reported on the annual reports for this period

were \$15,035,156 35, whereas the actual earnings, after deducting losses, were \$7,461,685 84.

(Report re Financial History, p 15)

On page 15 of our Financial History Report we have tabulated the earnings as reported, actual earnings, and the dividends paid for the 10-year period from 1923 to 1932 inclusive. Dividends were paid of more than \$15,000 in excess of the actual earnings for this period.

It seems extremely unlikely that had the stockholders and directors been aware of the amount of the real combined earnings, that they would have approved the declaration of such large dividends. Neither does it seem logical that they would have approved the payment of salaries and bonuses to officers of approximately \$700,000 for the years 1929 and 1930.

(Report re Financial History, p 16)

While the earnings of the Guardian Trust Co were reported to the stockholders on an accrual basis, the earnings reported by the bank for Federal income-tax purposes was on the cash basis. It should be noted that as a result of filing on this basis, no income-tax liability was incurred, with the exception of \$13,424 which was paid for the year 1929.

(Report re Financial History, pp 20, 21)

*Trust no 1092* — Further evidence of concealment of facts was discovered in an account called "Sundry Trust no 1092", the component parts of which were carried on the bank's statements as resources, or assets, with an offsetting credit among trust funds, whereas in reality this account included revenue and expense items as well as worthless assets. This so-called "trust" was merely another of the many subterfuges used by the bank management to conceal losses sustained by reason of unwise loans and investments. Semiworthless assets were transferred to this trust, the trust funds being shown in excess of their true worth on the annual report, as no write-off due to losses or decline in values was made.

(Report re Financial History, p 22)

Sundry trust no 1092 was originally created for the purpose of segregating certain commissions on real estate loans consummated by Mr. A. D. Fraser for various insurance companies.

Under an agency agreement, Mr. Fraser, an official of the bank, placed loans for several large insurance companies, receiving a certain commission from them for his services. Of such commissions, Mr. Fraser retained 40 percent and the bank, 60 percent. On the assumption that such earnings were not entirely applicable to the year in which the loan was consummated, but should be distributed over the life of the loan, the bank management decided that these commissions should be segregated in a trust fund, a proportionate share of which could be withdrawn yearly and credited to the earnings of the bank. Had this policy, which is perfectly tenable, been adhered to, there would be no occasion for criticism, but after some years the trust became, in effect, nothing more than a clearing house for many extraneous and generally non-profitable transactions.

This trust became nothing more than a secret reserve account in which was placed earnings from many sources, such as profits from the sale of acceptances, rentals on properties owned, etc., and from which funds were withdrawn for such purposes as the payment of rental to other trusts operated by the Guardian Trust Co., as trustee, the purchase of mortgages, notes receivable, bonds, etc. from the Guardian Trust Co.

(Report re Financial History, p 24)

In order to have sufficient funds in this trust to cover the bank losses being run through it, it was necessary to divert some of the bank's earnings and assets into it, the total amount so diverted being \$1,074,923 85, including commissions on loans

(Report re Financial History, p 25)

That the bank officials themselves considered this account as a secret reserve is borne out by memoranda and journal tickets signed by officials referring to this trust as "Sundry Trust Reserve 1092"

#### FINANCIAL CONDITION

(Report re Financial Condition pp 1, 2)

As we have stated previously in this report, the closing of the Guardian Trust Co. was simply the result of unsound practices and mismanagement. The unsound practices were many, being

1. An unwise loan policy
2. An unsound investment policy
3. Due to the loan policy, the bank was forced into a position of being a large holder of real estate through foreclosure.
4. Inadequacy of reserves
5. Too liberal dividend policy
6. The engagement in practically every type of business along with the banking business

(Report re Financial Condition, p 6)

*Loans.*—While a bank's principal function is primarily to make loans, conservative banking demands that these loans be of a fairly liquid nature. In the Guardian Trust Co. the reverse was true, a very large percentage of the loans being secured by real estate. In addition, too many of the collateral loans were made on security of a highly speculative nature. Even as early as 1929 the bank had loans past due of \$10,000,000, and an additional total of loans to officers and directors and their corporations amounting to \$10,500,000 more.

(Report re Financial Condition, p 13)

The Guardian Trust Co. was hopelessly insolvent in February 1932, 1 year before it was closed.

On February 29, 1932, the bank had estimated losses on loans of \$11,867,576 23, to which should be added doubtful loans of \$7,462,354 13 and loans of undeterminable value \$10,518,881 08, making a potential loss of \$29,848,811.44 or enough to wipe out the

entire capital and surplus of the bank, amounting to \$17,187,563.63, a potential deficit of \$12,661,247 81

(Report re Financial condition p 15)

*Assets pledged*—On April 8, 1933, when the conservator took charge of the bank, 55 percent of the bank's total resources were pledged to secure loans. The percentage of pledged mortgages to total mortgages increased from nothing on March 23, 1929, to 64 percent on April 8, 1933, and pledged loans from nothing to 52 percent during this same period, a clear indication of the bank's desperate attempts to keep operating at any cost

From December 1931 to February 1933 the total resources of the bank decreased more than 78 millions of dollars and liabilities increased by almost 20 million.

(Report re Examinations)

One of the chief reasons for the widespread confidence in the Guardian Trust Co prior to the closing of that institution in February 1933 was undoubtedly the belief by depositors that their savings, often those of a lifetime, were adequately protected through the medium of frequent examinations as to the condition of the bank by National, State, and local bodies

Sections 710-1 to 710-36 of the Ohio banking laws provide that the superintendent of banks must examine each bank "at least once each year" Section 9281 of the Federal Code provides that examinations should be made by the Federal Reserve examiners "at least twice each year", except that examinations by State authorities may be accepted in the case of State banks

(Report re Examinations)

There have been only six examinations of the Guardian Trust Co. conducted in the period from 1922 to the time of the bank's closing, as follows

- 1922. December 8, Federal Reserve examiners assisting.
- 1924. October 11, Federal Reserve examiners assisting
- 1926. February 26, Federal Reserve examiners assisting.
- 1928. January 27, Federal Reserve examiners assisting.
- 1929. November 15, State department examiners only
- 1932. February 29, Federal Reserve examiners assisting.

In our report regarding the examinations of the Guardian Trust Co. we have severely criticized the number and the methods of these examinations Also, we have condemned the "examinations" made by the directors' examining committee

#### LOANS

In the 2 years from December 1930 to December 1932, collateral loans decreased from 46 to 31 million and real-estate loans decreased from 37 to 31 million, while deposits decreased from 157 to 109 million dollars

(Report re Financial Condition, p 7)

Possibly one of the worst features of the real-estate loan situation was the large amount loaned on vacant property, the value of which is highly speculative. There can be no doubt that vacant or allotment property is purely speculative, its ultimate value being entirely dependent upon the sales ability of the allotment owner, and for a bank to loan large sums upon real estate of that nature indicates a very weak loan policy.

(Report re Loans to Directors and Officers, p 3)

Mr J Arthur House, like several of the other senior officers, availed himself of the device of obtaining loans from the bank as being made to his trust estate and not in his own name. The records of these loans did not, therefore, indicate the true borrower but merely a trust-fund number. Mr House's indebtedness to the bank totaled on April 8, 1933, \$245,933 48, on which he had been charged a preferential interest-rate of 5 percent. The liquidator has increased the interest rate to 6 percent.

Besides the loans to Mr House, the Guardian Trust Co has loans of \$400,000 outstanding to the Mills Co. Mr House is related to the Mills, and is a director of the Mills Co.

(Report re Loans to Directors and Officers)

Other senior officers who borrowed large sums from the Guardian Trust Co and whose loans are still unpaid are Mr H P McIntosh, Jr, a vice president, with loans of over \$100,000 unpaid, and Mr Robinson with loans totaling \$42,000 still due. Thomas Monks has unpaid borrowings of \$42,090. All of these officers enjoyed a preferential interest rate until the liquidator raised it to 6 percent.

(Report re Loans to Officers and Directors of Other Banks)

Also, when the Guardian Trust Co closed, it had outstanding approximately a half million dollars in loans to officers and directors of other banks. Some of these loans were sufficiently collateralized, while others were obviously made because of the connections of the borrower.

Attention is called, in particular, to the following loans:

E R Fancher, Governor of Federal Reserve Bank .....	\$53, 000
George DeCamp, Federal Reserve agent .....	40, 000
W M Baldwin, president, Union Trust Co .....	32, 000
A W Dean, Guardian director and treasurer of Enos Coal Mining Co .....	1, 257, 000

(Report re Loans to Eaton Interests)

The loans made by the Guardian Trust Co to the so-called "Eaton Interests" are represented by six loans totaling \$5,343,055 19, and are composed of the following:

Eaton interests	April 8, 1933		
	Loans	Deposit balance approximate	General average deposit balances 1931 and 1932
A Cleveland Cliffs Co.....	\$2,010,338 61	\$344,000	\$300,000-700,000
B Continental Shares.....	1,145,281 62	15,000	11,000-300,000
C George T Bishop, syndicate manager.....	440,796 59	None	None
D Foreign Utilities, Ltd.....	350,000 00	None	None
E Otis & Co.....	417,853 37	3,000	1,000-50,000
F R H Bishop, Jr and Samuel Mather.....	978,785 00	-----	-----
Total.....	5,343,055 19	-----	-----

All of these loans are collateralized by the same character of securities, i e, securities involving the Mather operations and the Otis-Continental companies

The Trust Co also has loans outstanding due from the Van Sweringens totaling \$4,306,324 60

#### EMPLOYEES' RETIREMENT FUND

On July 1, 1913 the Guardian Trust Co created an employees' retirement fund for the purpose of retiring faithful employees after certain prescribed periods of service Under the terms of this fund, the employees contributed an amount equal to 3 percent of their monthly salaries and the bank contributed an identical amount

(Report re Employees' Retirement Fund, p 2)

The management of the fund was administered by a board of trustees, of which Mr House, as the president, was an ex-officio member Mr W R Green, vice president, was secretary of the fund

Mr House utterly disregarded his oath to faithfully perform his duties as trustee, and his management of the fund is a flagrant example of the abuse and violation of the trust placed in him as a guardian of life savings

(Report re Employees' Retirement Fund, p 3)

In 1930. Mr House, along with his ever-present aide, H C Robinson, saw the possibilities of diverting funds from the retirement fund to their own use

(Report re Employees' Retirement Fund, p 4)

A group of officers and directors of the bank formed a syndicate known as the "Directors' Syndicate" to trade in the Guardian Trust Co stock. The syndicate was predicated on the plan that each director and officer of the bank was to subscribe to a certain number of shares in the syndicate, and the syndicate was to acquire the stock from the outside market

Mr H. C. Force, vice president, acting as agent for the syndicate, borrowed from the retirement fund to make the stock purchases for the syndicate.

The syndicate was never completed, and was left with 287 shares of Guardian bank stock on hand. Thereupon, these 287 shares were

sold by Mr Force, after approval had been arranged by Mr. House, to the employees' retirement fund at \$265 23 per share, notwithstanding the fact that the retirement fund had purchased only the day before 49 shares in the open market at \$69 72 a share

(Report re Employees' Retirement Fund)

Another example of Mr House's arbitrary price-fixing on the Guardian stock is shown by his conduct involving the sale of Guardian Trust stock to employees. The Guardian, in February 1929 sold its stock to the employees at \$250 a share on a partial-payment plan. In the event of a subscriber ceasing to be an employee of the bank, his subscriptions were refunded. The stock was thenceforth subject to the control and disposition of the president, as trustee, for reallocation.

By July 1932 Mr House, as trustee, had repurchased 218 shares of the Guardian stock at \$250 per share. He thereupon sold this stock to the retirement fund at the 1929 subscription price. The high market price of the stock in July 1932 was \$70 per share.

Messrs House, Robinson, and Green have been indicted by the Federal grand jury for their acts in regard to the retirement fund. No definite date has been set for the trial.

### "WINDOW DRESSING"

(Reports re "Window Dressing", Financial History)

In the preparation of its published statements, the Guardian Trust Co resorted to the device of "window dressing". This "window dressing" was through the medium of repurchase agreements, kiting of checks, and large temporary deposits from friendly depositors. Of course, as we have already pointed out, the statements of the bank did not include the losing subsidiaries, so that the "window dressing" methods described above were only part of the deception carried on by the bank management.

### TRUST PRACTICES

(Report re Trust Practices)

The Guardian Trust Co, in its capacity as trustee, has violated its fiduciary relationship in more than one instance, by burdening trust estates over which it had discretionary investment powers, with securities in which the bank realized a profit by the expedient of passing securities through its bond department and subsequently to its estates.

(Report re Trust Practices, p 1)

In one particular case the bank relieved one of its directors of a huge block of bonds at a profit of 5 points to the director. These bonds were subsequently sold to the trusts. In his particular instance the bank itself held a large block which it could have passed on to the trusts at cost, without incurring the 5-point profit to the director.

The following are some of the securities which were sold to the trust estates, and a comparison of the cost price paid by the bank to the selling price:

(Report re Trust Practices, p 3)

\$66,000 of H A Stahl Properties gold bonds, costing 92 percent, were sold to trusts at 99 and 100 percent

\$33,000 of Erie-Prospect Co bonds, costing 96 percent, were sold to trust at 98 to 100 percent

(Report re Trust Practices, p 3)

\$39,000 Fairmount-Development bonds, costing 93 percent, sold to trusts at 99 and 100 percent

\$300,000 H F Neighbors Realty Co land-trust certificates were purchased by the bank at 96 66 percent and sold to the trusts at a 3-point profit

(Report re Commingling of Trust Funds)

The officials of the Guardian Trust Co commingled the uninvested trust funds with the general funds of the bank After the Guardian Trust closed, and the first liquidating dividend of 20 percent was declared, the trust clients received their pro-rata share of the disbursement as general creditors in the same manner as the commercial depositors

#### GUARDIAN SECURITIES CO.

(Report re Stock Market Activities)

The largest single activity of the Guardian Securities Co seems to have been in the stock of the Inland Investors, Inc , an investment trust The Guardian Securities Co borrowed money from the Guardian Trust Co and purchased 15,000 shares of the Inland Investors, Inc stock, selling all but 2,004 shares to outside customers. The 2,004 shares were sold to the employees of the bank on the partial-payment plan, at \$52 50 a share The present market price of the stock is about \$9 a share

WALTER H. SEYMOUR,  
*Senior Examiner.*

Senator ADAMS Mr Meehan, the Guardian Trust Co. of Cleveland, Ohio, is in the hands of a receiver, isn't it?

Mr MEEHAN Yes, sir

Senator ADAMS When did it close?

Mr MEEHAN. I will have to look that up

Senator ADAMS I mean approximately

Mr MEEHAN In March 1933, I think

Senator ADAMS It was closed back in 1933 some time?

Mr MEEHAN. Yes, sir.

Senator ADAMS And it is in process of liquidation now?

Mr MEEHAN Yes, sir.

Senator ADAMS All right

The CHAIRMAN You may continue, Mr Pecora

Mr PECORA. Mr Meehan, I show you another report, entitled "The Guardian Trust Co and Subsidiaries—Corporate History " I ask you if you recognize it as being another report prepared by Mr. Seymour under your immediate supervision

Mr MEEHAN I also identify this as a report having been made under my immediate supervision

Mr. PECORA Mr Chairman, I offer that report in evidence, together with the exhibits that are referred to in the report itself

The CHAIRMAN. The report and exhibits will be received in evidence

(The report entitled "The Guardian Trust Co. and Subsidiaries—Corporate History", together with the exhibits now at the Government Printing Office, were received in evidence and marked "Committee Exhibit No 2, May 3, 1934," and are as follows')

COMMITTEE EXHIBIT No 2—MAY 3, 1934

CORPORATE HISTORY

(G-3A, G-3B)

From the time of its organization in 1894 until 1913, the Guardian Trust Co operated as a bank only, but in 1913 it acquired the first of the 25 subsidiary companies, which were instrumental in bringing about its ultimate failure

(G-3-1)

We find by referring to the minutes of the New England Co that as of January 3, 1914, the bank owned all, except directors' qualifying shares, of the capital stock of the New England Co, the outstanding 5,000 shares being held as follows

	Shares
Guardian Savings & Trust Co.....	4, 995
H P McIntosh.....	1
Chas S Mosher.....	1
J A House.....	1
H C Robinson.....	1
H P McIntosh, Jr.....	1
	5, 000

As the New England Co owned the property occupied by the bank, the purpose of this acquisition was, obviously, to obtain control of the banking premises, and as we know of no law that prevented a bank from owning its own banking quarters, we cannot understand why the property was not purchased outright and carried on the bank's books as a real-estate asset and can only assume that even at such an early date, the bank management had manipulation in mind.

The purpose of the move becomes apparent, as we go further into the minutes of the New England Co and find the following in the minutes of a directors' meeting held May 7, 1915

(G-3-2)

Whereas this company is empowered to borrow money and to issue its coupon or registered bonds therefore bearing any legal rate of interest and to secure their payment by a mortgage of its property, real or personal or both, and

Whereas it is necessary for this company to borrow money for the purpose of refunding its present indebtedness and of making contemplated improvements to its property, now, therefore, be it

*Resolved*, That the president or vice president, and secretary or treasurer of this company be, and they are hereby, authorized and directed to execute and deliver the coupon bonds of this company to an aggregate amount of not exceeding \$1,500,000 of said bonds

From this it can easily be seen that the Guardian Trust Co wished to erect additional new quarters of a semispeculative nature without violating the banking laws and adopted the expedient of a subsidiary

company, the first of many designed to evade banking laws. In later years the New England Co proved to be a very convenient medium for the bank to conceal indiscretions of the bank management, as will be brought out in later paragraphs.

The second subsidiary to be formed was the Guardian Mortgage Co. formed in 1917 for the purpose of permitting the bank to indirectly engage in the buying and selling of mortgages (at a time when such speculation was profitable). In 1927 the company recapitalized and was chartered to deal in securities.

Next in order of formation came the Branch Investment Co., organized for the purpose of taking over the sublease on certain property intended for the housing of the East One Hundred and Fifth Street branch of the Guardian Trust Co. The original purpose of this company was also lost sight of in later years.

In 1928, the bank found it necessary to organize the 4400 Superior Co. for the purpose of purchasing a leasehold for the assumption of an indebtedness to the Guardian Trust Co.

The Harrison County Investment Co. was formed in 1930 to take title to certain coal properties, in which the bank had made an investment, and which were sold by court order.

We have so far given only a brief outline of the five direct subsidiaries of the Guardian Trust and have commented on them only very generally.

However, we believe that even from this brief outline it is possible to gage the intent of bank officials to "camouflage" losses and evade banking laws.

In the acquirement of and formation of the aforementioned companies, we find evidence of subterfuge for four different reasons:

- 1 New England Co. To invest in a banking building in an amount beyond that permitted by law.
- 2 The Guardian Securities Co. To permit the bank to speculate in mortgages, and, subsequently, stocks and securities.
- 3 4400 Superior Co. To conceal and to attempt to recuperate a loss incurred through an unwise loan.
- 4 Harrison County Investment Co. To attempt to protect a loss sustained through a bad investment, the bank indirectly entered the coal mining business.

These companies were all purchased or financed with Guardian Trust Co. money secured from depositors and the practice of concealing losses and evading laws should have been apparent to examiners and curtailed, but as it was passed unnoticed, the bank officials really settled down to serious business in the matter of organizing subsidiaries in 1928. However, not wishing to make the fact too apparent, they adopted the expedient of organizing subsidiaries to the subsidiaries, thereby making the detection of subterfuges more difficult.

From 1928 until the closing of the bank, the formation of subsidiaries became a common occurrence, 4 being formed in 1928, 1 in 1929, 2 in 1930, 7 in 1931, and 6 in 1932. Naturally all of these subsidiaries required financing; and the Guardian was milked by means of "loans" and "investments", all of which were carried on the various books at full value, although many of them were obviously not worth the paper on which they were recorded.

Having given a general idea of the Guardian Trust subsidiaries, we shall now take them up individually and trace through the various ramifications.

## NEW ENGLAND CO.

We have already explained the original purpose of this company and traced it through to 1915. In 1913, when acquired, the capital stock of the company consisted of 5,000 shares with a par value of \$500,000

Since then, there have been the following changes in the capital stock:

1915, the capitalization was changed to 15,000 shares (2,500 shares of which was issued as a stock dividend) .....	<i>Par value</i> \$1, 500, 000
1916, increased to 19,000 shares.....	1, 900, 000
1917, increased to 20,000 shares.....	2, 000, 000
1921, increased to 23,000 shares.....	2, 300, 000
1924, the capitalization was changed to 10,000 shares.....	2, 300, 000

On March 14, 1928, the board of directors voted to change the stated common capital of the company to \$3,800,000, the present figure at which the stock was carried on the books of the Guardian Trust Co

From 1913 until 1926 the New England Co did not acquire any subsidiaries, but in 1926 the Vincent Building Co was formed for the purpose of building a hotel building to the east of the Hotel Hollenden, to be used by the Hotel Hollenden. To finance this, the New England Co invested \$619,500 in the Vincent Building Co and guaranteed \$800,000 of leasehold bonds. As the Guardian Trust Co owned the New England Co, the bank, therefore, voluntarily went into the hotel business.

In 1928 the New England Co purchased from the Guardian Trust Co all of the capital stock of the Hotel Hollenden Co for the sum of

(G-3-3ab)

\$750 and all promissory notes of the Hotel Hollenden Co to the Guardian Trust Co for the sum of \$1,350,000. By this means the management of the Guardian Trust Co was relieved of the embarrassment of showing a large loss on the Hotel Hollenden Co loans and stock.

(G-3-3)

In order to handle this deal, the New England Co (or in other words the Guardian Trust Co) mortgaged its building for \$3,250,000 with the Metropolitan Life Insurance Co and purchased the Hotel Hollenden Co stock and notes from the bank. By this means the Guardian Trust Co relieved its books of "sour" loans amounting to \$1,350,000 which properly should have been written off; mortgaged what was in effect its building, bolstered its cash to the extent of the amount received from the New England Co, and continued to carry on the bank books at full value under the caption "Banking house" the \$3,800,000 stock of its subsidiary, the New England Co, even though the management knew they had just unloaded a potential loss of over a million dollars on the subsidiary. During the ensuing years, the New England Co made advances to the Hotel Hollenden Co for various purposes, until in 1930, at a regular meeting of the board held June 25, the treasurer reported—

(G-3-4)

that the company is now loaning to the Hotel Hollenden Co \$1,987,500 of which \$441,310 is represented by trustees' advances for ground rent, taxes, and other items

The Hotel Hollenden Co has requested that the New England Co refund these various loans, totaling \$1,546,189 23 and on motion properly made and unannounced, it was resolved to accept from the Hotel Hollenden Co its second leasehold mortgage in the amount of \$1,546,189 23 securing the Hotel Hollenden Co notes for a like amount

Despite this idea, the Hotel Hollenden Co still represented a "sour" liability on the New England Co books, which might have caused embarrassment to the bank management in carrying the New England stock on the Guardian books at full value. In order to correct this, another brilliant plan was conceived, and at a meeting of the board of directors held on December 27, 1932

(G-3-5)

The president stated we have had recent appraisals made of the land and building owned by this company having in mind that if said appraisals were for a sufficient amount in excess of the present amount to write-off the notes receivable and first-mortgage bonds of the Hotel Hollenden Co. The treasurer, Mr Green, reported the following appraisals of the land

Henry Hertel.....	\$2, 603, 904
W J Purvis, special representative of the Metropolitan Life Insurance Co as of Dec 17, 1932.....	2, 063, 760
Geo L Craig as of Dec 28, 1932.....	3, 137, 308

On motion, the land and building were placed on the company books as follows

Land.....	\$1, 939, 200 00
Building.....	3, 041, 099 14
Total value of land and building.....	4, 980, 299 14
Which were carried on the company's books for.....	3, 021, 505 35

Thereby creating a credit through revaluation of assets of..... 1, 958, 793 79  
Which is hereby credited to an account "Appraised surplus"

On motion, the officers are authorized to charge to appraised surplus

Notes receivable, Hotel Hollenden to.....	\$1, 751, 243 79
First mortgage L H bonds, Hotel Hollenden Co (\$220,500 par).....	207, 550 00
	1, 958, 793 79

By this maneuver the Hotel Hollenden Co loss of \$1,958,793 79 was wiped from the books of the New England Co as successfully as it had been eliminated from the Guardian Trust Co records. The chicanery in this entire deal is so apparent it needs no further comment. The "reappraisal" could not be made sufficiently large, however, to cover the trustee advances made by the New England Co to the Hotel Hollenden Co, and there still remains on the New England books a debit against the Hotel Hollenden Co in the amount of \$483,483 13

We have traced the Vincent Building Co and Hotel Hollenden Co through the New England Co, but there still remains another factor to make the hotel picture complete

The De Witt Hotels Co was formed March 2, 1931, for the purpose of owning, holding, managing, operating, and controlling hotels. All of its stock, 500 shares, was subscribed for by the New England Co.

at \$500 and \$2,000 of surplus was paid in—making the total investment \$2,500

The picture is now complete. We have the Guardian Trust Co. sustaining a large loss by reason of loans to and investments in the Hotel Hollenden Co., concealing this loss by transferring it to its subsidiary, the New England Co., which in turn erased it by a convenient "reappraisal" and which, through the formation of another subsidiary, continued in the hotel business.

In March 1931 the Guardian Trust Co., with its record cleared of its former losses in its hotel venture, forgot its previous experience and loaned \$475,000 to the De Witt Hotels Co., its indirect subsidiary, this loan being collateralized by \$500,000 bonds of the Neil House, Columbus, Ohio, which were to be purchased with the proceeds of the loan. Could there be better evidence of the Guardian's reentry into the hotel business? The entire story of the Hollenden Hotel Co., Vincent Building, and De Witt Hotels Co. is contained in a separate report which brings out all details.

In addition to "camouflaging" the hotel activities of the bank, the New England Co. also served a useful medium in handling real estate acquired by the bank through foreclosure. Unfortunately, the charter privileges of the New England Co. were not sufficiently broad to allow this, being.

(New England Co. certificate of incorporation)

Said corporation is formed for the purpose of acquiring, holding, and managing the leasehold estate of the premises on the northerly side of Euclid Avenue, in Cleveland, Ohio, upon which is constructed the certain office and store building known as the New England Co., a corporation, and for the purpose of erecting, holding, managing, and leasing further buildings upon the said premises, and of acquiring, holding, and managing other buildings designed for business purposes.

To get around this, the ever-present subsidiary idea was again invoked, resulting in the formation of

The Valuation Service Co. in October 1929; capital stock, \$500; capital surplus, \$49,500; 100 no par shares all held by the New England Co. In addition to taking over properties acquired by the Guardian through foreclosure, it also acted as a manager for properties. As it was primarily financed by the bank, it placed the bank indirectly in the real-estate business.

(G-3-6, Minutes of executive committee, p 143)

In 1930, the company purchased several parcels of property on which the Guardian Trust Co. was foreclosing. In 1933, the company purchased from the Guardian some 120 or 130 properties on which the bank had foreclosed, notes in the amount of \$1,327,468.89 being taken therefor. These notes were for 1 year with interest at 6 percent, secured by mortgages on the property. As the financial responsibility of the Valuation Service Co. was practically nil, this subterfuge to evade the following section of the banking code is apparent.

(Ohio bank act)

Section 710-108, provides in part

A bank may hold real estate as follows (c) Such as has been purchased by it at sales upon the foreclosure of mortgages owned by it, or on judgments or decrees

obtained or rendered for debts due it, or in settlements effected to secure such debts. All real property referred to in this paragraph shall be sold by such bank within 5 years after it is vested therein.

(G-3-9, G-3-15)

In 1932, the New England Co acquired the stock of the Vcela Building & Loan Association at \$200 per share and after acquiring an additional 3 shares in January of 1933, owned all but 4 shares of the outstanding stock. The investment at that time amounted to \$891,-800. The Guardian Trust Co originally held the option to the New England Co. It was the original purpose of the Guardian to use the location of the Vcela as branch offices of the trust company and then to liquidate the Vcela Building & Loan Association. The reason for handling this deal through the New England Co is indicated by the fact that the net worth of the Vcela as shown by the January 31, 1933, balance sheet was \$1,093,079.01. Included in this are mortgage loans of \$733,000 which were reduced in value on the books of the New England Co, \$407,778.21, which reduction applied against the above net worth made the value of the stock approximately \$200,000 less than the purchase price. The Guardian did not desire to show this loss on its own books.

In 1931, the Guardian Trust Co found that by reason of extensive real-estate loans on allotment property that had failed to sell, it was being forced into a position where it would be necessary to foreclose on a great deal of this property. To avoid showing these properties among the bank's assets, the

*Land Development & Realization Co* was formed May 28, 1931, with a capital stock of 100 shares no par value, all held by the New England Co. The purpose or purposes for which this company was formed were, briefly, to:

(Certificate of incorporation)

*Third*—To acquire, own, hold, operate, manage, control, buy, sell, exchange, lease, mortgage, hypothecate, lend upon as security, and otherwise deal in and dispose of, for itself and for others, both real and personal property, including stocks, bonds, notes, drafts, bills of exchange, acceptances, mortgages, bills of lading, warehouse receipts, and other securities as owner, broker, agent or factor, to construct, erect, repair, and maintain buildings and other structures upon real estate owned, leased or controlled by it or others.

To organize, or cause to be organized under the laws of the State of Ohio, or of any other State, Territory or country, or the District of Columbia, a corporation or corporations, for the purpose of accomplishing any or all of the objects of which this corporation is organized, and to dissolve, wind up, liquidate, merge or consolidate any such corporation or corporations, or to cause the same to be dissolved, wound up, liquidated, merged, or consolidated.

In accordance with these articles of incorporation, the Land Development & Realization Co acquired all of the capital stock of the following real estate companies on the dates indicated. The articles of incorporation of these various companies are, in each case, the same as those of the Land Development & Realization Co.

June 17, 1931 The Shore Development Co and the Riverside Manor Co  
 August 19, 1931 The Noble Woodworth Co and the Ri-May Realty Co  
 January 6, 1932 The Severn Park Realty Co  
 January 22, 1932 The Staten Heights Realty Co, the College Heights Realty Co, Inland Lakes, Inc, and the Headland Realty Co  
 September 23, 1932 The Brookside Manor Co and the Memphis Heights Realty Co

May 25, 1933 The 1761 East Eighteenth Street Co, the 1874 East Eighteenth Street Co, and the 2116 East Fortieth Street Co

In addition to being used in an effort to protect the Guardian's loans to the above companies the Land Development & Realization Co was used in 1933 in connection with the Western Reserve Mortgage Co deal, which is explained in another (Reconstruction Finance Corporation) report. The Guardian Trust Co sold to the Land Development & Realization Co approximately 130 to 140 parcels of property for notes amounting to \$1,180,960.11. These notes were made for 1 year in the amount of the purchase price of the individual pieces of property and were secured by mortgages on these properties. As the Land Development & Realization Co had no real financial stability, the "dummy" effect of the transaction is apparent.

In the above we have traced through the chief direct subsidiary of the Guardian Trust Co and have shown that by means of it, the bank was enabled to conceal from depositors, stockholders, and perhaps even from directors, losses sustained by reason of injudicious loans, to evade State laws in regard to real estate, to engage in the hotel business and to present a balance sheet that showed the bank in a fairly liquid position when in reality it was in possession of large amounts of "frozen assets" in the form of real estate. All of this was done through the New England Co alone. Additional incidental transactions of the company are shown in its history attached.

(G-3-14-5 See financial history report)

As we have indicated earlier in this report, the entire capital stock of the New England Co was carried on the books of the Guardian Trust Co at \$3,800,000 under the caption "banking houses". To carry the stock of this company at such a figure is, in the opinion of your examiner, one of the chief indictments against the management of the bank, as this stock, as of December 31, 1930, had a real value of slightly over a million dollars, according to a generous appraisal. This statement is substantiated by an analysis of the balance sheet of the New England Co. The carrying of this item, as was done, seems to indicate a case of publishing a fraudulent financial statement dated December 31, 1932.

(G-3-10, G-3-11a)

*The Guardian Securities Co*—The Guardian Securities Co was originally incorporated in 1917 as a mortgage company under the name, the Guardian Mortgage Co, acting as a mortgage company and retaining that name until 1927, at which time the management—apparently desirous of reaping some of the profits to be made in securities speculation, recapitalized the company for \$250,000, all owned by the Guardian Trust Co and secured a license to deal in securities. The company, however, did not act as a brokerage company though it had a dealer's license, but rather bought and sold for profit. During the years 1927, 1928, and 1929, this company bought and sold stock of a great number of stock issues, almost all of which were listed stocks. In order to finance these purchases, collateral loans were made with the Guardian Trust Co, and at times these loans ran from \$600,000 to \$700,000. At one time in 1930 the investments ran slightly over \$1,000,000.

(G-3-11A)

As of December 31, 1932, the Guardian Securities Co owed the Guardian Trust Co \$540,000 secured by collateral, the book value of which was \$816,484 85, but the stated market value of which was \$711,510 39 This collateral included an item of 10,000 shares of Cleveland Worm & Gear common at \$500,000, which actually cost \$180,759 25, and for which there were no bids in 1932

(G-3-14-3)

If we were to reduce the so-called "market value" of \$500,000 to the book value of \$180,759 25, the total schedule would then show that the excess of book value over market value would be \$424,215 01 The balance sheet of December 31, 1932, shows capital and surplus of \$282,182 15, thus it will be seen that a reduction of the securities to market value in the manner described above would wipe out the entire capital and surplus and would also wipe out approximately \$140,000 of the security on the loan Despite this the Guardian Trust Co continued to carry the stock of the Guardian Securities Co among its assets at full book value of \$250,000 In 1932 the Guardian Securities Co paid a \$2,500 dividend to the Guardian Trust Co even though the reduction noted above would have more than wiped out the surplus The Guardian Securities Co definitely placed the bank in the brokerage or trading field

(G-3-14-1)

*The Branch Investment Co*—This company was incorporated in 1920 with 1,000 shares no par common stock, all the shares being held by the Guardian Trust Co The present capital stock outstanding is \$350,000 plus paid-in surplus \$315,000, making the total capital \$665,000 The investment in this company was carried on the books of the Guardian at \$550,000 as of the date of closing

The original purpose of the company was to take over a sublease on property at East One Hundred and Second Street and Euclid Avenue for the purpose of housing the One Hundred and Fifth Street branch of the bank In order to take over this lease it borrowed \$125,000 from The Guardian Trust Co in 1920 In 1921, improvements of approximately \$75,000 were put in the building and, in 1928, they purchased the lease on the property for \$257,812 50 At the same time they took over the stock of the Euclid Arcade Co for the balance of the loan to that company, in amount \$38,273 84.

In 1930, the Euclid-One Hundred and Second Street Market was acquired for \$144,363 30—that amount including the fee to three vacant lots in the rear of the leasehold estate In 1931 and 1932 special alterations of \$85,900 81 were made The result of the whole transaction has been that The Branch Investment Co owns a leasehold estate and three vacant lots costing \$701,587 12 which, according to the 1932 tax bills, had an assessment valuation of \$429,060

From the foregoing it can readily be seen that through its subsidiary, The Branch Investment Co, the bank entered into the real estate business through the ownership of a market house We also find, that, once again, through subterfuge the bank was enabled to conceal potential losses due to poor judgment

(G-3-14-2)

*The 4400 Superior Co* — This company was formed for the purpose indicated in an earlier paragraph, the details of the company being there given; and it needs no further comment

*The Harrison County Investment Co* — In 1929 The Guardian Trust Co held approximately \$600,000 in bonds of The Short Creek Coal Co, the value of which was problematical

In 1930 the property underlying these bonds was sold at a judicial sale and the Guardian Trust Co, through a former subsidiary known as the Smith Coal Co., acquired the property.

(G-3-14-4)

On July 8, 1930, the Harrison County Investment Co was incorporated with 250 shares of no par common stock \$500, all of this stock being held by the Guardian Trust Co. The property held by the Smith Coal Co was then turned over to the Harrison County Investment Co., who issued bonds in the amount of \$600,000, which were turned over to the Guardian Trust Co., these bonds being carried on the Guardian book at \$588,000. Through the formation of this company we have the bank going into the coal-mining business and at the same time concealing a bad investment.

From a summary of the activities of the above so-called "subsidiary" companies, we find that the Guardian Trust Co., besides being a bank, was actually engaged in the following businesses.

- 1 The operation of an office building
- 2 The operation of a chain of hotels
- 3 The operation of a coal mine
- 4 The ownership of a market house
- 5 The operation of residential, apartment, and business property
- 6 The holding of vacant allotment property
- 7 Speculation in stocks and bonds

We have used the phrase "so-called subsidiaries" because it is our belief that due to the degree of control exercised over these companies by the Guardian, they had lost their corporate entity and were in reality nothing more than departments of the bank Powell, on Parent and Subsidiary Corporations, has stated that a parent corporation may be held liable

When the parent corporation has exercised its control over the subsidiary, not in the manner normal and usual with stockholders, but to such a degree that it has reduced the subsidiary to a mere instrumentality

and we cite that the Guardian by reason of the close control over its subsidiaries had put the bank in a position where it was liable for the acts and debts of 25 subsidiary companies, thereby jeopardizing the interest of depositors and stockholders

(G-3-7)

As a result of investments in and loans to these various subsidiaries, the bank had over \$11,000,000 tied up in subsidiary companies as of April 8, 1933 as shown by the attached summary As the total resources of the bank at that date amounted to approximately \$113,000,000, these investments and loans represented almost 10 percent of the total resources involved in deals extraneous to banking.

It should be borne in mind that all through these years during which the Guardian Trust Co. was loaning to, investing in, and forming subsidiaries, a consolidated balance sheet was never presented to stockholders and depositors, and consequently they had no means of knowing the extent to which their bank was being involved in hazardous enterprises. Instead of so doing, a balance sheet was presented showing the investments in and loans to these subsidiaries at par, the non-liquidity of certain assets being concealed in this manner

(G-3-8)

In order to clearly illustrate the different picture which would have been shown to stockholders by the presentation of a consolidated balance sheet, we refer to a photostatic copy of one prepared by Lybrand, Ross Bros. & Montgomery as of February 28, 1933. From this can be noted the following differences between the bank balance sheet and the consolidated balance sheet

(G-3-8, p 20)

ASSETS	
Other bonds (decreased) .....	\$708, 410 86
Other investments (increased) .....	1, 347, 894 30
Collateral loans (decreased) .....	1, 540, 224 28
Investment in banking houses (decreased) .....	3, 800, 000 00
Investment in office buildings (increased) .....	6, 214, 258 42
Other real estate owned (increased) .....	11, 413, 718 49
LIABILITIES	
Mortgages payable (increased) .....	8, 308, 618 19
Bonds payable (increased) .....	705, 000 00
Interest payable (increased) .....	571, 069 93

These figures show the condition of the bank in an entirely different light from that when the subsidiary investments are concealed.

(G-3-8)

As can be noted from the comparative balance sheet, the principal effect the formation of subsidiaries had on the Guardian balance sheet was to eliminate the necessity of showing "other real estate" in the amount of \$17,627,976 91 and mortgages payable amounting to \$8,308,618 19. We doubt very much that stockholders would have approved of such items had they known of them

From the foregoing it can be seen that by the formation of convenient subsidiaries, it is possible for a bank to conceal from its depositors, stockholders, and even many directors, facts they are entitled to know. Through the formation of these subsidiaries it is possible to understate total investments in real estate, speculative securities, liabilities or mortgages payable, and to overstate the value of real estate and collateral loans. It is possible to transfer doubtful assets to a subsidiary and to carry the subsidiaries' stock at a fictitious value. It is also possible to charge off losses and worthless assets through them as was done in the case of the Hotel Hollenden.

(G-3-14)

As briefly as possible, we believe we have made clear, in the foregoing, the purpose of the formation of subsidiary companies by the

Guardian Trust Co , but, in addition, we have prepared separate short reports on each individual company, for your information and analysis, if deemed necessary

WALTER H SEYMOUR,  
*Senior Examiner*

This report based upon preliminary report and complete investigation by Committee Examiner R E Long

Mr PECORA. I now show you another report entitled "The Guardian Trust Co.—Financial History", addressed to you by Mr. Seymour, and I ask you if you recognize this report as being another one prepared by Mr Seymour under your immediate supervision

Mr MEEHAN. I do

Mr PECORA. Mr. Chairman, I offer that report in evidence, together with the various exhibits referred to therein.

The CHAIRMAN Let the report and exhibits be received in evidence. (A report entitled "The Guardian Trust Co —Financial History", together with the exhibits now at the Government Printing Office, were received in evidence and marked "Committee exhibit no 3, May 3, 1934", and are as follows )

COMMITTEE EXHIBIT No. 3—MAY 3, 1934

(G-4-1)

FINANCIAL HISTORY

It is our purpose in this report to bring out and substantiate the fact that the closing of The Guardian Trust Co was not merely the result of unusual economic conditions, but rather the result of many years' mismanagement in the form of too much leniency in the granting of credit, and laxity in collection, as a result of which the bank was gradually forced into activities beyond the scope of banking, becoming to a large extent a real-estate company and the holder of many worthless securities, a fact which was concealed from stockholders by the forming of subsidiary companies We will bring out and support that the management was, or by the exercise of ordinary judgment should have been, aware of the condition into which the bank was drifting, and that in order to conceal from shareholders the true facts, resorted to methods of accounting and preparation of reports designed to conceal losses which were being constantly sustained due to poor judgment and speculative tendencies

This report will show

1. That earnings were reported greatly in excess of their actual amount, as a result of which excessive dividends and bonuses were paid;
2. That transfers of semiworthless assets were made to subsidiary companies at their book value in order to prevent showing losses which would have occurred had they been written off to their true value;
3. That the entire method of reporting earnings and the condition of the bank was misleading and contrary to sound principles of accounting.

We have been advised through various sources that the Guardian Trust Co , Cleveland, has never issued a report to stockholders which showed the earnings for any period. The stockholders were apprised of the company's earnings through the medium of a report read at the annual meeting of stockholders. Each of these annual reports is a bound volume of 100 or more pages. It would have been expensive and cumbersome to have photostated complete copies of these reports. Instead, we have prepared analyses and statements from these annual reports which we will use to substantiate this report and have requested that the annual reports be brought to Washington to be offered in evidence, if it is so desired

(G-4-1)

In analyzing the earnings and general condition of the bank, it is first necessary to realize that the bank had

## 26 SUBSIDIARY COMPANIES

under its direct control, these companies obviously being formed for the purpose of transferring to them semiworthless assets acquired by the bank, concerning which there is additional comment in subsequent paragraphs. The purpose of our mentioning the subsidiary companies in this report is to point out that while bank officials recognized the necessity of presenting a combined statement of the earnings of the bank and subsidiaries by preparing a consolidated statement, they distorted this consolidated statement in such a manner that it did not present a true picture of the combined operations

(G-4-2)

To illustrate, we present page 14, Statement of Consolidated Earnings, made a part of the bank's annual report for the year 1932 in which are shown combined earnings of

1932.....	\$1, 359, 054 83
1931.....	2, 066, 293 14
1930.....	2, 115, 578 34
1929.....	2, 087, 359 93
Total.....	7, 628, 286 24

(G-4-3)

The combined figures for this period after the elimination of inter-company transactions and dividends paid by subsidiary companies amounted to only \$6,535,161 39, as follows

1932.....	\$916, 074 34
1931.....	1, 692, 679 22
1930.....	1, 777, 325. 46
1929.....	2, 149, 082 37
Total.....	6, 535, 161 39

Difference of \$1,093,124 85

Earnings before elimination of Intercompany.....	\$7, 628, 286 24
Earnings after elimination of Intercompany.....	6, 535, 161. 39

Difference..... 1, 093, 124 85

being the amount by which profits were misrepresented for a 4-year period from this source alone

(G-4-3)

In the preparation of this statement, we have used earnings of the Guardian Trust Co. as shown in the annual reports, all other figures being taken from exhibits of a Lybrand, Ross Bros. & Montgomery report to special deputy superintendent of banks of Ohio, dated January 19, 1934.

The profits for the 4-year period mentioned above were exaggerated due to the fact that in preparing this consolidated statement, only the operations of certain companies were included, these being companies that were making money, such as the New England Co. and Branch Investment Co., while losing companies such as the Hollenden Hotels Co and the many small real-estate holding companies were completely ignored.

(G-4-5 and G-4-3)

The year 1931 is a fair example of this and we have prepared a statement based largely on the report of Lybrand, Ross Bros. & Montgomery dated January 17, 1934, showing the consolidated earnings as taken from the bank's report, (\$2,066,293 14) with the combined earnings of the bank and subsidiaries, after eliminating intercompany dividends and transactions and making small adjustments to cover items handled directly through the surplus accounts (\$1,692,679 22) and it can readily be seen that the difference of \$373,613 92 is composed of the losses and earnings of companies not listed in the bank's report of consolidated earnings. In fact, the operating loss of the Hollenden Hotels Co alone, \$411,010 96, which was not included in the bank's statement read to stockholders, more than accounts for the difference and we can see no reason for not including this figure other than to deceive the stockholders and directors. Surely the operations of a company which lost \$1,001,704 27 in a 4-year period could not have been omitted through an oversight.

Not only were the results from operations of the bank and subsidiary companies distorted on this consolidated report made a part of the bank's annual report, but the information was spread upon the minutes of the annual shareholders' meeting held January 18, 1932, as follows

(G-4-6)

The president reported the gross and net earnings, also the gross expenses by department. The net earnings of the company, including its subsidiary companies and after eliminating intercompany dividends being \$2,066,293 14, compared with \$215,578 34 for the year 1930

(G-4-5 and G-4-4 pp 1 to 14; p 29)

The true earnings for 1931 were \$1,692,679 22.

(G-4-7)

This same misinformation is shown on the minutes of the annual meeting of the board of directors held January 19, 1932, in even greater detail.

It is hard to conceive that the president of an institution entrusted with public funds would be so ignorant of the true facts of the bank's operations as to permit him to innocently overlook an error of over

\$400,000 in computations, especially when this amount was represented chiefly by what must have been a "nightmare" to all of the bank's officials, namely, the Hollenden Hotels Co. situation, and we can only consider his reporting these incorrect figures as being part of the general plan to deceive stockholders and directors. A separate report has been prepared on the Hollenden Hotels Co.

(G-4-8; G-4-9; G-4-10; G-4-11; G-4-12)

That this incorrect reporting of combined earnings was not an isolated case is proven by the fact that it was also done for 1929, 1930, and 1932 as can be seen by comparing photostatic copies of minutes attached with correct figures, as shown on exhibit 2.

So far in this report we have dealt only with the difference between the combined earnings of the bank and subsidiaries as shown on the bank records and the earnings as they should have been truly reported on a consolidated basis and have shown that the earnings were exaggerated by \$1,093,124.85 for 4 years alone. Now, we will bring out that stockholders were further misled by the manner of preparing a statement of earnings for the bank alone.

#### RESERVES

In the operation of a bank, it is necessary at times to write off losses due to unpaid loans, discounts, interest, etc., and to reserve for decline in securities, real estate, and other assets acquired. To provide for this it is customary to set aside a "reserve for depreciation" by charging to current year's operations and crediting to the reserve for depreciation account a sum which past experience has indicated should be sufficient to take care of losses which might reasonably be expected to occur. If this sum is truly representative of the losses which might be expected to occur, the profits for each individual year as reported will be reasonably close to actual profits for the year. Of course, there will be some difference between the sum transferred to the reserve for depreciation account and the amount actually required, but it should be comparatively small when ordinary judgment is used in creating a reserve. The important point is that a reserve account is created by currently transferring amounts sufficient to take care of anticipated losses.

(G-4-13)

In the case of the Guardian Trust Co., the term "Reserve for depreciation account" was a misnomer as the account was at all times entirely inadequate to take care of the occurring losses. This inadequacy is clearly brought out by the attached unsigned, but bound typewritten schedule found in the file of W. R. Green, comptroller, headed as follows: "Nonaccruing Loans and Investments, August 13, 1929." The total of this schedule which indicated doubtful loans, was \$4,359,470.29. The reserve for depreciation on the same date, according to the general ledger account, was only \$192,182.68. As a result of the general inadequacy of the reserve and the failure to provide for losses, it was necessary to transfer from the undivided profits at the end of the year, sufficient to take care of the balance of the losses.

This transfer from prior years' profits did not affect the current year's operations.

In other words the president (Mr. House) reported the current earnings of the bank, which included accrued interest receivable on loans. Subsequently some of these loans became uncollectible and other losses were incurred; and the undivided profits account had to then be charged back with these losses. If adequate reserves had been created from current operations this charge-back would not have occurred. To quote from the Lybrand, Ross Bros. & Montgomery report:

(G-4-4, p. 2)

As a result of this procedure, the earnings of the bank as shown in the auditing department reports did not reflect the actual results from operations. The minutes of the board of directors for the years 1931 and 1932 indicate that the earnings of the bank as shown by these auditing departments reports were submitted by the president to the board of directors and considered correct earnings by them in determining dividends and the financial condition of the bank.

Inasmuch as the inadequacy of the reserve for depreciation account makes it obvious that it was not truly a reserve, it can only be considered as a portion of the profit and loss account through which it was customary to run losses, which, if reflected on the current statement of earnings of the bank, would have caused embarrassment to the bank management. To avoid showing the actual earnings of the bank when computed on a basis designed to include losses due to write-offs of bad loans, discounts, investments, etc., which was proper due to the failure to provide reserves, the bank management used the reserve for depreciation, reserve for taxes and undivided profits accounts in such a manner as to make the net result from operations very confused and obtainable only by a detailed analysis of these accounts in connection with the reported earnings of the bank for each year. Had the bank created proper reserves, this would have been unnecessary, as the operating statement would have reflected the losses.

The failure to provide proper reserves and the practice of running the losses mentioned through the above-mentioned accounts, made of these accounts merely burial grounds for losses due to poor judgment, and before proceeding with the details of individual transactions and showing how losses were concealed, it is perhaps well to explain each of these accounts, so that the impropriety of the methods employed may be easily seen.

1. *Reserve for depreciation account.*—This account in connection with a bank is for the purpose of taking care of losses due to the decline in value of securities and properties acquired lawfully and is created by charging to current operations and crediting to the reserve an amount which, as indicated by past experience and the nature of the securities, should be sufficient to take care of losses reasonably to be expected for the year.

2. *Reserve for taxes.*—This reserve is created by the same method as mentioned above for the purpose of setting up the tax liability and charging the expense to the current year.

3. *Undivided profits*—The undivided profits account is in effect nothing more than a portion of the general surplus and is created by transferring to it the net earnings after all expenses, and it is to be reasonably expected that under proper management this fund over a period of time would show a constant increase, unless deductions are

made from it for the purpose of increasing surplus or for the payment of dividends in a nonprofitable year.

(G-4-14)

Had the purpose of these accounts been observed by the Guardian Trust Co., there would be no occasion for criticism as the statement of earnings made a part of the annual report would have reflected the losses constantly occurring, but the confusing methods the bank employed in running losses through the reserve accounts enabled it to show earnings of \$7,573,470.51 in excess of the actual earnings after deducting losses, for the 10-year period, 1923 to 1932, inclusive. We have prepared a statement based on the bank's annual reports and report of Lybrand, Ross Bros. & Montgomery dated January 7, 1934, showing that the earnings of the bank as reported on the annual reports for these years was \$15,035,156 35, whereas the actual earnings on an accrual basis, after deducting losses, was \$7,461,685 84. This statement shows the difference between the yearly earnings reported and the actual earnings as ranging from \$200,000 to \$2,000,000 each year, the \$2,000,000 figure being reached in 1932.

(G-4-15)

We have also prepared a statement showing the year-by-year earnings as reported on the annual report of the bank as compared with the actual earnings after deducting losses and in order that this statement may be clearly understood, we will explain the difference for the year 1932.

(G-4-15)

Starting with the bank's reported earnings of \$1,342,192.79, we have added \$33,476.53 for recoveries on losses previously written off—\$15,785.15 for recovery of interest accrued which was written off in prior years and subsequently recovered—\$337,000 reserve provided for tax payments; while we have deducted \$1,681,493 41 for losses on loans, investments, etc., written off during the year—\$334,254.15 for accrued interest on loans and discounts charged off and \$397,026 68 taxes actually paid, the result of these adjustments being a net loss of \$684,319 77 for the year and not a profit of \$1,342,192.29 as reported by the bank. We believe this statement brings out very clearly the manner in which losses were buried in the reserve accounts and prior years' profit and loss account and we cannot construe the failure of the bank management to call these adjustments to the attention of stockholders as other than an attempt to keep them in the dark regarding the true state of the bank's affairs. Surely it is unreasonable to expect that stockholders would realize that part of the profits reported for previous years and the current year had been dissipated in losses due to unwise management which had been cleverly concealed through the misuse of certain accounts.

(G-4-16)

To show the nature of the losses written off yearly, we have prepared a statement entirely from bank's annual reports, classifying the losses. It can readily be seen that except in 1932 the bulk of the

write-off was due to collateral loans and discounts. These items aggregated \$4,559,064.20 during the years 1923 to 1932, inclusive, out of a total write-off of \$8,400,493 05. Of the remaining \$3,841,428.85, the sum of \$747,210.61 was written off in 1932 to cover losses on bonds owned. Surely it seems that in view of the tremendous write-offs due to losses on collateral loans and discounts the bank's policies were far too liberal and could not have failed to result in criticism had stockholders been aware of the tremendous losses which were occurring. The large write-off on bonds, which we assume were acquired by the bank in connection with collateral loans, in the year 1932 also indicates that sufficient consideration was not given to the type of collateral being accepted, a fact which stockholders had no means of knowing. The entire subject of loans is dealt with in a separate report which should prove of interest in connection with the above.

(G-4-17)

In order that the nature of the loans and discounts written off may be readily noted, we have prepared statements from the bank's annual report detailing the larger items of each and it can be seen that the bulk of them are due to advances made to a comparatively few firms and individuals, in which cases, had less leniency been shown in granting credit, losses would not have occurred. It is very probable that had the results of bad judgment been brought to the attention of directors and stockholders by means of an accurate statement of earnings, the practice of promiscuous loaning would have been curtailed.

It is of interest to note that officers or directors of the bank were interested in a number of the companies whose loans, amounting to \$759,479.43, were written off, namely:

(G-4-18)

Name of firm	Amount of loan written off	Interested director
National Humas & Chemical Co (1923 and 1924).....	\$80,312 59	H C Robinson
Russell Co (1926).....	55,000 00	W H Marlott and H J Shepard
Russell Holding Co (1926 and 1929).....	36,750 00	H C Robinson
Headlands Lumber Co.....	420,490 15	Do
Gulf Region Lumber Co.....	166,926 69	Do
Total.....	759,479 43	

<sup>1</sup> Organized to take over Gulf Region Lumber Co in an endeavor to recover losses sustained

## ACCRUAL AND CASH BASIS

(G-4-19)

It has been the practice of the Guardian Trust Co. in reporting earnings to stockholders and directors to report on an accrual basis, which included the accruing interest receivable on loans and securities and interest payable on deposits and other expenses, while for income-tax purposes, the cash basis which eliminates these items was used. We have prepared a statement to show the difference between earnings when computed on the two bases, the earnings as reported to stockholders being \$967,658.14 in excess of the earnings as reported

for tax purposes for the years 1923 to 1932 inclusive, although, in accordance with the tax laws, the fact should have been brought out to the stockholders that the earnings reported were on an accrual basis and not on a cash basis.

## DIVIDENDS PAID

(G-4-4, p. 6)

We call attention to the combined statement of earnings of the bank and subsidiaries shown on page 6 of exhibit G-4-4 which uses the actual earnings of the bank after deducting concealed losses for the 10 years 1923 to 1932 inclusive (\$7,461,685 84), adding thereto the amount of income taxes paid to the bank by subsidiaries (\$209,723.94) also the earnings of the subsidiaries as taken from the books (\$380,798.63) and deducting intercompany dividends (\$1,697,878.53), making the actual combined earnings of the bank and subsidiaries \$6,354,329.88.

(G-4-14, and G-4-20)

It seems extremely unlikely that had the stockholders and directors been aware of the amount of these combined earnings that they would have approved the declaration of dividends by the bank of \$6,370,000.00 for this same 10-year period, which was an excess of \$15,670.12 over the combined earnings of the bank and subsidiaries for this period.

The following is a comparison of the earnings as shown on the Trust Co.'s annual report and the true earnings of the Trust Co., together with the amount of dividends paid from 1923 to 1932 inclusive.

	Year	Earnings as reported	Actual earnings	Dividends paid
Annual Reports G-4-4, p. 6, and G-4-14.....	1923	\$1,287,549 98	\$451,030 68	\$480,000
	1924	1,048,646 16	521,137 26	480,000
	1925	1,103,615 50	711,666 46	480,000
	1926	1,192,616 95	725,141 64	560,000
	1927	1,502,450 44	1,229,116 23	600,000
	1928	1,482,758 00	1,069,250 75	600,000
	1929	1,981,061 44	1,981,894 46	930,000
	1930	2,079,722 27	1,290,280 36	1,050,000
	1931	2,064,542 82	387,311 62	840,000
	1932	1,342,192 79	1,110,438 22	350,000
		15,035,156 35	6,354,329 88	6,370,000

(G-4-20)

Neither does it seem logical that they would have approved the payment of salaries and bonuses to officers of approximately \$700,000 for the years 1929 and 1930, as brought out on the attached statement. Misled as they were, however, by reported earnings, approximately 7½ millions in excess of the actual combined earnings of the bank and subsidiaries they readily approved the payment of dividends which prevented the building up of undivided profits to a point sufficient to enable the bank to weather a period of financial stringency.

However, the officers or management of the Guardian Trust Co. were deliberate in their actions, as is pointed out in the report of Lybrand, Ross Bros & Montgomery:

It is evident that the management of the bank recognized this accounting principle by filing Federal income tax returns on a consolidated basis. It should be noted that as a result of filing on this basis, no income-tax liability was incurred, with the exception of \$13,424 for the year 1929

(G-4-4, p 26)

We also submit page 26 of exhibit G-4-4, which is an analysis of earnings and undivided profits of the bank alone for the years 1923 to 1932, inclusive, to show that despite reported earnings by the bank during this period of \$15,035,156.35, the undivided-profits account actually showed a shrinkage of \$1,085,742.38 between the balance at January 1, 1923 (\$1,690,572.09), and the balance at December 31, 1932 (\$604,829.71). This proves very conclusively that losses which were being sustained and dividends which were being paid were preventing the bank from reaching a position of security. It also proves conclusively that all of our previously commented-upon statements pertaining to the earnings of the bank alone are correct, as in this analysis there are used the actual earnings of the bank alone, computed on a basis reflecting losses due to write-offs on loans, discounts, etc., and the resultant balance of undivided profits agrees with the balance of the account as shown on the annual report of the bank and on published statements of condition.

It is therefore obvious that the losses we have enumerated and commented upon actually occurred and were only kept from the knowledge of stockholders by means of concealing them in accounts with which the average person would be unfamiliar, in such a manner that it would be necessary to analyze the reserve accounts, undivided-profits account, and earnings account very closely to realize what was actually taking place. Had the management of the bank been interested in presenting a true picture of affairs to stockholders and directors, it would have been a simple matter to follow standard accounting procedure by which these losses would have been readily apparent.

(G-4-4, p 30)

Page 30 of exhibit G-4-4 shows the undivided profits of the bank and subsidiaries for the 10 years 1923 to 1932, inclusive, and the decline from a credit balance of \$2,194,518.88 as of January 1, 1923, to a debit balance of \$52,254.84 as of December 31, 1932, and tells the entire story of the bank's failure. However, this surreptitious decline was cleverly concealed from the stockholders and directors.

(G-4-21)

We have also prepared a statement to show that in the 4-year period, 1929 to 1932, inclusive, despite an increase in capital stock of \$3,000,000, an increase in surplus of \$3,800,000 by reason of cash received for stock sold, and earnings of \$3,431,406.15 (total increase over 10 million) the combined capital, surplus, and undivided profits of the bank alone as of December 31, 1932, were only \$3,711,388.69 in excess of the same combined accounts as of December 31, 1928, indicating the constantly weakening condition of the bank.

## RESOURCES AND LIABILITIES

(G-4-23 to 26)

So far in this report, we have dealt only with the subject of earnings and the manner in which they were distorted and misrepresented, but the financial history of the Guardian Trust Co. cannot be considered complete without reference to its published statements of condition and some of the items thereon.

(G-4-22)

For this purpose, we have prepared a comparative statement of condition for the years 1929, 1930, 1931, and 1932 to show the fluctuations of certain resources and liabilities and also in order that items commented upon may be readily available for reference. First, we wish to point out that the total resources as of December 31, 1932 (\$148,417,566.57), were \$33,409,928.17 less than the total resources of December 31, 1930 (\$181,827,494.74), a decline of 14.25 percent. This in itself is an indication of the general trend of the bank's affairs that is significant. During this period, the ratio of real-estate loans to total loans increased from 33.63 to 36.47 percent, an increase of 2.84 percent in what might be considered frozen assets.

(Minutes of executive committee, p. 491)

This entire subject of loans is dealt with in a separate report, but in connection with them we make a part of this report an excerpt from minutes of an executive committee meeting held September 9, 1932, in which the president stated in part—

*that conferences between representatives of the State banking department and our executive officers had been held after which it was agreed that \$2,000,000 should be taken from "surplus" and \$600,000 from "undivided profits" to create a special reserve to meet anticipated losses*

(Minutes of executive committee, p 154)

In connection with loans, we also refer to a copy of minutes of a special meeting of the executive committee held February 15, 1933, which deals with a loan of \$1,200,000 to a subsidiary which was collateralized in part by stock in a company formed for the purpose of holding mortgages which were slow in collection. However, this is being covered fully in a separate report.

(Minutes of executive committee, p 94)

We also wish to refer to excerpt from the minutes of executive committee meeting held September 22, 1931, authorizing a payment of \$60,000 into "paid-in surplus" account of the Branch Investment Co., a subsidiary formed for the purpose of altering the East One Hundred Fifth-Euclid office of the Guardian Trust Co.

The above two loans to subsidiaries are quoted in connection with the fact that the Guardian Trust Co. in preparing the statement of condition for presentation to the public included in its resources the stock held in subsidiaries at par value, regardless of the actual book value of such stock as reflected by the books of each subsidiary, and

that by reason of this and the fact that loans to subsidiaries were included in the general loan total the resources of the bank as reported were greatly inflated.

(G-4-4, p. 14)

A concrete example of this is the Hotel Hollenden transaction which is dealt with fully in a separate report. The loss of the New England Co. in this enterprise in 1931 amounted to \$1,958,793.79, which was written off against revaluation surplus in 1932.

(G-4-2, p. 9; G-4-26; G-4-30 to 33, inclusive)

The next item on this statement worthy of attention is United States bonds. On the statement of condition shown on page 9 of exhibit 2, United States bonds in the amount of \$16,131,481.60 are shown as a resource while the same amount is shown on published statement of condition as of December 31, 1932. In neither statement was there any contingent liability set up to indicate that a portion of these bonds was pledged, but concrete evidence that this was the case is shown in the attached copies of letters to the Irving Trust Co. and the Chemical Bank & Trust Co. of New York, the amount of bonds pledged being \$7,000,000. The circumstances of this pledge are explained in a separate report under the subject of "Window dressing", which also explains how "deposits" were inflated by means of purchasing Federal Reserve funds from foreign banks with official checks which the Guardian Trust Co. requested to be held until after December 31, 1932, and for which they agreed to pay interest for the days held.

#### SUNDRY TRUST 1092

Further evidence of concealment of facts was discovered in an account called "sundry trust 1092", the component parts of which were carried on the bank's statements as resources or assets, with an offsetting credit among trust funds, whereas in reality this account included revenue and expense items as well as worthless assets.

It is our purpose to bring out and substantiate that this so-called "trust" was merely another of the many subterfuges used by the bank management to conceal losses sustained by reason of unwise loans and investments and that through it were run many transactions which properly should have been reported in connection with the earnings and losses of the bank. We will also show that by reason of semi-worthless assets being transferred to this trust at full value, the trust-department funds were shown in excess of their true amount on the annual report presented to stockholders and directors, as no write-off due to losses or decline in values was made.

Before going into specific instances to prove that sundry trust 1092 was merely a secret reserve account used for the purpose of concealing losses, we believe it advisable to establish definitely our opinion of the purpose of a trust and how it should be handled.

A trust, we believe, is primarily created for the express purpose of safeguarding money which is to be distributed at a later date in some specified manner and it should be the general practice to transfer to such trusts only the very safest securities as specified by law. It is not the purpose of this report to deal extensively with the subject of trusts, as that topic is covered in a separate report, but we cite the

above only to fix in mind what a trust actually should be, so that we may show in subsequent paragraphs how little this sundry trust 1092 resembled an actual trust.

(G-4-34)

For the purpose of supporting various comments made in subsequent paragraphs of this report, we attach photostatic copy of Lybrand, Ross Bros. & Montgomery report to the special deputy superintendent of banks of Ohio, dated November 10, 1933, which is hereinafter referred to as exhibit G-4-34.

Sundry trust 1092 was originally created for the purpose of segregating certain commissions on real-estate loans consummated by Mr. A. D. Fraser for various insurance companies. Under an agency agreement, Mr. Fraser, an official of the bank, placed loans for several large insurance companies, receiving a certain commission from them for his services. Of such commissions, Mr. Fraser retained 40 percent and the bank 60 percent. On the assumption that such earnings were not entirely applicable to the year in which the loan was consummated, but should be distributed over the life of the loan, the bank management decided that these commissions should be segregated in a trust fund, a proportionate share of which could be withdrawn yearly and credited to the earnings of the bank. Had this policy, which is perfectly tenable, been adhered to, there would be no occasion for criticism, but after some years the trust became, in effect, nothing more than a clearing house for many extraneous and generally non-profitable transactions.

(G-4-34, pp. 6 and 7; G-4-34, p. 16)

Beginning January 1, 1927, and continuing until the close of the bank, we find that the original purpose of sundry trust 1092 was almost completely lost sight of in the many transactions run through it. During this period the fund shows receipts of \$1,443,085.21 and disbursements of \$1,416,645.56, the net of these amounts together with the balance at December 31, 1926, of \$48,629.06 accounting for the balance of \$75,068.71 at the time of the bank's closing. During this period, the trust became nothing more than a secret reserve account in which was placed earnings from many sources such as profits from the sale of acceptances, rentals on properties owned, etc., from which funds were withdrawn for such purposes as the payment of rental to other trusts operated by the Guardian Trust Co. as trustee, the purchase of mortgages, notes receivable, bonds, etc., from the Guardian Trust Co. For example, we find placed in the trust, items such as the following:

(G-4-34, p. 6)

Interest earned.....	\$83, 643. 63
Profit on sale of acceptances.....	56, 428. 60
Payments on notes receivable.....	456, 180. 93

while from it, funds were withdrawn for the following purposes:

(G-4-34, exhibit 1, p. 7)

Mortgages purchased.....	\$137, 562. 59
Loans.....	449, 392. 61
Bonds purchased.....	217, 253. 11

These items are obviously entirely foreign to the purpose of the trust and their inclusion can only be interpreted as an acknowledgment by

the bank management that sundry trust 1092 was not in reality a trust as conceived, but had become merely a concealed portion of the profit-and-loss account.

(G-4-34, p. 18; G-4-34, pp. 10 and 11)

The total amount of these losses so concealed was \$380,720, of which \$147,836.82 was recorded on the books of the Guardian Trust Co. as a charge to the reserve for depreciation account, leaving the net amount of concealed losses \$232,883.73 and we call particular attention to the loss of \$214,133.11 on bonds acquired from trusts operated by the Guardian Trust Co., as trustee, as at the time the bonds mentioned were transferred to sundry trust 1092, the worthlessness of the bonds should have been known to bank officials, as the companies issuing the bonds were then either in receivership of liquidation.

(G-4-34, p. 8; G-4-34, p. 6; G-4-35 to G-4-42, inclusive)

In order to have sufficient funds in this trust to cover the bank losses being run through it, it was necessary to divert some of the bank's earnings and assets into it, the total amount so diverted being \$1,074,923.85, including commissions on loans. Of this amount, \$436,443.78 in cash was transferred back to the bank, leaving a net diversion of \$638,480.07. Of this amount, we wish to call particular attention to an item of \$78,000 shown under section 5 on page 6 of exhibit G-4-34. This amount represents earnings of the trust department arbitrarily transferred from their proper place to sundry trust 1092, for no other apparent reason than to bolster this fund for the purpose of concealing losses. The original transfer of such funds consisted of \$28,000 early in 1931 and in each subsequent month the sum of \$3,000 was transferred by means of a debit to trust-department earnings. We are attaching photostatic copies of some of these debits signed by officials of the bank, which show conclusively that responsible officials were fully aware of the subterfuges being resorted to. It is significant that these debits all refer to this trust as sundry trust reserve 1092, so there can be no doubt that they considered it merely a secret reserve.

(G-4-34, p. 8; G-4-34, p. 16, G-4-34, p. 9)

As shown upon page 8 of exhibit G-4-34, the total assets diverted to sundry trust 1092 aggregated \$638,480.07, while as of February 28, 1933, the cash in the fund was \$75,068.71, leaving a net difference of \$563,411.36 to be accounted for, which is done upon page 9 of exhibit G-4-34. Of particular interest thereon are the items: \$299,524.39 payment for investments, rentals, etc., to other trusts operated by the Guardian Trust Co. as trustee; reimbursement of the Guardian Trust Co. for losses and expenses; notes receivable \$63,675 and Fraser agency commission on Heather Building mortgage paid to H. P. McIntosh \$1,200.

The \$299,524.39 payment for investments, etc., is made up as follows:

(G-4-34, p 10)

Bonds.....	\$214, 133 11
Land trust certificates.....	55, 905 49
Advances to other trusts for rentals, interest, etc , less repayments.....	6, 678 51
Land rentals.....	22, 807 28
<b>Total.....</b>	<b>299, 524 39</b>

We have already called attention to the semiworthless condition of these bonds, but wish to do so again, in view of their being carried as an asset of the fund at the time of the bank's closing.

(G-4-34, p 13)

Page 13 of exhibit G-4-34 details the reimbursement to the Guardian Trust Co. for losses and expenses, and it can readily be seen that the majority of the items making up this amount had no real connection with sundry trust 1092 and prove again that the original purpose of this trust was deliberately ignored.

The notes-receivable item mentioned above represents the unpaid balances on certain notes receivable as follows:

(G-4-34, p. 15)

Edward Morgan.....	\$1, 775
A D Fraser (vice president).....	1, 900
Cleveland Cliffs Iron Co.....	45, 000
B Benjamin Co.....	15, 000
<b>Total.....</b>	<b>63, 675</b>

The note of the Cleveland Cliffs Iron Co originated when this company borrowed \$2,000,000 on a collateral loan, giving in consideration of the loan, commission in the form of notes amounting to \$20,000. In renewing the collateral loan, the commission was increased to \$45,000 for which new notes were given.

(G-4-34, p. 16)

The A D. Fraser balance results from borrowing \$3,500 in 1932 and repaying \$1,600 in 1933. In 1929 a commission of \$10,000 was earned on a collateral loan to B. Benjamin Co. and deposited in this fund. During the same year this company borrowed \$20,000 from the fund and in 1930, in order to record a reduction in this indebtedness, \$5,000 of the commission deposited was transferred and applied in payment of this loan. A. D. Fraser had a participation of \$10,000 in the loan.

(G-4-43)

In regard to \$1,200 commission paid to H. P McIntosh, Sr., we attach photostatic copy of debit signed by J. A. House, president, authorizing a check to Mr. McIntosh and a charge to sundry trust 1092 and as we have no record of Mr. McIntosh's being a party to an agency agreement entitling him to commissions, we are interested in the reason for this apparent gratuity.

(G-4-34, p 16; G-4-34, p. 17)

As a result of loading this trust with worthless or semiworthless assets of the bank the worth of this trust was shown greatly in excess of its true value and published statements were consequently mis-

leading; as we know that as of February 28, 1933, the assets of this trust were shown on the books at \$566,812.63 while their true value did not exceed \$182,690.81, after eliminating the bonds of liquidated companies, the investments in and advances to the Resarf Co. and other doubtful assets, and even this valuation is doubtful in view of the character of the remaining assets, the difference of \$384,121.82 being composed of worthless assets in the form of bonds such as previously mentioned, worthless notes receivable, etc.

(G-4-44 to 56, inclusive)

We are attaching photostatic copies to the original of the report of miscellaneous letters pertaining to sundry trust 1092, all of which indicate very clearly that various bank officers were fully aware of the nature of the items being run through the trust and their failure to prevent the practices being engaged in cannot help but make them parties to the subterfuges being used to conceal certain operations. We believe that in the above comments we have definitely established—

(a) that sundry trust 1092 was not a trust;

(b) that it was in fact a secret reserve account used for the purpose of taking care of losses which should have been reflected on the bank's books;

(c) that in the latter years of the bank's existence no attempt was made to adhere to the original purpose of the trust, which was to hold certain earnings to be distributed on a deferred basis;

(d) that to the trust were transferred worthless investments in order to avoid showing a loss on the bank's books;

(e) that bank officials were fully aware of what was going on and were parties to the continued deception being carried on, knowing that earnings of the bank and the true worth of sundry trust 1092 were being misrepresented;

(f) that responsible officials of the bank permitted this misrepresentation and that such action on their part is clear evidence of a willful intent to deceive directors, stockholders, and depositors as to the true result of the bank's operations

WALTER H. SEYMOUR, *Senior Examiner.*

This report based upon preliminary report and complete investigation by Committee Examiner R. E. Long.

Senator ADAMS. Mr Meehan, doubtless it is in this report, but can you give for my information at this time the surplus and deposits of the Guardian Trust Co when it closed its doors?

Mr MEEHAN I would have to refer to the exhibits to give you that information.

Senator ADAMS. Are those exhibits available here now?

Mr MEEHAN No; the exhibits are in the hands of the Government Printing Office just now.

Senator ADAMS And that information is not given in this summary?

Mr. MEEHAN. Only in a general way. We would not have the financial set-up of the Guardian Trust Co. That would be in one of the exhibits accompanying this report, which exhibits, for convenience of printing—for the purpose of expediting the printing—are now in the Government Printing Office.

Senator ADAMS All right.

The CHAIRMAN You may proceed, Mr Pecora

Mr. PECORA Mr Meehan, I now show you another report addressed to you by Mr Seymour, entitled "The Guardian Trust Co — financial condition, 1929-33", and ask you if you recognize that as being another report made to you by Mr Seymour, under your immediate supervision

Mr MEEHAN. I do

Mr PECORA Mr. Chairman, I offer that report in evidence, together with the various exhibits referred to therein

The CHAIRMAN Let the report and exhibits be received in evidence

(The report entitled "The Guardian Trust Co —Financial Condition, 1929-33", together with the exhibits now at the Government Printing Office, were received and marked "Committee Exhibit No. 4, May 3, 1934", and are as follows )

#### COMMITTEE EXHIBIT No. 4—MAY 3, 1934

##### FINANCIAL CONDITION—1929-33

The closing of the Guardian Trust Co. was not the result of the "Michigan bank holiday," the "National Bank Holiday," or any sudden disturbance of economic conditions, but was rather the result of unsound banking practice over a period of years. The unsound practices were numerous, being:

1. An unwise loan policy in the following respects:

(a) Credit granted too freely on loans.

(b) Collateral loans made too freely on collateral of a highly speculative nature.

(c) Real-estate mortgage loans out of proportion to the bank's resources and total loans.

(d) Too many real-estate loans on vacant property.

(e) Excessive loans to officers and directors and to companies in which officers and directors were interested.

2. An unsound investment policy in that:

(a) Many investments were in bonds and stocks of speculative enterprises

(b) A large portion of investments were in companies in which officers and directors were interested and were apparently made more with the intent of aiding the company than benefiting the bank.

3. Due to the loan policy of the bank, it was forced into the position of being a large holder of real estate through foreclosure, very little of which could be disposed of due to a falling market.

4. That the bank, instead of creating reserves out of its yearly earnings to cover losses on loans and investments, concealed these losses from directors and stockholders, as explained in another report, and continued to pay large dividends which were not justified.

5. That as a result of the above, the bank instead of adding to its surplus and undivided profits in cash, Government bonds, or any other valuable manner was doing so only in theory as far as the bank proper was concerned, and when taking into consideration the bank and its subsidiaries, was actually depleting them.

6. That by reason of paying out unjustified cash dividends and steadily accumulating real estate, semivalueless securities and doubtful loans, the bank was not liquid for several years prior to its closing.

7. That the bank, in order to continue to do business, was forced to pledge its valuable assets in every conceivable way to secure funds and that as a result of this pledging of assets, very little was left available for distribution to preferred creditors from 1930 to the date of closing.

8. The bank had exhausted its borrowing power with the Reconstruction Finance Corporation, had pledged everything pledgeable and simply "borrowed from Peter to pay Paul" throughout the years 1932 and 1933.

In order that these points may be easily followed and understood, they are treated under separate captions in succeeding paragraphs

#### LOANS

(G-6A-1)

(a) *Unsecured loans.*—To illustrate what we believe to be an unsound condition in regard to unsecured loans, we have prepared a chart to show the general condition of loans as of November 15, 1929, and February 29, 1932. The figures shown on this chart are taken from the State examiner's reports.

On November 15, 1929, the total loans of the bank amounted to \$112,006,762.86, of which 27.93 percent or \$31,098,693.25 were unsecured. Of this sum, 6.45 percent, or \$2,357,460.17, were past due.

(G-6A-1)

On the same date, collateral loans which represented 44.15 percent of the total loans, or \$49,832,392.14, had 4.08 percent past due, amounting to \$2,103,011.52.

Real-estate loans representing 27.92 percent of the total loans, or \$31,075,677.47, had delinquent 12.9 percent or \$4,704,207.28.

(G-6-2, p. 316)

We, therefore, find past due as of November 15, 1929, the following loan items:

Unsecured loans.....	\$2, 357, 460. 17
Collateral loans.....	2, 103, 011 52
Real-estate loans.....	4, 704, 207. 28
<b>Total past due.....</b>	<b>9, 164, 678. 97</b>

which represented a potential loss to the bank of a figure far greater than that of \$570,625.29, as indicated by the State examiner.

Due to the liberal attitude of the State examiner, as expressed in his comments, your examiner finds it difficult to arrive at an approximate estimate of the loss likely to be sustained on these loans, but we cite some of the larger items and refer to the State examiner's comments regarding them.

(G-6-2 p 199)

Puritan Realty Co.....	\$199, 604 77
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(G-6-2 p 199)

Richmond Mayfield Land Co.....	115, 336 41
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	(G-6-2 p. 200)	
J. Roy Taylor, Inc.....		\$205, 581. 94
	(G-6-2 p. 200)	
Stouder Thompson Co.....		55, 301. 40
	(G-6-2 p. 221)	
Interstate Foundries, Inc.....		307, 457. 58
	(G-6-2 p. 223)	
J. C. Russell.....		23, 500. 00
	(G-6-2 p. 225)	
Fort Smith & Western Railway Co.....		87, 735. 00
	(G-6-2 p. 226)	
J. H. Jones, Jr.....		66, 500 00
	(G-6-2 p. 229)	
Arthur M and Ottalie M. Brown.....		178, 000. 00
	(G-6-2 p 233)	
C. H. Judkins.....		20, 000. 00
	(G-6-2 p 234)	
C H. Mathews.....		46, 400. 00
	(G-6-2 p 246)	
M 'C Rosenfield.....		147, 000. 00
	(G-6-2 p 254)	
Harry N. Beddell.....		17, 264. 00
	(G-6-2 p. 255)	
Jacob Babin, et al.....		223, 250. 00
	(G-6-2 p. 267)	
Clinton DeWitt, et al.....		85, 300. 00
	(G-6-2 p. 270)	
Carrie and Fred S. Jones.....		118, 000. 00
	(G-6-2 p. 272)	
Edward and Florine Paul.....		135, 626. 30
	(G-6-2 p. 274)	
R H. Rutherford, et al.....		37, 000. 00
	(G-6-2 p. 278)	
Gulf Region Lumber Co.....		309, 278. 80
	(G-6-2)	
Joseph Laronge, et al.....		630, 960. 84
Total.....		<u>3, 009, 097. 04</u>

In compiling the above list we have included only a few of the larger items on which even the State examiner, as optimistic as he

was, acknowledged the probability of a loss, and, if imbued with his same spirit of liberality, we only consider 50 percent of it as a potential loss, we can still arrive at a figure in excess of a million and a half dollars, or one million in excess of the State examiner's figures.

We realize that second guessing in 1934 is much easier than making an original decision in 1928 or 1929, but believe that the potential losses indicated at that early date prove the weakness of the bank's loan policy, especially so when it is borne in mind that the State examiner did not complete his 1929 report until June 1930, which was 7 months after the stock-market crash.

Realizing that judging collateral by 1928 or 1929 standards is entirely different from judging it by 1934 standards, we have not gone too deeply into the matter of speculative collateral, but merely cite a few instances to prove that even as early as 1929, the worth of a great deal of the collateral was problematical. To illustrate this, we quote the State examiner's comments made November 15, 1929:

	(G-6-2, p. 220)	
C. B. Ellenwood.....		\$25, 026 55
400 shares Euclid-Windsor Conn : Present value, nothing		
	(G-6-2, p 221)	
J. L. Free.....		\$43, 233. 49
2,858 $\frac{1}{4}$ shares Winton Hotel stock No bids for stock		
	(G-6-2, p 223)	
J. C. Russell.....		\$23, 500 00
331 shares miscellaneous stocks No value.		
	(G-6-2, p 224)	
Old Dominion Mtge. Co.....		\$14, 000. 00
680 shares miscellaneous stocks. No value		

The above items, taken at random, are indicative of the character of a great deal of the collateral securing loans, and, we believe, prove our statements in respect to speculative collateral.

(G-6A-1)

While a bank's function is primarily to make loans, conservative banking demands that these loans be of a fairly liquid nature. In the Guardian Trust Co. the reverse was true, 28 percent of their loans as of November 15, 1929, representing real-estate loans. These loans, reaching the large total of \$31,075,677 47, were necessarily of long duration, and failure of the mortgagors to make payments could only mean that the bank, by process of foreclosure, would be in possession of a vast amount of real estate for which there was no market. Even at that early date over \$4,000,000 was delinquent, which condition reached the excessive total of over \$7,000,000 in 1932.

(G-6A-11)

From annual statements of the bank we have prepared a comparative statement showing the cash on hand, various loans, deposits, and total resources for a 5-year period, the purpose of this being to bring out that while resources, deposits, and other loans showed a steady decrease, real-estate loans remained at the same approximate figure, showing the bank's inability to get out from under.

(G-6-2, pp. 170-189, inclusive)

Possibly one of the worst features of the real-estate loan situation was the large amount loaned on vacant property, the value of which is highly speculative. As of November 15, 1929, the Guardian Trust Co. had loaned on vacant property approximately \$4,859,038, which was 12.9 percent of their total real-estate loans. There can be no doubt that vacant or allotment property is purely speculative, its ultimate value being entirely dependent upon the sales ability of the allotment owner, and for a bank to loan large sums upon real estate of that nature indicates a very weak loan policy.

(G-6-2, p. 6)

Loans to officers and directors and to companies in which officers and directors were interested were excessive both as to number and amount, aggregating \$10,426,882.46 as of November 15, 1929, and large amounts at other dates as shown by the statement made a part of report on examinations. Regardless of the nature of security, to loan a sum exceeding the combined surplus and undivided profits of a bank to a small group of this nature violates every principle of conservative banking and shows very clearly the selfish manner in which depositors' funds were used by the bank management. The non-liquidity of these loans is shown by the fact that as of April 8, 1933, they were in excess of \$12,000,000.

(G-6A-2, p. 167; G-6A-2, p. 156; G-6A-2, p. 167)

Another unwise concentration of loans were the loans to the so-called "Eaton interests" and Van Sweringen interests. These loans totaled \$8,852,751.47 as of February 29, 1932, of which the loans to the Eaton interests amounted to \$4,546,426.87 and the loans to Van Sweringen interests amounted to \$4,306,324.60.

(G-6A-12)

The status of these loans is brought out clearly in subsequent paragraphs, but in connection with the Van Sweringen loans, we attach copy of a letter dated June 8, 1932, from J. A. House, president of the Guardian Trust Co, to H. C. Robinson, executive vice president, which is self-explanatory.

## INVESTMENTS

We have stated that the investment policy of the bank was unsound in that it was the holder of bonds and stocks in too many speculative enterprises and to substantiate this we show the following semi-speculative securities held as of November 15, 1929.

	(G-6-2, p. 101)	
Real estate and building bonds.....		\$698, 508. 66
	(G-6-2, p. 106)	
Real-estate and building bonds.....		1, 354, 654 63
		<u>                    </u>
	(G-6-2, p. 102)	\$2, 053, 163. 29
Miscellaneous bonds.....		56, 980 00

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	(G-6-2)		
Miscellaneous bonds.....		\$1,390,422.75	\$1,447,402.75
	(G-6-2, p. 102)		
Stocks.....		848,319.78	
	(G-6-2)		
Stocks.....		3,839,566.96	4,687,886.74
Total.....			8,188,452.78

While it is true that legally the bank was within its rights in investing in securities of this nature, there can be no doubt that such investments are speculative and the large amount shown above is indicative of the tendency of the management to purchase highly rated securities rather than the safer more lowly rated ones.

For information concerning some of these investments, we refer to the State examiner's comments of November 15, 1929, concerning a few of them:

	(G-6-2, p. 109)		
Lorain property.....		\$175,000.00	
	(G-6-2, p. 109)		
Alleghany By-Products Coke Co.....		42,909.47	
	(G-6-2, p. 109)		
Short Creek Coal Co.....		396,313.68	
	(G-6-2, p. 109)		
Pasadena Investment Co.....		62,000.00	
	(G-6-2, p. 109)		
Estates and Investment Co.....		50,000.00	
	(G-6-2, p. 109)		
Fairmount Development Co.....		60,870.00	
	(G-6-2, p. 110)		
Guardian Securities Co.....		250,000.00	
	(G-6-2, p. 111)		
Clinchfield Coal Co.....		35,116.66	
	(G-6-2, p. 111)		
Euclid-Windsor Co.....		31,000.00	
	(G-6-2, p. 113)		
Relay Motors Corp.....		86,900.00	
	(G-6-2, p. 113)		
Golden Age Macaroni Co.....		454,005.27	
Total.....			1,415,767.67

(G-6-6)

As indicated by the examiner's reports, a substantial loss was to be expected on these investments—which was borne out by subsequent developments. In fact, the depreciation was far greater than anticipated as can be seen by reference to exhibit G-6-6 which shows that

at February 29, 1932, the depreciation on securities such as mentioned above amounted to \$3,365,131.56.

Another bad feature of the bank's investment policy was that they had invested heavily in securities of companies in which bank officers or directors were interested. As examples we cite the following items found among the bank's investments as of November 15, 1929:

	(G-6-2, p. 105)	
Continental Shares, Inc.....		\$78, 447 00
	(G-6-2, p. 106)	
United States Metal Products Co.....		82, 450. 00
	(G-6-2, pp. 107, 101)	
A C & Y Ry Co.....		652, 347. 50
Total.....		<u>813, 244. 50</u>
	(G-6-2, p. 6)	

This item added to the total loans to officers, directors, and interested companies of \$10,426,882.46 meant a total concentration of \$11,240,126.96 entirely out of proportion to the bank's total resources.

#### REAL ESTATE OWNED

(G-6-2, pp. 1A, 187)

As a result of the bank's loan policy on real estate, a great deal of "other real estate" was acquired which could not be disposed of, due to local real-estate conditions. As of February 29, 1932, the State examiner's statement of condition showed this amounted to \$1,788,733.31 with an additional sum of \$1,970,714.38 in process of foreclosure, a total of \$3,759,447.69 in highly unliquid resources.

#### SURPLUS AND UNDIVIDED PROFITS

(G-4-4)

The subject of dividends paid by the bank has been gone into fully in another report, which showed that on a basis of actual earnings such dividends were not justified and it is mentioned here, only in connection with the undivided profits account. Due to the payment of these dividends the undivided profits of the bank failed to show any material increase over a period of years, as should be the case and actually showed a decrease from 1930 to the date of closing, as shown on exhibit G-4-4 made part of the earnings report. This statement is of the bank alone and that the true condition of the bank and its subsidiaries may be noted, we refer to exhibit G-4-4 which shows that on a consolidated basis, the undivided profits account actually showed a debit of \$52,254.84. These two statements show clearly how very thoroughly the Guardian Trust Co. was "milked" to provide large salaries, bonuses, and excessive dividends. It is our contention that had the books of the bank been adjusted to reflect the losses incurred by reason of the shrinkage in value of resources, the surplus and undivided-profits accounts of the bank would have been wiped out

entirely and a deficit shown and we believe that in our foregoing comments, we have proven that as early as 1929, insolvency was imminent and we shall definitely prove in subsequent paragraphs that the bank was insolvent in February 1932 one year before it closed.

So far in this report we have only pointed out certain conditions existing in 1929, which could only lead up to the unsatisfactory condition of the bank as disclosed by the joint examination of the State banking department and Federal Reserve Examiner Evans made in February 1932. As of this date, the fruit of unsound banking was apparent, as the potential losses previously mentioned had actually occurred, plus a much greater amount.

To illustrate this, we attach an analysis taken from Federal Reserve Examiner Evans' report of February 29, 1932, which shows that

(G-6A-3)

out of total investments of \$37,663,173, only 65.1 percent or \$24,561,634 had any degree of desirability and while the remaining \$13,-

(G-6-2, p 263)

101,539 could not be considered as entirely valueless, they were of a highly undesirable or speculative nature, so much that the State examiner estimated the depreciation on all securities as \$7,870,729.74

(G-6-2, p 187)

to which should be added estimated loss on real estate loans \$302,118.52

(G-6-2, p 45)

estimated loss on other loans \$3,694,727.97, a total of \$11,867,576 23, or a sum sufficient to wipe out the combined surplus and undivided profits of the bank. While this estimated loss is startling enough in itself, the condition of the bank is even more apparent when we add

(G-6-2, p 358)

to it, doubtful loans \$7,462,354.13, loan, undetermined value \$10,-

(G-6-2, p 358)

518,881 08, making a possible loss of \$29,828,811.44, or enough to wipe out the entire capital structure of the bank, which amounted to

(G-6-2, p 1A)

capital stock paid in \$7,000,000, surplus \$9,000,000, undivided profits \$1,187,563.63, total \$17,187,563 63, a potential deficit of \$12,661,-247.81.

Federal Reserve Examiner Evans recognized the precarious condition of the bank, and in the comments attendant to his report stated in part:

(G-6-2)

An extremely liberal appraisal of the assets reveals estimated losses of \$5,292,000. This in itself should not cause any particular concern. Add to this, however, \$14,606,000 in doubtful assets, \$10,561,000 of undetermined value and the result sets out more clearly the real condition with which the management is confronted. The total estimated depreciation, losses and doubtful is sufficient in amount to absorb the entire capital structure. In appraisal of investments, the depreciation on defaulted issues only is classed as a loss. This is in accordance with a recently adopted policy of the banking department. Unquestionably there are substantial losses in the \$7,144,000 depreciation classed doubtful so \$3,067,000 of this is in their stockholdings. In the classification of loans the liberal attitude of the examiners is further shown by reference

to loans to Continental Shares, Goodyear Shares, Bishop Syndicate Mgr., Van Sweringen, Metropolitan Utilities, etc.

## REAL ESTATE LOANS

This asset presents a major problem to the management. On examination date, mortgage loans aggregated \$32,492,000 or 34.4 percent of total loans. Of this amount \$8,472,000 or 26 percent was in default of interest for period of 6 months or longer. Loans in process of foreclosure total \$2,145,885.

## RESOURCES PLEDGED

(G-6A-4)

In view of the many frozen assets held by the bank, it was desperately in need of funds to continue to operate and, in order to obtain them, was forced to pledge its resources. We have prepared a statement to show the amount of pledged assets at March 23, 1929, February 29, 1932, and April 8, 1933, to show the small total of free assets at the time the bank was taken over by the conservator. From this it can be noted that the resources pledged increased from \$36,529,552.10, or 22.26 percent of total resources as of March 23, 1929, to \$62,008,194.86, or 54.59 percent of total resources as of April 8, 1933, shortly after the closing of the bank. The percentage of pledged mortgages to total mortgages increased from nothing to 63.44 percent and pledged loans from nothing to 51.52 percent in the period mentioned above, a clear indication of the bank's desperate attempts to keep operating at any cost. The result of such pledging will be shown later under a subheading "Condition at Closing."

(G-6A-5)

To illustrate the steadily growing weakness of the bank we have prepared certain comparative statements which may be readily understood. The first is a comparative consolidated balance sheet of the bank and subsidiaries as of December 31, 1931, December 31, 1932, and February 28, 1933. From this the following important changes from December 31, 1931, to February 28, 1933, can be noted.

Cash, decreased.....	\$5, 547, 903. 64
Government bonds, decreased.....	2, 754, 694. 23
Deposits, decreased.....	42, 455, 406. 07
Surplus, decreased.....	3, 000, 000. 00
Liabilities, bills payable, increased.....	15, 923, 928. 20
Mortgages payable, increased.....	3, 934, 318. 19
Appreciation on real estate, increased.....	1, 908, 969. 75
<b>Total resources, decreased.....</b>	<b>28, 123, 556. 05</b>

(G-6-11)

The second is a comparative statement of loans to officers, directors, and companies in which officers or directors were interested, showing that from 1929 until the time of closing, the bank had a concentration of loans ranging from \$7,000,000 to \$12,000,000 to one small group, this representing from 10 to 15 percent of the bank's total loans.

(G-6A-6)

We have also prepared a statement to show the nature of bank investments in bonds and securities as of March 1929, January 1932, and January 1933, the figures being taken from reports of the bank's

examining committee. The point we wish to bring out in connection with this is that while the total of such investments only declined \$208,496.34 from 1929 to 1933, the character of the various securities showed a marked change, there being a considerable reduction in the amount of the better class of securities with an attendant increase in the amount of industrial bonds and stocks held. It can be seen that in this period industrial bonds increased \$1,918,328 27, and stocks

(G-6A-6)

increased \$2,038,546.77, a total increase of \$3,956,874 04 in securities of a speculative nature.

The next statement showing the difference between book value and market value of securities as of November 15, 1929, and February 29, 1932, brings out the loss to the bank as the result of the change in the nature of securities held, the depreciation increasing from

(G-6-6)

\$566,717.78 to \$7,155,070.68, an increase of \$6,577,352.90, a large portion of this increase being made up of the depreciation on the items mentioned in the preceding paragraph

We quote herewith certain of the Federal Reserve examiner's comments on loans in order that the nature of certain large loans may be appreciated and our belief of a large potential loss substantiated.

(G-6-2, pp 290 to 307)

GEORGE A ENOS, \$224,596

Collateraled by 4,908 shares Enos Coal Mining Co on which the bank places a value of \$46 per share. However, they carry 800 shares in the Guardian Securities Co at \$1 per share. Payment depends entirely on the value of the stock which at present time has absolutely no market at any price. Total loans to Enos' interests and investments in same are.

Enos Coal Mining Co , bonds.....	\$598, 120 00
Algers Winslow R R , bonds.....	212, 500. 00
Algers Winslow R R , loans.....	4, 550. 00
Geo. A. Enos loan on company stock.....	224, 596. 17
Direct loan to the company.....	25, 000. 00
F. S. McConnell loan on company stock.....	7, 500 00
G. W. Dean and E R Fancher loan.....	44, 201 00

1, 116, 467. 17

(G-6-2 pp 290 to 307)

GUARDIAN SECURITIES CO., \$545,000

Collateraled by listed securities which on date of examination had an estimated value of \$170,000. All the capital stock of the Guardian Securities Co. is owned by the bank and in the examiner's opinion the company is believed to have been organized for the purpose of dealing in stocks which were not legal investments for the bank. The depreciation in securities held by the company is sufficient to wipe out the capital stock (\$250,000) entirely and accordingly no value is allowed the same in the bank's investment account

(G-6-2, pp. 290 to 307)

CONTINENTAL SHARES INC. (DUE 4-21-32), \$480,000

Represents the balance of an original participation of \$600,000 in a loan of \$4,000,000. Collateraled by miscellaneous stocks which have an estimated value of \$1,698,400 or 42 percent of the total loan. The conditions of the affairs of the

subject company are quite well known and the amount above the estimated value of the collateral is considered a loss.

(G-6-10)

The large increase in nonaccrual loans from year to year is brought out in the next statement showing an increase of \$12,000,000 from 1923 to 1932. As nonaccrual loans are those on which the bank has stopped accruing interest due to the failure of the debtor to make payment of either interest or principal, it is obvious that a large portion of this amount represented a loss to the bank and is indicative of the weakness of the bank's loan policies.

As of the date of examination the title to the bank building was vested in the New England company, all the capital stock of which was owned by the bank and carried as a building equity in the amount of \$3,800,000. Analysis of the New England company statement does not justify a valuation of \$3,800,000 on the stock.

Among the assets of the New England company were the following:

1. Six demand notes totaling \$483,483.13 signed by the Guardian Trust Co., trustee, for Hollenden Hotel first mortgage, leasehold 6½ percent sinking fund bonds. Notes were payable to the Guardian Trust Co., were not endorsed without recourse, and were said to represent advances for ground rent and taxes and to constitute a prior lien.

2. Seven notes totaling \$1,756,848.58 signed Hollenden Hotel Co., of which \$160,000 was payable to the Guardian Trust Co., not endorsed without recourse.

3. Note for \$25,000 signed Valuation Service Co. and \$50,000 invested in the entire capital stock of the same company which was organized to handle the bank's properties.

4. Hollenden Hotel leasehold mortgage bonds in default \$207,550. Hotel in receivership since May 1931.

(G-6A-2, p. 1A)

Briefly summarized, the resources of the bank at February 29, 1932, as shown by page 1 of the State examiner's report of that date would appear to be

Total resources.....	\$159,781,384.05
Less contra items also shown as liabilities.....	7,256,719.00
Net resources.....	152,524,665.05
Less Losses on loans and investments.....	29,122,299.00
	123,402,366.05
Less Assets pledged.....	44,999,724.18
	78,402,641.87

with which to satisfy:

Deposits of.....	\$102,973,274.43
Bills payable.....	27,091,741.34
Repurchase agreements.....	3,609,429.17
	133,674,444.94
Deficit.....	55,271,803.07

On September 8, 1932, the final result of the appraisal of the bank's assets by State Bank Examiner T. O. McEldowney was presented at a meeting held at The Guardian Trust Co. Present were President

House and Vice President Robinson for the bank, Superintendent Fulton, Attorney Examiner Saffran and Examiner McEldowney for the banking department and Mr. DeCamp and Examiner Evans from the Federal Reserve bank. The result of the appraisal which brought out conditions such as outlined in preceding paragraphs was accepted with no contention and in conclusion it was agreed to transfer \$2,000,000 from surplus and \$600,000 from the undivided profits accounts to create a reserve for possible losses. This plan was presented to and accepted by the executive committee of the bank on September 30, 1932, at which time the transfers were made. This transfer, in our opinion, was meaningless, as the Guardian Trust co. actually had no surplus or undivided profits at that time as brought out by the foregoing figures, they having been wiped out by the losses outlined.

The bank management, instead of taking cognizance of the bank's condition as clearly brought out by the State examiner's report and making some effort to retrench, proceeded along the same paths as before, even going so far as to declare a \$1 per share dividend on December 15, 1932, when they had every reason to know the bank was absolutely insolvent.

*Condition of the bank at closing.*—The complete inability of the Guardian Trust Co. to reopen after the national bank holiday declared by President Roosevelt is partly shown by the following excerpts from the minutes of a special meeting of the board of directors held March 4, 1933:

(Minutes of directors' meeting, Mar 4, 1933)

The president reported that to the best of the bank's knowledge, and according to a statement by the Comptroller, our total deposits at the close of business, Feb. 25, 1933, subject to withdrawal restrictions were approximately.....	\$81, 069, 332 00
That deducting amount paid under our 1 percent restriction on withdrawal limitation, also deducting items in last above amount but which were since returned unpaid and making other adjustments, the balance on which we may yet be called for a 1 percent payment under the present plan of operation is approximately.....	57, 091, 768 00
On which 1 percent would be.....	570, 917 00
That we have on hand at the commencement of business Mar 4, to meet said amount, currency and coin.....	639, 826 00
The president also reported that our other liabilities are approximately.....	
Rediscounts, Federal Reserve bank.....	3, 928, 079. 12
Bills payable, Federal Reserve bank.....	1, 239, 796. 82
Bills payable, Reconstruction Finance Corporation.....	15, 226, 597. 62
Bills payable, Chemical Bank & Trust Co.....	250, 000. 00
Letters of credit and travelers checks.....	59, 070. 00
Bankers acceptances guaranteed or endorsed.....	531, 106. 45
Acceptances executed for customers.....	918, 769. 24
	22, 153, 419 25
And that to meet the present 1 percent withdrawal amount of above stated "other liabilities" not considering securities specifically pledged to their payment, we have funds in process of collection approximately as follows.	
Federal Reserve, reserve account.....	405, 501. 00
Federal Reserve, transit account.....	653, 668. 00
Exchange on hand.....	127, 828. 00
Due from other banks, not subject to contra accounts, but subject to varying restrictions.....	563, 413. 00
<b>Total</b> .....	<b>1, 755, 410. 00</b>

From the above it can be seen that at this date the Guardian Trust Co. had quick liabilities as follows:

Due to depositors.....	\$57,091,768.00	
Other liabilities.....	22,153,419.25	
Total.....		79,245,187.25

to meet, for which they had quick resources of—

Currency and coin on hand.....	\$639,826.00	
Funds in collection.....	1,755,410.00	
		2,495,236.00

Shortage.....		76,849,951.25
---------------	--	---------------

(G-6A-7)

This, however, does not tell the complete story, as it does not bring out that \$62,008,194.86 of the bank's resources were pledged, either to secure deposits or to borrow money. Exhibit G-6A-7 is a photostatic copy of a statement of condition prepared by the conservator on April 8, 1933, showing the condition of the bank at closing.

(G-6A-7)

Briefly summarized, this statement shows that to meet withdrawals of unsecured deposits amounting to.....	\$61,739,442.66
The bank has unpledged assets of.....	\$51,666,997.66

(G-6A-7)

Less contra accounts also shown as liability.....	\$1,384,775.69
---	----------------

(G-6A-2 p. 358)

Depreciation and loss as shown by State examiner's report of February 29, 1932.....	\$19,899,293.09	
		21,284,068.78
		30,382,928.88

Therefore being short.....	\$1,356,513.78
of the amount required to meet withdrawals of all unsecured deposits.	

While it is true that the deposits and borrowings against which were pledged.....	62,008,194.86
---	---------------

Amounted to only—	
Public funds.....	\$10,748,397.21
Trust funds.....	4,908,491.17

(G-6A-7)

Bills payable Federal Reserve.....	79,316.84	
Bills payable, Chemical Bank & Trust Co.	250,000.00	
Bills payable, Reconstruction Finance Corporation.....	14,900,481.40	
Bills rediscounted.....	3,893,042.30	
		34,779,247.52

Leaving an apparent equity of.....	27,228,947.34
Additional available for depositors, it should be borne in mind that there would still be a deficit between—	

(G-6A-7)

Unsecured deposits.....	61,739,442.66
-------------------------	---------------

and

(G-6A-7)

Unpledged resources.....	\$30,382,928.88	
Possible equity in pledged resources.....	27,228,947.34	
		\$57,611,876.22
of.....		4,127,566.44

assuming that all remaining resources, both pledged and unpledged, could be liquidated at book value, which was highly improbable, and, as we now know, impossible.

(G-6A-7)

The bills payable item with the Reconstruction Finance Corporation amounting to \$14,900,481.40 against which the Guardian had pledged securities amounting to \$42,989,919.10 is made up of four notes as follows:

Loan no	Date of note	Due date	Loan application	Amount received	Collateral pledged	Balance Apr. 8, 1933
115.....	Mar 14, 1932	Sept 14, 1932	\$5,100,000	\$5,047,377.89	\$10,484,285.64	\$4,536,997.76
306.....	Apr 20, 1932	Oct 14, 1932	4,450,000	4,154,528.12	9,602,508.43	3,290,888.50
402.....	May 23, 1932	Nov 14, 1932	2,722,500	2,714,090.00	8,026,873.11	2,114,007.26
680.....	Nov 2, 1932	May 2, 1933	5,900,000	5,504,401.84	12,744,395.34	4,988,577.88
				17,480,397.85	40,858,062.52	14,900,481.40

From this chart it can easily be seen that as of February 25, 1933, the Guardian Trust Co. was delinquent \$9,911,903.52 in payments to The Reconstruction Finance Corporation and was practically dependent upon the Reconstruction Finance Corporation for its existence.

(G-6A-7)

In February 1933 the Guardian Trust Co., having exhausted its credit with the Reconstruction Finance Corporation, was forced to resort to other means of obtaining money and along with several other Cleveland banks formed the Western Reserve Mortgage Co., the ostensible purpose of this company being to buy and sell mortgages. During the month of February 1933 the Guardian Trust Co. sold to the Western Reserve Mortgage Co. mortgages totaling \$19,340,701.98, receiving from the latter company notes for a like amount. The Western Reserve Mortgage Co. then pledged these mortgages with the Reconstruction Finance Corporation for a loan of \$6,227,761.74 and turned the entire proceeds of the loan over to the Guardian Trust Co. as part payment on their notes, leaving an unpaid balance of \$13,112,940.24. This balance is carried on the conservator's statement of condition mentioned in a previous paragraph as a resource under the title "Western Reserve Mortgage Co. Notes" and explains the decrease in real-estate loans during 1933.

(G-6A-8, 9, and 10)

We are attaching statements showing the complete transactions between the Guardian Trust Co. and the Western Reserve Mortgage Co., also the analysis of the real-estate loan account of the Guardian Trust Co. in order that it may be clear.

As a result of this transaction, the Guardian Trust Co. was enabled to secure approximately \$6,000,000 in cash for \$19,000,000 of mortgage loans, but the nature of the business of the Western Reserve Mortgage Co. was such that a partial loss of the unpaid balance of \$13,000,000 was likely.

(G-6A-7)

In view of this, we do not feel that the Western Reserve Mortgage Co. notes shown as a resource on the conservator's statement should be considered at full value and while we have made no effort to appraise these notes, we believe some consideration should be given this point in estimating the condition of the bank at the time of closing. It is extremely likely that in view of local real estate conditions the loss will be substantial.

To further support our contention that the Guardian Trust Co. was in no position to reopen after the "national bank holiday", we quote from the testimony of Alfred P. Leyburn given before the Senate Banking and Currency Committee on Thursday, January 11, 1934. Speaking of the "bank holiday", Mr. Leyburn stated in part:

(Testimony of Leyburn, Jan 11, 1934)

The Guardian Trust Co of Cleveland, Ohio on the 31st of December 1932, was borrowing \$18,000,000 on deposits of \$109,000,000 and they had practically all of their assets pledged. The Reconstruction Finance Corporation had poured considerable money in there, and they had just about reached their borrowing limit, and after the "bank holiday" the cash on hand was \$1,732,000 against deposits of \$76,000,000 and bills payable of \$19,385,000. Since that time with the aid of the Reconstruction Finance Corporation, that bank has paid out 20 percent

Now, you compare that with the banks in Detroit and you can readily see that this thing was ready to blow in your face. I was afraid it was going to blow while I was up in Detroit on this other deal.

The Guardian Trust Co. could not have stayed open at all, because when the "bank holiday" was declared and the banks were authorized to make disbursements, some of them made 5 and 10 percent but The Guardian Trust Co of Cleveland made a disbursement of 1 percent. It is the smallest amount I ever heard of such a large bank making.

The above testimony of Mr. Leyburn supports our previous comments in regard to the condition of the Guardian Trust Co., and should very effectively eliminate any doubt as to the bank's condition and any thought that the refusal to allow the Guardian Trust Bank to reopen was due to any prejudice, political or otherwise.

#### ATTEMPTED REORGANIZATION

(Minutes of executive committee, p. 166)

It should be borne in mind in connection with the above data relative to the closing of the Guardian Trust Co. that the final closing of the bank did not occur during the regime of President Hoover. From February 27 until March 4, 1933 the bank operated on a restricted withdrawal basis, allowing depositors to withdraw 1 percent of deposits. From March 4 to March 11, the period of the national bank holiday, the bank did not permit withdrawals.

(Minutes of directors' meetings, pp. 181-194)

On March 12, 1933, the Guardian Trust Co. applied for a license under the Roosevelt Act. On March 14 the board of directors voted

to continue to operate under the direction of the Secretary of the Treasury on the restricted withdrawal basis until further notice.

(Minutes of directors' meeting, pp 198 and 200)

On March 18, President J. A. House tendered his resignation, which was accepted and at the same meeting Mr. Dean suggested a committee be chosen to act with bank officers in reorganizing the bank.

On March 20, Harold H. Burton was elected to the board of directors and the presidency of the Guardian Trust Co

(P 206)

On March 25 President Burton stated that the reorganization committee was developing its ideas along the lines of a charter for a new national bank, which would take over at least a portion of the assets and liabilities of the then present institution.

(Minutes of directors' meeting, pp. 220, 221)

On April 7, President Burton reported that a reorganization committee had conferred with the Secretary of the Treasury and representatives of the Reconstruction Finance Corporation in Washington. He stated that while the committee was well received, the Government officials did not approve of reopening the Guardian Trust Co. as a national bank, as:

1. Its assets would not be sufficient to make possible the establishment of a new unit bank of sufficient size to be warranted in Cleveland.

2. That in order to establish such a bank there would be competition for subscriptions to capital stock with the proposed First National Bank in Cleveland, the formation of which the United States Treasury representatives had, after a presentation on behalf of the Union Trust Co , approved

(Minutes of directors' meetings, pp. 224, 227-246)

On April 8, the State superintendent of banks appointed Sidney B. Congdon as conservator of the Guardian Trust Co. From April 8 until May 3, a sponsoring committee of prominent Cleveland citizens worked to form a First National Bank of Cleveland, but due to a lack of response of the citizenry it was impossible to do so, and on May 9, 1933, the board of directors and reorganization committee of the Guardian Trust Co. accepted the offer of the National City Bank of Cleveland to purchase assets from and/or make loans to the liquidators of the Guardian Trust Co.

#### PROPAGANDA

Possibly one of the most vicious acts of the management of the Guardian Trust Co. was its practice of issuing advertising matter designed to impress the public with the integrity and soundness of the Guardian Trust Co. during the year 1932, and even in 1933.

(G-6A-14, 15, 16)

During this period, when the management could not help knowing the precarious condition of the bank, they continued to put out adver-

tising matter assuring the public of their strength. We have photostated copies of some advertisements used by the bank and quote from several of them

(G-6A-14)

IN 1932

Many a fortune is intact, many a cash reserve is steadily growing because the owners agreed with the sound ideas expressed by the Guardian and saved with the Guardian. Thousands of depositors, large and small, have approved the Guardian safe-and-sure policy.

Another reads:

(G-6A-13)

In 1898 the Guardian advertised "solid as a fortress." In 1932 "fifty times as solid and secure."

The above from a bank tottering on the brink of insolvency.

Advertisements such as these speak more eloquently than any word picture we might paint as to the caliber of the management of the Guardian Trust Co. Knowing the condition of the bank, due to their mismanagement, they still attempted by high-pressure advertising to wring a few more dollars from the people of Cleveland to be used for their own ends.

The peak of effrontery and duplicity was reached, however, on February 21, 1933, 4 days before the bank restricted withdrawals, on which date the following advertisement appeared in the daily papers of Cleveland:

LEST WE FORGET

There have been times these last 3 years when practically every man and woman has felt the chilling fear of being without work. Are you going to suffer that fear again, or will you provide your own unemployment insurance—a Guardian savings account? Cash in the bank is the foundation of self-confidence and peace of mind. It never depreciates and is always ready to help when you need it. And it pays 3 percent tax-free. Will you forget so easily—or will you begin now to become independent of whatever the future years may hold? Start a Guardian savings account today.

We believe that, if there is not in existence at present any law making it a penal offense to mislead the public by means of fraudulent advertising, a law should be enacted making officials of a bank criminally liable if any advertising issued by a bank is contrary to fact, as was the case with the Guardian Trust Co.

WALTER H. SEYMOUR,  
*Senior Examiner.*

Mr. PECORA. I show you another report, addressed to you by Mr. Seymour, entitled "The Guardian Trust Co. and subsidiaries—consolidated list of officers and directors." Is that another report prepared by Mr. Seymour under your immediate supervision?

Mr. MEEHAN. Yes; it is.

Mr. PECORA. Mr. Chairman, I offer that report in evidence together with the exhibits referred to therein.

The CHAIRMAN. Let the report, together with the exhibits, be received in evidence.

(The report entitled "The Guardian Trust Co. and subsidiaries—consolidated list of officers and directors", and the exhibits mentioned therein but now at the Government Printing Office, was received in evidence, and the same marked "Committee Exhibit No. 5, May 3, 1934", and are as follows:)

COMMITTEE EXHIBIT No. 5—MAY 3, 1934

Consolidated list of officers and directors of the Guardian Trust Co and subsidiaries

8030

	1928		1929		1930		1931		1932	
	Director	Officer								
Arter, Charles K The Guardian Trust Co							*		*	
Ayers, Allan F The Guardian Trust Co										Vice president
Berg, Philip C The Guardian Trust Co		Vice president								
Bicknell, Warren The Guardian Trust Co	*		*		*		*		*	
Bishop, F. W Harrison County Investment.					*		*		*	
Bishop, Robert H, Jr The Guardian Trust Co	*		*		*		*		*	
Bolton, Charles C The Guardian Trust Co	*		*		*		*		*	
Bolton, Irving C The Guardian Trust Co	*		*		*		*		*	
Bond, S M The Guardian Trust Co	*		*		*		*		*	
Hotel Hollenden Co	*	Vice president	*	Vice president	*	Vice president				
Vincent Building Co	*		*		*					
Bowman, George H The Guardian Trust Co	*		*		*				*	
Brand, Carl W The Guardian Trust Co	*		*		*		*		*	
Brooks, Arthur D The Guardian Trust Co	*		*		*		*		*	
Brown, Harvey H, Jr The Guardian Trust Co	*		*		*		*		*	
Bruggemeier, C F The Guardian Trust Co						Treasurer		Treasurer		Treasurer
Carlton, H A The Guardian Trust Co		Vice president								
Case, George S The Guardian Trust Co	*		*		*		*		*	
Coates, H J. DeWitt Hotels Co								Secretary		Secretary
Cook, Allan B The Guardian Trust Co		Vice president								
Daley, W A The Guardian Trust Co	*		*		*		*		*	

STOCK EXCHANGE PRACTICES

Dalton, H G The Guardian Trust Co.	*		*		*		*		*
Davies, S A : DeWitt Hotels Co.									
Dean, A W :									
DeWitt Hotels Co.							Vice president.		Vice president.
The Guardian Trust Co.	*		*		*				
Hotel Hollenden Co.									
Deasy, John F The Guardian Trust Co									
DeWitt, Theodore									
DeWitt Hotels Co.							President.	*	President
Hotel Hollenden Co.							Vice president.		Vice president.
Dietz, Wilham G The Guardian Trust Co	*		*		*				
Durell, George B The Guardian Trust Co	*		*		*				
Eide, Randolph The Guardian Trust Co									
Fish, John									
The Guardian Trust Co.		Vice president.		Vice president.		Vice president.		Vice president.	
Land Development & Realization Co								*	
Fishley, W O Valuation Service Co.				Secretary.	*	Secretary.	*	Secretary.	*
Force, C H									
The Guardian Trust Co.		Vice president.		Vice president.		Vice president.		Vice president.	
Hotel Hollenden Co.		Secretary.							
Hotel Hollenden Co.		Treasurer.							
Foote, L B The Guardian Trust Co.		Vice president.		Vice president.		Vice president.		Vice president.	
Fraser, A D Valuation Service Co.			*	Vice president.	*	Vice president.	*	Vice president.	*
Fraser, A R The Guardian Trust Co.		Vice president.		Vice president.	*	Vice president.	*	Vice president.	*
Fuller, Ralph L The Guardian Trust Co	*		*		*		*		*
Gill, K F The Guardian Trust Co.	*		*		*		*		*
Green, W R									
Branch Investment Co.	*	Treasurer.	*	Treasurer.	*	Treasurer.	*	Treasurer.	*
DeWitt Hotels Co.									
4400 Superior Co.	*	Treasurer.	*	Treasurer.	*	Treasurer.	*	Treasurer.	*
Guardian Securities Co.		Treasurer.		Treasurer.		Treasurer.		Treasurer.	
The Guardian Trust Co.		Vice president.		Vice president.		Vice president.		Vice president.	
Harrison County Investment					*	Treasurer.	*	Treasurer.	*
Hotel Hollenden Co.				Treasurer.		Treasurer.		Treasurer.	
Land Development & Realization Co							*	Treasurer.	*
New England Co.	*	Treasurer.	*	Treasurer.	*	Treasurer.	*	Treasurer.	*
Vincent Building Co.		Treasurer.		Treasurer.	*	Treasurer.	*	Treasurer.	*
Griffiths, E S									
The Guardian Trust Co.	*		*		*		*		*
Hotel Hollenden Co.	*		*		*		*		*
Grossman, Louis J The Guardian Trust Co	*		*		*		*		*

Consolidated list of officers and directors of the Guardian Trust Co. and subsidiaries—Continued

	1928		1929		1930		1931		1932	
	Director	Officer	Director	Officer	Director	Officer	Director	Officer	Director	Officer
Hall, R S										
DeWitt Hotels Co.....	*		*		*		*		*	
The Guardian Trust Co.....	*		*		*		*		*	
Hotel Hollenden Co.....	*		*		*		*		*	
Vincent Building Co.....	*		*		*		*		*	
Hanna, Dan R, Jr The Guardian Trust Co.....	*		*		*		*		*	
Hanna, L O, Jr The Guardian Trust Co.....	*		*		*		*		*	
Harmon, F S The Guardian Trust Co.....	*		*		*		*		*	
Heer, Charles G The Guardian Trust Co.....							*		*	
Herrick, Clay The Guardian Trust Co.....		Vice president.....		Vice president.....		Vice president.....		Vice president.....		Vice president
Hine, Charles P The Guardian Trust Co.....	*		*		*		*		*	
Holding, S H The Guardian Trust Co.....	*		*		*					
Holmden, L E The Guardian Trust Co.....		Treasurer.....								
House, J A										
Branch Investment Co.....	*	President.....	*	President.....	*	President.....	*	President.....	*	President
DeWitt Hotels Co.....	*	President.....	*	President.....	*	President.....	*	President.....	*	President
Guardian Securities Co.....	*	President.....	*	President.....	*	President.....	*	President.....	*	President
The Guardian Trust Co.....	*	President.....	*	President.....	*	President.....	*	President.....	*	President
Harrison County Investment.....	*		*		*		*		*	
Hotel Hollenden Co.....	*		*		*		*		*	
New England Co.....	*	President.....	*	President.....	*	President.....	*	President.....	*	President
Vincent Building Co.....	*	Vice president.....	*	President.....	*	President.....	*	President.....	*	President
Hunt, William H The Guardian Trust Co.....	*		*		*		*		*	
Inghs, Richard The Guardian Trust Co.....	*		*		*		*		*	
Irish, Arthur L The Guardian Trust Co.....		Vice president.....		Vice president.....		Vice president.....		Vice president.....		Vice president
Johnson, George B										
Guardian Securities Co.....	*		*		*		*		*	
The Guardian Trust Co.....	*	Vice president.....	*	Vice president						
Hotel Hollenden Co.....	*		*		*		*		*	

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Kaufman, L J	The Guardian Trust Co	Vice president		Vice president		Vice president		Vice president		Vice president.	
Kellogg, F D	The Guardian Trust Co						*		*		
Kline, Selden	The Guardian Trust Co	*	*		*						
Klung, John D	The Guardian Trust Co	*	*		*		*		*		
Lee, Robert C	The Guardian Trust Co									Vice president.	
	Harrison County Investment							*	*		
	Hotel Hollenden Co						*		*	President	
	Land Development & Realization Co							President		President	
Marlatt, W H	The Guardian Trust Co	*	*		*		*		*		
Marshall, G G	The Guardian Trust Co				*		*		*		
Marshall, W G	The Guardian Trust Co	*	*		*		*		*		
Masch, E F	Land Development & Realization Co							Vice president		Vice president	
Mather, W G	The Guardian Trust Co	*	*		*						
McGowan, F S	The Guardian Trust Co	*									
McIntosh, H P	The Guardian Trust Co	*	Chairman of board	*	Chairman of board						
McIntosh, H P Jr	Branch Investment Co	*		*		*		*		*	
	440 Superior Co	*	Vice president	*	Vice president						
	Guardian Securities Co	*		*		*		*		*	
	The Guardian Trust Co	*	Vice president	*	Vice president						
	Land Development & Realization Co	*		*		*		*		*	
	New England Co	*		*		*		*		*	
	Vincent Building Co	*		*		*		*		*	
Megerth, C R	The Guardian Trust Co		Vice president		Vice president		Vice president		Vice president		Vice president
	Vincent Building Co	*		*		*		*		*	
Mills, James R	The Guardian Trust Co	*		*		*		*		*	
Monks, T E	440 Superior Co	*		*		*		*		*	
	Guardian Securities Co	*		*		*		*		*	
	The Guardian Trust Co	*	Vice president	*	Vice president						
Murfey, O L	The Guardian Trust Co	*	Vice president	*	Vice president						
Murfey, L A	The Guardian Trust Co	*	Vice president	*	Vice president						
Oakes, H K	The Guardian Trust Co	*		*		*		*		*	
Olstyn, S J	The Guardian Trust Co	*	Vice president	*	Vice president						
Patterson, Proctor	The Guardian Trust Co	*		*		*		*		*	

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Consolidated list of officers and directors of the Guardian Trust Co and subsidiaries—Continued

	1928		1929		1930		1931		1932	
	Director	Officer								
Petrequin E A The Guardian Trust Co	*	-----	*	-----	*	-----	*	-----	*	-----
Pomerene Atlee The Guardian Trust Co	*	-----	*	-----	*	-----	*	-----	*	-----
Prentiss, F F The Guardian Trust Co	*	-----	*	-----	*	-----	*	-----	*	-----
Prescott, Orville W The Guardian Trust Co	*	-----	*	-----	*	-----	*	-----	*	-----
Probeck, Karl										
New England Co.-----								Vice president....		Vice president
Valuation Service Co.-----			*	Treasurer.....	*	Treasurer.....	*	Treasurer.....	*	Treasurer
Valuation Service Co.-----				President.....		President.....		President.....		President
Purdon, W D The Guardian Trust Co		Vice president....		Vice president....		Vice president....		Vice president....		Vice president
Quarrs, B D The Guardian Trust Co	*	-----		-----		-----		-----		-----
Robinson, H C										
Branch Investment Co.-----	*	Vice president....	*	Vice president						
DeWitt Hotels Co.-----										
4400 Superior Co.-----	*	President.....	*	President.....	*	President.....	*	President.....	*	President
Guardian Securities Co.-----	*	Vice president....	*	Vice president						
The Guardian Trust Co.-----	*	Executive vice president								
Harrison County Investment.-----										
Hotel Hollenden Co.-----	*	President.....	*	President.....	*	President.....	*	President.....	*	President
New England Co.-----	*	Vice president....	*	Vice president						
Vincent Building Co.-----	*	President.....	*	Vice president....	*	Vice president....	*	Vice president....	*	Vice president
Rogers, E D The Guardian Trust Co.	*	-----	*	-----	*	-----	*	-----	*	-----
Rogers, E S The Guardian Trust Co.	*	-----	*	-----	*	-----	*	-----	*	-----
Rossiter, W T The Guardian Trust Co	*	-----	*	-----	*	-----	*	-----	*	-----
Sanders, William B The Guardian Trust Co	*	-----		-----		-----		-----		-----
Schmidt, F A Valuation Service Co.			*	-----	*	-----	*	-----	*	-----
Sears, R P										
Branch Investment Co.-----	*	Secretary.....	*	Secretary.....	*	Secretary.....	*	Secretary.....	*	Secretary
DeWitt Hotels Co.-----										
4400 Superior Co.-----	*	Secretary.....	*	Secretary.....	*	Secretary.....	*	Secretary.....	*	Secretary
Guardian Securities Co.-----	*	Secretary.....	*	Secretary.....	*	Secretary.....	*	Secretary.....	*	Secretary
The Guardian Trust Co.-----	*	Secretary.....	*	Secretary.....	*	Secretary.....	*	Secretary.....	*	Secretary
Harrison County Investment.-----					*	Secretary.....	*	Secretary.....	*	Secretary

Hotel Hollenden Co.....			Secretary		Secretary		Secretary		Secretary
Do.....			Treasurer						
Land Development & Realization Co.....							Secretary		Secretary
New England Co.....	*	Secretary	*	Secretary	*	Secretary	*	Secretary	*
Vincent Building Co.....		Secretary		Secretary		Secretary		Secretary	
Shannan, E T The Guardian Trust Co.....		Vice president		Vice president		Vice president		Vice president	
Shepherd, H I The Guardian Trust Co.....	*	Vice president	*	Vice president	*	Vice president	*	Vice president	
Stewart, H B The Guardian Trust Co.....	*		*		*		*		*
Stone, Arthur L The Guardian Trust Co.....	*		*		*		*		*
Stucky, A G The Guardian Trust Co.....		Vice president		Vice president		Vice president		Vice president	Vice president
Land Development & Realization Co.....							*		*
Taylor, Alexander S The Guardian Trust Co.....	*		*		*		*		*
Tillotson, E G The Guardian Trust Co.....	*		*		*		*		*
Wade, George Garretson The Guardian Trust Co.....	*		*		*		*		*
Wallace, Robert B The Guardian Trust Co.....			*		*		*		*
Warner, Worcester R The Guardian Trust Co.....	*								
Warwick, James W The Guardian Trust Co.....	*		*		*		*		*
Whelan, George J The Guardian Trust Co.....	*		*		*		*		*
Willkom, H Valuation Service Co.....					*		*		*
Young, A F The Guardian Trust Co.....		Vice president		Vice president		Vice president		Vice president	Vice president

Senator COSTIGAN. Mr. Meehan, in one of the exhibits I notice reference is made to salaries and bonuses paid to officers.

Mr. MEEHAN. Yes, sir.

Senator COSTIGAN. Was that data taken from the books of the banks, or was it supplied in response to a Senate resolution calling for such information?

Mr. MEEHAN. That information was gathered by our examiners in Cleveland following the usual routine of finding out the compensation paid to officers and directors of any institution which was under investigation.

Senator COSTIGAN. Was that information checked with the information supplied to the Senate and referred to this committee in response to a resolution which I introduced in the Senate?

Mr. MEEHAN. No, sir. It was not checked, but we did get that information directly from the records of the bank in the hands of a receiver.

Senator COSTIGAN. All right.

The CHAIRMAN. You may proceed, Mr. Pecora.

Mr. PECORA. Mr. Meehan, I now show you another report made by Mr. Seymour, entitled "The Guardian Trust Co.—compensation paid to officers." Will you kindly look at it and tell me if that is another report made to you by Mr. Seymour under your immediate direction?

Mr. MEEHAN. Yes, sir; it is.

Mr. PECORA. Mr. Chairman, I offer that report in evidence, together with the exhibits referred to therein.

The CHAIRMAN. Let the report and exhibits be received in evidence.

(The report entitled "The Guardian Trust Co.—compensation paid to officers", together with the exhibits referred to therein and now at the Government Printing Office, was received in evidence and marked Committee Exhibit No. 6, May 3, 1934", and is as follows.)

#### COMMITTEE EXHIBIT No. 6—MAY 3, 1934

#### COMPENSATION PAID TO OFFICERS

The inequality of salaries in the pay roll of the officers of the Guardian Trust Co. forms the basis for much criticism against the conduct of President J. A. House and Executive Vice President H. C. Robinson in their domination of the Guardian Trust Co. and shows the ease with which patronage could be bought by Mr. House.

(G-11-11a to G-11-11c)

The review of the pay roll shows that in the years 1928 to 1932, inclusive, salaries plus bonuses of the seven highest paid officers to be as follows:

	1928	1929	1930	1931	1932
J A House, president.....	\$98,333 33	\$107,083 33	\$108,750 00	\$90,000 00	\$73,350 00
H O Robinson, executive vice president...	72,600 00	76,875 00	77,708 50	65,000 00	54,925 00
H P McIntosh, Jr, vice president.....	33,450 00	36,875 00	36,775 00	33,000 00	27,791 67
T E Monks, vice president.....	36,450 00	36,275 00	36,175 00	33,000 00	29,375 00
H I Shepherd, vice president.....	32,750 00	35,375 00	35,575 00	33,000 00	17,125 00
A G Strucky, vice president.....	27,000 00	30,625 00	30,125 00	27,000 00	23,708 33
H F Young, vice president.....	27,000 00	31,625 00	30,125 00	27,000 00	23,708 33

From these figures it will be seen that the salary of Mr. House has always been approximately three times that of any officers other than Mr. Robinson, and that the salary of Mr. Robinson has been almost twice that of the next ranking officer

While this is not contrary to any of the rules or regulations of the Trust Co., it does indicate that Mr. House placed a great value on his services. The approval by the other officers and directors of such an unusual salary shows that the Trust Co. was practically a one-man institution controlled by Mr. House. The word "practically" is used here because it was necessary to have an accessory to his acts and he chose as such, Mr. H. C. Robinson, executive vice president.

(G-11-1)

In order to gain and hold such power, it required something more than personality; Mr. House knew this. He also knew human nature and its frailties and that the best way to gain patronage would be through hard cash. Consequently, he secured the approval of the executive committee to a plan of bonus distribution that would carry out his ideas perfectly. Thus we find that on December 9, 1927, the executive committee passed this resolution:

On motion made, seconded, and unanimously carried, the committee hereby approves and authorizes fulfilling the president's recommendations, as follows

That before Christmas of this year, the bank pay to each officer and employee, as additional compensation, an amount equal to one half of the current month's salary of the respective individuals; and in addition thereto, there be turned over to the president a sum not in excess of \$45,000 to be by him distributed, in his sole discretion, to the officers and employees, exclusive of the chairman of the board and the president

(G-11-2)

This was approved by the board of directors on December 13, 1927. It will be seen from this that Mr. House could employ \$45,000 to very nice advantage in securing the patronage of officers and employees to further his personally sponsored projects

(G-11-3)

It would also appear that the committee had forgotten Mr. House and that his salary for 1927 had not been sufficient for his needs because we find an additional bonus of \$15,000, granted him by certain members of the executive committee in their letter to Mr. Bremer, directing Mr. Bremer as follows.

(G-11-3)

To Mr. House direct the sum of fifteen thousand dollars (\$15,000) is to be paid as additional compensation for faithful, efficient, and valuable service to the company

This in itself was irregular because it was never voted upon in the executive committee meetings nor in the directors' meetings

Of the \$45,000 in bonuses for that year given by the executive committee to Mr. House to distribute, Mr. House presented \$10,000 to his "man Friday," Mr. Robinson. He distributed the remaining

\$35,000 among 61 members of the organization, those receiving \$1,000 and more being the following.

John Fish.....	\$1, 500
A R Fraser.....	1, 000
Arthur L Irish.....	1, 050
Geo B Johnson.....	1, 500
L J Kaufman.....	2, 000
H P McIntosh, Jr.....	2, 750
Thos E Monks.....	2, 250
F M Riddleberger.....	1, 000
H I Shepherd.....	1, 250
A G Stucky.....	2, 500
A F Young.....	2, 750

We find in 1928 that the same procedure was followed by the executive committee, December 14, but this time there is a provision made—

(G-11-4)

To pay to him the same amount as was paid to him last year at this time

(G-11-5-a, 5-b, G-11-6)

While this wording of the resolution is ambiguous as to the intention of the committee to pay him an additional bonus of \$15,000.00, we nevertheless find that the committee so instructed the payments in their correspondence to Mr Bremer.

On December 13, 1929, the same bonus powers and bonuses were again granted to Mr House, but apparently the plums he handed the various officers were not large enough, for we find, under date of January 7, 1930, that the executive committee adopted additional resolutions authorizing the President to—

(G-11-7, G-11-8)

pay \$10,000 00 to the vice presidents in charge of certain departments to be distributed by them to certain of their employees, whom they might select, in recognition of loyal, faithful, and extraordinary services during the year

(G-11-9)

This extra \$10,000 bonus distributed by the vice presidents was not voted for the year 1930. However, the executive committee did vote in favor of the \$45,000 and \$15,000 (individual) bonus as it had in prior years.

In the year 1931, the constant drain on the resources of the Trust Co. had apparently become quite evident, so the executive committee thought it had better show some sort of conservation with the result that no bonuses were paid for that year, yet Mr. House's regular salary remained at \$90,000 00 and Mr. Robinson's at \$65,000 00. However, this plan of cutting out the bonuses apparently did not meet with the approval of the executive committee; and as a result, Mr. House's salary was reduced on February 1, 1932 to \$81,000.00, on July 1, to \$72,000 00; on November 1, to \$48,000 00 and on December 1, to \$42,000.00. In spite of this, his total compensation for the year 1932 amounted to \$73,350.00. Mr. Robinson's compensation for the same period amounted to \$54,924.99, with the same number of reductions.

For the short period of operation in 1933, January 1 to March 1, Mr House received total compensation in the amount of \$7,000 and Mr Robinson, \$6,944 44 A recapitulation of the foregoing shows that for the period January 1, 1928, to March 1, 1933, Mr. House received a total of \$484,516 65 in salary and bonuses and Mr Robinson, \$353,852 76

Thus, the Guardian Trust Co paid out a total of \$838,469 41 for salaries and bonuses for 1928, 1929, 1930, 1931, 1932, and January and February of 1933 to Messrs. House and Robinson.

While these unusual disbursements were sanctioned by the board of directors of the Guardian Trust Co, it is nevertheless a reflection on the good faith and integrity of banking officials to permit such a condition to obtain and permit such bleeding of a dying institution, and it is a question whether or not the directors would have sanctioned such huge salaries had they been properly acquainted with the true condition of the bank at that time, instead of the false earnings statements prepared for them as outlined in the report of our Mr Long entitled "Financial History."

In answer to an inquiry from a Mr Barton of the Metropolitan Bank of Minneapolis for a plan of additional compensation to be paid to officers, Mr. House stated in 1928

(G-11-12, G-11-13)

I am coming more and more to the conclusion that executives in banks, who are responsible for the success of the institution and who are really the money makers, should be paid, in addition to their salaries, a percentage of the net earnings.

WALTER H. SEYMOUR, *Senior Examiner.*

This report based upon preliminary report and complete investigation by Committee Examiner M. W. Firth

Senator COSTIGAN In this particular exhibit no 6, you did not segregate bonuses and salaries, did you? In other words, the bonuses and salaries are combined here

Mr. MEEHAN Well, that information may be shown in the exhibit itself, but we here summarized it in our report to save space

Senator ADAMS Senator Costigan, I notice here in committee exhibit no 3 a statement that follows out your inquiry, indicating that during the years 1929 and 1930 the Guardian Trust Co paid salaries and bonuses of approximately \$700,000 This exhibit also indicates, on page 15, that they reported through their annual reports earnings of around 15 million dollars during a period of 10 years, when their actual earnings proved to be 6 million dollars.

Senator COSTIGAN. Does the report indicate how much of the total was for salaries and how much for bonuses?

Senator ADAMS. It does not.

Mr. MEEHAN No. It is in the exhibits which are now in the Government Printing Office for the purpose of expediting their printing, and those exhibits have been offered in evidence by Mr. Pecora

The CHAIRMAN. You may go on, Mr. Pecora

Mr. PECORA. I now show you another report addressed to you by Mr. Seymour, entitled "The Guardian Trust Co.—Loans to Officers and Directors." Do you identify this report as one prepared by Mr.

Seymour under your immediate direction as the result of his investigation?

Mr MEEHAN I can and I do

Mr PECORA. Mr. Chairman, I offer the report in evidence, together with the exhibits referred to therein

The CHAIRMAN. The report and exhibits will be received in evidence (The report entitled "The Guardian Trust Co —Loans to Officers and Directors", together with the exhibits mentioned therein and now at the Government Printing Office, were received in evidence and marked "Committee Exhibit No 7, May 3, 1934", and are as follows.)

#### COMMITTEE EXHIBIT NO. 7—MAY 3, 1934

##### LOANS TO DIRECTORS AND OFFICERS

The loans made by the Guardian Trust Co to its directors and officers totaled almost \$6,000,000 on February 29, 1932, a year prior to the bank's closing.

(G-5B-1a to d)

Loans to officers and directors..... \$5, 926, 071 90

(G-5B-2)

Total loans and discounts..... 93, 087, 111. 73

From the above, it will be noted that loans to directors and officers exceeded 6 percent of the total loans on the books of the bank at February 29, 1932. Some of these loans obviously were made without justification from a credit standpoint and disclose the apparent laxity toward the maintenance of sufficient collateral. Only the larger loans and those deserving special comment have been analyzed and are discussed in the succeeding pages of this report.

That the officers and directors of the Guardian Trust Co realized, after it was too late, that the concentration of a large amount of money in loans to themselves and to their interests was not expected or suspected by the public is evidenced by a letter dated March 29, 1933, from Mr. H. C. Robinson, senior vice president and director of the bank, to Mr. Herbert K. Oakes, another director, in which he said

(G-5B-34)

All the Guardian directors have been sued for their double liability, and probably there will be a lot of unfortunate publicity regarding directors' and officers' loans. We have advised all the directors that such publicity would probably be forthcoming, and have suggested that if you wish to avoid it, now would be the opportune time to place any loans they have with us, so I am writing you calling attention to your loan with us, which is now about \$30,000, in order to give you an opportunity, along with others, to pay this loan or refund it elsewhere, thereby possibly saving you some embarrassing publicity.

However, Mr. Oakes was unable to pay off his loan, there being still unpaid a balance of \$33,403.

Referring to the general loan policy of the Guardian Trust Co., the State bank examiner pointed out in his report of February 1932 (a year before the bank closed):

(State Bank Examiner's Report, February 1932)

To begin with, a great many of the loans were past due, both collateral and unsecured. A number of collateral loans represent speculation, and apparently were made on that basis. By that I mean, the bank loaned entirely too much

to the borrower and did not sell him out when they should have. They now have a greatly under-collateraled loan which the market cannot pay. A great many of the loans are dependent on market conditions, and will not be paid until prices are considerably higher than at present. This situation is strikingly true of certain officers' and some directors' loans. As you will note, officers and directors have borrowed \$5,335,131.44 in their own name. This amount represents 33.3 percent of the present capital and surplus. It is needless to say, their present borrowings are entirely too high and not along the lines of conservative banking. Irrespective of security, certain officers are owing entirely too much to the bank. This item is of course subject to severe criticism and is a reflection against the present management.

J. A. HOUSE, PRESIDENT AND DIRECTOR

Mr. House, like several of the other senior officers, availed himself of the device of obtaining loans from the bank as being made to his trust estate and not in his own name. The records of these loans did not, therefore, indicate the true borrower but merely a trust fund number. Later, however, the name "House" was written in pencil, and it is our understanding that this identification was placed on the loan card during conservatorship.

Mr. House's indebtedness to the bank on February 29, 1932, totaled \$281,638 and on April 8, 1933 totaled \$245,933.48, which may be divided as follows:

(G-5B-1a)

	Feb 29, 1932	Apr 8, 1933
Loans to trust funds.....	\$179, 635 00	\$166, 599 96
Personal loans.....	11, 000 00	5, 157 88
Real estate loans.....	91, 000 00	74, 176 64

The real-estate loans are not worthy of much comment other than to mention that they include first and second mortgages on Mr. House's residence and carried an interest rate of 5 percent until increased by the liquidator to 6 percent on May 10, 1933.

(G-5B-3, 4)

The customary rate of interest on first mortgages in this institution was 6 percent, and its real-estate loans are predominantly first mortgages. So, Mr. House, in taking advantage of his position, was the recipient of a lower interest rate on his mortgages, was able to procure a service not generally given, and probably obtained a loan in excess of that ordinarily given with a like amount of security. The bank's valuation, which in this exceptional case was probably generous, amounted to \$110,000 on which Mr. House had borrowed \$65,000. The value of the property today is undoubtedly much lower than when borrowed upon, however, Mr. House had reduced his mortgages to approximately \$40,000 so that the loss in liquidation will probably be slight.

Another \$40,000 in real-estate loans made to House is on an unimproved business lot in downtown Cleveland and appears to be amply secured. There remains a balance due on these loans, as of February 15, 1934, amounting to:

Principal.....	\$74, 175. 64
Interest.....	2, 537 93

The loans to trust funds of \$179,635 are made up of three items as follows:

Loans to trust no 1126.....	\$140,000
Overdraft on trust no. 1126.....	9,413
Loan to trust no 2185.....	30,225

(G-5B-6)

The loan to trust no 1126 had its origin on May 9, 1923, and continued at various increasing amounts until November 8, 1929, when it reached a peak of \$140,000 which represented a consolidation of the smaller loans previously made. On June 15, 1930, collateral consisting of:

531 shares of Akron, Cleveland & Youngstown Ry Co

(G-5B-7c)

1,000 shares Continental Shares, Inc

(G-5B-7c)

was pledged by Mr. House to secure this \$140,000 loan. On February 16, 1931, the 1,000 shares of Continental Shares Inc were released and 850 shares of Clark Comptroller Co. stock was pledged instead. Since then the collateral has been unchanged, notwithstanding the tremendous decrease in its saleable value. The liquidator valued the collateral on February 13, 1934, at \$3,400.

There has been only one payment of \$100 on the principal of this loan since its inception.

(G-5B-7)

Mr House also enjoyed an interest rate of 5 percent on this loan until May 10, 1933, when it was raised to 6 percent. He was delinquent in interest payments beginning in June of 1932 and made payments considerably less than the accruals until March 15, 1933, when he stopped payments altogether. So that in addition to \$139,900 principal owed on this loan Mr House is also indebted to the extent of \$11,622.27 in delinquent interest at February 10, 1934.

(G-5B-8)

Another trust account belonging to Mr. House, through which he obtained loans, was trust no 2185. The advances to this trust also continued over a long period and on December 15, 1929, had reached a peak of \$35,210.63 when collateral consisting of miscellaneous securities was pledged.

(G-5B-8)

Mr. House made six payments against the loan and the liquidator has applied the bank's credit bank balance against it, bringing the amount still due down to \$26,699.96. Interest of 5 percent was charged to Mr. House on this loan also, until the liquidator changed the rate to 6 percent. Interest has been delinquent since December 15, 1932. The liquidator's valuation of the collateral as of March 6, 1934 was \$20,864.

(G-5B-9)

A loan direct to Mr. House was made by the bank on March 16, 1932, in the amount of \$11,000 with interest at 5 percent. This loan now has an unpaid balance of \$5,157.88 principal and \$52.57 interest. The reduction in principal is not due to payments however, but offsets made by the liquidator from credits due Mr. House.

(G-5B-11)

Concerning Mr. House's personal financial status, no information is available, but from unofficial sources we have learned that Mr. House has said that he is "broke" and was having difficulty in meeting insurance premiums. This we are not in a position to refute but it is interesting to know that Mr. House and his family are not "walking the streets." In fact, they (the family) were buying new cars during the year 1933. We might also mention that the file which should contain all information and correspondence concerning his financial condition was found to hold just one letter which pertained to Mr. House's automobiles and was dated September 27, 1933.

## THE MILLS CO. LOANS

The Mills Co. is a Cleveland concern manufacturing metal partitions. The president and vice president are relatives of Mr. House's by marriage. Mr. House is a director of the company. The present financial condition of the Mills Co. is extremely serious. Below is a tabulation of outstanding loans made to the company and to members of the Mills family and the amounts remaining unpaid.

(G-5B-12-17)

	Original loan	Unpaid Feb 10, 1934	Delinquent interest
The Mills Co.....	\$80,000 00	\$55,450 09	\$3,174 96
F C Mills, Jr.....	305,063 48	302,435 26	19,834 95
F C Mills, Sr.....	15,000 00		
George M Mills.....	33,000 00	30,765 13	None

These loans originated in 1928 and are at the present time inadequately secured with securities of very doubtful value. The bank examiner considered them in February 1932, a year before the bank's closing, as slow and nonliquid and stated that he believed that classification to be liberal. No effort is noticeable on the part of the bank to reduce the loans nor to secure additional collateral. Apparently the family relationship was strong enough to dictate a most lenient credit policy and an utter disregard for the safety and liquidity of bank funds.

H. P. M'INTOSH, JR., VICE PRESIDENT

(G-5B-18)

The borrowings of Mr McIntosh, Jr., from the Guardian Trust Co. began early in 1928 and extended through 1929 with seven loans being made in all. These loans totaled, at the time the bank closed,

\$110,200 Mr McIntosh has made no payments at all on these loans since the bank has been closed, but the liquidator has applied credit balances as "offsets" Prior to May 10, 1933, interest at the rate of 5 percent was charged, since then the rate has been changed to 6 percent

The following is a tabulation of the loans to McIntosh, Jr.:

(G-5B-18G, 18F, 18A, 18B, 18C, 18D, 18E)

Date	Original loan	Principal due Feb 25, 1933	Principal due Mar 15, 1934
Mar 12, 1927	\$47,000	\$45,900	\$42,894 91
Nov 14, 1928	34,400	34,400	34,400 00
Feb 18, 1929	2,500	2,500	2,500 00
Apr 28, 1929	1,100	1,100	1,100 00
May 22, 1929	5,000	5,000	2,041 39
July 25, 1929	8,000	8,000	8,000 00
Oct 24, 1929	3,300	3,300	3,300 00
		110,200	94,236 30

(G-53-18F)

Secured by collateral having a value of \$62,210.40.

H. C. ROBINSON, SENIOR VICE PRESIDENT

Mr. Robinson, following the lead of Mr. House, took advantage of borrowing through the medium of his trust account. His trust account number was 1114 and the identification is the name "Robinson" written in pencil on the loan card. This, we understand, was done during the term of the conservator.

(G-5B-19, 20)

The loans to Mr. Robinson, of which there were two, had their origin in 1930. The first was made on August 29, 1930, in the amount of \$58,000, and the other on October 6, 1930, in the amount of \$20,000. Both of these loans when made bore interest at the rate of 5 percent, but since May 10, 1933, interest of 6 percent has been charged but not paid.

(G-5B-19, 20)

These loans originally amounting to \$78,000 have an unpaid balance of \$41,352.09 as of January 30, 1934, with interest in amount \$2,605.46 unpaid and delinquent from December 15, 1932. Almost \$5,000 of the reduction is due to offsets, made since the beginning of liquidation. The indicated value of the collateral securing these loans appears to be sufficient if the liquidator's values are actual and are obtained in the sale of the loan or its security. The loan cards for all directors and those officials who are stockholders are marked "Hold for stockholders' liability" so that additional sums must be obtained to completely liquidate the debts of these individuals if their collateral is insufficient.

INTERSTATE FOUNDRIES, INC.

In addition to the loans made directly to Mr. Robinson, those made to the Interstate Foundries, Inc., by the Guardian Trust Co. have more than a passing interest.

(G-5B-21)

We are unable to write as much in detail concerning these loans as we believe the subject merits, due to the virtual dearth of information available. However, we were able to learn that Messrs. Robinson, House, Green, McIntosh, and Fraser, all officers of the bank, were stockholders in this company.

(G-5B-22, 23)

The first records we have been able to locate showing loans to Interstate Foundries, Inc., indicate that two loans were made on December 15, 1924, totaling \$349,701.70. Based solely on the odd amount of these loans, we believe this was not the first advance made to the company. It seems evident that unsecured advances had been made prior to December 1924 and that at that time it must have been deemed advisable to put the advances in the form of a collateral loan. However, the files of the Guardian Trust Co contain so little information that it was impossible to substantiate our belief.

(G-5B-22, 23)

At any rate, one loan of \$250,000 and one of \$99,701 70 were made as of December 15, 1924, to the company. Both of these loans, totaling \$349,701.70, were secured by \$400,000 Interstate Foundries, Inc, first-mortgage bonds and some additional motor-car stock of doubtful value at the time of the loan and of no value today.

(G-5B-23)

No payments other than a rather insignificant one of \$244 12 are noted since the date of the loan. On November 15, 1929, a reduction of \$42,000 is shown. However, the collateral was reduced for the same amount.

(G-5B-24)

The credit files show that on September 10, 1926, the executive committee authorized the purchase of the bonds which were pledged to secure this loan and that—

The Interstate Foundries, Inc, has passed a resolution authorizing our purchase of said bonds without the necessity of the ordinary provision for sale

(G-5B-25)

For some reason not disclosed by the files, this transaction did not actually occur until February 26, 1930, when the loans are shown as paid and "Transferred to bond department." At this time the interest accrued and unpaid amounted to \$131,074.31, and principal to \$307,457.58, which is a total of \$438,531.89. The files do not clearly enough set out the transaction to enable us to definitely state just how or on what basis the collateral was purchased.

(G-5B-25, 26)

As stated above, the indicated unpaid balance due the Guardian at February 26, 1930, was \$438,531.89, for which they received \$358,000 par value of the bonds. From this it would appear that the bank took a write-off of \$80,000 at the time the bonds were accepted.

In addition to the \$80,000 loss sustained, a write-off of \$49,657 58 was placed on the books as of June 16, 1932. Thirty-six thousand dollars par value of the bonds are shown as sold to the National City Bank of Cleveland for \$32,400 so that today the investment on the Guardian books is \$225,400. No interest has been paid on the bonds since 1930 and their value is extremely doubtful due to the closing of plants—which leaves only the real estate as the underlying security of the bonds. What the loss to the bank in liquidation will be cannot be estimated, due to lack of an impartial appraisal of the real estate

(G-5B-27)

Certainly the officers of the Guardian were very lenient to this company concerning credit extension and extremely negligent in protecting the depositors' interests, as this entire transaction was some 10 years or more in being carried, with no attempt being made to collect.

THOMAS E. MONKS, VICE PRESIDENT

(G-5B-29a, 29e)

Mr. Monks was indebted for loans directly from the Guardian as of April 8, 1933, and amounting to \$42,090. Interest was at 5 percent until changed by the conservator to 6 percent on May 10, 1933. The original amount of these loans was \$45,300 and they were dated from 1923. Mr. Monks' collateral for these loans consisted principally of 366 shares of Euclid Shale Brick Co. common stock which has a current appraised value of \$50 per share. The total appraisal value of all collateral on March 12, 1934, was \$23,252 to secure loans amounting to \$41,540.77 in principal and \$1,855 54 in accrued and delinquent interest. In addition to these debts Mr. Monks is also liable for double liability on his Guardian stock.

No information is found concerning the financial condition of Mr. Monks so that the possibility of collection is unknown.

(G-5B-28)

Mr. Monks owns a personal corporation, called the "Allen Holding Co", the purpose of which is to hold title to his real-estate investments. On May 26, 1930, Mr. Monks, through his corporation, obtained a first mortgage from the bank in the amount of \$175,000. This mortgage balance is now \$164,500. The bank's appraisal for the property is \$298,250. We are unable to comment concerning the salability of the property or its value. This company is delinquent on its interest payments to the extent of \$12,337.50 and has made no payments on principal since December 21, 1931, so that Mr. Monks was one of the "favored group" who received most cordial treatment concerning their obligations.

L. J. KAUFFMAN, VICE PRESIDENT

(G-5B-30)

Mr. Kauffman's loan is dated March 15, 1930, in the amount of \$87,000. As of March 14, 1934, the principal is \$77,984.18 and delinquent interest \$8,083.98. To liquidate this debt the liquidator has collateral which he values at \$30,196.60.

Mr. Kauffman was another of the officers who was permitted to owe money to the bank without receiving even the slightest suggestion that he make an effort to reduce his indebtedness or increase his collateral.

Apparently the records and files of loans to officers and directors must have been kept in a remote corner of the bank's quarters, for no correspondence has been found in the records which would indicate that the loan department officials or employees were even aware of the condition of these loans

(G-5B-31, 32)

Mr. Kauffman was also a real-estate operator and a director in a number of companies obligated to the Guardian, among these the L H Heister, Inc, which had mortgages with the Guardian of \$431,000 which have been reduced since their origin in 1927 and 1928 to approximately \$296,000 Both of these loans are now under foreclosure and interest has not been accrued since April of 1930. At that time delinquent interest amounted to almost \$25,000 The underlying real estate is vacant subdivision property and, of course, of doubtful value now How instrumental Mr Kauffman was in the granting of this loan and whether or not he was the "good fellow" who permitted such leniency in collection is not known, but no appreciable payment of principal is noted since 1931

The appraised value of the property at the date of the mortgages was over a million and a quarter, but that was back in 1927 and 1928 when everybody had inflated values on their assets The only thing which appears favorable about these loans is the interest rate of 7 percent However, that means little if the bank is unable to collect it

#### H. B. STEWART—DIRECTOR

(G-5B-33)

Mr Stewart, a director of the Guardian Trust Co, is the president of the A C & Y. R R and is known as a capitalist in Akron, Ohio. Loans to Mr Stewart at the Guardian began in 1921 with a loan of \$100,000 and increased at a rapid rate until June 15, 1934, when a new loan was approved for \$628,418 65 The principal security for his loan was 7,970 shares of the capital stock of the A. C & Y R R, which was appraised in June 1932 at \$618,288 98.

(G-5B-34)

In the minutes of the executive committee of June 21, 1932, this loan was approved under the following conditions:

(G-5B-38)

Payment of 1 year's interest in advance.  
Payment of 1 year's premium of \$500,000 life insurance policies.  
Pledging of additional collateral consisting of 3,800 shares of A. C & Y. Co. stock.

Mr. Stewart enjoyed a rate of 5¼ percent interest until June 15, 1933, when the liquidator raised it to 6 percent.

The unpaid balance on the principal is \$621,846.14 and interest accrued and delinquent of \$24,980.05, both as of February 10, 1934. The liquidator's appraisal of the collateral is \$1,350, having allowed no value for the principal security, i.e., A. C. & Y. Co stock. The liquidity of this loan is entirely dependent on the financial condition of this railroad and the approval of this loan with such a concentration of collateral in one company should be highly condemned, whatever the financial condition of the company, if only for the reason of the difficulty to dispose of the collateral if necessary.

WALTER H. SEYMOUR,  
*Senior Examiner.*

This report based upon preliminary report and complete investigation by Committee Examiner J. J. Sinnott.

The CHAIRMAN. I must be absent for a time and will ask Senator Costigan to preside.

Senator COSTIGAN (presiding). You may go on, Mr. Pecora

Mr. PECORA. I show you what purports to be another report made by Mr. Seymour, entitled "The Guardian Trust Co—Loans to Officers of Other Banks" Is this another report prepared by Mr. Seymour under your immediate direction and based upon investigations he made?

Mr. MEEHAN. Yes, sir; it is.

Mr. PECORA. Mr. Chairman, I offer the report in evidence, together with the exhibits referred to therein.

Senator COSTIGAN. The report, together with the exhibits and other information offered by Mr. Pecora, will be received in evidence.

(The report entitled "The Guardian Trust Co—Loans to Officers of Other Banks", together with the exhibits mentioned therein and now at the Government Printing Office, were received in evidence and marked "Committee Exhibit No. 8, May 3, 1934", and are as follows )

#### COMMITTEE EXHIBIT No. 8—MAY 3, 1934

##### LOANS TO OFFICERS OF OTHER BANKS

When the Guardian Trust Co closed in February of 1933 it had outstanding approximately a half million dollars in loans to officers and directors of other banks. Some of these loans were sufficiently collateralized, while others were obviously made because of the connections of the borrower. We shall review in detail the loans made by the Guardian Trust Co to E. R. Fancher, Governor of the Federal Reserve bank, George DeCamp, Federal Reserve agent; W. M. Baldwin, president of Union Trust; and A W Dean, a director of Guardian Trust and treasurer of Enos Coal Mining Co.

##### LOANS TO GEORGE DECAMP

The loans made by Guardian Trust Co. to George DeCamp, formerly Federal Reserve agent of Cleveland, were both secured loans and unsecured loans.

The advances made by the Guardian to DeCamp reached their peak on June 15, 1931, when he owed the bank \$40,000. We have no estimate of the value of the collateral securing this \$40,000 loan in June 1931, but feel sure that it was away below the balance of the loan.

On June 10, Mr. McIntosh, Jr, wrote to Mr DeCamp.

(G-5c-21)

At your convenience I wish you would stop in to see me in regard to your loan, as I have a suggestion which I believe will put the loan in better condition.

Therefore, the bank divided on June 15, 1931, the \$40,000 debt of DeCamp's into two loans as follows:

	<b>(G-5C-23A)</b>	
Secured collateral loan, no. 71036-----		\$16, 500
	<b>(G-5C-22)</b>	
Unsecured, no 23565-----		23, 500
		40, 000
	<b>(G-5c-22, 25)</b>	

Mr. DeCamp has made seven payments against the unsecured loan, and the balance when the Trust Co closed amounted to \$12,500. Since then the liquidator has applied DeCamp's bank balance as an

(G-5c-24)

offset bringing the balance due from the unsecured loan down to \$11,389 47 with interest from December 29, 1932, unpaid in the

(G-5c-23a)

amount of \$742 75. No payments have been made on the principal of the other loan; however, interest has been kept up to date

The credit files of the Guardian Trust Co show that DeCamp is now president of the Licking County Bank, Newark, Ohio, at a salary of \$5,000 a year, which would not seem to indicate a liquidation of this loan in the very near future

#### LOANS TO WILBUR M BALDWIN

The loans made by the Guardian Trust Co to W M Baldwin, president of the closed Union Trust Co are typical of the policy loans made by bankers

(G-5c-11)

Baldwin is indebted to the Guardian Trust Co for two loans: One dated September 15, 1924, originally made for \$17,000, on which there is \$15,000 still due, and the other dated December 7, 1927,

(G-5c-12a, 12b)

originally made for \$15,000, on which there is \$476 25 still unpaid. The collateral securing these loans, totaling \$15,476 25, had a value on March 5, 1934, of \$4,350

(G-5c-13)

Examination of the credit file discloses an interesting undated memorandum which seems to take the place of all credit information prior to the time of the conservator This memorandum says:

He is known to be a man of means  
and speaks of his rise

To his present high office

175541-34-PT 18-6

A credit file memorandum under date of February 26, 1934, indicates a story of an entirely different nature. It shows total bank loans due from Baldwin of \$88,733 25 against which collateral worth \$51,000 is pledged. It further shows unpaid interest on the

(G-5c-14a, 14b)

Guardian loans of \$1,062 83; that his unpledged assets do not exceed \$3,000, that he has no other property, and that should he be pushed by the banks

He would have no alternative other than bankruptcy.

Such a condition in a loan account can only be due to the "exchange of courtesies" and to the failure of the bank to insist on adequate collateral, basing their loan on their opinion of the "means" and "high office" of the borrower.

#### LOANS TO A. W. DEAN, DIRECTOR, AND HIS INTERESTS

An analysis of the loans made by the Guardian Trust Co. to Arthur W Dean, a director, covers loans made to Dean solely; loans made jointly to Dean and E R Fancher, Governor of the Federal Reserve bank, Cleveland, loans to George A. Enos, and loans made to the Enos Coal Mining Co

The history of these loans begins some time prior to July 1929, with a loan to George A. Enos, personally. George A. Enos is president of the Enos Coal Mining Co., and A. W Dean is vice president and treasurer

On December 31, 1932, the Enos Coal Mining Co. and its officers owed the Guardian Trust Co. the following:

(G-5c-10a)

Enos Coal Mining Co (direct).....	\$35, 000
Enos Coal Mining Co (indirect).....	3, 400
Enos Coal Mining Co (bonds).....	651, 000
A W Dean (collateral).....	133, 300
A W Dean and E R Fancher.....	44, 200
Fred S McConnell.....	7, 500
Algiers, Winslow & Western R R (bonds).....	200, 000
George A Enos (collateral).....	226, 800

Total..... 1, 301, 200

#### LOANS TO GEORGE A. ENOS

(G-5c-1)

On July 26, 1929, the Guardian Trust Co. granted a loan of \$14,000 to Enos personally, to be secured by 198 shares of Enos Coal Co. stock. This loan was in addition to a loan in the amount of \$18,000 and secured by 312 shares of the same stock which had been made some time prior to July 1929 and which was then unpaid. Five months later, on December 3, 1929, the Guardian Trust granted still another loan to Enos in the amount of \$30,000,

on the understanding that we will receive a balance for the Enos Coal Co. of at least the amount of our loans.

(G-5c-2c, G-5c-2d, G-5c-1)

On December 19, 1930, the loans to George A. Enos totaled \$65,000 and the executive committee agreed to grant a loan of \$225,000 to be secured by 4,900 shares of Enos Coal Mining Co. stock and a life insurance policy of \$335,000. It was agreed that \$65,000 of this loan was to be used to pay off the loans then unpaid.

(G-5c-2a)

No payments have ever been made on this \$225,000 loan. The loan was credited with dividends on the stock collateral and charged with the insurance premiums on the policy. The insurance premium charges have exceeded the dividends. In fact the only credits that appear against this loan are two; one on January 27, 1931, in the amount of \$403.83, and a reimbursement for a premium of \$614 on May 10, 1932. On April 13, 1933, the balance of this loan due from Enos was \$230,369.32, and his bank balance to offset this loan totaled \$4.05.

We have checked the bank balance of G. A. Enos for the year 1932, and find that his highest balance for 1932 was \$6.59 on February 18, 1932, and that it has been \$4.05 since then.

Interest on this loan has been paid steadily up to date.

#### LOAN TO A. W. DEAN

(G-5c-3a to m)

On October 24, 1930, the Guardian Trust Co. loaned to Arthur W. Dean the sum of \$150,000 secured by miscellaneous stock exchange collateral. We have carefully checked the bank's files and find no memoranda or letters showing the purpose of the loan, nor Dean's financial position. Evidently, the fact that he was a director was enough.

(G-5c-3a-3d)

Dean made several payments on the loan and on June 10, 1933, the balance due was \$110,742.10. The liquidator, Mr. Hanrahan, has applied Mr. Dean's bank balance as an offset bringing the balance of the loan down to \$77,652.74, secured by collateral having a value, as of March 8, 1934 of \$72,738. Interest has been paid regularly.

#### DEAN AND FANCHER LOAN

(G-5c-4, 5)

On November 10, 1930, the Guardian Trust Co. loaned \$53,201 to A. W. Dean and E. R. Fancher. A memorandum in the bank's credit file shows that—

(G-5c-5)

This loan was made to finance Mr. Enos' home.

(G-5c-2)

At the time this loan was made to Dean and Fancher, Mr. Enos owed the Guardian Trust Co. \$65,000, and in the very next month loaned him more money to bring his loan up to \$225,000. Evidently

this last loan was contemplated in November of 1930, and the officers of the Guardian Trust Co. felt they should have endorsement other than Enos'.

(G-5c-4)

This \$53,000 loan to Dean and Fancher jointly was secured by a mortgage and bonds on property valued at \$67,950, and by several insurance policies. The loan was dated November 10, 1930, and was originally due February 5, 1931, but was not paid when due. On February 9, 1931, a payment of \$9,000 was made and the loan was renewed in the amount of \$44,201. Subsequently, there were eight renewals in all for this loan. A memorandum in the files of the bank regarding this failure of payments, states—

(G-5c-5)

Because of Mr. Fancher's connection with the Federal Reserve bank, we cannot press for payments.

(G-5c-5)

No further payments were made, although interest was paid regularly, and just prior to the bank holiday the loan was sold out to Cleveland Trust Co. On February 10, 1933, which was 2 weeks before the Guardian Trust Co. closed, the bank received a check of the Cleveland Trust Co. in payment of this loan. It seems very likely to us that the Governor of the Federal Reserve Bank of Cleveland would obviously be in a position to have known the financial condition of the Guardian Trust Co. early in 1933, and that he acted accordingly. It will be remembered that Alfred Leyburn testified before the committee recently, that it was known the Guardian Trust was in a very poor financial position and in speaking of Cleveland banks stated that the Detroit banks "just beat other banks to the draw"

(Testimony of Leyburn before committee Jan. 12, 1934)

There doesn't seem to be any doubt whatsoever that Fancher, knowing the impending crash of the Guardian, insisted on the transfer of this loan to the Cleveland Trust Co.

#### ENOS COAL MINING CO.

The borrowings of the Enos Coal Mining Co. from the Guardian Trust Co. began in December 1930. Previous to then the company did not have an account with the bank

(G-5c-6)

The company opened its account early in December 1930 and on December 9 of that year borrowed \$10,000, unsecured, from the bank. The loan was promptly paid, and then in February 1931 the Guardian Trust granted another \$10,000 loan to the company, which was paid within the same month.

(G-5c-6)

On May 11, 1931, the Guardian Trust Co. granted another loan to the Enos Coal Mining Co. in the amount of \$25,000, secured by the accounts receivable of the company. A notation dated May 12, 1931, in a memorandum in the credit files of the bank states:

(G-5c-7a)

Discussed need of signed statements and of separate statements of parent company and subsidiaries with E. T. Shannon, who will call A. W. Dean.

(G-5c-8)

We found no statement of the company in the files of the bank as of any date close to May 1931. We did find a certified report of the company's as of December 31, 1929, which showed that the company had suffered a loss in 1929 of \$103,535 77.

(G-5c-9, 6)

The \$25,000 loan to Enos Coal Mining Co. was renewed 21 times and on March 14, 1932, the bank loaned the company an additional \$10,000, making the total loans due from the company \$35,000. Since the Guardian Trust Co. has been closed the Coal Mining Co. has made several payments on its loan, bringing the balance down as of February 20, 1934, to \$17,000

However, we believe that the total advances to all of the above, beginning in December 1930, should not have been made by the Guardian Trust Co. The company had suffered a loss of more than \$100,000, in 1929, the best year for business we have ever had, and it should have been obvious to the bank officials that the company was unlikely to obtain profits and improve its position unless some radical changes in expenditures and management policies were made. But then it must be borne in mind that the advances were made because of Arthur W. Dean, a Guardian Trust director, and E. R. Fancher, Governor of the Federal Reserve bank

WALTER H. SEYMOUR, *Senior Examiner*

Senator ADAMS Mr. Meehan, in regard to committee exhibit no. 7, in relation to loans to officers and directors of the Guardian Trust Co., it would seem that they were reasonably liberal in the making of loans

Mr. MEEHAN. Yes; Senator Adams

Senator ADAMS. It would seem that they had such loans practically to the extent of \$6,000,000 on February 29, 1933.

Mr. MEEHAN. Yes, sir.

Senator ADAMS That is, those loans apparently were 6 percent of the total loans and discounts of the bank.

Mr. MEEHAN Yes; they were very generous in the making of such loans.

Senator ADAMS To what extent were those loans paid back to the bank?

Mr. MEEHAN I am afraid we will have to depend upon the exhibits to give us that information. However, I think it is a very small percentage.

Senator ADAMS. All right.

Mr. PECORA. I now show you what purports to be another report prepared by Mr. Seymour, entitled "The Guardian Trust Co.—Loans to 'Eaton Interests'". Do you recognize that as a report made by Mr. Seymour based upon the investigation conducted under your supervision?

Mr. MEEHAN. I do.

Mr. PECORA. Mr. Chairman, I offer that report in evidence, together with the exhibits referred to therein

Senator COSTIGAN. The report, together with the exhibits and other information offered by committee counsel, will be received in evidence.

(The report entitled "The Guardian Trust Co — Loans to 'Eaton Interests'", together with the exhibits referred to therein, were received in evidence and marked "Committee Exhibit No 9, May 3, 1934", and are as follows )

COMMITTEE EXHIBIT No 9—MAY 3, 1934

LOANS TO "EATON INTERESTS"

The loans made by the Guardian Trust Co to the so-called "Eaton interests" are represented by six loans in the aggregate amount, as of April 8, 1933, the date of the conservator's inventory, of \$5,343,-055 19 and are composed of the items indicated in the schedule below:

(G-5f-1)

Eaton interests	Apr 8, 1933		General average deposit balances 1931 and 1932
	Loans	Deposit balance (approximate)	
A Cleveland Cliffs Co.....	\$2,010,338 61	\$344,000	\$300,000-\$700,000
B Continental Shares.....	1,145,281 62	15,000	11,000- 300,000
C George T. Bishop, syndicate manager.....	440,796 59	None	None
D Foreign Utilities, Ltd.....	350,000 00	None	None
E Otis & Co.....	417,853 37	3,000	1,000- 50,000
F R. H. Bishop, Jr., & Samuel Mather.....	978,785 00		
	5,343,055 19		

Loans to this group are collateralized by the same securities, i e , securities involving the Mather operations and the Otis-Continental operations

CLEVELAND CLIFFS IRON Co , \$2,010,338 61

(G-5e-1, 2, conservator's inventory Apr 8, 1933, p 223)

Of this total, \$2,000,000 represents a participation of the Guardian Trust Co in a line of credit extended to the Cleveland Cliffs Iron Co originating March 20, 1930, in the aggregate amount of \$14,387,500. The sum of \$10,338 61 is represented by three interest notes dated January 23, 1933. The other participants in this loan are

Central United National Bank.....	\$1,000,000
Union Trust Co.....	3,387,500
First National Bank of Chicago.....	1,000,000
Bankers Trust Co of New York.....	4,000,000
Continental Illinois Trust Co.....	3,500,000

This loan was made in order to enable the Cleveland Cliffs Iron to purchase the McKinney Steel Holding Co. The details of this transaction are covered fully in a report of the Union Trust Co

(G-5e-3)

The security for the above loan is 218 shares of Corrigan-McKinney Steel Co , 10,100 shares McKinney Steel Holding Co , 100,048 shares Otis Steel Co The banks carrying unsecured paper of the Cleveland Cliffs Iron Co have agreed to extend for at least 7 months and the company has agreed to deposit with the Union Trust Co as trustee, certain securities for the benefit of the noteholders Offsets of the bank balance have reduced this loan to \$1,655,838 75

(G-5e-1, 2)

CONTINENTAL SHARES, INC , \$1,145,281 62

(Minutes, executive committee pp 256, 458)

This balance as of April 8, 1933, represents the amount remaining in the following participations by the Guardian in loans of which the Union Trust Co was trustee The above total is composed of unpaid balances in a \$1,000,000 participation in a loan of \$5,000,000 on October 14, 1930, and a \$600,000 participation in a loan of \$4,000,000 dated January 23, 1931, together with a note for \$44,500 executed in favor of the Guardian Trust Co as a bonus The unpaid balances on these loans in the amounts of \$663,000 and \$477,369 on April 8, 1933 composed the above total

These loans appeared to have been well secured at the time of origin, according to records of the bank, and at that time the corporation enjoyed an excellent credit standing

While these loans were open for the total balance as indicated as of April 8, 1933, they have since been liquidated by public sale of the collateral This sale by transferring to the Guardian Trust Co their share of the collateral to the loan, at the market value of the date of the sale, resulted in setting up on the books of the bank a security value as of the market of that date This transaction involved a loss on the loan of \$59,886 99, which has been charged to losses The prices at which these securities were transferred to the security account are in some cases below and in some cases above the present market, and in those instances where the present market is higher than as of the date of transfer, the securities have been disposed of at a profit

(Conservator's inventory, Apr 8, 1933, p 435)

FOREIGN UTILITIES, LTD , \$350,000

(G-5e-4, G-5e-3)

This loan on which interest is paid to December 15, 1931, is collateralized by 6,600 shares Continental Shares, common, and 12,000 shares Commonwealth Securities, Inc., common, and appears in its original amount. The collateral has an estimated value of \$40,000 and even that appears to be doubtful for the stock it represents cannot be sold in any quantities. This loan originated on February 12, 1931, and has not been reduced. It originally paid 5 percent interest and was marked "nonaccruing." Unpaid interest is \$36,925.08.

GEORGE T. BISHOP, SYNDICATE MANAGER, \$440,796 59

(G-5e-5, G-5e-6)

This represents the balance in the Guardian's original participation in a loan of \$500,000 dated November 8, 1929, for a total amount of \$2,107,600 which by subsequent payments has been reduced to \$1,895,427.86. A reduction of \$25,000 per year was agreed to between the parties to the loan on April 10, 1931, but the payment of \$43,252 35 made May 5, 1931, and responsible for the reduction above indicated, was made with the understanding that the previously agreed to monthly payments of \$25,000 would be waived for 7 months. Since that time, however, no other reductions have been made. Interest has been paid to May 8, 1933, and now is accrued in the amount of \$40,351.93.

(G-5e-6)

The collateral securing this total \$2,000,000 loan is 24,845 shares of Cleveland Cliffs Iron Co. preferred, and 12,000 shares of Cliffs Corporation, common, with an estimated market value of \$716,280 on February 2, 1934, indicating that the loan is in such a condition that little can be done concerning it at the present time but that a long wait for the return of anything like reasonable market value will undoubtedly be necessary for its liquidation. The balance unpaid has not changed since June 19, 1931.

*(Minutes executive committee meetings, pp 296, 372, 471, 473, 474, 483, 45, conservator's inventory, April 8, 1933, p 484, minutes executive committee meeting, p. 296)*

OTIS & Co, \$417,853 37

This company has over a period of many years been a borrower at the Guardian Trust, particularly for the period starting with October 14, 1930, and extending to July 1931. During this time the Guardian participated in various loans ranging from \$500,000 to \$5,000,000 each, most of which have been amply collateralized and paid in whole or in part at maturity, and ranging up to a high point of \$1,593,294 78 in April 1931, and a low point of the balance indicated in the foregoing schedule

*(Minutes executive committee meeting, pp 483, 45, conservator's inventory, April 8, 1933, p 484)*

The balance represents the Guardian's participation of \$584,250 on May 27, 1931, in a loan of \$2,115,385 73. This loan has been reduced to \$417,853 37 on April 8, 1933, and on February 21, 1934, was \$392,217 84. The collateral held for this loan is valued by the bank at \$581,863.24 in the conservator's report, plus assigned customers' accounts valued at \$1,470,913 54. Payments on these accounts are reducing the loan. Accrued interest is now \$44,917 42.

*(G-5e-7, G-5e-8, conservator's inventory, April 8, 1933, p 207)*

R H BISHOP, JR, AND SAMUEL MATHER, \$978,785

This loan is a joint loan of Samuel Mather, deceased, and his son-in-law, R. H. Bishop, Jr, originating May 29, 1931, on which date the executive committee gave authority to participate in the amount of

\$1,066,000 in a total loan of \$3,566,000, the loan to be for 1 year at 5½ percent interest with the understanding that if this loan is made, the then present loan due the Guardian from R H Bishop, Jr., totaling \$808,015 35 be paid at maturity This latter loan was so paid

(G-5e-8, G-5e-9)

Minutes of the executive committee meeting of June 10, 1932, indicate that the balance of \$3,274,246 was still outstanding, of which the Guardian's share was \$978,785. This principal amount has been unchanged. Examination of the minutes of the meeting of December 2, 1932, indicate that due to the demise of Samuel Mather and the contingent liability of his estate on other unsecured loans, it is impossible for the estate to legally pay interest on this loan. The income from the collateral pledged, however, is being paid to the trust department in lieu of interest. The collateral held is estimated to have a market value of approximately \$1,000,000, consisting largely of stocks in companies affiliated and connected with Continental Shares, such as Youngstown Sheet & Tube, Interlake Steamship, etc.

#### VAN SWERINGEN INTERESTS

The loans and participations carried on the books of the Guardian in connection with the Van Sweringen interests are indicated in the schedule below:

Van Sweringen interests	Apr 8, 1933		General average deposit balances, 1931-32
	Balance on loans	Balance on deposit	
O P and M J Van Sweringen.....	\$2,841,000 00	<sup>1</sup> \$25,000	\$35,000-\$45,000
Metropolitan Utilities, Inc.....	1,465,324 60	None	None
	4,306,324 60		

<sup>1</sup> Includes balance of the Van Sweringen Co and Vaness Co

These loans have been discussed fully in the report of the Union Trust Co

It will be remembered, however, that the borrowings of the Van Sweringens from the Guardian Trust Co began back in 1916 when the Vans first purchased the Nickel Plate Railroad and entered the railroad business

WALTER H. SEYMOUR,  
*Senior Examiner*

This report based upon preliminary report and complete investigation by Committee Examiner J H Hamilton

#### FINAL REPORT

*Membership on board and management committees, 1927-33, the Guardian Trust Co.*

Mr. PECORA. I now show you what purports to be a report made by Mr. Seymour, entitled "The Guardian Trust Co—Window Dressing." Do you recognize it as another report made by Mr. Seymour of the result of the investigation made under your immediate supervision?

MR MEEHAN I do

Mr. PECORA Mr. Chairman, I offer that report in evidence, together with the exhibits referred to therein

Senator COSTIGAN (presiding) The report, together with the exhibits and other information offered by counsel to the committee, will be received in evidence.

(The report entitled "The Guardian Trust Co — Window Dressing", together with the exhibits referred to therein, were received in evidence, and marked "Committee Exhibit No 10, May 3, 1934", and are as follows )

COMMITTEE EXHIBIT No. 10—MAY 3, 1934

"WINDOW DRESSING"

In order to bolster the bank's liquid position at statement periods, the Guardian Trust Co. indulged widely in the practice of "window dressing" through the medium of repurchase agreements, "kiting of checks," etc.

(G-8-1, G-8-2, minutes of meeting executive committee, pp 98 to 100 and 102)

On September 28, 1931, the Guardian Trust Co. sold to the Bankers Trust Co. \$5,006,163.52 of stocks and loans under a repurchase agreement as per Exhibit G-8-1 and according to authority contained in minutes of executive committee meeting September 28, 1931.

(G-8-1 and 2)

The above-mentioned minutes also indicate repurchase agreements with the Chemical Bank & Trust Co. in the amount of \$1,500,000 and \$500,000.

(G-8-3)

These transactions total \$7,000,000 and had the effect of bolstering the bank's liquid position by that amount without any mention being made on the published statement of September 29, 1931 of the bank's contingent liability to repurchase these securities.

The reason for the entering into the transactions on September 28, 1931, 1 day before the published statement, is obvious and needs no comment.

(G-8-4)

On October 31, 1931, a repurchase agreement was entered into with the Chemical Bank & Trust Co. in the amount of \$2,000,000.

(G-8-5)

On January 14, 1932, the following letter was addressed to Mr. F. Coates, Jr., clearing house examiner, Federal Reserve Bank Bldg., Cleveland, Ohio, and Mr. Ira J. Fulton, superintendent of banks, Columbus, Ohio.

(G-8-6)

We are enclosing herewith, statement of condition of this company as of the close of business, December 31, 1931.

In addition to the figures shown on the report we wish to advise you there was, as of the date of the statement, a contingent liability for the repurchase

of United States bonds sold to the Federal Reserve Bank, in the amount of \$5,734,000 and loans and securities sold to others in the amount of \$4,954,770 40

Very truly yours,

W. R. GREEN, *Vice president.*

The same information was set out in the regular call report to the Federal Reserve bank dated December 31, 1931, as follows:

Item 24	Agreement to repurchase United States Govern- ment bonds.....	\$8, 781, 770 40
Item 30	Other liabilities.....	1, 907, 000 00
	Total.....	10, 688, 770 40

The published statement of condition for December 31, 1931, did not include the information relative to the bank's contingency. It

(G-8-7)

is our opinion that the stockholders are entitled to know to what extent the statement has been "dressed up" and the mere fact that such information was not given indicates a desire to conceal the true facts from the stockholders.

(G-8-8 and 9)

On October 27, 1931, W R Green, vice president of the Guardian Trust Co , telegraphed to H H Helm, vice president of the Chemical Bank & Trust Co , requesting that he make certain substitutions in the repurchase agreement Helm replied that the substitutions were undesirable, but:

(G-8-8 and 9)

This could be changed temporarily to repurchase agreement to cover publication of statement if you so desire

This is indicative that the banks cooperated with each other in their window-dressing activities and the poor public had small chance against such high-handed collusion

(G-8-10)

In order to bolster the statement of June 30, 1932, particularly the deposits, the Guardian Trust Co pledged \$5,250,000 in United States bonds which were being held by the Discount Corporation for a loan of \$5,000,000 from the Irving Trust Co The effect of this transaction was to increase the cash and due from banks from \$9,000,000 to \$14,000,000 on June 30 and to increase deposits by a like amount.

(G-8-11, 12, 13, 14)

The attached exhibits show clearly the details concerning this transaction

(G-8-12)

On June 29, a letter signed by R P S. (R. P. Sears), secretary to the Irving Trust Co read in part as follows:

In addition to the foregoing, at a regular meeting of our executive committee held yesterday, the 28th, our president, Mr House, reported you had agreed to deposit with us for your credit \$5,000,000, we to guarantee the repayment of the same by a pledge with you of United States bonds and/or Treasury notes, all of which the committee unanimously approved

(G-8-12 and 13)

We believe the enclosed certified copy, together with the above, fully covers the transaction of yesterday, wherein you did deposit with us \$5,000,000 as well as all former transactions

The Irving Trust Co replied on June 30, 1932, in part as follows:

(G-8-14)

We assume that in referring to the transfer of Federal funds as a "deposit" by us with you, you did so inadvertently, and that such reference was not intended to be descriptive of the real nature of the transaction or to affect in any way our rights as set forth in your letter of June 28, 1932, signed by Mr House

Your examiners were unable to locate a copy of the letter of June 28, 1932, signed by Mr. House, stating the "real nature" of the transaction, but in our opinion the intent of the transaction is obvious.

(G-8-15, 16, and 17)

In an effort to bolster the September 30, 1932, statement, the Guardian Trust Co borrowed \$5,000,000 from the Bank of Manhattan Trust Co. on September 23, 1932. The loan was immediately liquidated after the publication of the statement, the exact date being October 4, 1932.

(G-8-23 to G-8-26, inc; G-8-18; G-8-19; G-8-20)

On December 28, 1932, the executive committee of the Guardian Trust Co concocted a plan which, in our opinion, was tantamount to outright deception. On this date the Guardian Trust Co had pledged with the Discount Corporation of New York, about \$7,000,000 in United States bonds. The Guardian Trust Co. issued an official check of \$5,000,000 to the Irving Trust Co, and an official check of \$2,000,000 to the Chemical Bank & Trust Co for the purpose of securing the release of these pledged bonds. This action was authorized by the executive committee on December 28, 1932.

Letters were addressed to both banks on December 28, 1932, with specific instruction that the checks not be presented until after the end of the year. Instructions contained in the letter to the Irving Trust Co read in part as follows

(G-8-22)

We request you to withhold presentment of the above-mentioned check until January 4, 1933, and neither such delay nor any further delay incidental to the clearance or presentment of such check for payment shall in any way prejudice your right hereunder or as a holder thereof

For each day commencing December 30, 1932, and ending January 4, 1933, during which said check remains unpaid, we agree to pay you interest at the rate of 3 percent per annum on the said sum of \$5,000,000 and you are hereby authorized to charge our account with the amount of such interest

The letter to the Chemical Bank & Trust Co. and apparently signed by J. A. House, read in part, as follows

(G-8-21)

In accordance with your suggestion on Saturday, December 31, 1930, you will please send this check through in the regular way and it will be paid upon presentation in our clearance on Tuesday, January 3, 1933.

The results of this transaction were as follows:

1. The Guardian Trust Co. avoided the necessity of showing on the published statement of condition for December 31, 1932, that bonds shown as resources were pledged to the extent of \$7,000,000.

2. The issuance of the checks was shown under "Checks outstanding", but on January 4, 1933, when the checks were presented, "Bills payable and rediscounts" increased \$7,000,000 indicating that the liability for bills payable was at December 31, 1932 understated by \$7,000,000.

We cannot condemn too strongly the very obvious collusion on the part of banks to assist each other in the so-called practice of "window-dressing" by means of which the investing public and depositors are kept in the dark as to the true condition of a financial institution to which they have entrusted their life savings.

The following exhibits indicate that the assistance of others was solicited to aid the Guardian Trust Co. in its "window dressing." On December 28, 1932, H. C. Robinson, executive vice president of the Guardian Trust Co., addressed the following telegram:

(G-8-27)

Ralph Morton, treasurer, Empire companies, Bartlesville, Okla. Can you arrange to deposit some extra funds with us from December 30 to January 2  
Robinson

to which Mr. Morton replied:

(G-8-28)

Mailing today deposit one hundred thousand Sorry cannot do more but cannot arrange it R S Morton, Jr.

If Mr. Robinson had very many friends who willingly deposited funds over the year end for the purpose of "dressing up" the Guardian statement, it is evident that the statements as furnished to stockholders and depositors contained more fiction than truth.

WALTER H. SEYMOUR, *Senior Examiner.*

This report based upon preliminary report and complete investigation by committee examiners M. J. La Padula and R. E. Long.

Mr. PECORA. I now show you what purports to be another report made by Mr. Seymour, entitled "The Guardian Trust Co.—Supplemental Window Dressing." Will you look at it and tell me if you recognize it as being another report prepared by Mr. Seymour as a result of the investigation conducted under your immediate supervision?

Mr. SEYMOUR. Yes, sir; it is.

Mr. PECORA. Mr. Chairman, I offer that report in evidence, together with the exhibits referred to therein.

Senator COSTIGAN (presiding). The report, together with the exhibits and other information offered by the counsel to the committee, will be received in evidence.

(The report entitled "The Guardian Trust Co.—Supplemental Window Dressing", together with the exhibits referred to therein, were received in evidence and marked "Committee Exhibit No. 11, May 3, 1934", and are as follows:)

## COMMITTEE EXHIBIT NO. 11—MAY 3, 1934

## SUPPLEMENTAL MEMORANDUM—"WINDOW DRESSING"

One of the strongest aids to the Guardian Trust Co. in its "window dressing" operations was the firm of Henry L. Doherty & Co. Mr. H. C. Robinson, senior vice president of the Guardian Trust Co., was not only not at all backward about asking for help from Doherty & Co. for "window dressing" purposes but actually admitted that he wanted help in a crooked and underhanded way. While Mr. Robinson did not always get assistance from Doherty for Guardian "window dressing", he generally was successful. On October 23, 1929, Mr. Robinson wrote to Mr. E. H. Johnston of H. L. Doherty & Co. stating that.

(G-8-32)

As you know, we have to keep a 10-percent reserve in the Federal bank against money which we have on demand and a 3-percent reserve against money which is called time money

Mr. Robinson then stated that some of the bank's largest customers had been helping them out and

(G-8-32)

All I would ask you to do would be to write me a letter stating that the money held on deposit here by Henry L. Doherty & Co. or the Cities Service Co. would not be drawn except upon a 30-day notice to us

(G-8-32)

That letter we would use only in the event the Federal Reserve Bank asked us for evidence supporting our contention relative to time deposits. I want you to understand, however, that your money is subject to check whenever you require, the same as usual

Mr. Johnston refused this request of Mr. Robinson's by stating:

(G-8-33)

This matter has been presented to us by one of our other very good friends, but we have so far not seen our way clear to handle the matter as you suggest. I wish that you would see me the next time you are in New York and we will discuss this matter a little further

However, mindful of other help he had gotten from Doherty & Co. before, Mr. Robinson on September 19, 1932, wrote another letter to Mr. Johnston in which he stated:

(G-8-34)

We are looking for a call from the superintendent of banks sometime between September 26 and October 1. I have called upon you heretofore on these occasions and you have responded loyally

I am hopeful that you can help us out the last 4 days of this month with a substantial increase in your account

On September 22, 1932, a Mr. McCusker of the firm of H. L. Doherty & Co. wrote to Mr. Robinson stating that

(G-8-35)

\* \* \* We have been pleased to increase the balance in the Cities Service Securities Co. account the last week in September to about \$500,000

and then, written in longhand on the bottom of the letter is the notation

(G-5-35)

Mr Purdon says \$200,000 has come in

On September 23, 1932, Mr Robinson wrote to Mr McCusker regarding the additional deposit of the Cities Service Co. and stated:

(G-5-36)

This is very gratifying to us and we wish to thank you and your associates for your cooperation

WALTER H SEYMOUR,  
*Senior Examiner.*

Mr. PECORA. I now show you what purports to be another report prepared by Mr. Seymour, entitled "Guardian Trust Co. re Trust Practices." Do you recognize it as being another report made by Mr. Seymour of the investigation which was made under your immediate supervision?

Mr. MEEHAN. Yes, sir; I do.

Mr. PECORA. Mr. Chairman, I offer that report in evidence, together with the exhibits which are referred to therein.

Senator COSTIGAN (presiding). The report, together with the exhibits and other information offered by counsel to the committee, will be received in evidence.

(The paper entitled "The Guardian Trust Co., re Trust Practices", together with the exhibits referred to therein, were received in evidence and marked "Committee Exhibit No. 12, May 3, 1934," and are as follows )

COMMITTEE EXHIBIT No. 12—MAY 3, 1934

TRUST PRACTICES

Among the most flagrant malpractices existing in modern banking today is the dereliction of its duties by trust departments of our financial institutions. The Guardian Trust Co in its capacity as trustee has violated its fiduciary relationship in more than one instance, by burdening trust estates over which it had discretionary investment powers, with securities in which the bank realized a profit by the expedient of passing securities through its bond department and subsequently to its estates

In one case (K. L. Grennan realty trust) the bank relieved one of its directors of a huge block of bonds at a profit of 5 points to the director. These bonds were subsequently sold to the trusts. In this particular instance the bank itself held a large block which it could have passed on to the trusts at cost without incurring the 5-point profit to the director.

Some of the securities on which they made profits were:

The H. A Stahl Properties Co first mortgage, collateral trust 6½ percent gold bonds

The Erie Prospect Co first mortgage, L H 6 percent gold bonds

The H F Neighbors Realty Co 5½ percent land trusts certificates of equitable ownership

The Fairmount Development Co first mortgage and collateral trust 6½ percent gold bonds of February 1, 1926

The Fairmount Development Co first mortgage and collateral trust 6½ percent gold bonds of November 1, 1927

K L Grennan Realty Trust Co first mortgage and collateral trust 6½ percent gold bonds of July 1, 1927

**H. A. STAHL PROPERTIES GOLD BONDS**

(10-1-A)

On February 25, 1926, the bond department of the Guardian Trust Co. bought \$488,000 par value of these bonds at 92.

From February 27, 1926, to March 31, 1926, the bond department sold to various trust clients \$66,000 of these bonds at 99 and 100. This step up of 7 to 8 points on these bonds resulted in a profit of \$4,680 to the bond department saddled upon the trust clients.

(10-2-A)

Investments in these securities were approved by the trust committee as per meeting of December 1, 1926.

These bonds defaulted in the payment of interest and principal on August 1, 1929.

(10-3-A, 10-3a-c)

**THE ERIE-PROSPECT CO. GOLD BONDS**

The total issue of \$400,000 of these bonds was bought March 26, 1926, at 96 and from April 21, 1926, to October 1, 1926, the bond department sold direct to trust clients \$33,000 of these bonds, ranging in price from 98 to par. This resulted in a profit of \$1,152.50 to the bond department; a profit of 2 to 4 points.

(10-4-A)

Investment in this security was approved by the trust committee as per their meeting of December 15, 1926.

These bonds defaulted in the payment of interest due November 1, 1932.

**THE FAIRMOUNT DEVELOPMENT****GOLD BONDS OF FEBRUARY 1, 1926**

(10-5-A)

The bond department on February 17, 1926, purchased the entire issue of \$140,000 of these bonds for \$130,200. The purchase price each being 93

(10-5A and B, 10-6-A)

Sales item no 4-20 to 4-30 on exhibit no 10-5-A and B reflect sales of \$39,000 to various trust clients at prices ranging from 99 to par, resulting in a profit to the bond department of \$2,571 25, a profit of 6 to 7 points was made in these bonds.

**GOLD BONDS OF NOVEMBER 1, 1927**

(10-7A-D, item 5-20 to 35)

The bond department on November 30, 1927, bought the entire issue of \$354,000 par value of these bonds for \$336,300. The purchase price each being 95. The bond department in December 1927 and January 1928 sold to various trusts clients \$85,000 of these bonds at prices ranging from 99¾ to approximately 101. A profit to the bond department ranging from 4¾ to 6 points, borne by the trust clients.

THE H. F. NEIGHBORS REALTY CO, 5½ PERCENT LAND TRUST  
CERTIFICATES

(10-8-A, 10-8-B-C, item 3-20-21, item 3-50-54)

April 14, 1925, the Guardian Trust Co bought \$300,000 worth of these bonds at an average price of \$96 66 and then resorted to the reprehensible practice of selling the bonds to their trust clients at a profit of over 3 points

(10-9-A-B)

The bulk of the sales of this issue to trust clients was through the trust department, living trust no 1043, which was created for the purpose of centralizing the purchasing of bonds for trust clients

The sales to the trust clients from land trust 1043 was all at cost. No profit being made between the trust department and the trust client. The profit being made between the bond department and the trust department eventually borne by the trust client

The sales by land trust 1043 (trust department) to the trust clients at cost apparently was the result of a premeditated plan which the trust department hoped to escape criticism for selling bonds at a profit.

(10-10-A)

This practice of selling at a profit is forbidden, we refer to the Ohio Probate Practice & Procedure, paragraph 1, page 530 (Addmas & Hosford) under the caption of Duties of Trustee which states as follows:

And some other matters are equally well settled, *that he cannot do*. He cannot deal with the estate for his own profit, or for any purposes unconnected with the trust. All his skill and labor must be directed to the advancement of the interests of his beneficiaries. He may take no benefit directly or indirectly from the estate or his office, except the regular compensation allowed by law, and if he takes a present or be paid a bonus or commission of any kind in a trust transaction by a stranger, he must account to the trust for it

It is also interesting to note that trust clients had from \$5,000,000 to \$10,000,000 uninvested cash balances at various times and the Guardian Trust Co had the authority to make investments in many of these trusts. It was a perfect "set up" for the Guardian Trust Co, viz, a market for their securities and the authority to invest same for the trust clients. The Guardian Trust Co did not overlook the opportunity to "benefit directly from the estates" as the following will substantiate

(10-9-A)

Trust client	Trust no	Issue	Amount	Sales price	Purchase price	Increase per M	Bond department profits
M S Hanna.....	L984	H E Neighbors..	\$4,000	100	96 90	31 00	124 00
Harry Bunder.....	C89	.....do.....	3,000	100	96 66	33 40	100 20
R F Smith.....	C157	.....do.....	1,000	100	96 66	33 40	33 40
R A Burnett.....	C491	.....do.....	3,000	100	96 66	33 40	100 20
A A Dunn.....	C589	.....do.....	25,000	100	96 66	33 40	835 20
Total.....			36,000				1,192 80

(10-11-A)

The following are excerpts from agreements, etc , giving the Guardian Trust Co the investment authority:

(C T. 89)

Henry Binder, clause 6 reads in part:

All the residue of my estate, wherever situate, of which I die seized I give, devise, and bequeath to the Guardian Trust Co , of Cleveland, Ohio, and its successors forever, in trust, nevertheless for the following uses and purposes, to wit

1 During the entire term of this trust, my said trustee and its successors shall have the full control and management of the trust estate, with authority to sell, invest, and reinvest the same or any part thereof, at such times, in such manner, and for such amounts as it deems advisable and for the best interest of my said estate, the reinvestments to be subject to the same trusts as the original estate

(C.T 157)

Reuben F. Smith.

To hold, manage, and keep the same invested during the continuance of the trust hereby created with full power and authority to sell any and all property of which I may die seized or possessed, whether real or personal, and to execute and deliver any and all instruments therefore which may be necessary in selling such property, to invest and reinvest the proceeds arising from such sales and in such wise as shall in the judgment of said trustee for the best interests of my estate

(C T 191)

Rollin P. Burnett:

I desire that the above trustees mentioned, the Guardian Savings & Trust Co. and Fielder Sanders proceed to manage, control, and disburse my estate and its income as in their judgment seems best, for the best interests of my wife; to sell, convert, invest, and reinvest as seems best to them

(C T 589)

Alice A Dunn

My said trustee shall have and retain title to and possession, management, and control of the trust estate and every part thereof, with power to sell, invest, and reinvest as they deem advisable

(L 984)

Mary Stuart Hanna:

During the entire term of the trust herein created second party shall have full power and authority to management, control, sell, invest, and reinvest the trust estate as it shall deem advisable

It has been intimated to the writer that since the Ohio Senate investigation disclosed this profit-taking practice there have been many suits started against the Guardian Trust Co. From the writer's conversation with a junior trust officer of the Guardian Trust Co. the latter was of the opinion that the duties of a trustee were confined to the activities of the trust department. In this department bonds were sold at cost, to the trust clients, regardless of what transpired in the bond department. This apparently will be their defense for their questionable practices.

(10-12-A)

These bonds were opposed by the trust committee as trust investments June 8, 1925.

The October 1, 1931, and subsequent installments are now in default.

## K. L. GRENNAN REALTY TRUST FIRST MORTGAGE BONDS

(10-13-A)

These bonds were purchased from the trust department on August 1, 1927, in the amount of \$1,100,000 at 92½ for the joint account of Tillitson and Wilcott and the Guardian Trust bond department.

(10-13-A, items 2 and 3)

On the same day (Aug. 1, 1927), the following sales were made at 92½: \$550,000 to the Guardian sales account and \$375,000 to Tillitson and Wilcott, totaling \$925,000 in sales, leaving a balance on hand of \$175,000.

(10-14-A, 10-13-A, item 3, 10-15-A)

Again on August 1, 1927, Tillitson and Wilcott sold \$136,500 of these bonds to the trust department as per our verified list at 97½. At that date the bond department had on hand \$175,000 plus \$550,000 on hand in the Guardian sales account, totaling \$725,000 on hand bought at 92½.

If the sales were made direct to trust clients by the Guardian Trust Co. at cost (92½) out of the balance on hand of \$725,000 instead of this Tillitson and Wilcott Co. at (97½) the savings to trust clients would have been \$6,800.

It is interesting to note that Tillotson was a director of the Guardian Trust Co. and this apparently was the reason for him being let in on this profitable raid on the trust clients.

(10-16-A)

All told Tillitson and Willcott sold \$249,500 of these bonds to the trust clients at 97½.

(10-17-A)

These bonds were approved for trust investments at the trust committee August 10, 1927.

(10-18-A)

The bonds due July 1, 1932, January 1, 1933, and July 1, 1933, in default as to principal and interest.

Apparently the Guardian Trust Co. was criticized for its trust-departments methods because at the board of directors' meetings of January 10, 1933, the following was adopted:

(10-21-D)

Care must be exercised in the purchase and sale of securities so that criticism or comment cannot be substantiated that the bank is profiting thereby either directly or indirectly. This means that no securities shall be purchased from any other department of the bank or from any other trust

(10-22-A)

It is interesting to note the slogan of the Guardian Trust Co. on page 12 of exhibit no. 10-22-A is as follows.

There is a spirit of helpfulness in the Guardian bank.

The Guardian Trust Co. was sincere in the carrying out of this "Spirit of Helpfulness" because from the above transactions we find the Guardian Trust Co. "Helping itself to a profit in the sale of securities to its trust clients."

WALTER H. SEYMOUR, *Senior Examiner.*

This report based upon preliminary report and complete investigation by Committee Examiner R. F. Muir.

Mr PECORA I now show you what purports to be another report made by Mr. Seymour, entitled "The Guardian Trust Co—Commingling of Funds." Do you recognize that as being another report made by Mr Seymour based upon his investigation conducted under your immediate supervision?

Mr. MEEHAN Yes, sir.

Mr. PECORA Mr Chairman, I offer that report in evidence, together with the exhibits referred to therein.

Senator COSTIGAN (presiding) The report, together with the exhibits and other information offered by counsel to the committee, will be received in evidence.

(The paper entitled "The Guardian Trust Co.—Commingling of Funds," together with the exhibits referred to therein and now at the Government Printing Office, was received in evidence and marked "Committee Exhibit No 13, May 3, 1934", and is as follows:)

#### COMMITTEE EXHIBIT No. 13—MAY 3, 1934

#### COMMINGLING OF FUNDS, GUARDIAN TRUST CO., CLEVELAND, OHIO

This report pertains to the commingling of funds represented by the invested cash balances in the trust accounts with the general funds of the Guardian Trust Co., and the treatment of the clients, claims in connection with these funds as general creditors upon liquidation of the Guardian Trust Co.

(18-1-A, 18-2-B)

The statement of uninvested cash on deposit with the Guardian Trust Co as of February 20, 1933, reflects a total of \$5,146,004 57 of trust clients, which can be traced into the general funds of the Guardian Trust Co. By referring to the statement of conditions at the close of business February 20, 1933, we find this item appearing as a deposit liability to the Guardian Trust Co. under the caption of trust department funds.

(18-3-A)

When the Guardian Trust Co. closed on February 25, 1933, the banking department had on deposit \$5,016,536 91, representing uninvested cash of trust clients. When the first liquidating dividend of 20 percent was declared these clients received their pro-rata share of this disbursement as general creditors in the same manner as savings and commercial depositors.

This injustice to the trust clients has been rectified in the State of Ohio by the passing of the State of Ohio House Bill 696, on June 8, 1933, and approved June 14, 1933. The bill is as follows:

(18-4-A)

STATE OF OHIO, HOUSE BILL 696

Passed June 8, 1933, approved June 14, 1933, George White, Governor.

AN ACT

SEC 710-165 No properties or securities received or held by any trust company in trust shall be mingled with the investments of the capital stock or other properties belonging to such trust company or be liable for its debts or obligations. Money held in the trust department by any trust company, or by any bank having a trust department or doing a trust business, pending distribution or investment may be treated as a deposit in the trust department or may be deposited in any other department of the bank, subject in other respects to the provisions of law relating to deposit of trust funds by trustees and others, but in case of the insolvency, closing, or suspension of any such trust company or bank, claims for such moneys hereafter so deposited in any other department of such trust company or bank shall be preferred and the property and assets of such closed trust company or bank shall be impressed with a trust for the payment thereof.

WALTER H. SEYMOUR,  
*Senior Examiner.*

This report based upon preliminary report and complete investigation by Committee Examiner R. F. Muir.

Senator ADAMS As I understand, Mr. Meehan, some of the officials of the Guardian Trust Co. of Cleveland, Ohio, are now under indictment, are they not?

Mr. MEEHAN. Yes, sir.

Senator ADAMS If that is so, the affairs of that company have been gone into by a grand jury in Cleveland, in order to have an indictment returned.

Mr. MEEHAN. Yes, Senator Adams; both in the case of State and Federal grand juries.

Mr. PECORA. I now show you what purports to be another report prepared by Mr. Seymour, entitled "The Guardian Trust Co—Examinations" The examinations referred to, as I understand, being examinations made by the State banking department of Ohio Do you recognize it as being another report made by Mr. Seymour based upon his investigations made under your immediate supervision?

Mr. MEEHAN. Yes, sir; I do.

Mr. PECORA. Mr. Chairman, I offer that report in evidence, together with the exhibits referred to therein

Senator COSTIGAN (presiding). The report and exhibits offered by counsel to the committee will be received in evidence

(The report entitled "The Guardian Trust Co—Examinations", together with the exhibits referred to therein and now at the Government Printing Office, was received in evidence and marked "Committee Exhibit No 14, May 3, 1934", and is as follows:)

COMMITTEE EXHIBIT No. 14—MAY 14, 1934

### EXAMINATIONS

The responsibility for the ultimate closing of the Guardian Trust Co. in February 1933 must be shared by the Government bank examining agencies as well as by the directors and officers of the bank. As pointed out in the report regarding the examinations of the Union Trust Co., we feel that the responsibility of the Ohio State banking

department and of the Federal Reserve bank is wholly different from that of the bank officials. We do not think that because the Government agencies were derelict in their duties the bank officials are in any way relieved from their own responsibilities. As we pointed out in the other report, we feel that bankers have more knowledge about what is and what is not good banking than bank examiners, and, therefore, are not relieved from their acts simply because the bank examiner failed to make corrective demands.

However, in this report we intend to show just how the examinations of the Guardian Trust Co. were conducted and the failure of the State banking department to live up to its duties.

One of the chief reasons for the widespread confidence in the Guardian Trust Co. prior to the closing of that institution in February 1933 was undoubtedly the belief by depositors that their savings, often those of a lifetime, were adequately protected through the medium of frequent examinations as to the condition of the bank, by national, State, and local examining bodies.

It was the general belief that these examinations were by three separate agencies, as follows:

- 1 Federal Reserve examination
- 2 Ohio State banking department examination
- 3 Cleveland clearing house examination

While specific data as to the frequency and scope of these examinations was unknown to many, it was their belief that our National and State laws, adequately provided for searching examinations of banks. With this thought in mind they entrusted their funds to the Guardian Trust Co. secure in the belief that they were assured of protection by means of examinations of such a nature as to eliminate any unsound banking practice, which might result in a loss to depositors.

#### FEDERAL RESERVE EXAMINATIONS

The National Government recognizing its responsibilities in this respect has embodied in section 9281 of the Federal Code the following in regard to banks coming under Federal supervision, as a result of being member banks of the Federal Reserve Bank System:

(Sec 9281 Federal Reserve Act)

The Comptroller of the Currency with the approval of the Secretary of the Treasury shall appoint examiners who shall examine every member bank at least twice in each calendar year and oftener if considered necessary. *Provided, however,* That the Federal Reserve Board may authorize examination by the State authorities to be accepted in the case of State banks and trust companies and may at any time direct the holding of a special examination of State banks or trust companies, that are stockholders in any Federal Reserve bank.

(G-6-13)

The above section, while eliminating the necessity of a Federal Reserve examination in years during which an examination has been conducted by the State banking authorities, does not excuse the Federal Reserve examiner from making examinations as specified in other years. The Federal Reserve examiners with too much confidence in the ability of the Ohio State banking department examiners, failed to conduct examinations of the Guardian Trust Co. during the following years: 1923, 1925, 1927, 1930, and 1931.

Legally they were not excused from examining during these years as the State superintendent of banks for Ohio also failed to conduct an examination and the law is clear on this point. We feel that the Federal Reserve examiner is subject to grave criticism for the failure to follow the law in this respect, as the thorough examination made by Federal Reserve examiners would have revealed the precarious position of the Guardian Trust Co early in 1930 and undoubtedly many of the evils existing could have been corrected. As to the efficacy of Federal Reserve examinations, no criticism is made as we have found them to be thorough, critical, and corrective.

### STATE BANKING DEPARTMENT EXAMINATIONS

(G-6-1, Ohio State Bank Act)

In an effort to protect stockholders and depositors in banks located in the State of Ohio, the legislature of the State has enacted laws pertaining to banks and banking.

Particular attention is called to sections 710-1 to 710-36 which specify the duties of the State superintendent of banks and which provide in part, as follows:

(G-6-1, p. 14)

At least once a year and as often as the superintendent of banks may deem necessary, the superintendent of banks or an examiner appointed for that purpose shall thoroughly examine the cash, collaterals, securities, books of account, and affairs of each bank. He shall also ascertain if such bank is conducting its business in the manner prescribed by law

(G-6-13)

There have been only six such examinations conducted in the period from 1922 to the time of the bank's closing, as follows:

- 1922, December 8, Federal Reserve examiners assisting.
- 1924, October 11, Federal Reserve examiners assisting.
- 1926, February 26, Federal Reserve examiners assisting
- 1928, January 27, Federal Reserve examiners assisting
- 1929, November 15, State department examiners only.
- 1932, February 29, Federal Reserve examiners assisting.

For the failure to comply with the law regarding bank examinations and for the infrequency of such examinations at the Guardian Trust Co., the State superintendent of banks cannot be condemned too strongly. Had examinations been conducted as specified by law they could not have failed to reveal the constantly weakening condition of the bank for several years prior to its closing, and it is quite possible that corrective measures instituted in 1930 or 1931 might have saved considerable loss to stockholders and to depositors.

As it may be argued that scarcity of man-power was the reason for the failure to make examinations in accordance with the law, we quote from the banking code, section 710-7:

(G-6-1, p 9)

The superintendent of banks may employ from time to time necessary deputies, clerks, and examiners to assist in the discharge of the duties imposed upon him by law.

Not only is the State superintendent of banks subject to criticism for the infrequency of examinations, but also indirectly for their

nature, as his examiner failed to bring out and emphasize certain unsatisfactory conditions existing, and suggest steps to correct them. These conditions could be readily noted from an analysis of the examiner's reports and it was surely the intent of the Ohio lawmakers that examinations should be more than a superficial scrutiny of the bank's records

As examples of conditions existing in the Guardian Trust Co. which were subject to criticism and correction, we cite:

(G-6-2, p. 6)

1. Loans to officers and directors and companies in which officers and directors were interested totaled \$10,058,742 51 as of November 15, 1929, of which there was unsecured \$2,667,487 01

This condition, which is surely against conservative banking principles, was not commented upon in any way by the examiner.

2. Loans to O. P. and M. J. Van Sweringen and Van Sweringen interests, secured by collateral in other Van Sweringen interests totaled approximately \$3,000,000 as of that date. This practice of loaning such a large amount on such speculative collateral was surely subject to criticism.

(G-6-2, p. 147)

3. Nonaccruing past-due collateral loans, or loans on which the bank had stopped accruing interest because of the unlikelihood of the loan being paid, amounted to \$752,838.47 the largest item of which was Interstate Foundries Co. \$307,457.58 and concerning which the examiner stated in part:

(G-6-2, p. 221)

Sale of the property would liquidate this loan although at the present time this property would bring practically nothing at a forced sale. Therefore, this loan should be classed as doubtful

(G-6-2, p. 165, G-6-3, 4, 5)

4. Unsecured past-due loans as of November 15, 1929, totaled \$2,357,460.17 and to illustrate the condition of some of these loans we attach photostatic copies of the examiner's comments.

We also call attention to the examiner's recapitulation of possible losses which shows loans and discounts.

(G-6-2, p. 316)

Classified as "Doubtful, loss probable but not estimated", amounting to \$1,037,212.89, and classified as "Loss" \$570,625.29, and also shows a probable loss on securities due to depreciation in value, \$566,717.78, making a total possible loss of \$2,174,655.96.

In connection with the above we quote from the examiner's report of November 15, 1929:

(G-6-2, p. 318, par. 1)

Unsecured past-due loans total approximately \$2,357,000. Excessive both as to number and amount.

(G-6-2, p. 318, par. 2)

All large lines and past-due loans were carefully analyzed and reviewed with one or more officers. Amount set up as being doubtful appears to be unusually

large, while this amount does not represent a total loss a certain portion of it can be classed as extremely doubtful at this time.

(G-6-2, p. 318, par. 8)

Delinquent mortgage loans totaled \$4,704,000, interest being delinquent for 6 months or more; of this amount \$2,370,000 was delinquent on allotment loans.

(G-6-2, p. 318, par 13)

Investments show a market depreciation of approximately \$566,000. A large percentage of this is due to the recent crash in both the stock and bond market.

(G-6-2, p. 318, par. 15)

Unable to appraise a good many stock issues All stocks of a questionable nature were reviewed with the officers of this bank

(G-6-2, p 318, par. 16)

Certain defaulted leasehold mortgage bonds can be classed as being a slow workout, additional losses will unquestionably be suffered on some of these issues.

(G-6-2, p. 318, par. 17)

Other bonds can be classed as being high grade with a good marketability.

No recommendation is contained anywhere in these comments that a reserve be provided for probable losses on loans and securities, even though the examiner indicated a probable loss of over \$2,000,000 on these items. In addition to the probable losses outlined above, there was evidence that the bank was overloaded with real-estate bonds, industrial bonds, and stocks, as follows:

(G-6-2, p 114)

Real-estate bonds.....	\$2, 053, 163 29
Industrial.....	1, 630, 737 07
Stocks.....	4, 687, 886 74
	8, 371, 787 10

The examiner did not complete his 1929 examination until June 1930 which certainly gave him ample time to value the securities and should have indicated to him that the October 1929 market crash was not just a temporary decline of security prices. There was sufficient evidence of a marked decline to justify the creation of a substantial reserve to cover possible losses, especially on securities such as we have detailed. Had the State examiner insisted on the providing of such reserve from earnings, dividends of \$2,820,000 which were declared in 1929, 1930, and 1931 might have been eliminated and some provision made for the further decline in value of \$3,365,131.56 which was shown by the next State examination as of February 29, 1932, for these 3 types of securities as follows

(G-6-6)

	Book value	Market value	Depreciation
Real-estate bonds.....	\$1, 800, 636 49	\$945, 512 77	\$855, 123 72
Industrial bonds.....	3, 715, 166 03	2, 987, 512 05	727, 653 98
Stocks.....	2, 536, 321 25	753, 967 39	1, 782, 353 86
	8, 052, 123 77	4, 686, 992 21	3, 365, 131 56

With the failure of the State banking department to correct conditions such as previously outlined, the management of the Guardian Trust Co. persisted in unsound banking practices throughout 1929, 1930, 1931, and 1932, until finally in February 1932, State Examiner T. O. McEldowny, who had made the previous examination could no longer ignore the facts that should have been apparent 2½ years earlier, made a desperate effort to save his "face" by conducting a real examination. In this February 1932 examination and his comments he completely reversed the comment in his November 1929 report—

(G-6-2, p 319, par 29)

Management not subject to criticism.

and stated—

(G-6-7, p 4, par 23)

The efficiency of the management can be honestly challenged. The management of this bank, both junior and senior officers, have made serious mistakes in the past.

Surely the character of the bank's officers did not change completely in the short space of 2 years and neither can it be believed that any efficiency in bank management acquired prior to November 1929 was lost in so short a time. It seems much more logical to assume that the speculative tendencies and vicious practices commented upon so strongly by Mr. McEldowney in 1932 had been existent for some time and had simply been overlooked by him previously or had not been commented upon.

Let us compare the State examiner's comments of February 29, 1932, with his comments of November 15, 1929, and existing conditions.

In paragraph 8 of the 1932 report we find:

(G-6-7, p 1, par 8; G-6-7, p. 1, par. 8)

A number of collateral loans represent speculation and apparently were made on that basis. By that I mean the bank loaned entirely too much to the borrower and did not sell him out when they should have. They now have a greatly undercollaterated loan which the maker cannot pay.

Contrast the above with the comment in the 1929 report:

(G-6-2, p. 318, pars 4 and 5)

Each collateral loan was checked as to margin, etc., with an officer of the bank and his opinion obtained as to the collectibility. Some commendation is due the officers of this bank for the small amount of loans, which are undercollaterated; this would indicate that nothing is overlooked in keeping their loans in liquid condition.

It seems that had sufficient attention been paid to the collateral securing loans in 1929, the possible inadequacy of some of it would have been noted and a recommendation made to sell out the borrower.

The State examiner also states:

(G-6-7, p 1, par. 8)

As you will note, officers and directors have borrowed \$5,335,131 44 in their own name. This amount represents 33 3 percent of the present capital and surplus. It is needless to say their total borrowings are entirely too high and not along the lines of conservative banking. Irrespective of security, certain.

officers are owing entirely too much to the bank. This item is, of course, subject to severe criticism and is a reflection against the present management.

(G-6-2, p 6)

We find no criticism in the State examiner's report of November 15, 1929, despite the fact that officers, directors, and interested companies owed \$10,426,882 46, of which \$2,667,487 01 was unsecured as of that date as compared with a total of \$14,085,432 72 as of February 29, 1932. Surely, if it was poor banking to loan directors and officers \$14,000,000, it was poor banking to loan them \$10,000,000. Had the examiner been as alert and free to criticize in 1929 as in 1932, the bank might have been saved some trouble.

In paragraph 12 of the 1932 report, the State examiner comments:

(G-6-7, p 2, par 12)

A great many of the real-estate loans have been sold to insurance companies; one company in particular, the Metropolitan Life Insurance Co has purchased the first 50 percent interest in various real-estate loans, the last 50 percent, or weaker portion, being owned by the Guardian.

(G-6-2, p 318, par 9)

This same practice was prevalent in 1929, as evidenced by the comment:

Bank has sold some of their loans to the Metropolitan Life Insurance Co.

and was subject to criticism then as well as in 1932.

The State examiner in his 1932 report accuses the Guardian of speculating in the following manner.

(G-6-7, p 2, par. 13)

It is both evident and apparent that the bank was speculating, otherwise they would not own large blocks of stock in such corporations as the Allegheny Corporation, Cities Service Co, Domestic Industries, Goodrich Tire & Rubber Co., Standard Textile Products Co., and Van Sweringen Corporation. They also have invested \$250,000 in a company known as the "Guardian Securities Co.," which likewise has the appearance of a speculative concern.

The investment picture in this bank is a very sorrowful one and represents a study in itself. It is apparent heavy losses will be suffered in the future.

(G-6-2, p. 105)

It is therefore somewhat strange to find listed on the examiner's 1929 schedule of stocks the following:

Allegheny Corporation.....	\$116, 877 40
Cities Service Co.....	250, 351 50
Continental Shares, Inc.....	108, 756 00
Guardian Securities Co.....	250, 000 00
Standard Textile Products Co.....	99, 460 00
	<hr/>
	825, 444 90

If the bank is subject to criticism for having these stocks in their possession in 1932, what excuse can there be for not criticizing them in 1929 and insisting on providing a reserve for loss?

(G-6-2, p 318, par 19, G-6-7, p 3, par 18)

Paragraph 14 of the 1929 report comments and paragraph 19 of the 1932 comments refer to the earnings of the bank. In view of the distorted reported earnings of the bank, as brought in a separate report on the "Financial history", we question the ability of the State examiner to comment on earnings in any manner, as an intelligent examination could not have failed to reveal the subterfuges being indulged in by the bank management to mislead depositors and stockholders.

We believe that in the foregoing we have established the utter failure of the State bank examiner to protect the public from loss by reason of incompetent or dishonest banking. In view of the character of the February 29, 1932, report there seems little doubt of the ability of the examiner to unearth the true condition of a bank and we cannot understand his failure to show the same efficiency and zeal in prior examinations.

We have made no comment on the failure of the State examiner to criticize the Guardian Trust Co for its many subsidiary companies, obviously formed for the purpose of concealing losses, but we feel that had some attention been given this phase of the bank's activities, deals like that of the Hollenden Hotel Co would not have occurred. We also wish to criticize an examination that does not provide for the submission of consolidated financial statements for a bank having 26 subsidiaries.

As stated previously, we cannot help but feel that the break-down of the Guardian Trust Co. can in a large measure be traced to State bank examiners and the State superintendent of banks of Ohio. Had examinations been made as specified by law and conducted in a more thorough manner, many of the evils which resulted in the bank's closing would have been eliminated before serious damage was done. However, unwarned and uncriticized, the bank management continued to conduct the affairs of the bank in such a manner that by February 28, 1933, its condition was such that there was no alternative save liquidation.

#### BANK EXAMINING COMMITTEE EXAMINATION

In addition to the examinations of the State banking department dealt with above, an additional safeguard for depositors and stockholders was provided for in section 710-69 of the State banking code which stipulates in part

(G-6-1, p 29)

"A committee of at least three directors or stockholders shall be appointed by the board of directors to examine or to superintend the examination of, once each 12 months, the assets and liabilities of the bank and to report to the board of directors the result of such examination

For the purpose of presenting such reports to the State superintendent of banks, certain printed forms are furnished to banks, one of which entitled "Report of examining committee", states in part.

(G-6-9, p 18, par. 2)

In making the examination, the committee should acquaint itself with the general character of the assets of the bank and with the character of its management. The assets should be closely examined, all bad or doubtful items should be ascertained and listed in detail as provided for on the accompanying blanks.

(G-6-9, p 18, par 3)

The committee should especially examine all loans and the collateral thereto, ascertaining thereby what loans are insufficiently secured and what collateral is of doubtful or unknown value

(G-6-9, p 18, par. 4)

The primary object of this examination is to inform the board of directors and the banking department of the true condition of the bank, so as to prevent the continuance of any policy in the conduct of the affairs of the institution which in the opinion of the committee and the board of directors might lead to loss, and to encourage such policies of administration as will result in profitable and conservative banking.

(G-6-9, p 18, par. 7)

The examination should be made without previous notice to or knowledge by the employees of the bank

The method employed by the Guardian Trust Co to conduct this examination was to name a number of directors and stockholders as examiners, each of whom would be assigned a certain part of the assets to verify, after which the total reported by each examiner was proved with the general ledger controls by one examiner.

(G-6-9, p. 22)

On the face of it, this seems to be an excellent manner of checking the bank's condition, but embodied in the report to the superintendent of banks under the heading "Remarks" on the January 1932 report, we find the following

the value of all loans and investments being accepted by said examiners at the figure at which same were carried on the books of the company

(G-6-9, p 18, par 3)

This alone should be sufficient to indicate the character of the examination and its complete impotence. Surely this is not in accord with the spirit of the instructions shown above, which stipulated that the

assets should be closely examined, all bad or doubtful items ascertained and listed in detail; all loans examined to determine if sufficiently secured and the nature of the collateral

(G-6-9, 18, par 5)

Clearly, the examination was but a perfunctory gesture made to comply only with the letter of the law and never made with the intent of informing the board of directors and the banking department of the true condition of the bank

The lack of information and comment in the report brings a mental picture of a number of directors scurrying from place to place like schoolboys on a lark, checking previously prepared items against a previously prepared list, with no knowledge of its purpose and then complacently resting from their labors in the belief that they had done their duty to stockholders and depositors

(G-6-9, p. 1 reverse, G-6-10)

The complete inadequacy of the report is shown by the attached exhibit where in the spaces captioned "List of all loans insufficiently secured or secured by collateral of doubtful value or not readily

marketable", we find inserted the notation "No exceptions made by committee", this despite the fact that as of December 31, 1931, there were over \$5,000,000 in nonaccrual loans on the books of the Guardian Trust Co, nonaccrual loans being loans on which the bank had stopped accruing interest because of the borrower's failure to pay. Surely these loans were doubtful

(G-6-11)

Only one thing more need be said in regard to the examining committee report and we may then dismiss it as being entirely worthless and of no protection to stockholders and depositors. We wish to call attention to the attached list of loans to directors totaling \$7,426,-591 07 as of February 29, 1932, and of large amounts for prior years. Can the failure to comment on these loans and to recommend their discontinuance be in keeping—

to prevent the continuance of any policy in the conduct of the affairs of the institution which in the opinion of the committee and the board of directors might lead to loss and to encourage such policies of administration as will result in profitable and conservative banking?

### CLEARING HOUSE EXAMINATIONS

(G-6-12)

Inasmuch as the last examination of the Guardian Trust Co. by the Cleveland Clearing House was made in 1923 there seems no need to comment on this supposedly protective agency, other than to attach a transcript of the testimony of Clearing House Examiner Coates before the Ohio Senate committee, which clearly shows the value of the examination.

There is one further point in regard to the examinations conducted by the State examiner upon which we wish to comment.

(Ohio Bank Act)

Section 710-138 of the Ohio General Code provides:

At least 4 percent of such deposits as are payable on demand, and at least 2 percent of such deposits as are time deposits must be kept in vaults of the bank in lawful money, national notes, Federal Reserve notes or bills, notes and gold and silver certificates issued by the United States

This provision of the law which was intended to provide a certain amount of liquidity in banks was being violated by the Guardian Trust Co on November 15, 1929, as shown by State Examiner McEl-downey's report of condition, at which time the demand deposits were \$64,466,046 98 and time deposits \$72,821,451.12 for which the cash reserve should have been.

Demand deposits, \$64,466,046.98 at 4 percent.....	\$2, 578, 641. 87
Time deposits, \$72,821,451 12 at 2 percent.....	1, 456, 429. 02
Cash reserve required.....	4, 035, 070 89

On which date the bank had on hand:

Gold coin and gold certificates.....	\$11, 427 94
Silver coin.....	102, 448 79
Nickels and pennies.....	28, 226 52
Paper currency.....	1, 229, 334 00
	<hr/>
	1, 371, 482 25
Cash reserve short.....	2, 663, 588. 64

As of February 29, 1932, the reserve was short, per Examiner McEl-downey's report of condition, as follows:

Reserve required.....	\$2, 764, 224. 50
Cash on hand.....	1, 337, 809. 15
Cash reserve short.....	1, 426, 415. 35

No comment was made by the examiner in regard to either of these reserve shortages, and no attempt was made to invoke the penalty of the law which provides:

(Ohio Bank Act)

If the reserve of a bank falls below the amount required by law, it cannot make new loans or discounts otherwise than by discounting or purchasing bills of exchange payable at sight or on demand; nor can it declare dividends of its profits until the reserve required by law is restored

In discussing this matter informally with State Examiner Evans, we were informed that the Federal Reserve Bank had relieved the Guardian Trust Co. of the necessity of abiding by the above quoted section of the Ohio Banking Code, in view of the bank's being a member of the Federal Reserve System and meeting that body's reserve requirements.

We have been unable to find anything in the Federal Code giving the Federal Reserve Bank the power to abrogate State laws to any such extent as this, and have, therefore, included the foregoing facts in order that counsel might pass on the legal aspects of this matter.

From the foregoing we believe we have established the complete inadequacy of examinations such as have been conducted in the past, to protect stockholders and depositors from the losses attendant to unwise speculative banking. It is apparent from the failure of any existing examining body to safeguard the public interests that this function must be placed in more competent hands and examinations conducted in such a manner that the inefficiency of bank management and the subterfuges used to conceal it may be discovered before the bank has reached a state beyond recovery.

WALTER H. SEYMOUR,  
*Senior Examiner.*

This report based upon preliminary report and complete investigation by Committee Examiner R. E. Long.

Mr PECORA I show you now what purports to be another report made by Mr Seymour, entitled "The Guardian Trust Co —Employees' Retirement Fund." Do you recognize it as being a copy of a report made by Mr Seymour based upon his investigation conducted under your immediate supervision?

Mr. MEEHAN I do

Mr PECORA Mr Chairman, I offer the report in evidence, together with the exhibits alluded to therein

Senator COSTIGAN (presiding) The report and exhibits offered by counsel to the committee will be received in evidence

(The report entitled "The Guardian Trust Co —Employees' Retirement Fund", together with the exhibits referred to therein and now at the Government Printing Office, was received in evidence and marked "Committee Exhibit No. 15, May 3, 1934", and is as follows:)

## COMMITTEE EXHIBIT No. 15—MAY 3, 1934

## EMPLOYEES' RETIREMENT FUND

(G-9-12-A, G-9-12-F; minutes of meeting, board of directors, Jan 10, 1933, pp. 87-88)

The management of the employees' retirement fund, by its president, J. A. House, is one of the most flagrant examples of the abuse and violation of trust placed in him as a guardian of life earnings, and is wholly contrary to the ethics of trusteeship which the Guardian Trust Co so elegantly set forth in the "Trust investment policy and organization" approved by the trust department officers and trust committee of the Guardian Trust Co at a meeting of their board of directors January 10, 1933.

(G-9-1, Rule 10)

The retirement fund was created July 1, 1913, for the purpose of retiring faithful employees after certain prescribed periods of service. Funds for this purpose were to be contributed by the employees on the basis of 3 percent per month of their monthly salaries, provided no employee contribute more than \$10 per month, each employee to continue his payments until he had contributed for a period of 25 years, unless he was retired sooner on account of age or sickness. These payments were deducted from the pay roll by the bank and above-mentioned contributing percentage continued from July 1, 1913, to July 1, 1932, with the exception of the period from July 1, 1927, to February 1, 1932. During the latter period the percentage was changed to 5 percent and the maximum contribution was \$25 a month. From July 1, 1932, to February 28, 1933, no contributions were made either by the employees or the company.

(G-9-1, Rule 11, G-9-14, a-d, G-9-4, p 6)

Under this retirement fund plan the bank was to contribute amounts equal to the employees' contributions, as well as an additional amount to equalize the terms of service of certain subscribing employees who were not able to complete 25 years of service before arriving at the retiring age. The total of all contributions and interest received up to January 17, 1933, was \$1,876,027 88.

(G-9-1, Rule 5)

The management of the fund was vested in a board of trustees consisting of 7 members, 4 of whom were selected by directors of the Guardian Trust Co. from their own number at the annual meeting of the said board, and 2 of whom were selected by the employees from their own number by ballot to be taken contemporaneously with the holding of the annual meeting of said board of directors of the Guardian Trust Co. The rules also required that the president of the Guardian Trust Co be ex officio a member of said board of trustees and president thereof, this Mr J A House, as president of the Guardian Trust Co, automatically became president of the board of trustees of the employees' retirement fund

(G-9-1, Rule 4)

The faith placed in Mr House by the contributors to the retirement fund, and which he so grossly violated, was shown by the powers they delegated to the trusteeship of the fund in giving them absolute control of the management of the funds and arbitrary interpretation of the rules of the fund without any personal liability or responsibility other than an oath to which they were obliged to subscribe, stating that they would faithfully perform their duties as trustees of the fund during their terms of office.

The utter disregard with which trustees of this fund treated this oath will be found in the acts of Mr. House as president of the retirement fund board. While these acts of his were approved by the other directors at their regular meetings, it was only a complete arbitrary domination of this board by Mr. House that secured such approval, for it is only natural that a subordinate obey the dictates of a superior, especially when that superior is the president of the institution for which the subordinate is employed.

Prior to 1930 investments of the funds of the retirement fund were confined to real-estate mortgage participations, with the one exception of \$5,000 par value Hydraulic Pressed Steel Co. notes which were acquired in 1918 for \$4,751 80 and sold in 1920 for \$5,025, the entire amount realized then being invested in participations.

(G-9-2)

In 1930 Mr. House saw the possibilities of diverting funds from the retirement fund to his own and the Guardian Trust's interests by virtue of the powers granted him in the management of the fund, thus on June 27, 1930, at a meeting of the pension fund trustees, the chairman reported that

For some time consideration had been given to investing part of the fund in capital stock of the Guardian Trust Co

(G-9-2)

A motion was duly passed authorizing the trustees of the fund to purchase up to 500 shares of the capital stock of the Guardian Trust Co. at a purchase price not to exceed \$400 per share.

(G-9-3)

The minutes of November 10, 1931, show that 522 shares of the capital stock of the Guardian Trust Co. were purchased, or 22 shares in excess of the amount approved, so a motion was immediately made and carried to approve the purchase of an additional number of shares to bring the total holdings up to 1,000 shares.

(G-9-4-A, 4-B)

Having been granted power, under the minutes of June 27, 1930, to purchase stock in the Guardian Trust Co, Mr House conceived the idea of forming what was referred to as a directors' syndicate as mentioned in the correspondence to Mr W. R. Green, former secretary of the employees' retirement fund, from Mr. C H. Force, of the

stock transfer department of the Guardian Trust Co, and dated April 7, 1933 Mr. C. H. Force was stock transfer agent and vice president of the Guardian Trust Co at the time Mr House formed this syndicate.

(G-9-4-A, 4-B)

The syndicate was predicated on the plan that each director and various other officers of the Guardian Trust Co were to subscribe to a certain number of shares in the syndicate and the syndicate was to acquire from the outside market or from other sources capital stock of the Guardian Trust Co According to the letter of Mr Force each participant was notified by Mr House of his share in the syndicate and agreed to purchase his allotment Purchases of the stock were made beginning November 22, 1930, to and including April 30, 1931, totaling 243 shares

(G-9-4-A, 4-B)

Beginning then with May 6, 1931, up to and including August 31, 1931, stock was purchased both for the retirement fund and the directors' syndicate. On this latter date there had been acquired 587 shares for the retirement fund and 329 shares for the directors' syndicate The subscriptions to the directors' syndicate totaled 394 shares with 329 shares purchased, a difference of 65 shares which the directors' syndicate purchased from the retirement fund at an average cost of \$311.20 a share This left the retirement fund with 522 shares. It was stated in Mr. Force's letter that the reason this purchase was made from the retirement fund was that some of the directors wished to close their syndicate and the stock was not available on the open market at that price.

(G-9-4-A)

Some of the directors refused to be coerced by Mr. House into entering the syndicate, so that certain cancellations followed, the canceled shares amounting to 66 in number. Mr. House then unloaded these into the retirement fund on August 1, 1932, at an indicated average of \$312.99 a share.

(G-9-4-A, 4-B, U-9-3)

The purchase of these 394 shares of stock was effected by a series of loans made from the retirement fund, notwithstanding the fact that neither the retirement fund nor any of its contributors were to participate in any profits that might accrue from the directors' syndicate. Mr Force, acting as agent for the syndicate, pledged the shares purchased by the syndicate as collateral for his loans. Such a procedure was made possible through the foresight of Mr. House, as evidenced in his having approved a motion at the November 10, 1931, meeting in which he got the trustees of the retirement fund to approve loans secured by Guardian Trust Co stock.

The syndicate was never completed and was left with these 287 shares of Guardian stock. On July 6 the balance due the retirement fund from Mr Force as agent or trustee of the proposed syndicate, amounted to \$79,867.97.

In his letter of April 7, 1933, Mr Force stated, regarding his market activities:

(G-9-4-B)

My instructions regarding the execution of market orders came directly from Mr House without any written form of authorization

(G-9-13-A, G-9-13-B, G-9-5, G-9-6)

It seems that Mr House always had a remedy for situations involving losses to himself or projects in which he was personally interested, so again taking advantage of the powers vested in him as president of the retirement fund, he secured the approval of the trustees of the retirement fund on July 6, 1932, at their regular meeting, to purchase back from Mr Force as agent, the 287 shares of the Guardian stock and a cancelation of the notes of Mr Force as agent of the syndicate, for \$76,122.56. This was at the rate of \$265.23 per share, notwithstanding the fact that the retirement fund purchased from brokers on July 5, 1932, 49 shares at an average price of \$69.72. This \$76,122.56 also represented a markdown of \$3,745.41. If this charge-off is included, the cost per share to the retirement fund for these 287 shares was \$278.28.

In view of the fact that this so-called "syndicate" was a brain child of Mr House, it would appear that a personal responsibility attaches itself to him for the losses sustained by the retirement fund on these stock purchases.

(G-9-7, G-9-10, G-9-11)

Another example of Mr. House's arbitrary price-fixing on the Guardian stock is shown in his conduct involving the sale of Guardian Trust stock to the employees. On February 15, 1929, the Guardian Trust Co sold its stock to the employees at \$250 a share on a partial-payment plan. The cost of the stock was secured by the employees' notes and the principal and interest on these notes were deducted from the employees' salary monthly at the rate of \$3 a share subscribed. The stock was held for the employees in negotiable form for a period of 5 years from February 15, 1929, under the control of a trustee who was the president of the Guardian Trust Co. and the stock was voted by that trustee. In the event of a subscriber ceasing to be an employee of the bank the employee was to be refunded the amount paid on his note. The stock was thenceforth subject to control and disposition of the president for reallocation.

(G-9-8-A)

At a meeting of the retirement fund trustees, on July 6, 1932, Mr House reported that he had as trustee repurchased 218 shares of the Guardian Trust Co stock under the terms of this agreement and was carrying same at a cost of \$55,041.59. Again seeing the possibilities of the retirement fund to further his own ends, he got the trustees at the said meeting to approve the acquisition of this stock payment to be made from the bank's contributions to the fund. Between that time and February 1, 1933, 40 more shares of employees' stock were acquired by the retirement fund under like conditions.

The purchase price represented the original subscription price by employees of \$250 per share for stock which had not sold for over \$100 on the open market at the time of those purchases by the retire-

ment fund See exhibit G-9-9-A for market prices of Guardian Trust Co. stock

(G-9-14-A, G-9-14-D)

Another deplorable feature of Mr House's stewardship of the retirement fund was his original recommendation of the purchase of Guardian Trust stock when he knew that such stock was subject to assessment by the State banking department in the event of said trust company's failure Subsequent to January 17, 1933, such an assessment was made in the amount of \$100 per share by the State banking department According to the books of the retirement fund it was holding 1,565 shares of Guardian Trust stock at this time and this assessment further depletes the funds of the retirement fund in the amount of \$156,500

(G-9-8-A)

Mr House's complete domination of the board of trustees of the retirement fund is further shown by the ease with which he obtained the passage of certain motions, such as the motion to take in the 287 shares of the directors' syndicate and the 218 shares for which he was responsible as trustee at prices far in advance of the open market value, all this in spite of the fact that the other trustees on the board of the retirement fund were fully cognizant of the way these transactions would jeopardize and affect their savings and if left to their own resources would never sanction such action.

The Ohio State banking laws have no provisions covering the conduct of an officer or trustee in a position corresponding to that held by Mr House in the retirement fund, but it is the writer's belief that legislation should be effected covering management and conduct of any funds deposited with any department of a bank or trust company where the purpose of such account is for savings or retirement annuities

WALTER H SEYMOUR, *Senior Examiner.*

This report based upon preliminary report and complete investigation by Committee Examiner M. W. Firth

Mr PECORA I now show you what purports to be another report made by Mr Seymour, entitled "The Guardian Trust Co.—Membership on Board and Management Committees" It is for the period 1927 to 1933 Do you recognize that as being a copy of another report made by Mr Seymour based upon his investigations made under your immediate supervision?

Mr MEEHAN. Yes; I do

Mr PECORA. Mr Chairman, I offer the report in evidence, together with the exhibits referred to therein

Senator COSTIGAN (presiding) The report and exhibits offered by counsel to the committee will be received in evidence

(The report entitled "The Guardian Trust Co.—Membership on Board and Management Committees, 1927-33", together with the exhibits referred to therein and now at the Government Printing Office, was received in evidence and marked "Committee Exhibit No. 16, May 3, 1934," and is as follows:)





WALTER H. SEYMOUR, *Senior Examiner.*

This report based upon preliminary report and complete investigation by Committee Examiner C. H. Horton.

Mr. PECORA. Now, Mr. Chairman, there is another report prepared by Mr. Seymour and entitled "The Guardian Trust Co.—Officers' and Directorate's Representation in other Concerns." The only copy of that report which we had here in Washington is now in the hands of the Government Printing Office. Have you seen that report, Mr. Meehan?

Mr. MEEHAN. Yes, sir.

Mr. PECORA. Do you know it now to be in the hands of the Government Printing Office?

Mr. MEEHAN. I do, for I sent it to them.

Mr. PECORA. Having sent it do you recognize it to be a copy of another report made by Mr. Seymour as a result of his investigations conducted under your immediate supervision?

Mr. MEEHAN. Yes, sir.

Mr. PECORA. Mr. Chairman, I ask that that report be received in evidence, together with the exhibits therein referred to.

Senator COSTIGAN. The committee will receive in evidence the report and exhibits offered by committee counsel, with the explanation he has made.

(A report entitled "The Guardian Trust Co.—Officers' and Directorate's Representation in other Concerns", together with the exhibits referred to therein, both now being at the Government Printing Office, were received in evidence and are to be marked "Committee Exhibit No. 17, May 3, 1934", and are as follows:)

#### COMMITTEE EXHIBIT No. 17—MAY 3, 1934

(This exhibit, together with the accompanying papers offered by Mr. Pecora, are now at the Government Printing Office and will be inserted at this point by the Government Printing Office.)

Mr. PECORA. I now show you what purports to be another report made by Mr. Seymour, entitled "The Guardian Trust Co.—Guardian Securities Co.—Stock-market activities." Do you recognize it as being a copy of a report made by Mr. Seymour as a result of his investigations conducted under your immediate supervision?

Mr. MEEHAN. Yes, sir.

Mr. PECORA. Mr. Chairman, I offer that report in evidence, together with the exhibits referred to therein.

Senator COSTIGAN. The report and exhibits offered by committee counsel will be received in evidence.

(The report entitled "The Guardian Trust Co.—Guardian Securities Co.—Stock-market activities", together with the exhibits referred to therein and now at the Government Printing Office, were received in evidence and marked "Committee Exhibit No. 18, May 3, 1934," and are as follows.)

#### COMMITTEE EXHIBIT No. 18—MAY 3, 1934

##### STOCK MARKET ACTIVITIES

While the Guardian Securities Co. was organized as the security affiliate of the Guardian Trust Co. it never engaged very extensively in the securities business. Its records consist of a small journal and

a ledger about 14 by 8 inches. We have carefully checked its affairs and find that it never participated in any large underwritings or trading accounts. Its largest single activity seemed to be in the stock of the

INLAND INVESTORS, INC.

(G-17-1a)

This company, the Inland Investors, Inc., was organized under the laws of Delaware on June 24, 1927, with 100,000 shares of common capital stock authorized. The function of the company was as an investment trust of the management type.

(G-17-1a)

The original board of directors of the company included J. A. House, president of the Guardian Trust Co.; H. C. Robinson, vice president and executive vice president of the Guardian Trust Co.; J. O. Eaton, later replaced as president by H. C. Inglis; Floyd Anderson, and Paul J. Bickel.

(G-17-1a, G-17-2a, G-17-3, G-17-4)

Immediately after the formation of the Inland Investors, Inc., Otis & Co. was employed as selling agent to dispose of 40,000 shares of the common stock at \$52.50 per share payable 50 percent at time of purchase, 25 percent September 1, 1927, and the remaining 25 percent November 1, 1927. A contract was executed wherein Otis & Co. received a commission of \$2.50 on each share sold and a supplementary contract wherein the Guardian Securities Co. underwrote the sale of 10,000 shares of the 40,000 shares which Otis & Co. undertook to sell, the \$2.50 commission on the 10,000 shares accruing to the Guardian Securities Co.

Thereafter, beginning on July 19, 1927, and extending to September 27, 1927, the Guardian Securities Co. purchased this Inland stock from the Guardian Trust Co. and sold it to individuals as follows:

(G-17-5)

Purchased 5,278 shares, at \$47.50 per share  
 Sold 3,274 shares, at \$52.50 per share  
 Sold 2,004 shares, at \$50 per share to employees.

As stated above, all of the stock was purchased from the bank and all except 2,004 shares were sold to outside customers at \$52.50 per share.

(G-17-6)

On August 31, 1927, 2,004 shares of Inland Investors, Inc., was sold to the employees of the Guardian Trust Co., at \$50 per share, on a partial payment plan. This plan evidently was fostered by J. A. House, president of the Guardian Trust Co., as appeared in a letter from W. R. Green to C. R. Mergerth, both of the Guardian Trust Co., dated July 19, 1927, outlining the plan as follows:

Mr. House desires that the Guardian officers and employees be permitted to buy Inland Investors, Inc., stock on a partial payment plan; namely, the stock is selling for \$52.50 per share and it is proposed to sell the stock on a down-payment of \$2.50 a share and \$2.50 per share per month, until paid.

This will be purchased through the Guardian Securities Co., who will borrow the money on its note from the Guardian Trust Co. at 5 percent and will take notes of the employees at the same rate.

From the foregoing it will be seen that the Guardian Trust Co. loaned the money to its subsidiary for the purchase of Inland Investors stock based upon the employees' individual notes.

Regarding the bank employees' participation in the stock purchase, in conversation with several of former bank employees they indicated that the transaction was profitable for them. One said that he had purchased his stock at \$50 and sold it at \$67, an appreciation of \$17. This is probably not true of all the employees, however, especially those who have retained their stock which at the present date (Mar. 21, 1934) is quoted by Hornblower & Weeks at from \$9 to \$11 per share.

(G-17-7, G-17-5)

The Guardian Securities Co., during 1928, purchased 5,000 more shares direct from the Inland Investors, Inc., at \$52 a share and by November 2, 1928, had disposed of all of the original 10,000 shares and the additional 5,000 shares at \$56 per share.

(G-17-5)

From January 7, 1929, to April 25, 1929, 830 shares were purchased at various prices ranging from \$60 to \$67 per share. As of September 23, 1929, the number of shares remaining unsold in the Guardian Securities Co. inventory was 132 at a total value of \$7,123 or \$53.97 per share. The value of these shares at the present-day market price of from \$9 to \$11 per share would show them as \$1,188 and \$1,452, respectively, a reduction of approximately \$5,000.

(G-17-9)

An analysis of the declining condition of Inland Investors, Inc., as shown in an analysis prepared from Moody's Investors Manual by years from 1928 to 1933, inclusive, is submitted herewith as an exhibit.

WALTER H. SEYMOUR, *Senior Examiner.*

This report based upon preliminary report and complete investigation by Committee Examiner J. H. Winchester.

Mr. PECORA. I now show you what purports to be another report made by Mr. Seymour, entitled "The Guardian Trust Co., re Hotel Hollenden Co. and DeWitt Hotels Co." Do you recognize it as being a copy of a report made by Mr. Seymour, based upon his investigations conducted under your immediate supervision?

Mr. MEEHAN. I do.

Mr. PECORA. Mr. Chairman, I offer that report in evidence, together with the exhibits referred to therein.

Senator COSTIGAN. The report and exhibits offered by committee counsel will be received in evidence.

(The report entitled "The Guardian Trust Co., re Hotel Hollenden Co. and DeWitt Hotels Co.", together with the exhibits referred to therein and which are now at the Government Printing Office, were received in evidence and marked "Committee Exhibit No. 19, May 3, 1934," and are as follows:)

## COMMITTEE EXHIBIT No. 19—MAY 3, 1934

## RE HOTEL HOLLENDEN CO. AND DE WITT HOTELS CO.

The stock of the De Witt Hotels Co, a holding company for several hotels including the Hotel Hollenden, is owned principally by the New England Co, the main subsidiary of the Guardian Trust Co.

The history of the Guardian Trust Co's participation, or engagement, in the hotel business began back in early 1923.

(G-15-1)

In April 1923 Herman Mack, a well-known hotel operator in Chicago, obtained an option for the purchase of the Hotel Hollenden in Cleveland from the Hollenden Hotel Co.

The Hollenden is a second-grade hotel located in a rather favorable section of the city. It does not generally attract the better class of guests, but caters mostly to a "sporty" and "raey" type.

Under the terms of this option Mack had agreed to:

(G-15-6-3)

a. Lease the land for a term of 99 years at an annual rental of \$150,000.

b. Maintain a "security fund" of \$500,000 by making quarterly payments of \$6,250 to April 1, 1943. This fund to be used in erecting a new building at a cost of \$3,000,000.

c. Pay \$1,726,000 to the Hollenden Hotel Co, for which he was to receive the building and furniture, etc.

Mack's option required an immediate payment of \$100,000 down and the balance of \$1,626,000 to be paid before June 30, 1923.

(G-15-1)

Mack entered into an agreement with the Chicago brokerage firm of Hyney, Emerson & Co, whereby he would form a new corporation called the Hotel Hollenden Co., which was to issue \$2,000,000 in bonds, selling the entire issue to the Chicago brokerage firm at 92 percent. The new corporation was to use the proceeds of the bond issue to purchase the Hollenden Hotel.

(G-15-65)

On April 2, 1923, Herman Mack opened a personal account at the Guardian Trust Co after being introduced by H. C Robinson. Herman Mack's initial deposit was in the amount of \$100,000; and 3 days later (Apr 5, 1923) he deposited an additional \$50,000. This seems to have been the first connection between Mack and the Guardian Trust Co.

On May 8, 1923, Herman Mack entered into a purchase agreement with the Hollenden Hotel Co, the terms of which we have already outlined.

(G-15-3)

In accordance with his agreement with Hyney, Emerson & Co., Mack formed the Hotel Hollenden Co. on May 9, 1923. The company

had an original capitalization of 5,000 shares of \$100 par value preferred stock; 10,000 shares of no par value common, the subscription price of the common being \$1 per share

The incorporators and original common stockholders were:

(G-15-3, G-15-4)

Incorporators	Common stockholders	Shares
Irwin N Loeser <sup>1</sup> .....	Herman Mack.....	9,996
Frank G Mooney <sup>1</sup> .....	Roscoe Tompkins.....	1
Monroe A Loeser <sup>1</sup> .....	Earl W LeFever.....	1
H Stewig.....	Edgar A Hahn <sup>1</sup> .....	1
I L Nichols.....	Irwin N Loeser <sup>1</sup> .....	1
		10,000

<sup>1</sup> The individuals so indicated are members of the law firm of Mooney, Hahn, Loeser & Keough referred to in the agreement between Mack and Hyney, Emerson & Co , as the attorneys for Herman Mack

The original directors of the company and the officers as well were:

(G-15-6-1)

Herman Mack, president and treasurer; Irwin N. Loeser, vice president; E A Hahn, secretary; Roscoe J. Tompkins, assistant secretary; Earl W LeFever.

(G-15-92)

Early in May of 1923 (May 3) Mack and the firm of Hyney, Emerson & Co. were having difficulty in getting the bond issue floated. It should be borne in mind that this \$2,000,000 issue represented 100 percent of the cost of the hotel and the first year's rent; which feature alone would make the bonds unattractive. Obviously, in a case of forfeiture or liquidation the bondholder could not hope to realize the full amount of his bond from a forced sale

The urgency for speed in the sale of the bond issue can be fully appreciated from reading a letter of Mr E. A Hahn (of Mooney, Hahn, Loesser & Keough), counsel for Herman Mack, to Messrs. Chapman, Cutler & Parke, counsel for Hyney, Emerson & Co., stating that—

(G-15-92-1)

\* \* \* Because of the extremely limited period of time and the fact that no extension of time can be procured, and because Mr Mack has deposited \$100,000, which will be lost if the balance of the money is not available on the stipulated day Mr. Mack has asked me to urge you to give this matter your immediate attention \* \* \*

From this it would seem that counsel was as fully aware of the scheme and as conscious of the need for speed as was Mack himself, in his gamble that the bonds would be sold in time to take up his option

It was evidently decided by Mack and his brokers that the bonds could not be issued and sold unless the property was appraised by reputable Cleveland appraisers at a value far in excess of the bond issue. Therefore it was decided to do business with the Guardian Savings & Trust Co. (the Guardian Trust Co.).

(G-15-50-2)

On May 15, 1923 a conference was held between Mack, Hyney, and officials of the Guardian. At this conference it was decided that the bonds were to be issued as originally planned at 92 percent but that the purchasers would be Hyney, Emerson & Co., and the Guardian Savings & Trust Co., participating equally. It was also decided at this conference that—

(G-15-20-2)

As the appraisals of the property are one of the main selling features, it is necessary that the names of the appraisers be the strongest obtainable, and that the appraisers should be the following: H. C. Robinson, executive vice president Alex. S. Taylor; Craig-Curtiss Co.

(G-15-50-1)

Thereupon the Guardian Savings & Trust Co. and Hyney, Emerson & Co. entered into an agreement to jointly purchase the Hotel Hollenden Co. bonds at 92 percent and accrued interest. These bonds were later advertised (the Guardian appearing as the first name on the circular) as

(G-15-11)

Hotel Hollenden Co., \$2,000,000 first-mortgage leasehold 6½ percent serial gold bonds.

(G-15-6-12)

The bonds were secured by a first mortgage deed of trust upon the leasehold estate of the Hotel Hollenden Co.

The purpose of issue, as advertised in the bond circular, was that—

(G-15-11, G-15-67)

The proceeds of this bond issue—which will constitute the only lien or mortgage indebtedness of any nature on the property—will provide funds for completing the purchase of the Hotel Hollenden, Cleveland, by a new ownership and for the cost of various alterations and improvements

#### APPRAISAL OF PROPERTY

(G-15-49)

On May 23, 1923, Herman Mack agreed to pay the cost of securing an appraisal of the real estate and leasehold equity and of the buildings by—

\* \* \* Messrs H. C. Robinson and A. S. Taylor and \* \* \* Craig-Curtiss Company

(G-15-49)

Copies of the several appraisals accompany this report, each of which bears the same date as the agreement of Herman Mack. Attention is called to this coincidence, which, together with other detail set out below, savors of "rubber stamp" operations

Craig-Curtiss Co. appraised the property and, in their letter to Mack, stated:

(G-15-49, p 2)

We have made a careful examination of the building and checked its dimensions and in our opinion a fair market value of the same is \$3,500,000.

Messrs. Robinson and Taylor, jointly, also appraised the property and stated:

(G-15-49, p 3)

We have carefully checked the value of property in the immediate vicinity of the land herein appraised and have determined that the fair market value of the same today is \$3,250,000

On the same day, May 23, 1923, the three appraisers together wrote Herman Mack in the official appraisal, as follows.

(G-15-49-4)

We have carefully checked the value of property in the vicinity of the above property, have made a careful examination of the buildings upon the land and have estimated their present value and in our opinion the value of the leasehold estate is \$4,250,000.

(G-15-72, G-15-49-9)

Attention is also drawn to the fact that H. C. Robinson was the executive vice president of the Guardian Savings & Trust Co. and that he later handled all matters at the bank pertaining to the Hotel Hollenden, also that he personally received an appraisal fee of \$1,200, a fact which he denied when he testified before the Ohio State Senate banking committee on July 26, 1933

The Guardian Trust Co.'s bond circular advertising these bonds stated that—

(G-15-11)

The leasehold estate has been appraised by Messrs H. C. Robinson and Alexander S. Taylor of V. C. Taylor & Son and The Craig-Curtiss Co at \$4,250,000 \* \* \* This issue, therefore, constitutes a loan of less than 42 percent of the appraised value of the property.

Also, the circular stated, regarding the class of the hotel and its service:

It is a favorite headquarters for conventions and for gatherings representative of the leading activities of Cleveland, and because of its central location and high standards of service it has attained permanent popularity with a wide transient patronage from all sections of the United States.

(G-15-49)

Here we would like to interrupt the continuity of this report to call attention to a change in Mr. Robinson's opinion. A trifle over 2 years after these bonds had been issued and sold (Nov. 18, 1925) and after the Hotel Hollenden Co. had been in receivership Mr. Robinson filed an affidavit for a reduction in State taxes. In this affidavit he swore that the total actual fair value of all of the assets of the Hotel Hollenden Co. amounted to only \$2,050,187 59 which is quite a contrast to the value of the leasehold alone, set out in the bond circular of June 1923.

In the affidavit (referring to the assessed value of the land) Mr. Robinson stated that—

(G-15-49-12)

It should be clearly understood that the above item of \$2,668,250 represents the value of property not owned by this company; merely rented under lease; one of the provisions of said lease being that the leasee pays the taxes on said land.

(G-15-49-18)

On November 14, 1925, Mr. Robinson wrote the county auditor complaining of the assessed value of the improvements to the hotel building, in which letter he described the hotel in the following manner

(G-15-49-19, G-15-49-20)

You are probably aware that the Hollenden Hotel proper is made up of a series of buildings erected at different intervals. It is, in effect, patchwork. Some portions of the hotel are modern and have an earning capacity per square foot equal to that of Hotel Cleveland or The Statler, which are up-to-date hotels, but take, for example, the original portion of the hotel, namely, that fronting on Superior Avenue and East Sixth Street, which, by the way, is the portion in which the improvements in question were installed, it was erected in 1890 at a time when the public was not demanding the conveniences that it is at present. A large number of the rooms have no bath facilities, the floors are sagging, the plaster is falling, and it requires the most constant vigilance and outlay of money on the part of the management to keep many portions of this building in an inhabitable condition. The earning power of the rooms per square foot is very low as certain parts of this building are only used or acceptable to the public when there is a crowded condition in the city when any kind of a room is called into use, for example, the last Republican Convention held in the city.

(G-15-49-3)

It is very difficult to reconcile the description above, which happens to be a true one, with that outlined in the circular and on which Robinson placed a "fair" valuation, 2 years previously, of \$3,250,000.

(G-15-20-2)

From the above it can be readily seen why the underwriters realized that:

As the appraisals of the property are one of the main selling features, it is necessary that the names of the appraisers be the strongest obtainable.

#### BOND PURCHASE AGREEMENTS

(G-15-50, G-15-37, p. 4)

A letter agreement was signed by Hyney, Emerson & Co. of Chicago on May 16, 1923, covering the purchase of the bond issue, with the Guardian Trust Co. on a 50-percent basis at 92 (although H. S. Hyney of Hyney, Emerson & Co. had a secret agreement with Mack to "cop" an additional 2 percent).

(G-15-57, G-15-37 (4 to 7), G-15-16)

From correspondence, etc., which has been uncovered during the course of our investigation, it is evident beyond any question of doubt that R. S. Hyney of Hyney, Emerson & Co. and Herman Mack were "crooks", the two appearing to have worked together for their mutual gain. We call particular attention to exhibit G-15-37, pages 4 to 7.

On May 22, 1923 G. B. Johnson, manager of the Guardian bond department, wrote to Hyney

(G-15-102)

You understand that our executive committee has not as yet approved this issue and they will not approve it until we are able to substantiate the earning figures which have been submitted by you

Mr. Johnson then outlined the syndicate plans and stated:

(G-15-102)

We further agreed that the better way to syndicate this issue was by personal contact and that you were not to mail syndicate agreements broadcast

Mr. Robinson in a letter to Herman Mack, on May 23, 1923, stated:

(G-15-102-2)

\* \* \* Mr. Thompson, the present manager, stated he believed the new company would have a hard time making money in the operation of the hotel, \* \* \* he believed you were anticipating a higher rental per day from the rooms than could be obtained in Cleveland, \* \* \*

Mr. Robinson apparently did not take the above advice seriously as in the same letter he informed Mack that

\* \* \* Whatever his (manager of Hotel Cleveland) conclusions are, I do not believe it will have any bearing upon our final opinion \* \* \*

(G-15-7)

On June 1, 1923, a new agreement was signed between the Guardian, Hyney, Emerson & Co, and Herman Mack covering the purchase of the bond issue, which was substantially the same as the previous agreement. The bonds were allotted out to the syndicate members to be sold

(G-15-102-6)

On June 13, 1923, Mr. Johnson was informed by the T. H. Saunders Co., a member of the selling syndicate, that they had received a communication, a quotation from the letter being as follows:

I would advise that I have just learned from apparently reliable sources that this issue of bonds amounting to \$2,000,000 is upon a property which has changed hands within 2 or 3 months at \$1,700,000 I regard such a transaction as an exercise of bad faith I cannot refrain from saying that it is singular conduct on the part of the able appraisers who have fixed a value on the Hollenden Hotel property at figures several times beyond the recent selling price of the same.

T. H. Saunders further stated.

(G-15-102-6)

You are, of course, familiar with the stories that are going around and, of course, are familiar with the actual facts Right from the beginning we have heard the issue alluded to as a "high-finance" proposition

On June 14, 1923, Mr Johnson, in reply to a telephone inquiry, advised Mr E B Spitzer, cashier of a bank at Medina, Ohio (who apparently offered some criticism of the proposed issue).

(G-15-102, p 8)

\* \* \* that this loan was made on the valuations of appraisers who stand at the forefront of their profession \* \* \* in addition, this loan is made to

men in whom we have the utmost confidence as successful managers of hotel and restaurant properties. \* \* \*

From the above it appears that the officials of the Guardian Trust Co were not concerned so much with the security of the issue as they were in the profits to be derived from the sale thereof

During the operation of the selling syndicate, certain of the bonds were sold to national banks. It is interesting to note from a memorandum in the Guardian files that as early as October 1923 an examiner objected to these bonds

(G-15-103)

It seems that Mr T E. Thomas, chief national bank examiner, and his force have been making examinations in Columbus, Ohio, and while there objected to the bonds in question being carried as part of the assets of a national bank. His reason therefore, so I was advised, was based upon the sale price of the hotel property, and the amount of the bond issue

The participation and profits of the Guardian Trust Co. in the bond issue were as follows:

(G-15-10)

	Participation	Purchase price	Sale price	Profit
Original group.....	\$1,000,000	92	94	\$20,000 00
Bankers group.....	1,075,000	94	95	10,750 00
Syndicate.....	205,000	95	98	5,762 94
To be sold to the public at.....			100	(?)
				36,512.94

### PREFERRED STOCK

(G-15-15)

As we have previously outlined in this report, the Hotel Hollenden Co. at the time of its organization issued 5,000 shares of preferred stock. In a letter dated October 22, 1923, to Hyney, Mr. Johnson stated that the Guardian would not undertake to sell the company's preferred stock and suggested that Mack sell it to his friends. Later, November 2, 1923, a memorandum in the bank files indicates that Mack sold this preferred—

(G-15-15-3)

to many firms from whom they purchase supplies for the hotel, chiefly I believe in the food line

On August 22, 1923, the company was authorized to increase its common stock to 15,000 shares without nominal or par value, the increase of 5,000 shares to be sold for cash at \$1 per share

On November 5, 1923, the company was authorized to increase its preferred stock to 10,000 shares at \$100 per share, representing an increase of 5,000 shares.

### THE GUARDIAN TRUST CO. TAKES OVER HOTEL

Early in the first half of 1924, less than 1 year after the bond issue, the Hotel Hollenden Co got into financial difficulties and could no longer pay its sinking fund requirements

On September 16, 1924, the trustee (the Guardian Trust Co) notified the Hotel Hollenden Co. by letter that—

(G-15-66-3)

\* \* \* In view of the fact that your default has continued for more than \* \* \* 30 days, and is still continuing, the trustee has elected to take immediate possession of \* \* \* the property described \* \* \* by \* \* \* deed of trust \* \* \*

(G-15-64)

Two days later, September 18, 1924, the Guardian Trust Co., as trustee, secured control of the Hotel Hollenden Co through a voting trust agreement wherein H. C. Robinson, L. B. Foote, and W. E. Guerin (all officers of the Trust Co.) were designated as the "trustees." All of the outstanding common stock of the Hotel Hollenden Co. was deposited thereunder and depository receipts issued in the name of Herman Mack, the sole common stockholder (in fact).

(G-15-88)

A plan of rehabilitation of the hotel was immediately put into effect calling for expenditures, which were duly authorized by the bank, totaling \$535,000. From this point on, the hotel became a "cess-pool" for Guardian funds.

Beginning on page 18 of this report we cover in detail all the loans and advances which the Guardian Trust Co. made to the Hotel Hollenden. The bank literally financed the operation of the hotel.

The minutes of the meeting of the board of directors on October 16, 1924, disclose—

(G-15-21, p 1)

That the certificate of stock issued by this company evidencing 5,000 shares of common stock of this company covered by the increase of its common capital stock, \* \* \* issued to Herman Mack without any corporation action whatsoever; that the officers of the company were not authorized to issue the same and that Mr Mack had paid no consideration therefore, that the officers of this company be authorized and directed to request the Guardian Savings & Trust Co to cancel its voting trust receipt which it has issued but not delivered to Mr. Mack and to return said certificate of 5,000 shares now in its possession, to this company for cancelation, that upon receipt of said certificate the officers of this company cancel the same; that said stock be not again issued until further action of this board

(G-15-19)

Mr Mack resigned both as a director and as vice president of the hotel company on October 8, 1924, and died (of D T 's) on November 15 following.

(G-15-60)

On August 13, 1925, a judgment was entered in the suit of the Guardian Trust Co against Herman Mack in the amount of \$78,200 to be satisfied by the sale of voting trust certificate no 1 in the name of Herman Mack for 7,500 shares of common stock

(G-15-70)

The certificate of deposit was duly sold at a public sale and was purchased by the Guardian Trust Co on October 20, 1925, for \$750

(10 cents per share), the purchase price being credited to the indebtedness of Mack at the Guardian Trust Co

(G-15-37, G-15-70)

The bank had acquired title to the remainder of the outstanding common stock (2,500 shares) from Ralph S Hyney on July 9, 1925, when a mutual release was entered into by him with the Guardian whereby the latter released Ralph S Hyney, Emerson & Co from all pending claims and causes of action.

(G-15-75-2, G-15-75-5)

The 10,000 shares of stock of the hotel company remained in the name of the Guardian Trust Co (except for directors' qualifying shares) until December 13, 1928, when they were sold to the New England Co. for \$750.

Early in January of 1925 H. C. Robinson was instrumental in employing the services of a new manager, Theodore De Witt, for the Hotel Hollenden. The details of his employment and his stewardship are given elsewhere in this report

#### FORECLOSURE AND RECEIVERSHIP

(G-15-45-12, G-15-45-13)

The Guardian Trust Co (trustee) filed a petition to foreclose the first mortgage on the Hotel Hollenden leasehold estate on May 4, 1931, when Theodore De Witt (the manager) was appointed receiver at the request of the Guardian. A bondholders' protective committee was formed May 11, 1931, consisting of E J Body, J B Keenan, and Maurice Maschke. To date the foreclosure has not been consummated nor has the lessor, the Hotel Hollenden Co, canceled its lease.

During all the time of the Guardian Trust Co's stewardship it received many letters of inquiry from bondholders. Practically all of these letters were answered by H C Robinson. Elsewhere in this report we cover these inquiries in detail.

#### LOANS MADE TO HOTEL HOLLENDEN Co

(G-15-64)

Shortly after the organization of the Hotel Hollenden Co, the Guardian made its first loan on August 25, 1923, in the amount of \$75,000. The line of credit remained at this amount until November 14, 1924, about 1 month after the voting trust was created, whereby the Guardian Trust Co obtained complete stock control of the Hotel Hollenden Co.

(G-15-69)

From this point on, the Guardian, both as a "bank" and as "trustee" literally "dumped" money into the hotel company, in the former capacity for operating expenses, improvements, and principal payments on the bonds, and in the latter, for ground rent, taxes, and guaranty payments as well as interest on the advances so made.

## "BANK" LOANS

The borrowings of the Hotel Hollenden Co from the Guardian Trust Co (bank), as reflected by the bank's books, were as follows:

(G-15-69-2, G-15-39-13)

Date	Loans	Payments	Balance
1923 Aug 25.....	\$75,000 00		\$75,000 00
1924 Nov 14.....	100,000 00		175,000 00
1925			
Jan 15.....	174,000 00		249,000 00
June 12.....	150,000 00		399,000 00
Sept 15.....	61,000 00		460,000 00
Oct 26.....	150,000 00		610,000 00
Oct 30.....		\$688 10	609,331 90
1926 Mar 4.....	70,000 00		679,331 90
1927 Nov 30.....	160,125 00		839,456 90
1928			
June 4.....	157,687 50		997,144 40
July 7.....		32,687 50	964,456 90
Sept 13.....		25,000 00	939,456 90
Oct 26.....		30,767 67	908,689 23

<sup>1</sup> Each of these loans was secured by a separate second mortgage, each subject to those preceding, and all subject to the first mortgage indenture

(G-15-39-15, 15-39-10)

On June 25, 1930 the board of directors of the New England Co. (subsidiary of the Guardian Trust Co—see transaction below) "acquiesced" in the request of the Hotel Hollenden Co to refund all of its obligations to date (excepting the trustees' advances), and authorized the acceptance of a second mortgage for the total amount of \$1,546,189 23

The farcical nature of these gestures by the bank and its subsidiary is more readily apparent when it is taken into consideration that the security of the first mortgage bondholder was so obviously impaired—that is, at least obvious to the officers of the bank, the subsidiary, and the hotel company in their several capacities

## TRUSTEES' ADVANCES

Article 8, section 1, paragraph B of the trust indenture provides that:

(G-15-8-59)

The trustee shall not be responsible for any recitals herein or in said bonds, \* \* \* or payment of taxes, charges, assessments, or liens upon the same, or otherwise as to the maintenance of the security hereof or for the use of the bonds secured hereby or the proceeds thereof

Notwithstanding this exemption granted the trustee, from obligating itself or advancing funds for the security of the bonds, the Guardian Trust Co, trustee, saw fit to borrow moneys from the Guardian Trust Co. (bank) for the purpose of meeting payments for "taxes, assessments, and ground rent" on the hotel property securing the bond issue, which later prompted a bondholder to inquire of the trust company as follows:

(G-15-38-L, p 9, G-15-38-1)

We would also like to know what authority you, as trustee, had in advancing money as outlined in the notice dated May 11

A detailed summary of these advances made by the trustee is as follows:

(G-15-44-18, G-15-69-1, G-15-69-4)

Date	Nature of payment	Debit	Credit	Balance
1924 Sept 30.....	Balance of ground rent due Oct 1, 1924.....	\$37,234 08	-----	\$37,234 08
1925				
Jan 2.....	Ground rent due Jan 1, 1925.....	37,500 00	-----	74,734 08
Jan 5.....	Taxes for the first half of the year 1924.....	47,713 52	-----	122,447 60
Apr 1.....	Ground rent due Apr 1, 1925.....	37,500 00	-----	159,947 60
Do.....	Guaranty fund under the lease due Apr 1, 1925.....	6,250 00	-----	166,197 60
July 1.....	Ground rent due July 1, 1925.....	37,500 00	-----	203,697 60
Do.....	Guaranty fund due under lease July 1, 1925.....	6,250 00	-----	209,947 60
July 16.....	Taxes last half of 1924.....	47,652 21	-----	257,599 81
1926				
Jan 20.....	Less payment.....	-----	\$25,000	232,599 81
Do.....	Taxes first half of year of 1925.....	50,295 62	-----	282,895 43
Apr 30.....	Interest on above.....	18,360 23	-----	301,255 66
Aug 2.....	Taxes second half of 1925.....	50,295 63	-----	351,551 29
1927				
Feb 1.....	Taxes first half of 1926.....	44,879 74	-----	396,671 03
Sept 2.....	Taxes second half of 1926.....	44,879 74	-----	441,550 77

**GUARDIAN "DUMPS" THE HOTEL HOLLENDEN Co OBLIGATIONS ONTO ITS SUBSIDIARY, THE NEW ENGLAND Co.**

(G-15-69-1 and 2, G-15-7, G-15-7)

On December 22, 1928, the Hotel Hollenden Co.'s obligations consisting of notes to the Guardian Trust Co (bank) \$908,689 23, advances from the Guardian Trust Co (trustee) \$441,310.77, were "sold by the Guardian Trust Co to the New England Co" for \$1,350,000, the cash represented being raised by the New England Co. on a loan from the Metropolitan Life Insurance Co. on December 18, 1928, in the amount of \$3,250,000, secured by a first mortgage on the Guardian Bank Building.

A better term for this "sale" would be "burial" in the New England Co. as the loans were later written off and the advances have not been repaid by either the subsidiary or the hotel company to date, with the prospect that they never will be, unless and until the mortgage on the leasehold is foreclosed. Even in that event the question then arises (if the leasehold is of value) whether or not the trustee is to be construed as a preferred creditor over the bondholders. This question will, no doubt, have to be decided by the courts, notwithstanding the provision of section 2 of article 8 of the indenture that

(G-15-8-62, G-15-66)

The trustee shall have a prior lien hereunder upon the mortgaged property for—advances—incurred \* \* \*.

due to the misleading information conveyed to the bondholders by H. C. Robinson and other officers of the Guardian Trust Co concealing the fact that the bonds were actually in default since September 16, 1924

**ADDITIONAL LOANS AND ADVANCES TO THE HOTEL HOLLENDEN Co.**

Notwithstanding the staggering losses already sustained by the Guardian Trust Co. (which it had successfully concealed by burying them in the New England Co,) both as a bank and as trustee, it

continued to make loans and advances to the hotel company, as did its subsidiary, the New England Co, direct.

The additional loans and advances, including those to date, are reflected as follows:

(G-15-69, pp 3 to 10, inclusive, G-15-77)

Date	By Guardian Trust Co		By New England Co
	Bank	Trustee	
1928 Dec 22 (to date).....			\$1,350,000 00
1929			
Feb 6.....			25,000 00
Mar 11.....			25,000 00
Apr 11.....			25,000 00
May 7.....			55,000 00
June 1.....			50,000 00
June 27.....			45,000 00
Oct 23.....			50,000 00
Nov 12.....			50,000 00
Dec 2.....			100,000 00
Dec 11.....			50,000 00
1930			
Jan 16.....			50,000 00
Feb 13.....			50,000 00
June 6.....			62,500 00
July 7.....	\$25,000		
July 25.....	75,000		
Aug 9.....	25,000		
1931			
Jan 16.....			140,000 00
Mar 5.....	35,000		
Apr 11 (G E Supp Co notes discounted).....	28,000		
Apr 27.....	188,000		188,000 00
Apr 29.....		\$42,172 36	
Apr 29.....		<del>42,172 36</del>	42,172 36
			2,257,672 36

<sup>1</sup> As reflected above, the additional loans by the Guardian Trust Co (bank) totaling \$188,000, as well as the additional advance of the trustee of \$42,172 36, were "sold" to the New England Co on April 27 and 29, 1931, respectively. The minutes of the meeting of the board of directors of the New England Co on May 5, 1931 (day following hotel receivership), approves the "purchase" of the notes totaling \$188,000, but the directors appear to have forgotten to go through the formality of approving the "purchase" of the note covering the advance of \$42,172 36

<sup>2</sup> Transferred to

(G-15-77)

ANALYSIS

Trustees advances.....	\$483,483 13
"Secured" (second mortgage).....	1,546,189 23
Unsecured <sup>1</sup> .....	228,000 00
Total.....	2,257,672 36

(G-15-62)

An interesting "sidelight" to the making of the above loans and advances by the Guardian Trust Co. is contained in a letter of W. Iccomb, hotel company auditor, dated November 13, 1929, setting out a "statement of amount required for special purposes for the 6 months from December 1, 1929 to June 1, 1930" indicating (as expressed by counsel in 1931).

(G-15-62, p. 3)

\* \* \* The habit is so strongly impressed upon the employees of the hotel to come to the Guardian for assistance \* \* \*

(G-15-77)

The grand finale of the Hotel Hollenden Co. financing was reached on December 27, 1932, when the board of directors of the New England Co. decided to "write off" the company's investments in the hotel. At this meeting Mr. J. A. House, its

(G-15-87-2)

\* \* \* President stated we have had recent appraisals made of the land and building owned by this company having in mind that if said appraisals were for a sufficient amount in excess of the present amount for which they are carried on the company's books, we would use the excess amount to write-off the notes receivable and first mortgage bonds of the Hotel Hollenden Co., which are now carried on this company's books

The treasurer, Mr. Green, reported the following appraisals of the land

(G-15-87-2)

Henry Hertel.....	\$2, 603, 904 00
W J Purvis, special representative, Metropolitan Life Insurance Co, as of Dec 17, 1932.....	2, 063, 760 00
He also reported an appraisal of the building by George L Craig as of Dec 28, 1932 to have a present sound value of.....	<u>3, 137, 308 00</u>
On motion made, seconded, and unanimously carried, the officers are hereby authorized and empowered to place on the company's books the value of the land and building as follows	
Land.....	1, 939, 200 00
Building.....	<u>3, 041, 099 14</u>
Total value of land and building.....	4, 980, 299 14
Which land and building are now being carried on the company's books for.....	<u>3, 021, 505 35</u>
Thereby creating a credit, through revaluation of assets, of..	<u>1, 958, 793 79</u>
Which is hereby authorized to be credited to an account entitled "Appraised surplus"	
On motion made, seconded, and unanimously carried, the officers are hereby authorized and directed to charge to "Appraised surplus" notes receivable of the Hotel Hollenden Co.....	1, 751, 243 79
First mortgage leasehold bonds the Hotel Hollenden Co (\$220,-550 par).....	<u>207, 550 00</u>
	<u>1, 958, 793 79</u>

Attention is directed to the flexibility of the value of the Guardian land and building, which, in this instance "took up the slack" caused by the aforementioned write-off, to the penny. Notwithstanding the apparent concealment of the loss on a published statement of the New England Co., the Guardian Trust Co.'s equity in its subsidiary (if the appraisals were based on fact) was reduced proportionately, for had the enhancement in value actually existed, on liquidation the benefits therefrom would have accrued to the stockholder, i e, the Guardian Trust Co

The trustee's advances of \$438,483 13 were not included in the above "write-off", but from the present outlook they might just as well have been included.

(G-15-45)

In the opinion of the writer, the primary motive behind the making of the loans and advances by the Guardian Trust Co. and the New England Co. was the knowledge its officers had of the hotel

company's precarious position Having underwritten the bond issue to the extent of over 100 percent of the purchase price of the property, the bank (as the underwriter) had to continually finance the company or else allow it to go into foreclosure, which would have disclosed the company's weak financial condition from the very day of its birth. The Guardian did not succeed entirely in doing this, but at least it headed off some very embarrassing court actions and postponed the inevitable, which occurred on May 4, 1931, when foreclosure proceedings were finally begun by the trustee and a receiver in rem (Theodore De Witt, former manager) appointed, at the trustee's request As we have already pointed out, however, the foreclosure has not been consummated as yet nor has the lessor (the Hotel Hollenden Co ) canceled its lease, the latter no doubt due to income-tax reasons

(G-15-98)

The position of the Guardian Trust Co is unique in that, as trustee, it has instituted foreclosure proceedings against itself, the owner of all of the common stock of the Hotel Co.

The profit and loss account of the Hotel Hollenden Co for the 10-year period from 1923 to 1933 shows that it suffered a loss every year except 1929 when a profit of \$10,000 was reflected These losses with "surplus adjustments" ranged from \$50,000 and \$80,000 to \$500,000 each year. From 1923 to 1933 the deficit of the company increased from \$63,633 37 to \$2,088,909 17, or a net loss for the period of \$2,025,275 80.

(G-15-27)

On January 28, 1925, the Hotel Co board of directors approved the employment of Theodore De Witt as manager of the Hotel Hollenden Co at the salary of \$10,000 per annum and other considerations disclosed in a copy of the agreement accompanying this report.

(G-15-27-1)

The history of Theodore De Witt's connection with the Hotel Hollenden Co. began when he was employed by the company on January 23, 1925. However, the events just preceding 1925 seem to have had a definite bearing on his being employed (at a very substantial compensation) and for this reason are being set out in detail.

#### PROSECUTION FOR VIOLATION OF THE NATIONAL PROHIBITION ACT

While engaged as manager-steward of the exclusive Union Club of Cleveland (the membership of which is more or less restricted to persons of wealth) De Witt was indicted on March 30, 1922, for his participation in a conspiracy to violate the National Prohibition Act The docket of the United States attorney at Cleveland discloses that he was tried and convicted on June 30, 1922, fined \$100 and sentenced on July 3, 1922, to 2 years in the Federal penitentiary at Atlanta, Ga. An appeal was filed on July 7, 1922, but the verdict of the lower court was affirmed on June 30, 1923 A "petition for writ of certiorari" was filed in the October 1923, term of the Supreme Court of the United States which was also denied, the mandate of the Circuit Court of Appeals being filed on December 7, 1923 De Witt

began his sentence on January 2, 1924, and was paroled on September 1, 1924, after the expiration of one third of the sentence. During the period between his conviction on June 30, 1922, and January 2, 1924, when he was admitted to the Atlanta Penitentiary, Theodore De Witt was at liberty under bond and remained in the employ of the Union Club.

An affidavit of one Charles Cianciolo (a coconspirator), who was used as a Government witness in the trial of De Witt, discloses that the former was advised when he was engaged in the conspiracy, that—

(G-15-93-A)

\* \* \* the Union Club would be back of us \* \* \*  
and to keep him quiet, Burney (another defendant), showed him—

(G-15-93-B)

\* \* \* some papers he had in his possession which he stated would help us get out of any trouble and that these papers showed \* \* \* the names of parties to whom the liquor was consigned, and, therefore, that the Union Club would necessarily have to take care of everybody that was arrested \* \* \* .

On September 15, 1922, after his conviction and while he was awaiting the outcome of his appeal, De Witt wrote Federal Judge D. C. Westenhaver, stating—

(G-15-93-B, p 1)

\* \* \* the truth was never known in this matter—the district attorney's office does not know the truth today I am convinced would your honor really know the facts—you would not permit this case to stand in its present form.  
\* \* \*

However, Judge Westenhaver did not see fit to give De Witt an interview, advising him that—

(G-15-93-D, p 3)

\* \* \* If there are any matters proper to be brought to my attention, your counsel, Mr. W. H. Boyd, will do so in the presence, undoubtedly, of the United States attorney \* \* \*

A number of the officers and directors of the Guardian Trust Co. were members of the Union Club, a few of the more prominent ones being S. M Bond, J. A House, and H. C. Robinson.

(G-15-93-C)

An "application for executive clemency" for De Witt was filed on October 15, 1923, the signers of which are described in a letter of Judge Westenhaver as follows:

(G-15-93-C, p 2)

\* \* \* Theodore De Witt is and was the steward of the most prominent club in the city of Cleveland The names signed to his application for executive clemency would serve in part for the roster of its membership. \* \* \*

The application was denied by the president.

(G-15-93-D, pp. 7 and 26)

An "application for pardon to restore civil rights" was filed by De Witt on May 14, 1926, to which were attached affidavits and testimonials of many of Ohio's prominent citizens (including members of the Union Club) several of whom referred to De Witt's having been a "tool", a "goat", etc, for others

Mr. H. C. Robinson, senior vice president of the Guardian Trust Co., whose testimonial letter accompanied the above application, stated therein that—

(G-15-93-D, p 17)

\* \* \* I have known Mr De Witt for the past 10 years and am familiar with the circumstances resulting in his trial and conviction. Whatever may have been his degree of guilt, it is of no consequence now \* \* \* As president of the Hotel Hollenden Co., I was instrumental in securing for him the position of manager of the hotel \* \* \*

## EMPLOYMENT AS MANAGER OF THE HOTEL HOLLENDEN

(G-15-27-1)

On January 23, 1925 (shortly after his release from Atlanta), De Witt, through the instrumentality of H. C. Robinson, was employed by the Hotel Hollenden Co. as manager at the salary of \$10,000 per annum, plus a suite of rooms and board at the hotel for himself, wife, and daughter, without cost and 10 percent of the net profits of the hotel after all charges.

The terms of his employment would seem to indicate that more consideration was given to De Witt than he had received while in the employ of the Union Club where he received \$5,000 per year in salary to September 1, 1923, when the following resolution was passed by the club's board of directors:

(G-15-27-4)

The salary of the manager of the club at the present time is \$5,000 per year plus accommodations and board for himself and family. His desire to maintain living quarters away from the club was made known and it was thereupon moved by Mr. Strong, seconded by Mr. Coulton and carried that his salary be adjusted to \$7,000 per year plus one room for himself and luncheon and that rooms 12 and 14 be vacated and made available for guests.

Thereafter, De Witt received \$7,000 per annum (including the period of his absence while at Atlanta) to January 1925, when he entered the employ of the Hollenden Hotel.

The above hotel employment agreement was changed on January 21, 1926, when Mr. Robinson wrote De Witt setting out the new "terms of \* \* \* employment as follows: "

(G-15-27-3)

A. You are to give your *undivided time* and attention to the management of the hotel and your contract of employment is to continue for 3 years from January 1, 1926, until January 1, 1929.

B. Your salary is to be fifteen thousand dollars (\$15,000) per annum including living quarters at the hotel and board for yourself and family.

C. In the event that the hotel is sold during the first year of your employment you are to receive from the purchase price the sum of ten thousand dollars (\$10,000). If the hotel is sold during the second year of employment you are to

receive twenty thousand dollars (\$20,000), and if the hotel is sold during the third year of your employment, you are to receive thirty thousand dollars (\$30,000)

(G-15-41)

On January 14, 1929, the board of directors of the Hotel Co. approved a contract with De Witt dated January 1, 1929 (running for 20 years) at the annual salary of \$15,000 and other considerations such as, a suite of rooms, meals, entertainment expenses, etc , without charge This contract also stipulated that De Witt was to receive 125 shares of the Hotel Co stock annually for the full 20 years The 2,500 shares of stock necessary to comply with this provision of the contract was placed with the Guardian Trust Co , as trustee

The contract was practically a renewal of that of January 1, 1926, except that De Witt was allowed to—

(G-15-41)

\* \* \* devote portions of his time to other developments but only when the same can be done without prejudice to the best interests \* \* \*

A summary of all of the management contracts, etc , secured by Theodore De Witt thereafter were.

1. The Hollenden Hotel, Cleveland, Ohio, \$1,250 per month
2. The Neil House, Columbus, Ohio, \$1,000 per month
3. The Mayflower Hotel, Akron, Ohio, \$625 per month
4. The La Salle Hotel, Chicago, Ill , \$1,250 per month <sup>1</sup>
5. The Fenway Hall Hotel, Cleveland, Ohio, \$166 66 per month
6. The Lake Shore Hotel, Cleveland, Ohio, \$3,500 per year <sup>1</sup>

(G-15-94-A)

In November 1930, De Witt was offered a chance to purchase a hotel in Columbus, Ohio, the Neil House The company owning this hotel had defaulted on its bond issue and had gone into receivership De Witt thereupon wrote a letter to Robinson outlining the deal that had been offered to him

At a meeting of the Hotel Hollenden Co Board of Directors on December 1, 1930, it was—

(G-15-34)

proposed to form a holding company to which De Witt will transfer

His entire income from the said Neil House, also any and all capital stock in said Neil House which he receives

His entire salary which he receives from the Hotel Hollenden Co also all the capital stock now or hereafter received, in said Hotel Hollenden Co

All his income and stock from both the Main State Holding Co , of Akron, and the Mayflower Hotel Co , of Akron The latter proposition providing the proposed holding company assumes paying his obligation of \$150,000 to the Main State Holding Co in payment of capital stock

Any and all other income and/or remuneration which he receives from connections to which he devotes some portion of his time in a business way

The Guardian Trust Co will transfer to said holding company 7,500 shares common stock the Hotel Hollenden Co

De Witt would receive a salary of \$20,000 from said holding company

The stock ownership of said holding company would be owned, 75 percent by the Guardian Trust Co or its nominee and 25 percent by De Witt

Said holding company would supply the \$500,000 with which to buy the proposed first mortgage leasehold bonds on the Neil House above referred to

This board is unanimous in favor of the holding company set-up approximately as above outlined

<sup>1</sup> In receivership when contract was signed.

On March 3, 1931, the De Witt Hotels Co. was formed and Theodore De Witt was installed as its president

(G-15-78)

On May 4, 1931, De Witt was appointed receiver for the Hotel Hollenden, on which date the trustee filed a petition of foreclosure of the mortgage securing the \$2,000,000 bond issue

#### RÉSUMÉ OF DEMAND FOR SERVICES OF THEODORE DE WITT

(G-15-100-2, par 3, G-15-95, G-15-95-4)

The so-called "demand" for De Witt's services seems to be limited to the Guardian Trust Co. or enterprises where the Guardian could be influenced to put in additional capital and those where De Witt's employment in receivership was bought, as was done in the case of the La Salle of Chicago, which he has since lost. Robinson's letter recommending De Witt to the bondholders' committee of the La Salle (overlooking the personal interest of the Guardian in De Witt's employment) is amusing wherein he stated that

(G-15-95-4)

\* \* \* The Hollenden was rehabilitated and was making progress in liquidating its obligations when it was hit by the depression and forced into receivership \* \* \*

The Lake Shore management deal is another example of where De Witt seems to have in some measure bribed his way into the receivership. This is suggested in a letter dated December 24, 1931, which he wrote to W R Green, Guardian Trust Co., vice president, stating in part:

(G-15-97, p 1)

Please issue a De Witt Hotels Co. check for \$335, made payable to myself, and I will explain to you in person what this \$335 is going to be used for

De Witt's apparent success in obtaining others to invest their money in hotel enterprises seems to have been blocked in the Hotel Winton (now Hotel Carter) negotiations, at which time he advised Robinson

\* \* \* Confidentially, between you and me, if you could induce Norton to foreclose on this property and to invest \$200,000 additional capital and let me take care of the operations of the property, we will make a lot of money \* \* \*

The Winton was taken over by the Prudential Life Insurance Co. and improvements made, but De Witt was not employed

The records indicate that the only one who benefited from the Guardian Trust Co.'s attempt to conduct a hotel business was Theodore De Witt. It is inconceivable that a man with his so-called "miraculous" ability in hotel management could suffer so many failures (see De Witt Hotels Co. section, also) over so short a period of years (from 1925 to 1933)

#### THE DE WITT HOTELS CO

Notwithstanding the tremendous losses already sustained by the Guardian Trust Co. (and the New England Co.) in the "financing" of the Hotel Hollenden Co., the trust company (2 months before the

recervership of the Hollenden in 1931) saw fit to become heavily interested in other hotel projects, namely, the Neil House in Columbus and the Mayflower Hotel at Akron, Ohio

In accordance with the proposal of the directors of the Hotel Hollenden Co on December 1, 1930, to control these "investments", the De Witt Hotels Co was organized on March 3, 1931, its articles of incorporation setting out as its purpose—

(G-15-59)

to own, hold, manage, operate, and control hotels with the power to acquire by purchase, lease, or otherwise real estate necessary and convenient for said purpose and to sell, mortgage, lease, convey and acquire, and otherwise deal in shares of capital stock, bonds, mortgages, personal property and securities in, upon, and concerning hotels and hotel building securities, and incidental thereto; to acquire hotel operating contracts and to receive the benefits of operating and management contracts either in corporate name or otherwise, and to contract with hotel managers for the profits and benefits to be derived from management contracts and to do all things necessary, convenient and incidental to said purposes

The company's authorized capital is \$500 represented by 500 shares of common stock without par value, subscribed for by—

(G-15-52, 15-58)

Stockholders	Shares	Director and officer
The New England Co.....	492	
H C Robinson.....	1	Director
Theodore De Witt.....	1	Director and president
Sydney A Daws.....	1	Director
R P Sears.....	1	Do
J A House.....	1	Do
A W Dean.....	1	Director and vice president
R S Hall.....	1	Director
W R Green.....	1	Director and treasurer
H J Coates.....		Secretary
Total.....	500	

(G-15-53)

At the first meeting of the board of directors held the day a contract with Theodore De Witt was approved, the substance of which, in proposal form, has already been set out.

On December 16, 1931, the balance sheet of the company disclosed the company's—

(G-15-56-1)

TOTAL ASSETS	
Cash in bank.....	\$2, 776 08
Investments	
\$465,900 par the Neil House Hotel Co, first mortgage leasehold 7's.....	\$442, 605 00
6,644 shares the Neil House Hotel Co common stock.....	44, 715 00
10,000 shares the Hotel Hollenden Co. common stock.....	1, 202 32
1,000 <sup>1</sup> shares the Main State Holding Co capital stock.....	100, 000 00
	<u>588, 522. 32</u>
	<u>591, 298. 40</u>

<sup>1</sup> An additional 500 shares the Main State Holding Co was also subscribed for by Theodore De Witt to paid for out of his salary contract (See P & L reconciliation, p 44 for amounts paid)

The investments above, all of which were acquired under the terms of the contract with Theodore De Witt, dated March 4, 1931, are described as follows.

THE NEIL HOUSE HOTEL CO , \$465,900 PAR FIRST MORTGAGE LEASEHOLD  
7-PERCENT BONDS, \$442,605

These bonds plus an amount of \$34,100 sold, are the \$500,000 par value purchased under resolution of the board of directors of March 4, 1931:

(G-15-52, p 3)

\* \* \* that in accordance with the terms of said contract with Theodore DeWitt, this company purchase the entire issue of the first mortgage leasehold 10-year 7-percent sinking-fund gold bonds of the proposed the Neil House Hotel Co , Columbus, Ohio, amounting to a total par value of \$500,000 and secured by all of the real and personal property of said proposed company, or as much of said issue as is not subscribed for by others, as, if, and when the same are offered for sale, at a price not to exceed 95 percent of their par value; that the treasurer of this company be and is hereby authorized and directed to negotiate and complete the purchase of said bonds

*Be it further resolved,* That the president and secretary of this company be and they are hereby authorized and directed to borrow from the Guardian Trust Co , of Cleveland, Ohio, such a sum of money, not to exceed \$475,000, as shall be required for the purchase of the said bonds in accordance with the foregoing resolution, and to execute in the name and on behalf of this company, its promissory note as evidence of such indebtedness, for such period of time, and upon such terms as may to them in their discretion seem advisable, and that said officers are hereby authorized to pledge all of said bonds, for the purpose of securing any moneys so borrowed; to endorse the same; and that said officers are hereby authorized to do all things and perform all acts necessary to the full accomplishment of the spirit and intent of this and the foregoing resolutions

Six thousand six hundred and forty-four shares of common stock, \$44,715, comprise 5,000 shares of bonus stock received in the purchase of the \$500,000 of bonds above, less 221 shares disposed of in the sale of \$22,100 of the bonds to former Neil House bondholders or a net amount of 4,779 shares of bonus stock plus 1,865 shares of common stock received in exchange for \$186,500 par first mortgage bonds of the Neil House. The \$44,715 being the "cost" of these bonds (before the exchange) to the company when on May 19, 1931, it agreed—

(G-15-51, G-15-94 "o")

to assume and pay the liabilities of Mr. Theodore De Witt to the Guardian Trust Co. in the amount of \$44,715 and accrued interest, and in so doing become the owner of securities pledged to the above-mentioned liabilities, which securities are as follows Depository certificates of deposit represent \$179,500 par value first mortgage leasehold 6½-percent bonds of the Neil House, Columbus, Ohio, also \$7,000 par value of said bonds

(G-15-52, p 4)

The Hotel Hollenden Co , 10,000 shares of common stock, \$1,202 32, was acquired under resolution of the board of directors on March 4, 1931, when the stock was purchased from the New England Co

The Mam State Holding Co , 1,000 shares of common stock, \$100,000, was acquired under resolution of the board of directors on March 4, 1931, and in accord with agreement with Theodore De Witt of the same date reading in part that the De Witt Hotels Co was—

(G-15-53, p. 4)

To assume and pay off as hereinafter provided the indebtedness of party of the second part for which the said 1,000 shares of the Main State Holding Co. have been pledged at the Central Depositors Bank & Trust Co., Akron, Ohio, so that said stock so pledged together with any other collateral pledged for the same purpose may be released to party of the second part, and so that said stock may thereupon be endorsed and transferred to party of the first part; and to reimburse party of the second part, as hereinafter provided, for all net cash outlay and expense together with interest at the rate of 6 percent per annum thereon which party of the second part has made or been subjected to in the purchase of said shares of stock so agreed to be assigned by party of the second part to party of the first part.

(G-15-53, exhibit B, p 1)

The files of the Guardian Trust Co contain no record of any transactions of Theodore De Witt with the Main State Holding Co other than the management contract of De Witt's dated April 2, 1931, setting out the terms of the latter's proposal of April 12, 1929, covering the purchase of the holding company's stock.

(Exhibit 15-101-6)

However, the loan department records disclose that De Witt borrowed from the Guardian Trust Co on July 31, 1929 (approximate date of purchase of above stock) \$30,000, which was paid off in installments of approximately \$3,000 per month.

(G-15-98)

The Guardian Trust Co.'s interest in the Neil House appears to have been created through the salesmanship of Theodore De Witt, who at the time was the receiver for the Neil House. His attempts at successful hotel managements seem to be limited to prospectuses, as distinguished from actual operating reports. His record of operation of the Hollenden fails to substantiate his reputation of a "super-hotel manager" or the "miracles" he wrought in putting the Hollenden on its feet, unless those subscribing thereto misunderstood the significance of "red ink" figures on accounting statements and reports. From January 1925 when De Witt took charge of the Hollenden, the operating deficit increased from \$384,061.63 to \$1,083,372.26 on October 31, 1930, a net increase of \$699,310.63, in the face of the costly improvements to the hotel.

(G-15-94-a, pp. 1-4)

Notwithstanding this past record, De Witt succeeded in selling the bank officers (House and Robinson) on the contents of his prospectus letter of November 26, 1930, in which he estimated the annual earnings accruing from this hotel to be \$42,000. How far this actually fell short can be seen from the reconciliation below.

## RECONCILIATION OF EARNINGS DE WITT HOTELS CO.

(Estimated to actual)

In sharp contrast to the prospectus of Mr. De Witt under date of November 26, 1930, to—

(G-15-94-A, pp 1-4)

\* \* \* bring to the Hotel Hollenden Co the following (annual) earnings

Columbus (Neil House).....	\$42,000
Akron (Mayflower).....	68,000
Saving in advertising.....	25,000
Combined buying power.....	25,000
	<hr/>
	160,000

(G-15-56, pp 5 and 7)

The profit and loss account of December 31, 1933 (approximately 3 years), reflects the result of operations as follows:

Net loss 1931.....	\$1,243 42
Net profit 1932.....	16,997 11
Net loss 1933.....	4,137 06
	<hr/>
Surplus Dec 31, 1933.....	11,616 63

(G-15-56-7)

*Balance sheet, Dec. 31, 1933*

ASSETS	
Cash in bank.....	\$166 44
Neil House Hotels Co	
First mortgage L H and 7's (\$452,000 par).....	429,400 00
Common stock, 7,074 shares.....	46,275 03
Hotel Hollenden Co common stock, 10,000 shares.....	1,202 32
Main State Holding Co common stock, 1,075 shares.....	107,500 00
Payments on the Main State Holding Co capital stock.....	10,937 50
	<hr/>
	595,481 29
	<hr/>
LIABILITIES	
Notes Payable	
The Guardian Trust Co.....	471,781 32
The First Central Trust Co.....	28,750 00
Vendor's lien.....	66,250 00
Accrued salary.....	14,583 34
Capital stock.....	500 00
Surplus paid in.....	2,000 00
Profit and loss.....	11,616 63
	<hr/>
	595,481 29

It will be seen that the Guardian Trust Co through its loans, etc, to the De Witt Hotels Co. has an interest in the latter, at present, of approximately \$475,000 without considering the trust company's additional interest (including approximately \$2,000,000 charged off) in the Hollenden Hotel Co (loans and advances) of approximately \$2,500,000.

## CONDITION OF HOTEL OPERATING COMPANIES

(G-15-98, G-15-100-4 and 7, G-15-101-1)

All three of the hotel operating subsidiaries of the De Witt Hotels Co. are at present in financial difficulties, the Neil House and the Mayflower facing the problem of reorganization or refinancing, with the Hollenden hopelessly insolvent

<sup>1</sup> Includes \$4,687 50 income on management contracts applied on stock of the Main State Holding Co

<sup>2</sup> Includes \$6,260 income on management contracts applied on stock of Main State Holding Co

NEGOTIATIONS OF THEODORE DE WITT TO PURCHASE THE DE WITT  
HOTELS CO

Since the closing of the Guardian Trust Co. and due to the financial embarrassment of the De Witt Hotels Co , the management fees from the various hotels of which De Witt is the manager are being retained by him for the reason—

(G-15-100-2, p 3)

\* \* \* that the Guardian Trust Co cannot render to me that service contemplated by our original plan \* \* \* based upon the Guardian Trust Co. financing hotel projects in which I could obtain management contracts \* \* \*

On July 11, 1933, De Witt offered—

(G-15-100-5, p 4)

\* \* \* to purchase the De Witt Hotels Co stock for a consideration of \$25,000 cash \* \* \* if the liquidator is willing to consider \* \* \* plan for the Neil House \* \* \* refinancing

On October 11, 1933, F. R. Hanrahan, liquidator, accepted the above offer—

(G-15-100-6)

\* \* \* subject to the approval of I. J. Fulton, superintendent of banks, Reconstruction Finance Corporation, National City Bank, and the necessary approval of the common pleas \* \* \*

(G-15-100-6)

Mr. Hanrahan accepted this agreement, however, with the provision that the Neil House bonds were to be refunded and the De Witt Hotels Co note due the Guardian Trust Co. be partially liquidated.

(G-15-100, pp 9-13)

The approvals referred to have since been secured by the liquidator and the sale is expected to be consummated by him at an early date.

## INQUIRIES OF BONDHOLDERS, HOTEL HOLLENDEN CO. BONDS

During 1924, before the Guardian took control of the Hotel Hollenden Co , there had been—

(G-15-38-A, p 1)

\* \* \* a great deal of rumor from time to time about the Hollenden situation \* \* \*

(G-15-38-A)

circulated; and this became the basis for inquiries from bondholders and their representatives. From the correspondence it appears that these letters were replied to by various officers of the Guardian Trust Co From the tenor of the replies the attitude of the bank in "lulling" the bondholders into a sense of security is readily apparent.

(G-15-38-B, p. 1)

On April 3, 1925, Mr. Emerson of Hyney, Emerson & Co. (co-underwriters) wrote the Hotel Hollenden Co. calling attention to the

nonreply to his letter of February 7, in which letter the hotel company was notified—

that the annual audit of your company for the year of 1924 would be due on March 1, 1925, in accordance with the trust indenture.

Mr. Robinson, as vice president of the Guardian Trust Co., replied to the second letter, when he stated that—

(G-15-38-B, p 2)

You know the situation as well as any one We did not go to the expense of employing a certified public accountant to make an audit of the Hollenden books for the year ending December 31, 1924

The company lost approximately \$180,000 for the period. The Guardian Trust Co., trustee, has advanced carrying charges for ground rent, interest, and taxes Furthermore, it has advanced certain sums of money to rehabilitate the property and put it on a better earning basis

It is our conclusion you ought to satisfy those owning Hollenden bonds who are your customers when inquiries are made without presenting a formal audit which, of course, I suppose they are entitled to under the terms of the bond issue.

The more quiet we can keep the real situation here, in reference to the security back of the bonds, the better it will be for all persons interested in the long run.

On April 10, 1925, Mr. Robinson wrote to L. B. Foote giving in the letter his

\* \* \* idea of answering the inquiry of Arthur J. Straus Co of April 8, by stating that—

(G-15-38-C)

We have every reason to believe that the \$75,000 due June 1 of this year will be paid

Mr Robinson made this reply notwithstanding his knowledge that the net loss for 1924 of \$185,000 (operating only—without considering the deficit for 1923 of \$63,633 37) more than wiped out the company's total invested capital of approximately \$135,000. The deficit reflected by the books of the hotel company at December 31, 1924, was \$384,061 63 (See inquiry of Aug 27, 1925, below.)

(G-15-38-D)

It seems from a letter of H C Robinson's under date of April 21, 1925, the Guardian was forced to do some explaining as to its position in the Hotel Hollenden At least Mr Robinson was consistent in his attempt to mislead the person making the inquiry by attempting to conceal the Guardian Trust Co's stock interest (through its officers being trustees of voting trust) in the hotel company, which in October 1925 became a direct stock ownership If the tragic phase of the bank's course could be overlooked, the following paragraph of Mr Robinson's letter might be considered humorous.

(G-18-38-D)

\* \* \* The affairs of the Hollenden Hotel Co are administered by a board of directors that takes independent action on all matters pertaining to the hotel management and the Guardian Trust Co does not interfere in any course of action which the directors of the hotel determine to be just and proper You can readily see why this distinction is maintained, not only because it is a legal one but also because as a bank we could not afford to be drawn into corporate matters where we simply acted as trustee If we did permit ourselves, as a banking institution, to be influenced in all cases where we acted as trustee for this or that kind of an enterprise we would be in difficulty more or less all the time.

On August 27, 1925, H. C. Robinson replied to an inquiry of the Ohio Savings Bank & Trust Co, stating that—

(G-15-38-A, p 6)

\$75,000 of the first mortgage bonds matured on July 1, and were promptly paid and undoubtedly other maturities will be cared for in the same manner by the hotel company

(G-15-91-1)

At the time this letter was written, the sinking fund account shows that although the Guardian Trust Co. had paid these bonds at maturity, the hotel company had only paid into the fund \$45,000, the balance of \$30,000 not having been paid until September 5, 1925.

The files of the credit department of the bank contain a memorandum under date of January 9, 1926, instructing that—

(G-15-38-F)

\* \* \* Any inquiries regarding Hotel Hollenden Co and until further notice to be referred to Mr Robinson in whose files all recent data are kept

From this memorandum and the fact that thereafter all replies to inquiries were answered by him, it appears that Mr. Robinson assumed the complete job of "stalling" the bondholders. In these replies he consistently stated that—

(G-15-38-J, p 2)

\* \* \* The Hotel Hollenden Co has not published any financial statement, but it has promptly taken care of all its obligations and, in our opinion, will continue to do so

or that—

(G-15-38-H, p 2)

The hotel company has been meeting interest and principal maturities of the bond issue promptly \* \* \* but refuses to issue a financial or earnings statement. \* \* \*

Replies of the above nature persisted until as late as April 1931, less than a month before the filing of the foreclosure petition and the appointment of the receiver on May 4, 1931. It will be noted also that as late as March 13, 1931, Mr Robinson had the temerity to advise the American State Bank of Saginaw, Mich, that—

(G-15-38-T)

The Hotel Hollenden Co is following its usual policy of not giving out any figures with reference to its operations and that it has taken care of its interest and principal payments promptly when they became due \* \* \*

The falsity of the statements relating to payments by the company of bond maturities, interest, etc, are readily apparent, but this breach of trust on the part of the trustee and the brazenness of the writer to withhold the operating and financial statements is unforgivable in the face of the indenture which specifically states that the company shall furnish the "trustees and \* \* \* bankers", which was done regularly—

(G-15-8-30)

\* \* \* within 60 days \* \* \* after the close of each calendar year, full audits and reports \* \* \* covering the operations of the company for the \* \* \* preceding fiscal year, showing \* \* \* the financial condition of the company as of the close of such year, and its assets and liabilities, gross earnings, and expenses

The fact that the Guardian Trust Co acted as trustee, banker, and as the sole stockholder of the hotel company, and H. C. Robinson as vice president of the Guardian and president of the hotel company only adds to the ridiculous or ludicrous nature of the above replies. Why so many of the bondholders' representatives (bond houses, banks, etc ) accepted the explanation as to the nonpublication of statements is a mystery.

## FIRST NATIONAL BANK OF BAY CITY, MICH

(G-15-38-L, p 1)

As early as March 10, 1927, the above bank (a member of the underwriting syndicate group) requested information of a "recent nature" as to the Hotel Hollenden bonds—in reply to which they were advised by Paul H Sihler, manager of the bank's bond department, that—

(G-15-38-L, p 2)

\* \* \* we regret that we have no statement from which we can quote any figures as this company is not giving any statements out and we are therefore unable to comply with your request on this specific point \* \* \*

On April 18, 1927, the First National Bank of Bay City, Mich, wrote the Guardian requesting—

(G-15-38-L, p 3)

\* \* \* your opinion concerning the Hotel Hollenden 6½-percent bonds, as to their position, security earnings, etc \* \* \*

Again the bond department manager replied and after endeavoring to put over some of the usual salesmanship advised—

\* \* \* that this property is being looked after and that the interest of the bondholders \* \* \* are being guarded to the fullest extent

In the next sentence (illustrating how these interests were being guarded), he told the bondholder a deliberate lie in stating—

\* \* \* There is no earning statement available and we cannot therefore comply with your request for this information \* \* \*

On April 19, 1927, the Bay City Bank again wrote the Guardian Trust Co. asking if—

(G-15-38-L, p. 4)

\* \* \* the sinking fund requirements have been lived up to promptly and has there ever been any doubt as to the ability of the hotel company taking care of the different maturities \* \* \*

to which the bond-department manager replied that—

(G-15-38-L, p. 6)

The sinking fund requirements and the interest have been met promptly and all maturities falling due have been met in the past We do not expect that any change will take place in this direction in the future As stated to you before,

this issue has the best sponsorship possible, i e, the Guardian Trust Co of Cleveland We think we have had an enviable record in looking after this property and do not believe that anything will occur which will in any way affect this past record

(G-13-38-L, p 7)

From the correspondence record of the Guardian Trust Co it seems that the Bay City Bank did not again make inquiry until June 25, 1930, when more information was requested. Mr Robinson answered the letter and stated—

(G-15-38-L, p 8)

\* \* \* The Hotel Hollenden Co is following a policy which it adopted several years ago of not giving out financial statements pertaining to the operation of the hotel \* \* \*

After having received the notice of default, the Bay City Bank, in a letter dated May 4, 1931, asked to be advised, in view of the prior information furnished—

(G-15-38-L, p 9)

\* \* \* what provisions have not been fulfilled

Furthermore, we notice that \$525,000 has been paid off, but \$483,483 13 had been advanced by yourselves, as trustee, for the purpose of payment of taxes and ground rent It would seem to us that this bond issue should have gone into default a long time ago, because funds used to pay the principal of the bonds should have been used to pay taxes and ground rent From the report, principal had been paid beginning June 1, 1925, or 6 years ago, and if the bonds had been allowed to go into default at that time, conditions would have been far different than they are now, and the deal could have been worked out We would also like to know the responsibility and integrity of the men representing themselves as the bondholders' protective committee We are certainly not impressed with the method of handling this deal in the past We would also like to know what authority you, as trustee, had in advancing money as outlined in the notice dated May 11.

(G-15-38-L, p 10)

R. C Lee, assistant vice president, replied to the above letter supplying the desired information in a general way.

(G-15-38-L, p 12-29)

Since this time the Bay City Bank filed a claim against the Guardian Trust Co, which is still pending

During the course of handling the claim, Mr Thompson (of Thompson, Hine & Flory) attorneys for the Guardian Trust Co, had occasion to state in his letter of December 10, 1931, to the attorney for the Bay City Bank, that—

(G-15-38-L, p 25)

\* \* \* I am thoroughly convinced that no officer of the Guardian Trust Co had any knowledge on this point until some years after the deal was closed I am quite confident that some of the officers acting in this matter in May 1923, did not know anything about the purchase price until the fall of 1931 \* \* \*

Mr. Thompson (senior partner of one of the leading law firms in Cleveland and held in high esteem in this locality) could not have been in possession of all the facts when he made this statement as from the records of the bank, it is next to impossible that the officers could escape knowing the facts surrounding the purchase of the Hotel

Hollenden, for the reason that the purchase was made through the medium of accounts at the Guardian Trust Co , in the following manner:

(G-15-2, G-15-65-2, G-15-69-1)

1 The total purchase price under contract between the Hollenden Hotel Co. and Herman Mack dated May 8, 1923, was \$1,726,000

2 The option of \$100,000 under this contract was paid by Herman Mack with "official check no 225848" of the Guardian Savings & Trust Co dated and charged to Mack's account on May 7, 1923

(G-15-68-1, G-15-68-2)

3. The balance of the purchase price of \$1,626,000 (plus prepaid charges of \$50,000) was paid by a certified check of the Hotel Co. on the Guardian Savings & Trust Co from the proceeds of the issue of bonds sold on June 15, 1923. We were unable to secure the original certified check from the Hotel Co. (it being lost or mislaid) but were able to secure a copy of the auditor's slip at the bank reflecting the certification

(G-15-49-3)

In view of the fact that the funds covering the purchase had been disbursed through the Guardian Savings & Trust Co. and that Messrs. H. C. Robinson and Alexander Taylor in their joint appraisal report of May 23, 1923, stated—

\* \* \* We are familiar with the terms of the 99-year lease covering the \* \* \* property \* \* \*

(G-15-2)

the position taken by Mr. Thompson appears untenable, the lease setting out the purchase price.

(G-15-65-3)

Further evidence of the knowledge of the officers of the Guardian Trust Co of this purchase price of the hotel is contained in a resolution of the executive committee on May 8, 1923 (the day Mack posted his option) to approve—

The loaning up to \$100,000 to the Interstate Hotel Co , Chicago, Ill , in connection with said company's proposed purchase of the Hollenden Hotel property, is left to the president and first vice president Robinson with power to act.

and the following excerpt from a letter received by the Guardian Trust Co. on June 14, 1923:

(G-15-102-6)

I would advise that I have just learned from apparently reliable source that this issue of bonds amounting to \$2,000,000 is upon a property which has changed hands within 2 or 3 months at \$1,700,000 I regard such a transaction as an exercise of bad faith I cannot refrain from saying that it is singular conduct on the part of the able appraisers who have fixed a value on the Hollenden Hotel property at figures several times beyond the recent selling price of the same

WALTER H. SEYMOUR, *Senior Examiner.*

This report based upon preliminary report and complete investigation by Committee Examiner A. S. Cranston.

Mr PECORA. Mr. Meehan, did you see a copy of another report made by Mr. Seymour, entitled "The Guardian Trust Company—Loans from Reconstruction Finance Corporation"?

Mr. MEEHAN Yes, sir.

Mr PECORA. Do you know whether that report is here, or where it now is?

Mr. MEEHAN. That report is also in the Government Printing Office.

Mr PECORA. Did you recognize it to be a copy of a report made by Mr Seymour based upon his investigations conducted under your immediate supervision?

Mr. MEEHAN. I did

Mr. PECORA Mr. Chairman, I offer that report in evidence, together with the exhibits referred to therein.

Senator COSTIGAN. The report and exhibits offered by committee counsel will be received in evidence.

(The report entitled "The Guardian Trust Company—Loans from Reconstruction Finance Corporation", together with exhibits referred to therein, both of which are now at the Government Printing Office, were received in evidence and are to be marked "Committee Exhibit No. 20, May 3, 1934", and are as follows )

#### COMMITTEE EXHIBIT No 20—MAY 3, 1934

(The report comprising this exhibit, together with the exhibits referred to therein, both of which are now at the Government Printing Office, will be inserted by the Government Printing Office in the record at this point )

Mr PECORA Mr Meehan, do these reports that have been received in evidence this morning, and which comprise 20 in number, include all the reports setting forth the results of investigations of the practices and methods employed in the Guardian Trust Co , of Cleveland, Ohio, in the direction not only of its own affairs but the affairs of subsidiary corporations?

Mr MEEHAN Yes; of the Guardian group of Cleveland, Ohio

Mr PECORA Mr Chairman, I think that is all that I have to offer today If it will suit the convenience of the subcommittee to hold a session tomorrow I will be prepared at that time to present reports similar in character and form to these but relating to the Union Trust Co , of Cleveland, Ohio, and its affiliates and subsidiaries

Senator COSTIGAN The subcommittee will now adjourn subject to call by the chairman

(Thereupon, at 11.35 a m , Thursday, May 3, 1934, the subcommittee adjourned subject to the call of the chairman )

# STOCK EXCHANGE PRACTICES

FRIDAY, MAY 4, 1934

UNITED STATES SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON  
BANKING AND CURRENCY,  
*Washington, D C*

The subcommittee met at 10 30 a m , pursuant to call following adjournment on yesterday, in room 301 of the Senate Office Building, Senator Duncan U Fletcher presiding

Present Senators Fletcher (chairman) and Adams

Present also: David Saperstein, associate counsel to the committee, and Frank J Meehan, chief statistician to the committee

The CHAIRMAN The subcommittee will come to order, please. Mr. Saperstein, you may proceed with the matter that you want to present this morning

Mr SAPERSTEIN Mr Chairman, I should like to place upon the record this morning the reports prepared by our examiners and accountants in Cleveland, under the direction of Mr Meehan, in relation to the Union Trust Co , together with the exhibits which support those reports Those exhibits have already been placed in the Government Printing Office, and consequently will not be physically produced here this morning However, I should like the record to indicate that they will be submitted in evidence

The CHAIRMAN The reports refer to the exhibits so they may be clearly understood, as I understand

Mr SAPERSTEIN The reports being submitted this morning refer to the exhibits, now at the Government Printing Office Each exhibit has a letter and a number indicating the corresponding letter and number appearing on the report. That is, a letter and a number appear opposite the paragraph or paragraphs in the reports which relate to the particular exhibits

The CHAIRMAN Very well It will be understood that the exhibits are offered and received at the same time the reports are offered and received in evidence

Mr. SAPERSTEIN. I will ask Mr. Meehan to take the stand again.

**TESTIMONY OF FRANK J. MEEHAN, NO. 215 EAST FOURTH STREET,  
BROOKLYN, N.Y.; CHIEF STATISTICIAN TO THE COMMITTEE**

Mr. SAPERSTEIN. Mr. Meehan, in addition to the reports which were introduced in evidence on yesterday referring to the Guardian Trust Co , of Cleveland, Ohio, were there also prepared by the investigators and accountants of the staff under your immediate direction

and supervision, reports relating to the Union Trust Co., of Cleveland, Ohio?

Mr. MEEHAN. Such reports were prepared and are now in my possession.

Mr. SAPERSTEIN. How many such reports are there?

Mr. MEEHAN. There are 22 such reports.

Mr. SAPERSTEIN. And are those the reports which I have here before me, with the exception of those numbered 15 and 19, the only copy of each of which is now at the Government Printing Office; which reports relate to the Union Trust Co. of Cleveland, Ohio?

Mr. MEEHAN. Yes.

Mr. SAPERSTEIN. They were prepared by the investigators and accountants of the committee under your supervision?

Mr. MEEHAN. Yes.

Mr. SAPERSTEIN. Now I have a report—

Senator ADAMS (interposing). Cannot they all be identified, practically in the form of a group, without having to go through the individual indication as to each report?

Mr. SAPERSTEIN. That could be done.

Senator ADAMS. That is merely an inquiry made in order to save time. If it is preferable that it should be done the other way, of course, I have no objection.

Mr. SAPERSTEIN. I suppose that could be done, Senator Adams, except that I think the committee's record ought to show the titles of the respective reports, so that the exhibits may be related to the particular title under which they may fall.

Senator ADAMS. I was simply thinking of saving time. There was no question as to whether you might not inquire about the fact as to how the reports were made, and have them marked as exhibits, as to each individual report, and have it understood that in each case it was prepared under the immediate direction of Mr. Meehan.

Mr. SAPERSTEIN. I think that can be done very readily.

The CHAIRMAN. You may proceed to present the reports and the exhibits that are to accompany them.

Mr. SAPERSTEIN. Mr. Meehan, I show you a report entitled "Union Trust Co., Cleveland, Ohio—Summary", and ask you whether you can identify it as being a report prepared by members of the staff of investigators and accountants of the committee, under your immediate direction and supervision.

Mr. MEEHAN. Yes; this is the report so prepared.

Mr. SAPERSTEIN. I ask that the same will be received in evidence, together with the exhibits which are now at the Government Printing Office.

The CHAIRMAN. The report and exhibits will be received in evidence and appropriately marked by the committee reporter.

(The report entitled "Union Trust Company, Cleveland, Ohio—Summary", together with the exhibits now at the Government Printing Office relating thereto, were received in evidence and marked "Committee Exhibit No 1, May 4, 1934", and are as follows:)

COMMITTEE EXHIBIT No 1, MAY 4, 1934

**UNION TRUST CO., CLEVELAND, OHIO****SUMMARY**

In the individual reports covering the various phases of our investigation into the affairs of the Union Trust Co, we have submitted in detail the history and facts regarding the respective subjects. We shall endeavor in this report to summarize as briefly as we can the main facts as disclosed by our investigation.

(Report re Corporate History)

The corporations making up the Union Trust Co group are the following

- 1 Union Trust Co
- 2 Union Cleveland Corporation
- 3 Union Lennox Co
- 4 P A Frye Co
- 5 Akers-Folkman Co
- 6 Cleveland & Boston Co

The Union Trust Co was organized in 1920 by a consolidation of the First Trust & Savings Co and the Citizens Savings & Trust Co. It has a combined capital of \$35,000,000 consisting of—

914,000 shares, \$25 par value each.....	\$32, 850, 000
Surplus.....	12, 150, 000
	<hr/>
Total capitalization.....	35, 000, 000

The Union Cleveland Corporation was organized in July 1929, as the security affiliate of the bank. Each bank stockholder has Union Cleveland Corporation stock to the amount of one tenth of his bank stock, ownership being evidenced by endorsement on his bank stock certificate.

The Union Lennox Co. is a wholly owned subsidiary of the bank and was formed to hold title to the main bank building.

(Report re Corporate history)

P. A. Frye Co. is also a wholly owned subsidiary of the bank and was used to manage, operate, and dispose of the foreclosed properties turned over to it by the bank.

The Akers-Folkman Co. was another wholly owned subsidiary and was simply a travel agency bureau.

The Cleveland & Boston Co. is owned 62 percent by the bank and was formed to be a holding company for assets taken in the foreclosure of the Cleveland-Akron Bag Co.

**MANAGEMENT**

The management policies of the Union Trust Co. were dictated by a small group of men. Chief among these men was the bank's first president—Joseph R. Nutt—later elected chairman of the board.

Others associated with Mr. Nutt in the domination of the bank's policies were:

Wilbur M Baldwin, president  
 George A Coulton, vice-president  
 Frank H Ginn, director  
 Kenyon V Painter, director  
 Otto Miller, director

As we have pointed out in our "Van Sweringen loan" report, there is very little doubt that the affairs of the Union Trust Co. were dictated by Mr. Nutt, and, too, that there is very little doubt but that the policies and acts of Mr. Nutt were, in a great measure, influenced and dictated by the Van Sweringens.

(Minutes of directors' meeting, pp 1040, 1045)

Certain of the directors of the Union Trust Co, being entirely "fed up" with the domination of the bank's affairs by this group, rebelled. Although the minutes of the bank do not show the true reasons, the dissenting directors forced the resignation of Joseph R. Nutt as chairman of the board on May 24, 1932, to be effective as of June 30, 1932. Mr Joseph R Kraus was elected chairman on that date.

Later in 1932, these dissenting directors insisted upon a thorough examination being made of the Union Trust Co. Thereupon, three of the directors were appointed to conduct this examination, viz: E P Lenihan, R C. Norton, and R T King.

These directors completed their examination early in 1933 and submitted their report to the board of directors. The report is filled with criticism of Messrs Nutt, Baldwin, Carlson, U P, Painter, et al, and the conduct of each. We have a complete copy of this report

(U-1)

Shortly after arriving in Cleveland and after having read the "Lenihan report", the writer attempted to contact Mr Lenihan to discuss with him certain aspects of the report. Mr. Lenihan was out of town; but the writer succeeded in obtaining an interview with Mr. Robert C. Norton instead. He is one of the partners of Oglebay-Norton & Co, engaged in the steel business.

Attached is a memorandum of the interview between Mr Norton and the writer. Mr. Norton corroborated what we have already pointed out in this report and what we point out and substantiate in practically every single report written in connection with the investigation of the Union Trust Co.

That the management of the Union Trust Co was dominated by this small group of men. Messrs Nutt, Baldwin, Carlson, Ginn, et al, and that behind this group, at all times, was the influence of the Van Sweringens.

(Report re Compensation to officers)

The salaries of the principal officers of the Union Trust Co. were as follows:

J. R Nutt.....	\$50, 000
J R Kraus.....	50, 000
W M Baldwin.....	50, 000
G A Coulton.....	50, 000
Allard Smith.....	40, 000

## FAILURE OF THE UNION TRUST CO

(Report re Financial condition, 1929-33)

Opinions have been orally expressed in and around Cleveland by certain individuals, as in Detroit, that the closing of the Union Trust Co in particular and the Cleveland banks in general was due to "a political plot" and to the "Michigan bank holiday". These charges are grossly untrue. The failures of both the Union Trust Co and the Guardian Trust Co were not the result of the "Michigan holiday", "The national bank holiday", or any sudden disturbance of economic conditions; nor were they caused by any "plot", political or otherwise. The failure of the Union Trust Co was the result of unsound banking practices over a period of years.

(Report re Financial condition, 1929-33)

The reasons for the failure of the Union Trust Co. may be summarized as follows

1. Heavy investment in real estate owned.
2. Bad loan policy.
  - (a) Excessive concentration of loans to the Van Sweringen and Eaton interests
  - (b) Loans to officers, directors, and their affiliated corporations
  - (c) General loans.
  - (d) Real estate loans
3. Poor investment policy.
4. Inadequacy of reserves for losses.
5. Bad dividend policy in the face of impaired capital.
6. Rapid decline in deposits.
7. Exhaustion of ability to borrow.

(Report re Financial condition, 1929-33, p 5)

*1 Real estate owned.*—Even prior to 1929, more than 50 percent of the bank's capital and surplus was invested in real estate. In January 1929 this investment represented 50.3 percent of the total capitalization, and by January of 1933 the figure had grown to 57.7 percent. In this one item of "Real estate owned", the Union Trust Co. had invested almost \$18,000,000

(Report re Financial condition, 1929-33, p 9)

Although the bank owned considerable real estate in addition to the main bank building, it did not pursue a conservative policy of setting up provisions for physical depreciation for each year on its books, other than depreciation on the main bank building. However, on its Federal income tax returns the bank did take the benefit of such depreciation on all its properties, regardless of the fact that it was not recorded on the bank's general books. As of December 31, 1932, the accumulated amount of depreciation reported on income tax reports, and not recorded on the books, was \$747,941.86.

We intend to point out later in this report the fact that the bank did not write off sufficient amounts each year as a reserve for losses. The net effect of those failures to record the true facts was an inflation of the assets on the statements of the bank and an annual inflation of the earnings statements.

(Report re Financial Condition, 1929-33, p 20)

2 *Loans*—The percentage of total loans to total deposits, exclusive of trust deposits, was as follows:

	<i>Percent</i>
January 1929.....	76 2
March 1931.....	75
December 1932.....	87 3
January 1933.....	91

(Report re Financial Condition, 1929-33, p 20)

From March 1931 to December 1932 the deposits of the bank dropped in the amount of \$123,000,000, while the loans for the corresponding period dropped only \$70,000,000. Even as long ago as March 1931, there were \$43,000,000 of unsecured loans open on the books of the Union Trust Co.

(Report re Financial Condition, 1929-33, p 15)

On December 20, 1932, the total nonaccrual loans were \$23,000,000, and by January 20, 1933, had increased by more than another million dollars.

(Report re Financial Condition, 1929-33, p 13)

The loans to directors and officers and their affiliated corporations, exclusive of the loans to the Van Sweringens, totaled:

January 1929.....	\$15,000,000
March 1931.....	34,000,000
January 1933.....	30,000,000

(Report re Financial condition, 1929-33)

The relation of real-estate loans to total loans was as follows:

Date	Total loans	Real-estate loans	Percent of total
Jan 25, 1929.....	\$220,346,080 63	\$76,846,359 10	34 9
Mar 27, 1931.....	222,805,076 90	74,168,249 06	33 3
Dec 20, 1932.....	152,404,226 68	66,429,477 43	43 6
Jan 24, 1933.....	161,821,516 39	66,157,760 91	43 5

Correspondingly, reserves for losses on loans were as follows:

Jan 25, 1929.....	\$404,335 42
Mar. 27, 1931.....	360,440. 59
Jan. 20, 1933.....	1,196,389 07

3. *Investments*.—Monthly schedules were submitted to the officers and directors of the bank showing in detail the securities and investments of the Union Trust Co. Pencil notations appear on these schedules, indicating the shrinkage of the market value of these investments from the figures at which they were carried on the books. The following shows the amount of this shrinkage, according to the bank's own records, and the reserve being carried to offset the losses

(Report re Financial condition, 1929-33, p. 21)

Date	Shrinkage in investments	Reserve carried
July 1932.....	\$16,500,000	\$3,891,487 15
September 1932.....	15,000,000	3,819,553 97
January 1933.....	15,000,000	3,704,071 92

In their December 1932 report to the board the directors' examining committee pointed out:

(U-1-39)

A schedule of all investments held by the bank was priced according to market values on all listed securities, and where no market value was available an estimated value was given

(U-1-39)

On our books, total \$40,276,013.45; market value, \$23,856,913 40; shrinkage, \$16,410,100 05; reserve for investment variation \$3,704,071.92

(U-1-40)

Also in this same report the committee pointed out the results of a "privately arranged deal" which had been handled by W. M. Baldwin, president of the bank. This deal was regarding bonds of the Van Sweringen Co. owned by the bank and was made possible by Mr. Baldwin's close relationship with the Van Sweringens. However, like practically all deals involving the Van Sweringens, the bank came out second best and lost money on the transaction. The committee, in its report, states:

In looking over the securities held by our securities and investment department out attention was drawn to \$200,000 Missouri-Pacific Railway convertible 5½ percent bonds on our books at \$119,000, and having a market value of \$16,500. Upon further questioning, we found that these bonds came to us on an exchange of securities upon which the committee desires to comment further.

(U-1-40)

The committee then traces the events that actually happened and sets out the losses, following through with what the results would be if the remaining securities should be sold and setting out the further losses. In comparison with this the committee reviews what should have transpired had Baldwin not "privately arranged" the deal, and shows that the bank suffered a greater loss of \$209,221.37 than it would otherwise have suffered. The committee then concludes with the statement.

(U-1-40)

It is evident that the best interests of the bank were not served when this exchange was negotiated

(Report re. Financial History, p. 3)

*Dividend policy.*—In the face of the shrinkage in value of its investments and the large uncollectible loans which were standing on the bank's books, the board of directors voted large dividends year after year. The dividend rate of the Union Trust Co from 1921 to 1927

was 10 percent. The rate was changed in 1927 to 12 percent and continued until 1932 when it was reduced to 8 percent. From 1921 to 1932 the Trust Co. has paid cash dividends of \$27,904,750.

#### WINDOW DRESSING

(Report re Window Dressing)

While considering the facts regarding "window dressing" practices carried on by the Union Trust Co., it might be well to bear one very important point in mind, i.e., that these "window dressing" transactions were consummated prior to the "call" dates. This supports the conclusion that notice was given to the Union Trust Co. sufficiently in advance to permit the officers to negotiate the transactions necessary to carry out their desires.

In order to aid the Trust Co. to publish a report showing a good liquid position, the Van Sweringens, in 1931, were prevailed upon to "lend" \$10,000,000 of United States Government securities to the Union Trust Co. through one of their corporations, namely, the Van Sweringen Corporation. These bonds were "loaned" for "window dressing" purposes only, and the "loan" was reversed 9 days after it was made.

(Report re Window Dressing)

The bonds were in the possession of J. P. Morgan & Co. and were being held by them for safekeeping. The "window dressing" transaction was arranged by letter agreements, by which the Trust Co. agreed to purchase the bonds from the Van Sweringen Corporation, crediting a special checking account of the latter with the purchase price, and pledging the bonds as security for the "deposit." Actually, the whole transaction was handled through book entries, physical possession of the bonds not changing hands, nor was there any exchange of cash.

(Report re Window Dressing)

Another method of "window dressing" employed by the Union Trust Co. was the sale of loans under repurchase agreements. In September 1931 the Union Trust Co. sold to certain New York banks, through the facility of repurchase agreements, various loans for which the Trust Co. received cash totaling almost \$12,500,000. When the statement of condition of the Trust Co. was published, "Total loans" was reduced and the item "Due from domestic correspondent New York banks" was correspondingly increased. However, the contingent liability of the Trust Co., due to the repurchase agreement, was not shown.

#### VAN SWERINGEN LOANS

As we have stated previously in this report, one of the chief causes of the ultimate failure of the Union Trust Co. was the excessive concentration of loans to the Van Sweringen interests.

(Report re Van Sweringens, p 11)

The loans due the Union Trust Co. from the Van Sweringens and their controlled companies may be summarized as follows.

Commercial and collateral loans.....	\$11, 412, 908 54
Mortgage loans.....	772, 064 57
Land contracts.....	1, 000, 000 00
Total.....	13, 184, 973 11
Interest delinquent to May 1, 1933.....	1, 089, 045 83
Total.....	14, 274, 018 94

At times during the past few years the loans to some one of the individual companies or to the Van Sweringens themselves exceeded the legal limits of the bank's loaning powers. When this was questioned by the State examiner, the bank simply arranged to transfer part of the loans from the name of one of the Van Sweringen companies to the name of another company

(U-119)

Certain of the directors and senior officers had realized the unsoundness of so great a concentration of loans and had complained. On December 10, 1931, Mr D L Johnson, a director of the bank, wrote a letter to Mr Crawford, secretary of the bank, dissenting from the making of any more loans to the Van Sweringens and asking that his dissent be noted on the bank's minutes

(Minutes of Directors' Meeting, p. 971, 987)

The record of the minutes shows this dissension. Mr Johnson again dissented from another loan to the Higbee Co (a Van Sweringen corporation) on December 8, 1931; but the loan, nevertheless, was made

Early in 1932 Mr Johnson was not reelected to the board of directors of the Union Trust Co

(Report re Van Sweringen Loans, p 7)

However, sentiment among some of the directors was so strong that no more loans should be made to the Vans, that an unsecured loan to the Daisy Hill Co was refused in the main office. This refusal in the main office did not prevent the loan from being made, however. It was made through the terminal office on the oral approval of Mr. Nutt

(Report re Van Sweringen Loans, pp 20-25)

In 1930, the Van Sweringens had borrowed every dollar from the Cleveland banks that it was possible for them to borrow. In October of 1930 they found it necessary to make large additional borrowings. Accordingly, arrangements were made to borrow from J. P. Morgan & Co \$39,500,000, but to do this substantial collateral had to be pledged. Every bit of collateral securing the loans made from the Cleveland banks was sorely needed if those loans were to be adequately secured. The Union Trust Co. was trustee for the other Cleveland banks which had participated in these loans and as such was responsible for the collateral. However, the Vans needed help and the Union Trust Co. supplied it. Practically all of the collateral having any market value was released from the Cleveland loans and given over to the Van Sweringens to pledge against the loans they were receiving

from J. P. Morgan & Co and this switch was evidently done without the knowledge of the other participants.

#### LOANS TO DIRECTORS

(Report re Loans to Directors)

When the bank closed in February 1933 the directors were indebted to the bank in the amount of \$8,148,788 38 Due principally to sale of collateral, these loans have been somewhat reduced since the bank has been in liquidation However, there still exists \$6,129,491 36 of unpaid loans made to the directors. Many of these loans will suffer very large losses

If the laxity of effort to collect and reduce these directors' loans had existed in all loans, the results would have been disastrous. Undoubtedly, the directors, because of their being directors, were given undue leeway in making and in repaying their loans.

(Report re Painter Loan)

*Painter loan* —When the Union Trust Co. closed on February 25, 1933, Mr K V Painter, a director, was indebted to the bank in the amount of \$3,000,000—an indebtedness that has never been repaid. Mr Painter has been a director and a member of the executive committee for more than 10 years

Our investigation discloses that virtually all of this indebtedness resulted from unlawful collusion between Painter, Baldwin, and Carlson, for the purpose of wilfully misapplying the moneys, funds, and credits of the bank for the direct use, benefit, and advantage of Painter, and indirectly for the use, benefit, and advantage of Baldwin and Carlson Recently, Messrs. Baldwin and Painter were indicted by the Common Pleas Court of Cleveland for their acts in regard to the Painter loans

(Report re Painter Loan)

In substance, the general scheme of operation was as follows: Painter would convey to the bank certain real-estate holdings, leaseholds, and real-estate equities together with certain unlisted and unknown stocks of doubtful worth, all to be held by the bank in trust as collateral security for future borrowings Subsequently, Painter would execute his demand note, or notes, for sums averaging about \$300,000 each These notes would not immediately be recorded on the bank records for their face amounts and like credits passed to Painter's account, but instead would be withheld by Baldwin or Carlson and used only at such times and in such amounts as would be necessary to avoid an overdraft in Painter's personal account

By this arrangement, each note was recorded as constituting a series of loan transactions rather than as one independent borrowing. Furthermore, such irregular procedure was decidedly beneficial to Painter, in view of the fact that at no time was he required to pay interest on any unused portion of his loans He also enjoyed a preferential interest rate on his loans, being charged a lesser rate of interest than other borrowers were required to pay

(Report re: Painter Loan)

The loans to Painter began in July of 1930 and continued until October 1931. All of the funds were used to purchase the stock of the Union Trust Co in an effort to maintain the market. Baldwin handled all of the transactions for Painter—arranging the loans and purchasing the stock. Whether Baldwin was acting for himself as well as Painter we do not know

However, the advances to Painter ceased rather abruptly in October 1931. Obviously, Baldwin had no intentions of extending further credit to Painter, as is evidenced by a \$300,000 note of Painter's dated August 31, 1931, having an unused balance of \$235,000. Upon the note there is an unsigned notation: "No more advances."

(Report re: Painter Loan)

We do not know who insisted upon there being "no more advances" to Painter, but whoever it was, he, at the time, had more authority than the bank president. However, Baldwin and Painter were not to be prevented from obtaining more money. Although the loans to Painter at the Union Trust Co. were undercollateralized, Baldwin released collateral of \$315,000 and arranged a loan in the name of Painter at the Chemical Bank & Trust Co. of New York.

(Report re: Loans to Mather)

*Loan to William G. Mather.*—Among the largest of loans to directors were those made to William G. Mather. On June 15, 1932, Mather owed six different banks a total of \$2,500,000. He is indebted to the Union Trust Co. for a direct loan of \$857,523.99. In addition, the trust company has loaned Otis & Co \$725,000 because of Mather's being a director of the trust company and prominent in the Otis & Co. group of companies.

(Report re: J. P. Harris Loan)

*J. P. Harris Loan.*—There seems to be little doubt that J. R. Nutt was directly responsible for a loss of over \$165,000 being suffered by the Union Trust Co. because of loans made by the bank to J. P. Harris, formerly a vice president.

Mr. Harris had been operating a rather active brokerage account at a local broker's office. Evidence in our possession seems to indicate that this brokerage account was probably a joint account belonging to Messrs. Nutt and Harris and that it was being managed by the latter. At any rate, the account was collateralized by certain stock which belonged to Mr. Nutt. The brokerage firm finally insisted an additional collateral, and upon the instance and approval of Mr. Nutt a loan was arranged at the Union Trust Co. in the name of J. P. Harris. Mr. Nutt loaned additional stock to Mr. Harris and then approved this loan from the bank in the amount of \$263,000, the proceeds of which were used to pay off the brokerage account.

No payments were made on the loan, and on January 3, 1934, the liquidator of the Union Trust Co. sold the collateral at public auction, the bank suffering a loss of \$165,056.61.

Subsequently, the superintendent of banks has filed an action against Mr. Nutt to recover the amount of this loss, Mr. Harris having gone into voluntary bankruptcy.

#### LOANS TO OFFICERS AND DIRECTORS OF OTHER BANKS

(Report re Loans to officers and directors of other banks)

The Union Trust Co loaned a great deal of money to officers and directors of other Cleveland banks. Many of these loans should never have been made and obviously were made mostly as a matter of business policy.

There is one loan of \$68,000 to J. Arthur House, president of the Guardian Trust Co. Mr. House was indebted to practically every bank in Cleveland, including his own bank, and is now "broke" and cannot make any payments on his loans. The Union Trust Co. also loaned \$18,000 to Mr. Monks, senior vice president of the Guardian Trust Co., the collection of even a part of which is doubtful.

However, the Guardian was not the only bank represented. F. H. Hobson, vice president of the Cleveland Trust Co., still owes the Union Trust Co. \$55,000. Two directors of the Cleveland Trust Co., Belden Seymour and M. J. Mandelbaum, owe \$38,000 and \$110,000 respectively.

#### UNITED MILK PRODUCTS CORPORATION

(Report re United Milk Products Corporation)

In 1925, Mr. Nutt was given the opportunity of purchasing at \$100 per share 25,000 shares of the preferred stock of a newly formed milk company—United Milk Products Corporation. Mr. Nutt, not desiring to take up all this stock himself, allotted portions of his option to his friends, to outside customers of the bank, and to the individual trust estates of the bank. He personally approved and arranged loans from the bank at 100 percent of the value of the collateral in order to bring about these purchases.

Trading accounts were maintained in the name of C. W. Carlson for almost 2 years after the original issue.

Subsequently, Mr. Nutt, and probably most of his friends did the same, disposed of the greater part of his holdings. No warning was given to the small investor, and he was "left" holding the stock, with the market on the stock having dropped very badly. The Union Trust Co. still has several loans unpaid with the principal collateral being the stock of United Milk Products.

(Report re United Milk Products Corporation)

The charge has been made repeatedly that Mr. Nutt and his associates organized this company for their own personal gain.

#### CORRIGAN-MCKINNEY STEEL CO.

(Report re Corrigan-McKinney Steel Co.)

In May 1925, J. R. Nutt was instrumental in the formation of a corporation known as the McKinney Steel Holding Co., which purchased control of the McKinney Steel Co. For the purchase by the

McKinney Steel Holding Co of a certain block of McKinney Steel Co stock, Mr Nutt received a commission of \$130,000, which, although turned over to the bank by Mr Nutt 7 months after he had received it, has been a transaction causing very much dispute and discussion

(Report re Corrigan-McKinney Steel Co)

Mr. E. S Burke, owner of 13¼ percent of the stock of the McKinney Steel Co, approached Mr. Nutt and offered the latter a 2 percent commission if Mr. Nutt would arrange the sale of Mr. Burke's block of stock. E. S. Burke, in his agreement with Mr. Nutt, insisted that the commission was to be paid to Nutt personally.

(Report re Corrigan-McKinney Steel Co)

In accordance with the plan worked out for the sale, the McKinney Steel Holding Co. was formed and issued its \$7,250,000 par value preferred stock for the 13¼ percent stock interest of McKinney Steel Co., then owned by Burke. Burke then entered into an agreement with the Union Trust Co. to sell to the bank the entire issue of McKinney Steel Holding Co. preferred stock at \$6,500,000. From this \$6,500,000, Burke paid the \$130,000 to Mr. Nutt, and evidently it was from the participation of the Union Trust Co. instead of Nutt in the transaction that the other directors felt the commission belonged to the bank and not to Nutt personally. This preferred stock, which was purchased at 89 655 percent a share, was finally sold by the bank to the public at \$100 per share

(Report re Corrigan-McKinney Steel Co)

We have heard rumors expressed around the bank that Mr. Nutt considered this \$130,000 as a personal transaction and that it did not belong to the bank—an opinion that was not shared by the other senior officers and directors. According to these rumors, Mr. Nutt refused to turn the \$130,000 over to the bank, but on the other hand was afraid to take it himself, with the result that he held the check for 7 months before he turned it over to the bank. Mr. Nutt claims this is all untrue and that he always considered that he was acting as president of the Union Trust Co. in this transaction and that he did not "hold" the check at all, but turned it over to the bank immediately. Further, Mr. Nutt states that it was a personal check of Mr Burke's that he had and turned over to the bank. Actually, Mr. Burke purchased Union Trust Co. official check no. A-83106 in the amount of \$130,000, payable to the order of J. R. Nutt, and that check was dated May 16, 1925, but not credited to income on the bank's books until December 24, 1925.

(Report re: Corrigan-McKinney Steel Co)

We have carefully reviewed the files and records of the Union Trust Co. and can find no reference whatever showing that this check was turned over to the bank prior to December 1925. Messrs Nutt and Baldwin have both written letters to the liquidator attempting to explain this 7-months' delay. The open attitude expressed in these letters might be disarming if it were not for the facts as we have presented them in our detailed report. To a man such as J. R. Nutt,

accustomed to making important decisions frequently and quickly, it does not appear reasonable or creditable that it would take 7 months for him to decide whether he should keep the commission or turn it over to the bank. It does appear, however, that J. R. Nutt would like to create the impression of a magnanimous gesture, whereas the elapsed time would indicate the contrary and after much indecision

(Report re. Corrigan-McKinney Steel Co.)

In 1930, the Union Trust Co., in participation with several other banks, arranged a loan of \$25,000,000 to the Cleveland Cliffs Iron Co. in order that the Iron Co. might purchase the McKinney Steel Co. stock. No payments have ever been made on these Cleveland Cliffs Iron Co. loans. The Union Trust participation was \$3,387,500.

In renewal of the loans to Cleveland Cliffs Iron Co., the Union Trust Co. charged certain commissions for the renewals. As a result of these commissions, usury was paid by the Iron Co. Subsequently, in December 1933, the Iron Co. forced the Trust Co. to pay back the \$145,000 of usury. An officer of the bank testified in court that it was known when the commissions were being charged that it was usurious.

#### UNION CLEVELAND CORPORATION

(Report re. Union Cleveland Corporation)

The Union Cleveland Corporation, as the security affiliate of the bank, engaged in many stock and bond issue underwritings. Very little of this participation was as the sole underwriter, and in practically all cases the corporation was a participant in "Banking groups" formed by one of the large New York financial houses. In order to carry on its operations the affiliate consistently borrowed from the Trust Co. In October 1933, the corporation had a deficit of almost two million dollars and was indebted to the bank in the amount of an additional five million.

The details of this corporation's affairs are outlined fully in a report titled "Union Cleveland Corporation"

The corporation did not actively trade through any pool participation in the stock of the bank.

*Union Cleveland Corporation tax evasion.*—The General Code of Ohio levied, in 1930 and 1931, a personal-property tax upon the assets of corporations such as the Union Cleveland Corporation. Taxable under this code were such assets as cash, accounts receivable, investments (stocks and bonds), etc. However, the securities representing Ohio corporations were exempt from this taxation.

The Union Cleveland Corporation was, because of the nature of its business, in possession of large investments in the stock of out-of-State corporations and, therefore, would be subject to a substantial tax. The Union Trust Co. as a bank was not subject to this tax, principally, we assume, because by law the Trust Co. was prevented from owning the stocks

In order to avoid this taxation the Union Cleveland Corporation would, on December 30, sell the taxable securities to the Union Trust Co. for cash. As the cash itself was taxable, the corporation would then pay the amount of the cash it had received to the Trust Co. in reduction of its ever-existent loans. This transaction allowed

the Trust Co. to show on its published statement an increase in "Investments" and a decrease in "Advances to subsidiaries", and allowed the Union Cleveland Corporation to avoid a large payment of tax.

The following is a comparison of the tax the corporation paid to the amount it should have paid, in the years 1930 and 1931:

Year	Amount actual tax liability	Amount of tax paid
1930.....	\$54,244 94	\$27 09
1931.....	76,786 82	

WALTER H SEYMOUR,  
*Senior Examiner*

Mr. SAPERSTEIN. I now hand you a report entitled "The Union Trust Company—Corporate History", and ask you whether that is a report made by the investigators and accountants of the staff, under your direct supervision.

Mr. MEEHAN. It is.

Mr. SAPERSTEIN. Mr. Chairman, I offer the report in evidence, together with the exhibits now at the Government Printing Office, which support the report.

The CHAIRMAN. The report and exhibits will be received in evidence and appropriately marked.

(The report entitled "The Union Trust Company—Corporate History", together with exhibits to support same but which are now at the Government Printing Office, are received in evidence and marked "Committee Exhibit No. 2, May 4, 1934," and are as follows:)

COMMITTEE EXHIBIT No. 2, MAY 4, 1934

CORPORATE HISTORY

COMPANIES INVOLVED

1. The Union Trust Co., Cleveland, Ohio.

AFFILIATED COMPANY

2. Union-Cleveland Corporation, Cleveland, Ohio.

SUBSIDIARY COMPANIES, 100 PERCENT OWNED

3. Union Lennox Co., Cleveland, Ohio.
4. P. A. Frye Co., Cleveland, Ohio.
5. Akers-Folkman Co., Cleveland, Ohio.

SUBSIDIARY COMPANY OWNED THROUGH CONTROL (62 PERCENT)

6. Cleveland & Boston Co., Cleveland, Ohio.

## THE UNION TRUST CO.

(U-82)

Reference is made to exhibit entitled "The Union Trust Family Tree" showing the development and growth of the two constituent companies

(U-83, minutes of stockholders' meeting, pp 1, 2)

The Union Trust Co was organized December 31, 1920, by consolidation of the First Trust & Savings Co. and the Citizens Savings & Trust Co. (both Ohio companies). The capital stock of the Union Trust Co. was the combined capital of the two institutions, namely, \$13,333,333 33 divided into 133,333 $\frac{1}{2}$  shares of \$100 each

(U-84, minutes of stockholders' meeting, pp 20, 21)

On January 17, 1921, the Woodland Avenue Savings & Trust Co. and the Broadway Savings & Trust Co were consolidated in the name of the Union Trust Co. with an authorized capital stock of not less than \$14,833,333 33 divided into 148,333 $\frac{1}{2}$  shares of par value of \$100 each

(Minutes of meeting of board of directors, pp 32, 33, 34)

On March 11, 1921, the authorized capital stock was increased from \$14,833,333.33 to \$22,250,000 and to stockholders of record March 14, 1921, a 50 percent stock dividend of 74,166 $\frac{1}{2}$  shares (\$7,416,666 67) was declared and distributed. There was concurrently an entry made transferring from surplus account to capital account the par value of shares so distributed.

On December 31, 1921, \$375,000 was transferred from undivided profits account to surplus account making the surplus \$11,125,000.

(U-85)

On April 17, 1926, the consolidation of the State Banking & Trust Co. was effected and accordingly the capital stock of the Union Trust Co. was increased by \$600,000 to \$22,850,000 and surplus increased by \$625,000 to \$11,750,000, and on January 8, 1927, the surplus was increased by \$400,000 to \$12,150,000 making a combined figure of capital and surplus of \$35,000,000, which figure remained until the bank closed

(U-86)

On August 3, 1929, the stockholders of the Union Trust Co. approved a "plan and agreement" which had been submitted to them by the directors to form a security affiliate and to reduce the par value of the bank stock.

(Minutes, stockholders' meeting, pp 786-790)

The par value of the Union Trust Co. stock was reduced from \$100 to \$25 per share. As a result of this reduction in par value, 914,000 new shares were exchanged for 228,500 shares then outstanding. The split-up of bank shares, the plan stated, was made to increase the number of stockholders.

(Minutes of a meeting of the board of directors, p. 764, U-86)

Bank shares are today being recognized for their investment character and possibilities, and the smaller units which we now propose to create should enable many of our friends and customers, who may not now be stockholders, to become such.

The security affiliate, the formation of which was approved by the stockholders, was Union Cleveland Corporation. It was formed to deal—

(U-86)

To a large extent in stocks which the bank is unable lawfully to handle

At the time of the closing of the bank in February 1933 there were approximately 4,250 stockholders

UNION CLEVELAND CORPORATION

(U-88)

The Union Cleveland Corporation was organized on July 24, 1929, as a security and investment company to be owned by the stockholders of the Union Trust Co

(U-89)

The Union Trust Co.'s stockholders are the owners of the Union Cleveland Corporation, as investment company affiliate. By individual subscription, the bank's stockholders supplied the capitalization of \$2,285,000 for the company in direct proportion to their stockholdings in the bank. Each bank stockholder has Union Cleveland Corporation stock to the amount of one tenth of his bank stock, ownership being evidenced by endorsement on his bank stock certificate.

(U-87A)

Thus, ownership of the investment company was identical with that of the bank; its executive control was vested in the bank's directorate, and its affairs were, in effect, part and parcel of the bank itself.

This corporation was organized "for the organization and operation of a securities and investment company", and took over the major portion of the business of the bank's bond department

The plan and agreement which was approved by the stockholders at their meeting on August 3, 1929, vested the voting control of the Union Cleveland Corporation in five "voting trustees," all of whom were directors of the bank and some of whom were officers of the bank. By the terms of this agreement these voting trustees were given the right to name the officers and the management, and direct the operations of the corporation, and in case of the resignation of any trustee to even elect his successor. As provided in the agreement:

(U-87C)

The trustees and/or such other persons as they may designate shall constitute the first board of directors of the Securities Co. This board will name the officers and management and will direct the operations of the Securities Co. The charter regulations and bylaws of said corporation will be as determined by the trustees.

## THE TRUSTEES

Messrs H G. Dalton, G. W. Grandin, Warren S. Hayden, Wm. G. Mather and J. R. Nutt have been suggested by the officers, approved by the board of directors of the bank, and have agreed to act, as trustees under this plan and the agreement herein referred to. There shall be five trustees Any trustee may resign at any time and in case of any vacancy in the number of trustees it shall be filled with the trustees remaining No person shall be named a trustee who shall not be an officer or director of the bank and any trustee who shall cease to be a director or officer of the bank shall also cease to be a trustee hereunder. The trustees shall be under no liability whatever for their acts or the acts of others. The trustees in all cases may act by a majority of their number either at a meeting or by writing with or without a meeting

## THE UNION LENNOX CO.

(U-90, U-90C)

The Union Lennox Co. was incorporated May 9, 1922, in the State of Ohio, with 1,000 shares of no par value. On May 11, 1922, a stated value of \$200 per share was declared. The Union Trust Co. accepted 995 shares of stock for warranty deed and transfer to Union Lennox Co ownership in fee and leasehold to certain properties on which it was proposed to build the present bank building, and also a stock of structural steel and supplies to be used in its proposed building constructions.

(Minutes of stockholders' meeting, Jan 8, 1925)

On January 1, 1925, the capital stock of Union Lennox Co. was reduced from \$200,000 to \$100,000 No reason for such a change has been determined.

## P. A. FRYE CO.

(U-91, U-92)

The P A. Frye Co was incorporated May 23, 1930, for the purpose of buying and holding, leasing and dealing generally in real estate, land contracts, leaseholds, etc. Its real function, however, was to manage, operate, and/or dispose of foreclosed properties turned over to it by the Union Trust Co.

The authorized capitalization was 50 shares of no par value and the Union Trust Co. subscribed to all of the stock for \$5,000 or \$100 per share.

## THE AKERS-FOLKMAN CO.

This company was incorporated June 8, 1919, with an authorized capital stock of \$10,000. The amount subscribed was \$1,000, all subscribed by the Union Trust Co or its nominees. The actual amount paid in was \$100.

This company was wholly owned by the Union Trust Co. and dealt in the purchase and sale of steamship tickets and transportations, the reason for its formation being to assume this class of service and remove the bank from a direct participation in a nonbanking enterprise.

(U-93)

The capital stock of this company was sold on October 30, 1933, to Mr. Joseph Folkman for \$75. The minute books are in the

hands of Mr. Folkman and they are not deemed of sufficient importance to review in connection with the corporate history.

THE CLEVELAND-BOSTON CO.

(U-94, U-95)

This company was organized in Ohio on October 9, 1928, to be the holding company for the assets taken in foreclosure from the Cleveland Akron Bag Co. It was capitalized at 500 shares of no par value, the value of which was declared to be \$100 per share. The Union Trust Co.'s proportionate share represents 53 eighty-fifths of the balance of \$740,183.88 remaining unliquidated as of December 31, 1931. The other 32 eighty-fifths is owned by the following:

The Central United National Bank, Cleveland, Ohio, 15 eighty-fifths; the Bank of Manhattan Trust Co., New York, N.Y., 17 eighty-fifths.

The Union Trust Co. was trustee, along with Isaac H. Orr on \$2,000,000 first mortgage, 15-year 8-percent sinking fund gold bond issue of the Cleveland Akron Bag Co. and subsidiaries, dated April 1, 1921, which was eventually foreclosed, and the Cleveland-Boston Co. represents the assets taken at the foreclosure.

WALTER H. SEYMOUR,  
*Senior Examiner.*

This report based upon preliminary report and complete investigation by Committee Examiner Frank H. Ensigh.

Mr. SAPERSTEIN. Next, Mr. Meehan, I hand you a report entitled "The Union Trust Company and Affiliated Companies—Nature of Business and Financial History", and ask you if that report was made by members of the staff of the committee under your immediate direction.

Mr. MEEHAN. It was.

Mr. SAPERSTEIN. Mr. Chairman, I offer in evidence the report, as well as the exhibits supporting the report, which exhibits are now in the Government Printing Office.

The CHAIRMAN. The report and exhibits will be received and appropriately marked by the committee reporter.

(The report entitled "The Union Trust Company and Affiliated Companies—Nature of Business and Financial History", together with exhibits now at the Government Printing Office, were received in evidence and marked "Committee Exhibit No. 3, May 4, 1934," and are as follows:)

COMMITTEE EXHIBIT No. 3, MAY 4, 1934

NATURE OF BUSINESS AND FINANCIAL HISTORY

THE UNION TRUST CO.

(U-82)

The banking institution known as the Union Trust Co. was the result of a series of 30 separate consolidations and mergers. The original bank (Bank of Commerce) was organized in 1853. The

principal business of the Union Trust Co. was conducted at the main bank institution.

At the time the bank was closed there were 22 branches operating in the city of Cleveland and suburban districts. The company was to operate a general banking business within the limitations prescribed in its charter and has been under the supervision of division of banks, State of Ohio. The wide latitude covered in the business career of the Union Trust Co. will be noted from the business activities of the various affiliated and subsidiary companies. After the formation of these various companies and the withdrawal of that particular line of activity from the bank's regular business it finally evolved itself into the situation where its business consisted principally of general commercial banking and the management of trust estates and the necessary operations attached to foreclosure of real estate properties.

The bank's activities have been very intricate and involved, and the various phases which ultimately brought about the closing of the bank and its liquidation will be discussed under separate subjects.

The business affairs of the Union Trust Co. were directed by a board of directors consisting of 60 prominent business men in the city of Cleveland. The affairs of the bank, however, were practically dominated by a small group of men

There are several officers and directors who have served the bank since its organization in 1920 and who have been actively interested in its management. In the course of our examination the following names recur many times, and in connection with many phases of the bank's operation W. M. Baldwin, George A. Coulton, Frank H. Ginn, Joseph R. Kraus, J. R. Nutt.

With the exception of J. R. Nutt, who resigned in May 1932 (May 24 to be exact), these men have been active in the bank from 1920 until the time of its closing. During this entire period they have held the most important positions and it is believed that they practically governed the management of the Union Trust Co.

(U-98)

It will also be noted later, covering the operation of the Union Cleveland Corporation, that these men were active in its affairs from its organization up to the time of the closing of the bank.

The main bank building is a very imposing institution and is a part of a building 20 stories in height. The banking space used by the Union Trust Co. occupied the first three floors and the actual banking floor is reputed to be the largest of any bank in the world.

The financial transactions, except as to certain subjects, have not been traced prior to 1929.

(Minutes of stockholders' meeting, pp 20, 21)

The capital stock and surplus of the Union Trust Co. at the time of its organization in 1920 consisted of capital stock in the amount of \$13,333,333.33, and its surplus \$10,750,000.00. Total, \$24,083,333.33. The capital between 1920 and December 31, 1932, has been increased through the purchase of the various banks taken into the organization and by a contribution from undivided profits to surplus account and by a stock dividend to \$35,000,000.

(U-96)

A stock dividend of \$7,416,666.67 was declared in 1921, which amount was appropriated from surplus and undivided profits at the time of the declaration. This left remaining in undivided profits at this time \$129,736.60.

(U-96-A)

The profits from operation before any write-off for depreciation in value of securities for the period from 1921 to 1932 inclusive have amounted to \$49,342,949.17

(U-97)

Cash dividends of this same period have amounted to \$27,904,750. It should be noted that the total amount of cash dividends exceeds the total amount of cash invested by a very substantial amount. Dividends from 1921 to 1927 were paid at the rate of 10 percent. The rate in 1927 was changed to 12 percent and continued until 1932 when it was reduced to 8 percent. An analysis of undivided profits from January 1, 1928, to December 31, 1932, shows that while the earnings were substantial in these 5 years, the undivided-profits account has been decreased, in the amount of \$606,160.07, through payment of dividends and amounts appropriated for a reserve for losses.

The Union Trust Co was closed by the superintendent of banks of the State of Ohio on February 28, 1933. Shortly after, from the cash reserves on hand, a 5 percent dividend was paid to depositors. Subsequent thereto, from proceeds received from the Reconstruction Finance Corporation, a further dividend of 35 percent of the balance of the account was paid, making a total dividend to depositors since the closing of the bank of 40 percent.

From February 28 to June 15, 1933, the bank was operated under a conservator appointed by the superintendent of banks. It being apparent that the bank could not reopen and that the only solution was a liquidation of its assets, a liquidator was appointed by the superintendent of the banks on June 15, 1933, and has been in charge of its affairs since that date.

All pertinent matters pertaining to the closing of the bank and the eventual appointing of a liquidator are discussed under separate headings.

## UNION CLEVELAND CORPORATION

(U-88)

Union Cleveland Corporation was organized July 24, 1929, under the laws of the State of Ohio with an authorized capital consisting of 228,500 shares having no par value. The purpose of its incorporation was simply to carry on the business of dealing in securities which the Union Trust Co could not legally do.

(U-88, U-100, U-101)

The 228,500 shares of its capital stock were given a stated value of \$10 per share and were set up on the books of the corporation as:

Capital.....	\$2,000,000
Paid in surplus.....	285,000

On August 20, 1929, the Union Trust Co. sold to the Union Cleveland Corporation stocks and bonds in the amount of \$407,202.51. Among other investments made by the corporation were purchases of 6,072 shares of the Union Trust Co. stock from April 11, 1930, to June 13, 1930, ostensibly to maintain a market in the Union Trust Co. stock. For this and other financing the Union Trust Co. loaned large sums of money, which illustrates how, under the guise of an affiliate, the bank maintained and supported the market with its own stock and with its own money. This matter will be discussed under a separate subject.

(U-102)

Another of the activities of this corporation was the acquiring of the stock of the Chagrin Falls Banking Co. The purchases of this stock began in September 1929 and extended through November 1929; all at \$650 a share. It will be noted that this period of time extends beyond the stock market decline of October 1929 with the price of \$650 still being maintained. This is true in spite of the fact the apparent book value of the stock in September 1929 (the 23d) was \$365.92. This subject, too, will be covered fully in a separate report.

The operations of the Union Cleveland Corporation from its incorporation in August 1929 to December 31, 1932, showed the following results

Year		
1929 (8-20 to 12-31), loss	-----	\$50, 290. 65
1930, profit	-----	311, 687. 80
1931, loss	-----	23, 577. 75
1932, loss	-----	165, 784. 99
Total profit for period	-----	69, 034. 41

(U-99)

In 1931 securities were written down to a market value at December 29 in the amount of \$1,517,748.14. Further adjustments in 1932 followed, and the corporation showed a deficit at December 31, 1932, of \$1,960,999.14. There was owing to the Union Trust Co. on December 31, 1932:

Secured	-----	\$2, 214, 008. 79
Unsecured	-----	993, 426. 64

Represented in the above figures is the investment in the Chagrin Falls Banking Co. of \$757,423.98, which is regarded by the bank examiner as being a total loss.

The Union Cleveland Corporation rented space from the Union Trust Co. in the same building, and, to all appearances, operated as if it were part of the bank. Rental was paid for space until 1932 and apparently this charge has been waived since that time.

The corporation has handled for the bank many security dealings, refinancing companies which were debtors of the bank, and has absorbed from time to time some of the investments of the bank.

Various activities of the Union Cleveland Corporation will be discussed as separate subjects.

Attention is called to the following extract of the articles of incorporation of the Union Cleveland Corporation.

(U-88)

No contract or other transaction between the corporation and any other corporation and no act of the corporation shall in any way be affected or invalidated by the fact that any of the directors of the corporation are pecuniarily or otherwise interested in, or are directors or officers of, such other corporation; any director individually or any firm of which any director may be a member, may be a party to, or may be pecuniarily or otherwise interested in, any contract or transaction of the corporation, provided that the fact that he or such firm is so interested shall be disclosed or shall have been known to the board of directors or a majority thereof; and any director of the corporation who is also a director or officer of any such other corporation or who is so interested may be counted in determining the existence of a quorum at any meeting of the board of directors of the corporation which shall authorize any such contract or transaction and may vote thereat to authorize any such contract or transaction with like force and effect as if he were not such director or officer of such other corporation or not so interested.

## THE UNION LENNOX CO

(U-103)

At the time of the incorporation of this company the Union Trust Co. accepted 995 shares of stock for warranty deed and transfer to Union Lennox Co., ownership in fee and leasehold to certain properties on which it was proposed to build the present bank building, and also a stock of structural steel and supplies to be used in the proposed building constructions.

(Minutes, meeting of stockholders, p 36 to 40, inclusive)

On January 8, 1922, there was authorized a loan of \$6,500,000 from the Northwestern Mutual Life Insurance Co. of Milwaukee, Wis., to be secured by first mortgage on building equipment, the loan to be for 20 years at 5½ percent per annum, payable semiannually. It was also agreed to give the insurance company the assignment of the lease to the Union Trust Co for the building as additional security. This lease is dated January 31, 1923, and is between the Union Lennox Co., lessor, and the Union Trust Co., lessee.

(U-104)

The records of the Union Lennox Co. show that \$6,300,000 was the actual amount of money received from the mortgage and that the first repayment on the principal was made January 30, 1925 in the amount of \$300,000. Thereafter, a similar amount was paid every year until at December 31, 1932 there remained a balance due on this loan of \$3,900,000.

The books of the Union Lennox Co. were opened on May 10, 1922, by an entry setting up capital stock \$1,000. On July 10, 1922, there is an entry setting up on the books cost of real estate, leaseholds, and contracts taken over from the Union Trust Co. in the amount of \$4,942,070 59 and the credit is capital stock issued for the same amount

From July 10, 1922, to June 28, 1923, the capital stock account shows additions as the result of advances and payments made by the Union Trust Co. The total amount appearing in the capital stock account on June 28 was \$9,560,000. On June 29, 1923, there appears a journal entry transferring \$4,616,929.41 from the capital stock account to an account called "Accounts payable of the Union Trust

Co ” The explanation for this entry is as follows: “To convert to accounts payable as per resolution of board of directors on account advances by the Union Trust Co have been credited to capital stock in error ”

(U-105, U-106)

On January 1, 1925, there appears another transfer from the capital stock account in the amount of \$4,843,070 59 to the account called “Accounts payable of the Union Trust Co ” explained as follows: “To reduce capital stock by converting to accounts payable ” After these two journal entries the balance remaining in the “Capital stock issued” is \$100,000 Thereafter the account called “Accounts payable to the Union Trust Co ” reflects all further advances made by the Union Trust Co and is reduced regularly by the amount of depreciation charged against the building Payments on account of reduction of the mortgage liability to the Northwestern Mutual Life Insurance Co , namely, \$300,000 each year, are also credited in a similar manner as other advances to the account “Accounts payable to the Union Trust Co ” and do not appear as credits to the account “Rent income ”

Until December 31, 1925, the records of the Union Lennox Co. reflect income and expense operations; in other words, there is an account called “Interest on mortgage” and the charges to this account are offset by similar credits to rent income. After December 31, 1925, no detailed accounts appear on the books of this company reflecting expenses and income of the Union Lennox Co

The operations of the Union Lennox Co after December 31, 1925, were all absorbed by the Union Trust Co and reflected directly in their statements without any entries in the books of the Union Lennox Co. At no time does there appear on the accounts of this company the item of rent income in the amount of \$300,000, being the payments on account of principal, which should be credited as rent in accordance with the terms of the lease.

On the books of the Union Trust Co there is carried an account called “Union Lennox Co ” which corresponds in detail to the account on the Union Lennox Co books called “Accounts payable to the Union Trust Co.”, except for the item of \$100,000 capital stock which is also included in the account “Union Lennox Co ”; in other words, on December 31, 1931, the “Accounts payable to the Union Trust Co ” on the Union Lennox books reflected a credit in the amount of \$10,583,357.53 and the account “Capital stock issued” reflected a credit of \$100,000, and on the same date the corresponding account called “Union Lennox Co.” on the books of the Union Trust Co. reflected a debit balance in the amount of \$10,683,357.53.

(U-107)

On December 31, 1932, on the Union Lennox Co. books the account called “Accounts payable Union Trust Co.” reflected a credit balance of \$10,611,255.85 and the capital stock issued a credit of \$100,000 and on the same date the Union Trust Co. books reflected in the account called “Union Lennox Co.” a debit balance of \$10,711,255.85.

On December 31, 1932, the records of the Union Lennox Co. disclose the following analysis of the building account:

Cost of land Euclid-E 9th property.....	\$3, 493, 501. 49
Cost of leaseholds.....	21, 127. 42
Cost of construction.....	13, 180, 086 62
Architect fees.....	425, 000 00
<hr/>	
Total cost of the buildings and land in the amount of.....	17, 119, 715. 53
Deducting therefrom the reserve for depreciation to Dec. 31, 1932, in the amount of.....	2, 508, 459. 68
<hr/>	
There remains a net book figure of land and building (real estate) in the amount of.....	14, 611, 255. 85

(U-107)

As of this date the balance due on the mortgage payable was \$3,900,000, so that the total equity of the Union Lennox Co. in its real estate as of December 31, 1932, was \$10,711,255.85.

(U-107)

The Union Trust Co, on December 31, 1932, in its published statement carries the item "Bank buildings and real estate owned" \$19,828,783 61 and on December 31, 1931, \$18,588,116 32. As part of these totals the Union Trust Building is carried on December 31, 1931, as \$10,683,357.53 and on December 31, 1932, as \$10,711,255 85.

This method of reflecting the Union Trust Co's advances to the Union Lennox Co is misleading, inasmuch as it is carried as bank buildings and real estate owned, whereas, in fact the Union Trust Co. did not and does not own the main bank building and only has an account due it for advances in the amount of \$10,611,255 85 on December 31, 1932, and the amount of \$10,583,357 53 on December 31, 1931, and it further owns capital stock in the amount of \$100,000 which rightfully belongs in its account "Securities and investments "

In absorbing the properties of the Union Lennox Co. (a 100-percent owned company) the Union Trust Co. in effect assumes the position of a consolidated company and its published statements being headed "Statement of condition as of December 31, 1931. The Union Trust Co, Cleveland, Ohio", is a misrepresentation, inasmuch as these statements are consolidated statements of the Union Trust Co., the Union Lennox Co., and the P. A. Frye Co.

Further, in setting up these advances to the Union Lennox Co. as "Bank buildings and real estate owned" the Union Trust Co. does not show the total cost of the real estate and the partial offsetting liability on account of the mortgage payable which is a very substantial amount. The amount of this mortgage at one time was \$6,300,000 and as of December 31, 1931, was \$4,200,000 and on December 31, 1932, \$3,900,000. This method of setting up the statement is subject to criticism insofar as a very substantial liability is concealed and the cost of the real estate misstated.

(U-108)

As further evidence that this company was a separate entity the records disclose that on January 2, 1924, the Union Lennox Co. borrowed \$50,000 from the commercial loan department of the bank on which a discount of \$148.89 was charged. This loan was repaid on February 11, 1924. The record of the loan and the interest appears in the general ledger of the Union Lennox Co.

The Union Trust Co. in its bank earnings included each year the earnings from the Union Lennox Co. Building, which was the main bank building. The net profits from the operations of the Union Trust Building as reflected on the annual statements which are part of the financial reports of the Union Trust Co., are as follows:

(U-109)

1926.....	\$219, 852 80		1930.....	\$601, 672. 14
1927.....	448, 468 94		1931.....	537, 275. 11
1928.....	543, 508. 60		1932.....	402, 996. 81
1929.....	584, 392 10			

It is very evident, therefore, that the net profit from the building was a very material item in the earnings of the bank for all the years listed. At no time does the \$300, 000 annual amortization of the principal of the mortgage appear as rent expense to the Union Trust Co. and nowhere on the records of the bank is there an account "Mortgage payable."

THE P. A. FRYE CO.

The Union Trust Co. owns all the capital stock of the P. A. Frye Co., which was formed to take over the bank's foreclosure real estate. No dividends have ever been paid. The company sustained losses in each year of operation, which losses have been absorbed by the bank so that the company's capital remains unimpaired.

The following extract of a letter dated July 26, 1930, sets forth clearly the intent and purpose of this company:

The undersigned desires to transfer to your company the legal title to certain parcels of real estate and from time to time hereafter plans to transfer to your company the legal title to additional parcels of real estate, all to be held by your company subject to the following understanding:

You are to hold said legal title for the account of and subject to the order of the undersigned. Unless and until specific direction shall be given your company as to the disposition of the title to the properties thus conveyed, your company is authorized to manage for the undersigned all of said properties, to effect such changes, alterations, or improvements in or upon said properties as in your judgment may be desirable with a view to the ultimate disposition thereof, to negotiate and consummate sale of said properties on such basis as in your judgment is desirable (subject always to the right of the undersigned to give your company binding instructions in connection therewith), and to make necessary conveyances in connection with such sale. Upon the consummation of any sale involving conveyance of title by you, to the extent that the proceeds shall be represented by net cash payments and obligations secured by mortgage, you are to account immediately to the undersigned for such proceeds, but to the extent that such proceeds shall be represented by other real estate you are to hold the title to said real estate in the same manner and subject to the same terms as are herein provided with reference to the title to the real estate transferred to you by the undersigned. In cases of sale under land contract you are to account monthly to the undersigned for the payments received on such contracts until such time as title shall be conveyed by you, at which time you are to account to the undersigned for the entire balance of the proceeds of such sale.

This arrangement is to be subject to termination or modification at any time at the pleasure of the undersigned.

(U-110)

The balance sheet of the company shows at December 31, 1931, "Real estate Union Trust Co." as an asset \$1,898,971.61 and shows as a liability Union Trust Co. in a similar amount. At December 31, 1932, it shows an asset "Real estate Union Trust Co." \$2,941,100.97 and shows as a liability Union Trust Co. in a similar amount.

The Union Trust Co. carries the same amounts upon their books; as "Real estate, buildings, leaseholds, etc."

The same criticism applies as that in the case of the Union Lennox Co., wherein the Union Trust Co., owning stock of a subsidiary company, shows upon its statement of condition as of December 31, 1931, the assets of this subsidiary company listed under bank buildings and real estate owned.

#### THE AKERS-FOLKMAN CO.

This company was owned 100 percent by the Union Trust Co. and operated a traveling service operated by the bank as an added service to its clients. It specialized in steamship tickets.

Formation of a subsidiary company to assume this service was to remove the bank from direct participation in a nonbanking enterprise.

Dividends were declared and paid to the Union Trust Co. in amounts totaling all the profits for each year, as follows:

(U-111)

Year	Amount	Year	Amount	Year	Amount
1923.....	\$1,000 00	1926.....	\$10,224 12	1929.....	\$4,184 14
1924.....	7,651 01	1927.....	12,000 00	1930.....	1,072 26
1925.....	9,520 60	1928.....	9,695 65		

In the year 1931 a loss of \$4,257.96 was sustained. In the year 1932 a profit of \$40.72 was shown so that there was at December 31, 1932, a deficit of \$4,217.24. There was also due the Union Trust Co. in the form of notes payable at this same date \$2,000.

#### THE CLEVELAND-BOSTON CO

There is no further comment in connection with this company other than that stated in the caption "corporate structure", and supplemented by a statement taken from the superintendent of banks report of January 20, 1933, which reads:

It is apparent that the liquidating value of the Cleveland-Boston Co is almost entirely a slow work-out proposition of undeterminable value at this time.

#### UNION CLEVELAND CO , INC.

(U-112)

This company is mentioned merely because of its similarity in name to the Union Cleveland Corporation

This company was organized in February 1920, and acted principally as a messenger service and an information office for the Union Trust Co. at 120 Broadway, New York City.

The company was formally dissolved on October 31, 1932, and is no longer in existence.

WALTER H. SEYMOUR,  
*Senior Examiner.*

This report is based upon preliminary report and complete investigation by committee examiner Frank H. Ensign.

Mr. SAPERSTEIN. I now hand you a report entitled "The Union Trust Company—Financial Condition, 1929 to 1933", and ask you if that is a report made under your immediate supervision by the members of the investigating staff of the committee

Mr. MEEHAN. Yes.

Mr. SAPERSTEIN. Mr. Chairman, I now offer in evidence this report, together with the exhibits at the Government Printing Office which support same.

The CHAIRMAN. The report and exhibits will be received in evidence and appropriately marked.

(The report entitled "The Union Trust Company—Financial Condition, 1929 to 1933", together with the exhibits now at the Government Printing Office, were received in evidence and marked "Committee Exhibit No. 4, May 4, 1934", and are as follows:)

#### COMMITTEE EXHIBIT No. 4, MAY 4, 1934

##### FINANCIAL CONDITION 1929 TO 1933

(U-5-1, U-5-2, U-5-3, p 4)

A detailed analysis of the Ohio State bank examiner's reports rendered as of January 25, 1929, March 27, 1931, January 20, 1933 and the special directors' examination as of December 20, 1932, known as the "Lenihan report", discloses the fact that the seeds for the final closing of the bank in February 1933 were sown as far back as 1928.

Before reporting on the results of our analysis, however, we should like to point out one thing relative to the above-mentioned State examinations. Section 710-19 of the Ohio State bank laws requires that the superintendent of banks make an examination of each bank

(Ohio bank law, sec 710-19)

At least twice each year and as often as the superintendent of banks may deem necessary

except that in cities having a clearing house association only one examination each year is required

(Ohio bank law, sec 710-19)

\* \* \* when the superintendent of banks deems a second examination unnecessary.

It will be noted from the above that the Union Trust Co. was examined approximately once every 2 years by the State banking department. The regulations of the Clearing House Association require that each bank be examined by the association at least once each year and the Federal Reserve Bank had the right to make an examination once each year. The Clearing House Association made its last examination of the Union Trust Co. in 1926. The Federal Reserve has never made an independent examination of the Union Trust Co.

While we believe that the officers and directors of the Union Trust Co. are responsible for their own acts and for allowing the bank to drift into its present condition, we do feel that the State banking

department is in a great measure responsible for the fact that examinations were not made often enough, and that when they were made, corrective measures were not taken to arrest the threatening doom of the Union Trust Co

We are not trying in any way to lay at the door of the State banking department the responsibility for the closing of the Union Trust Co. We believe that bankers have a great deal more knowledge about the banking business than State officials, and, therefore, know what is and what is not good banking practice; and we do not believe that because Government banking department officials have not called to the attention of bankers the latter's wrongful or imprudent acts the responsibility of the bankers is in any way relieved or removed. Neither do we subscribe to the belief that a banker has a right to perform some act simply because it is not legally wrong to do so, but is morally or ethically wrong. After all, the bankers have had the benefit of eminent and astute counsel before performing their acts to see that they were within the law. In other words, we feel that the Ohio State Banking Department has a great deal to answer for in the closing of the Union Trust Co., but that its responsibility is wholly apart from that of the bank's directors and officers.

#### UNION TRUST'S FAILURE

In summary, the reasons for the bank's extremely nonliquid condition, which resulted in its failure to reopen, were as follows:

1. Heavy investment in real estate owned.
2. Bad loan policy and inadequacy of reserve for losses.
  - a. Excessive concentration of loans to the Van Sweringen interests and Eaton interests.
  - b. Loans to officers, directors, and their affiliated corporations.
  - c. General loans.
  - d. Real estate loans.
3. Poor investment policy.
4. Bad dividend policy in the face of impaired capital.
5. Rapid decline in deposits
6. Exhaustion of ability to borrow.

(U-5-a, consisting of U-5-1, p. 3; U-5-2, p. 4; U-5-8, p. 2; U-5-3, p. 1)

For the purpose of convenient reference, there is submitted a comparative statement of condition as per State bank examiner's reports and directors' report (Lenihan report), which embody the statements of resources and liabilities appearing in each of the above-mentioned State bank examiner's reports and directors' examination.

(U-5-B)

It should also be noted that the Ohio State bank examination, dated as of January 20, 1933, was not completed by the examiner as the bank holiday was declared before its completion, and the bank was denied a license to reopen.

The reports of the State examiner consist of some 300 or 400 sheets and we have not taken photostatic copies. We have requested the bank officials to have these reports in Washington in case they be needed during the committee hearing and we shall refer to the reports

frequently in our report, exhibits U-5-1, U-5-2, and U-5-3 being the State bank examiner reports.

1. *Heavy investments in real estate owned.*—The item of real estate owned, as carried on the books of the bank and reflected in statements, represents the Union Trust Co. main bank building, which is a building of 20 floors, its other branch bank buildings, and other real estate owned.

The main bank building was built shortly after the consolidation of the banks forming the Union Trust Co. in 1922, when a separate corporation was formed, called the Union Lennox Co., wholly owned by the bank—title to the bank building being placed in the name of the Union Lennox Co. The Union Lennox Co. leased the bank building to the bank and also procured a mortgage loan of \$6,300,000 from the Northwestern Mutual Life Insurance Co. of Milwaukee.

The bank carries this real estate on its books and in its statements each year at the net amount of its advance to the Union Lennox Co., less annual depreciation. The mortgage liability, however, is not reflected on the books of the bank, the total cost of the building being thereby understated by the amount of the mortgage.

Confining ourselves in this report, however, to the valuations of real estate owned as reflected on the above mentioned four bank examinations, the following appears as a summary

(U-5-a)

	Banking prop- erties	Percent of capital and sur- plus	Percent of total deposits	Other real estate owned	Total real estate owned	Percent of capital and sur- plus	Percent of total deposits
Jan 25, 1929	\$13,008,872 03	37 2	4 5	\$4,581,517 27	\$17,590,389 30	50 3	6 1
Mar 27, 1931	13,600,994 17	38 8	4 6	5,976,445 04	19,577,439 21	55 9	6 6
Dec 20, 1932	13,622,088 00	39 0	7 8	6,464,045 48	20,086,064 48	57 4	11 5
Jan 20, 1933	13,614,480 66	38 9	8 2	6,569,343 89	20,183,824 55	57 7	12 1

From this analysis it will be seen that over 50 percent of the bank's capital and surplus was at all times invested in real estate, without taking into consideration the fact that the actual investment in real estate was considerably greater by reason of the mortgage liability not reflected on the books of the bank or on its statements. This obvious element of unhealthy condition prevailed from the very organization of the Union Trust Co. in 1922. Such large real-estate investments denote lack of conservative banking inasmuch as such investments are definitely nonliquid; and it is considered generally to be very poor banking policy to have such a large percentage of the capital and surplus, and the correspondingly large percentage of total deposits, tied up in assets of this nature.

It should be noted, however, that the bank was entirely within its legal rights in constructing its main office building in 1922, although it did come perilously close to the 60 percent limitation of its paid-in capital and surplus. Reference is here made to section 710-108 of the Ohio banking laws.

Sixty percent of its paid-in capital and surplus of \$35,000,000 would set a limitation of real estate owned for banking quarters in the amount of \$21,000,000.

The actual cost of the construction of the main office building at Euclid and East Ninth Street, according to the books of the Union Lennox Co., was as follows

Cost of land, Euclid and East 9th Street property.....	\$3, 493, 501 49
Cost of leaseholds.....	21, 127 42
Cost of construction.....	13, 180, 086 62
Architect fees.....	425, 000. 00

Total cost of the main office buildings and land in the amount of 17, 119, 715. 53

Against this cost the Union Lennox Co. placed a mortgage of \$6,300,000 as mentioned above

The bank, of course, on its own books and in its statements did not carry this building at the actual total cost of \$17,119,715.53, but carried it, as indicated before, at a figure representing the net advance made to the Union Lennox Co.

However, going behind the book figures to actual facts, we find that the bank had an investment of \$17,119,715.53 in its main office building at the time of its construction. That, together with its other banking properties at cost, made its actual investment in real estate owned for banking purposes, a sum not much short of its legal limitation of \$21,000,000.

(U-5-1)

It is interesting to note the comments of the State bank examiner in his report of January 23, 1929, regarding real estate:

Question 1. State whether banking house is owned or leased.

Answer. Owned

Question 3. Is deed in name of the bank?

Answer. Union Lennox Co

Question 6. Is property encumbered? If so, is bank liable on encumbrance?

Answer Yes. Mortgage to Northwestern Mutual Life Insurance Co. for \$5,100,000 at 5½ percent, amortization \$300,000 yearly.

(U-5-2, p. 100)

Similar questions and answers appear also in the report dated March 27, 1931, except that the answer to question 6 is "\$4,200,000 balance due on mortgage held by Northwestern Mutual Life Insurance Co., rate 5½ percent "

However, in 1929, the State bank examiner did point out that the real estate holdings were unwarrantedly high and in his confidential report to his department stated.

(U-5-4)

#### REAL ESTATE

Main office and branch buildings are apparently worth book value. This amount, however, should be watched very closely in the future or else it will soon reach a staggering figure. The main office will be necessarily increased \$300,000 each year as this amount is each year's amortization figure. This alone is a sufficient amount for the real estate to be increased. Regarding the other real estate, it is practically impossible to rate the actual amount of loss which will be suffered by this bank. On certain pieces of real estate, the examiner is positive that a loss will be suffered; but it is impossible to determine that amount. The law has been disregarded in certain instances regarding the outright purchase of various pieces of real estate. This was brought to their attention, and it is the opinion of the examiner that this practice will be discontinued in the future. Also, some parcels of real estate have been held longer than the allotted time; this was brought to their attention and a requirement was made. The condition

of the other real estate is probably the most unsatisfactory item in the bank at this time; they are taking their losses as they see fit, and are earnestly trying to place all real estate on the books at actual value

Although the bank owned considerable real estate in addition to the main bank building, it did not pursue a conservative policy of setting up provisions for physical depreciation for each year on its books, other than depreciation on the main building.

On its Federal income tax reports, however, the bank took the benefit of such depreciation on all its properties, regardless of the fact that they were not recorded on the bank's general books; 1929 was the only year in which depreciation was charged off, and that in the amount of \$250,000, indicated as depreciation "for prior years." The accumulated depreciation on the real estate owned which was not recorded on the books as of December 31, 1931, totaled \$569,877.54.

For the year 1932 an amount of \$178,064.32 was claimed in a deduction on the income-tax return, but not charged off on the books. As of December 31, 1932, the accumulated amount of depreciation reported on income-tax reports, and not recorded on their books, was \$747,941.86.

The net effect of this method of accounting is that the real estate owned assets were inflated by the amount of the depreciation not deducted, and the earning statements were also inflated by such amounts of depreciation applicable to each year not deducted.

Nowhere in the State bank examinations is there any criticism relative to this inaccuracy and misrepresentation in the accounts of the bank.

(Ohio bank laws, secs 710-122)

2 *Bad loan policy and inadequacy of reserve for losses*—(a) Excessive concentration of loans to the Van Sweringen and Eaton interests: As far back as early 1929, the State bank examiner's report shows that the bank loans to the Van Sweringen interests were in excess of the statutory limitation, which is 20 percent of the total capital and surplus (in the case of this bank this limitation being \$7,000,000).

(U-5-1, p 98)

In the State examiner's report dated January 25, 1929, the examiner found that total loans made to the Van Sweringen interests amounted to \$8,069,890.25, being excessive thereby in the amount of \$1,069,890.25.

(U-5-2, pp 45, 46)

On March 27, 1931, the loans to the Van Sweringen interests amounted to \$11,623,928.92, and to Cyrus S Eaton interests \$4,579,862. Nevertheless, in the confidential report of the examination the bank examiner, Mr Thomas McEldowny, states as follows.

(U-5-5)

#### COLLATERAL LOANS

This department with its tremendous activity is well managed. Regardless of the downward swing in the stock market, this department has admirably met the situation. Short loans have been kept to a minimum amount. The collateral loan department is not subject to any criticism at the present time.

Further under confidential comments headed "General" he states:

(U-5-5)

Management appears to be of the highest grade. The Van Sweringen concentration of credit and the real-estate situation appear to be the only items of worry at this time. However, no definite stand can be taken on these items at the present. The officers are well aware of this situation and are keeping in constant touch with it. The general condition of this bank with the above two exceptions is satisfactory. The examiner's requirement will not be taken care of immediately, but will be complied with as soon as possible.

Nevertheless, in spite of these comments, indicating apparent dangers, the following appears in the body of the report of the bank examiner

(U-5-2, p 6)

Question 10 and answer are as follows

Q What elements of danger or weakness are in the bank?

A None—apparent.

(U-5-6, p 7)

Also reference is made in a special report of the examining committee of directors, dated November 14, 1930, to the subject of excessive loans, indicating excessive loans to the Van Sweringen interests in the amount of \$2,249,455 03. Total amount of these loans was as follows.

Collateral loans to O. P. and M. J. Van Sweringen.....	\$7, 800, 000 00
Endorsers on collateral loan.....	20, 000. 00
Endorsers on unsecured loan.....	6, 955 03
Guarantors on collateral loan to Metropolitan Utilities, Inc.....	1, 422, 500 00
Total.....	<u>9, 249, 456. 03</u>
Excess.....	<u>2, 249, 455 03</u>

(U-5-6, p 7)

The following note also appears thereon:

The loan to Metropolitan Utilities, Inc, was paid off November 26, 1930.

(U-5-7)

This statement appears to be only partially true, as the records of the bank indicate that whereas the loan to Metropolitan Utilities, Inc, in the amount of \$1,422,500, was paid off on November 26, 1930, a new loan on the same date was made to the same company in the amount of \$1,632,500. Both these loans were certificates of participation, and the only difference between them was that the loan of \$1,422,500 was guaranteed by O. P. and M. J. Van Sweringen, while the loan of \$1,632,500 was guaranteed by the Vaness Co.

The above-mentioned large loans to the Van Sweringen interests and Eaton interests finally resulted in their inclusion, to a substantial extent, in the total loans considered as bad at the closing of the bank.

- (b) Loans to officers, directors, and their affiliated corporations
- (c) General loans
- (d) Real-estate loans.

(U-5-1, p. 7)

As of January 25, 1929: Loans to officers and directors, \$5,550,198 55; loans to corporations with which the directors were affiliated, \$9,351,147.41.

(U-5-2, pp. B and F)

As of March 27, 1931. Loans to officers and directors, \$9,325,059.94; loans to corporations with which they were affiliated, \$24,345,442.12.

(U-5-3, p 16)

As of January 20, 1933. Loans to officers and directors, \$9,165,677.11; loans to corporations with which they were affiliated, \$20,510,620.43.

It should be noted that in these figures the State bank examiner did not consider the Van Sweringen loans in the category of loans to corporations affiliated, whereas J. R. Nutt owned a 10-percent interest in the Vaness Co.

(U-1-10c)

On December 20, 1932, the total nonaccrual loans were \$22,715,190 46.

(U-1-8)

These were loans on which the bank ceased accruing interest; or, in other words, loans which in the opinion of the bank's officers were bad, or at least very doubtful of collection. They were loans which were, perhaps, properly collateralized at their inception, but were permitted to become "sour" and delinquent in interest payments because the management apparently did not have the ability to collect on the collateral, or refused to embarrass what might have been preferred borrowers. Of the above figure \$4,719,200 were non-accrual loans of officers and directors.

The following comments by the directors' committee regarding loans to directors are very pertinent:

(U-1-8)

*Committee comment.*—While these loans should be among the best loans in the bank and be predicated upon the highest type securities, in some cases the reverse is true and the bank now finds itself with loans greatly undersecured or secured by other items for which there is no market whatsoever. Further, some of these loans have necessarily been placed on a nonaccrual basis.

The committee knows that in some cases, even though our loan is still undersecured, the borrower has come forward and offered such other security as he may have had and such action is highly commended. However, there are other loans on which we should bring pressure to get a mortgage on their homes and insist that they arrange for the payment of delinquent interest and reduction of the principal

(U-1-10)

The estimated losses on account of these loans, on December 20, 1932, were \$13,560,556.70.

(U-5-3, p. 183; U-5-3, pp 41 and 75)

As of January 20, 1933, the nonaccrual items, exclusive of bonds and securities, were \$24,119,748.65, and the estimated losses on loans were \$11,582,275.82.

In estimating the above two mentioned losses appearing on the examiner's reports, it is definitely stated that these losses do not include any possible real-estate losses on account of real-estate loans or real-estate owned, as no proper estimate could have been made of such losses.

(U-1)

In fact, the directors' examining committee stated:

Because of extremely abnormal conditions affecting real-estate, the committee made no attempt to place an independent value on real-estate loans or on real-estate owned by the bank.

Reference is also made to the state bank examiner's report as of January 20, 1933, regarding real-estate mortgage loans:

(U-5-3, p. 248)

In attempting to classify loans none was classified as absolute loss unless the bank expressed an intention of abandoning the property or where a loss was apparent from a reappraisal of the subject property.

Half the delinquent loans are over a year past due in interest and nearly all such loans are delinquent in taxes—with such delinquency increasing at an alarming rate—thus weakening the equity that may exist to the property owned. The bank now has 103 suits in foreclosure and the officer in charge of real-estate loans stated that the bank expected to be forced to bid in at least 81 of these properties. As the delinquent interest and taxes increase it is bound to result in one thing—the property owner will move out and turn the property over to the bank. In most cases the properties have been reappraised since the loan was granted. Some startling facts are revealed in the reappraisal. From the appraisals of 1927 to 1929 the 1931 and 1932 appraisals show a reduction in value from 20 to 50 percent. And the balance due on the bank's loan in a great many cases equals the 1932 appraisal. Unless some relief is granted or business conditions change I believe the bank will be forced to take over at least 300 of these delinquent loans.

Another bad feature is the fact that the bank has over \$2,000,000 loaned on vacant property. No attempt is now made to foreclose on such loans. All are delinquent in taxes. The bank will suffer most on allotment loans. The delinquent taxes are increasing and eating away the values back of the bank's mortgage.

Analyzing the loans further, the following is the relation of real-estate loans to total loans:

(U-5-a)

Date	Total loans	Real-estate loans	Percent of total
Jan 25, 1929.....	\$220,346,080 63	\$76,846,359 10	34 9
Mar 27, 1931.....	222,808,076 90	74,168,249 06	33 3
Dec 20, 1932.....	182,404,226 63	66,429,477 43	43 6
Jan 24, 1933.....	151,821,516 39	66,187,760 91	43 5

Correspondingly, reserves for losses on loans were as follows:

(U-5-1, p. 130; U-5-2, p. 77; U-5-3, p. 299)

Jan. 25, 1929.....	\$404,335.42
Mar. 27, 1931.....	360,440.59
Jan. 20, 1933.....	1,196,389.07

Loans were classed as slow, doubtful, and losses, as follows:

Date	Slow	Doubtful	Loss
Jan 25, 1929.....	\$9,734,141 90	\$298,262 11	\$44,428 00
Mar. 27, 1931.....	8,838,165 90	1,193,915 86	254,834 92

(U-5-2, pp 14, 77)

As of March 27, 1931, the bank examiner also found real-estate loans in the amount of \$5,185,215.43 delinquent in interest; and

collateral and unsecured loans in the amount of \$3,313,248 14, delinquent in interest Reserves for losses on March 27, 1931, were only \$360,440 59.

The following notation appears in the examiner's report of March 27, 1931, regarding the mortgage loans:

(U-5-2, p 14)

Mortgage loans listed as being delinquent as to interest have been in such a condition for a period of 6 months or longer.

(U-5-2, p. 73; U-5-a)

In this connection it is important to note that the classification of loans mentioned above as of March 27, 1931, covers only the analysis of unsecured loans of \$13,114,457.65; whereas the total unsecured loans on that date were \$42,804,615.32.

(U-5-2, p. 138; U-5-a)

The analysis of the collateral loans covers only \$11,677,332 98, whereas the total collateral loans was \$94,348,212.30. In other words, the Bank Examiner's report on March 27, 1931 reflects an analysis of only small portions of the loans outstanding at that time.

It should also be noted that no comment whatever appears in the report of March 27, 1931, regarding the large loans to O.P. and M. J. Van Sweringen which, as of that date, totaled \$6,900,000, except in the confidential report to the State superintendent under "General," which we have referred to previously in this report.

In spite of the amount of loans to the Van Sweringens and the general condition of the bank, the examiner answered the following questions thusly:

(U-5-2, p 15; U-5-2, p 6)

3. Q. Do corporations or enterprises in which any director or officer is interested borrow to an undue extent?—A. Apparently none.

10. Q. What elements of danger or weakness are in the bank?—A. None apparent.

These answers to questions certainly appear in a very poor light in view of the acknowledged questionable condition of the real-estate loans as indicated in the confidential comments of the examiner as follows.

(U-5-5)

#### REAL-ESTATE LOANS

The real-estate loans comprise 33 2 percent of the total loans Delinquent loans in both main office and branches total \$5,185,215 43, or 6.9 percent of the total loans After taking into consideration the prevailing unsatisfactory condition of the real-estate situation in the city of Cleveland, the above figures appear satisfactory. The bank is foreclosing on a number of properties at the present time. Any loss that is suffered in the real-estate department is immediately written off The real-estate situation is probably the most troublesome one in the bank. Additional losses will unquestionably be suffered The general depression, lack of employment of our borrowers, and a tremendous decline in the present day value of real estate are the chief reasons for the unsatisfactory condition in this department.

A comparison of the total loans and the total deposits, exclusive of trust deposits, indicates the following:

(U-5-a)

Date	Total loans	Total deposits
Jan 25, 1929.....	\$220,346,080 63	\$289,021,704 05
Mar 27, 1931.....	221,808,076 90	296,928,523 08
Dec 20, 1932.....	152,404,228 63	174,528,029 55
Jan 20, 1933.....	151,821,516 39	166,864,901 17
A drop in percentage of.....	31 1	42 3

From these figures it will be seen that whereas the deposits dropped between March 27, 1931, and December 20, 1932, in the amount of \$122,400,493.53, loans for the corresponding period dropped only in the amount of \$70,403,850 27; and that whereas the deposits further dropped between December 20, 1932 and January 20, 1933 in the amount of \$7,663,128.38, the loans for the corresponding period dropped only in the amount of \$582,710.24.

The percentages of total loans to total deposits, exclusive of trust deposits, were as follows

	Percent
Jan 25, 1929.....	76 2
Mar. 27, 1931.....	75 0
Dec. 20, 1932.....	87. 3
Jan. 20, 1933.....	91 0

3. *Bad investment policy inadequate reserves.*—From examination of monthly schedules of securities and investments which we have reason to believe were regularly placed before the executive committee and directors it is very evident that the senior officers and executive committee were cognizant for some time past that the value of their securities and investments were shrinking progressively.

(U-5-10)

Pencil notations appear on these monthly schedules, indicating that on November 30, 1931, there was a shrinkage in the values of investments in the amount of \$14,771,051 08 against which there was a reserve for security variations of only \$2,200,000. Similarly, on the following dates corresponding figures were as follows.

(U-5-11, 12, 13, 14, 15)

Date	Shrinkage in investments	Reserve carried
July 31, 1932.....	\$16,467,013 29	\$3,891,487 15
Aug 31, 1932.....	13,946,578 11	3,852,879 56
Sept 30, 1932.....	14,896,132 77	3,819,553 97
Dec 31, 1932.....	14,710,285 75	3,704,071 92
Jan 31, 1933.....	14,757,080 74	3,704,071 92

4. *Bad dividend policy in the face of impaired capital*—It is apparent that the executive committee and directors were aware of the serious impairment to the capital by reason of a large shrinkage in investment values in 1931 and 1932, and by reason of a large shrinkage in the values of loans during these periods

(U-97)

In spite of this knowledge they nevertheless continued to pay cash dividends in substantial amounts during the year 1931 and the full year of 1932. Prior to 1927, the Union Trust Co paid dividends at the rate of 10 percent. The rate in 1927 was changed to 12 percent and continued until 1932, when it was reduced to 8 percent.

Conservative banking would have dictated that dividends should be omitted and larger reserves set up to provide for losses on account of loans and investments.

In the case of this bank it is very evident that additional contributions of capital should have been made, even in 1931 and certainly in 1932.

It must be remembered that in reflecting estimated losses on loans as set up by the State bank examiner, no attempt was made to evaluate the real-estate loans on which, unquestionably, large losses were obvious.

5. *Rapid decline in deposits.*—Comparative decline of deposits has already been indicated in the report above under the caption "General Loans as Compared to Deposits."

6. *Inability to borrow.*—During the years 1931 and 1932, the pledged assets of the Union Trust Co were increasingly large. As indicated by the State bank examiner's reports, public funds on deposit and bills to the Federal Reserve bank were secured by assets of the Union Trust Co, pledged as follows:

(U-5-1, p 70)

Jan. 25, 1929		
Public funds.....	-----	\$4, 097, 400 27
Bonds pledged.....	-----	7, 543, 000 00
Federal Reserve bills.....	-----	3, 000, 000 00
Assets pledged.....	-----	7, 000, 000 00

(U-5-2, p 78)

Mar 27, 1931		
Public funds.....	-----	8, 130, 980. 67
Bonds pledged.....	-----	12, 835, 000. 00

(U-1-42)

As of December 20, 1932, a total of \$58,466,312.38, consisting of bonds, mortgages, and other assets, were pledged to secure public funds and bills payable to the banks and the Reconstruction Finance Corporation; and as of January 20, 1933, total assets pledged were \$60,142,577.62, consisting of the following:

(U-5-3, p 8)

Unsecured loans.....	-----	\$5, 293, 398. 07
Mortgages.....	-----	41, 505, 679. 55
Bonds.....	-----	13, 343, 500. 00

Alfred P. Leyburn, in his testimony on January 11, 1934, given before the committee (speaking of the general banking situation) stated:

(Testimony of Leyburn, Jan 11, 1934)

Then we go to the Union Trust Co of Cleveland, with deposits of \$194,000,000 on the 31st of December, 1932; bills payable of \$15,878,000; cash \$35,000,000. In addition to borrowing that \$15,000,000 they had borrowed through an affiliated mortgage company about \$21,000,000. They had just about exhausted their

borrowing power After the bank holiday, that bank, with the aid of the Reconstruction Finance Corporation, paid out 35 percent.

The additional \$21,000,000 stated above as being borrowed through an affiliated mortgage company is the money borrowed through the medium of the Western Reserve Mortgage Co., organized to meet the requirements of the Reconstruction Finance Corporation, on the subject of which a separate report is being written.

It is believed that the purpose in borrowing from the Reconstruction Finance Corporation through the medium of the Western Reserve Mortgage Co. was twofold:

1. To obviate the necessity of reflecting on the bank statements such large additional bills payable, which would result in an increased alarm on the part of the public;

2. To enable the bank to borrow money in excess of its borrowing limit.

The details of the borrowings by the Union Trust Co. from the Reconstruction Finance Corporation both before and after the bank's closing will be covered fully in a separate report

#### CONCLUSION

Concluding this report, it is believed that as much as the officers and directors may have been largely responsible for allowing the bank to get in so bad a condition that it could not reopen, the Ohio State Banking Department too must shoulder the responsibility for allowing this condition to prevail. It is further believed that the State banking department did not perform its duties diligently and fearlessly, and definitely violated the law by not making examinations at least once a year as prescribed by law, and further, by condoning practices in the bank which were subject to severe criticism. These practices, if criticized in time, could have been checked, and the result would have been that the bank would not have sunk to as bad a condition as it did. The final result would have been that the depositors would not have been faced with so large a loss in the tying up of their assets; as turned out to be the fact.

It is a very sad commentary that the State banking department, in the light of definite poor banking practices, should give the bank's officers and directors what amounts to a pat on the shoulder and in effect tell them what amounts to "Your bank is in excellent condition and you have a very fine management."

A true conclusion of the State bank examiner's reports would have indicated severe criticism and severe requirements for ending the practices which resulted in the bank's final closing. It is also believed that if the State banking department would have made an examination early in 1932 (which it did not do) it would have disclosed a serious impairment of capital, and if the examination were conducted properly and fearlessly, it should have resulted in a demand for additional capital on the part of the stockholders, or in case of refusal or inability to meet such assessment, it would have been the duty of the State banking department to step in and save the institution from subsequent additional losses.

WALTER H. SEYMOUR,  
*Senior Examiner.*

Mr. SAPERSTEIN. Mr. Meehan, I hand you a report entitled "Schedule of directors and officers, years 1929 to 1933, inclusive, of the Union Trust Company and the Union Cleveland Corporation," which I will ask you to identify and state whether it was prepared under your immediate supervision by the members of the investigating staff of the committee

Mr. MEEHAN It is and was

Mr SAPERSTEIN Mr Chairman, I wish to offer this report in evidence, and I do not believe there is any reference to any exhibits in connection therewith

The CHAIRMAN The report will be received in evidence and appropriately marked

(The report entitled "Schedule of directors and officer, years 1929 to 1933, inclusive, of the Union Trust Company and the Union Cleveland Corporation," was received in evidence, marked "Committee Exhibit No 5, May 4, 1934," and is as follows.)

### COMMITTEE EXHIBIT No. 5, MAY 4, 1934

*Schedule of directors and officers, years: 1929-33, inclusive*

[Asterisk (\*) indicates year serving]

#### UNION TRUST CO

Name	Directors					Officers				Office held	
	1929	1930	1931	1932	1933	1929	1930	1931	1932		1933
W M Baldwin, president, Union Trust Co....	*	*	*	*	*			*	*	*	President
E S Barkwill, secretary, Cleveland Builders Supply & Brick Co	*	*	*	*	*						
George Bartol, chairman of executive committee, Otis Steel Co	*	*	*	*	*						
W P Belden, Belden, Young & Beach.....	*	*	*	*	*						
Alexander C Brown, president, Industrial Brownhouse Corporation	*	*	*	*	*						
Geo P Comey, president, the Comey & Johnson Co	*	*	*	*	*						
Henry W Corning.....	*	*	*	*	*						
Geo A Coulton, vice chairman of the board, The Union Trust Co	*	*	*	*	*						
W J Crawford, Jr, president, Crawford Realty Co	*	*	*	*	*						
H G Dalton, Pickands, Mather & Co.....	*	*	*	*	*						
F B Fretter, president, the National Refining Co	*	*	*	*	*						
W H Gerhauser, president, the American Ship Building Co	*	*	*	*	*						
F H Ginn Tolles, Hogsett & Ginn, attorneys	*	*	*	*	*						
Tom M Girdler, chairman of board and president the Republic Steel Corporation	*	*	*	*	*						
Geo C Gordon, president the Park Drop Forge Co	*	*	*	*	*						
G W Grandin, secretary the Missouri Lumber & Mining Co	*	*	*	*	*						
E R Grasselli, director Grasselli Chemical Co	*	*	*	*	*						
Thos S Grasselli, director E I Du Pont De Nemours & Co, president Grasselli Chemical Co	*	*	*	*	*						
Geo Gund, Gund Realty Co.....	*	*	*	*	*						
J A Hadden, Andrews, Hadden & Burton....	*	*	*	*	*						
H M Hanna, chairman of board, The M A Hanna Co	*	*	*	*	*						
W A Harshaw, president Harshaw Chemical Co	*	*	*	*	*						
F H Haserot, president the Haserot Co.....	*	*	*	*	*						
W S Hayden, Hayden, Miller & Co.....	*	*	*	*	*						
Parmely W Herrick, New York City.....	*	*	*	*	*						
Geo H Hodgson, chairman of board, the Cleveland Worsted Mills Co	*	*	*	*	*						

Schedule of directors and officers, years 1929-33, inclusive—Continued

Name	Directors					Officers				Office/held	
	1929	1930	1931	1932	1933	1929	1930	1931	1932		1933
David L Johnson, M B & H H Johnson, attorneys	*	*	*	*	*						Vice chairman of board
Emil Joseph, attorney	*	*	*	*	*						
Adrian D Joyce, president, the Glidden Co.	*	*	*	*	*						
Ralph T King, vice president, the Realty Investment Co	*	*	*	*	*						
John A Kling, president, the Cleveland Builders Supply Co	*	*	*	*	*				*	*	
J R Kraus, <sup>1</sup> chairman of board, the Union Trust Co	*	*	*	*	*						
E J Kulas, president, Midland Steel Products Co, president, Otis Steel Co	*	*	*	*	*						
E A Langenbach, chairman of board, Mitchell, Herrick & Co, Canton Ohio	*	*	*	*	*						
E P Lenihan, Lenihan & Co	*	*	*	*	*						
Bascom Little, Crowell & Little Construction Co	*	*	*	*	*						
Samuel Mather, Pickands, Mather & Co	*	*	*	*	*						
Philip R Mather, Pickands, Mather & Co	*	*	*	*	*						
William G Mather, president, Cleveland Cliffs Iron Co	*	*	*	*	*						
Otto Miller, Hayden, Miller & Co	*	*	*	*	*						
T. W Miller, chairman of board, Faultless Rubber Co, Akron, Ohio	*	*	*	*	*						
Ralph D Mitchell, Mitchell & Co	*	*	*	*	*						
R V Mitchell, president, Mitchell, Herrick & Co	*	*	*	*	*						
Herman Moss, general agent, the Equitable Life Assurance Society of N Y	*	*	*	*	*						
P A Myers, president, the F E Myers & Bros Co, Ashland, Ohio	*	*	*	*	*						
Laurence H Norton, Oglebay, Norton & Co	*	*	*	*	*						
Robert C Norton, Oglebay, Norton & Co	*	*	*	*	*				*	*	
J. R. Nutt, chairman of the board, the Union Trust Co	*	*	*	*	*						
Carl N Osborne, treasurer, the M A Hanna Co	*	*	*	*	*						
Kenyon V Painter, real estate	*	*	*	*	*						
N G Richman, the Richman Bros Co	*	*	*	*	*						
Thos. P Robbins, vice president, the Cleveland Hardware Co	*	*	*	*	*						
Jos E Rogers, president, the American Multigraph Corporation	*	*	*	*	*						
F. F. Root, president, E P Root Co	*	*	*	*	*				*	*	
Allard Smith, executive vice president, the Union Trust Co	*	*	*	*	*				*	*	
Samuel Lewis Smith, vice president, National Malleable & Steel Castings Co	*	*	*	*	*						
Andrew Squire, Squire, Sanders & Dempsey, attorneys	*	*	*	*	*						
Henry G Tremmel, president, the North American Fibre Products Co	*	*	*	*	*						
J H Wade, Jr, Wade Realty Co	*	*	*	*	*						
Whitney Warner, W H Warner & Co	*	*	*	*	*						
Fred B White, Baker, R & L Co	*	*	*	*	*						
Thos H White	*	*	*	*	*						
Windsor T White	*	*	*	*	*						
R W Woodruff, chairman of board, the White Motor Co, president, the Coca Cola Co	*	*	*	*	*						

UNION CLEVELAND CORPORATION

W M Baldwin	*	*	*	*	*	*	*	*	*	*	Vice president, <sup>1</sup>
E F Carter	*	*	*	*	*	*	*	*	*	*	
A C Coney	*	*	*	*	*	*	*	*	*	*	Vice president and manager
G A Coulton	*	*	*	*	*	*	*	*	*	*	
H. G Dalton	*	*	*	*	*	*	*	*	*	*	
G W Grandin	*	*	*	*	*	*	*	*	*	*	
Warren S Hayden	*	*	*	*	*	*	*	*	*	*	
John A Kling	*	*	*	*	*	*	*	*	*	*	
J. R. Kraus	*	*	*	*	*	*	*	*	*	*	
E J Kulas	*	*	*	*	*	*	*	*	*	*	

<sup>1</sup> J R Kraus elected chairman of board June 30, 1932

<sup>2</sup> President after July 12, 1932.

## Schedule of directors and officers, years: 1929-33, inclusive—Continued

## UNION CLEVELAND CORPORATION—Continued

Name	Directors					Officers					Office held
	1929	1930	1931	1932	1933	1929	1930	1931	1932	1933	
O B Lincoln.....	*	*	*	*	*	*	*	*	*	*	Vice president President
J R Nutt.....	*	*	*	*	*	*	*	*	*	*	
Wm G Mather.....	*	*	*	*	*	*	*	*	*	*	Assistant secretary- treasurer <sup>2</sup>
E N Wagley.....	*	*	*	*	*	*	*	*	*	*	
Windsor T White.....	*	*	*	*	*						Assistant treasurer Secretary-treasurer Treasurer Assistant treasurer
L C West <sup>4</sup> .....					*						
O C Merrifield.....					*					*	
R C Hyatt.....					*	*				*	
Henry Ranft.....					*	*	*	*	*	*	
L J Roeder.....					*	*	*	*	*	*	

## AKERS-FOLKMAN CO

Jos Folkman.....								*	*	*	President Secretary Director
Grover Hull.....								*	*	*	
Allard Smith.....								*	*	*	

## CLEVELAND-BOSTON CO

L C Gilger.....	*	*	*	*	*	*	*	*	*	*	Secretary. President Vice president and treasurer
Grover H Hull.....	*	*	*	*	*	*	*	*	*	*	
W J O'Neill.....	*	*	*	*	*	*	*	*	*	*	
John C McConnell.....					*			*	*	*	Secretary-treasurer. Vice president President
A L Wieland.....					*			*	*	*	
James S Royan.....					*			*	*	*	

## P A. FRYE CO

P. A. Frye.....		*	*	*	*	*	*	*	*	*	President Secretary-treasurer Vice president and as- sistant secretary. Vice president
Charles M Knight.....		*	*	*	*	*	*	*	*	*	
L H Stofer.....		*	*	*	*	*	*	*	*	*	
A. W Lewis.....								*	*	*	

## THE UNION LENNOX CO.

W M. Baldwin.....	*	*	*	*	*	*	*	*	*	*	President and treas- urer Vice president.
Allard Smith.....	*	*	*	*	*	*	*	*	*	*	
M S Haliday.....	*	*	*	*	*	*	*	*	*	*	Do President
O W Carlson.....	*	*	*	*	*	*	*	*	*	*	
Grover H Hull.....	*	*	*	*	*	*	*	*	*	*	Assistant secretary and assistant treasurer Secretary Vice president Secretary Treasurer
H E Hills.....	*	*	*	*	*	*	*	*	*	*	
S J Blair.....	*	*	*	*	*	*	*	*	*	*	
Charles M Knight.....	*	*	*	*	*	*	*	*	*	*	
James S Rogen.....	*	*	*	*	*	*	*	*	*	*	
O B Anderson.....	*	*	*	*	*	*	*	*	*	*	
P W Jewell.....					*			*	*	*	Secretary.

WALTER H. SEYMOUR,  
Senior Examiner.

Mr. SAPERSTEIN. Mr. Meehan, I now hand you a report entitled "The Union Trust Company—Compensation to officers", and ask you if that was prepared under your supervision by members of the investigating staff of the committee.

Mr. MEEHAN. It was.

<sup>2</sup> Secretary in 1929

<sup>4</sup> Elected director July 31, 1933, also elected president.

Mr. SAPERSTEIN. Mr. Chairman, I offer the report in evidence, together with the exhibits referred to on the report and which exhibits are now at the Government Printing Office

The CHAIRMAN The report and exhibits will be received and appropriately marked

(The report entitled "The Union Trust Company—Compensation to officers", together with exhibits referred to therein and which exhibits are at the Government Printing Office, were received in evidence and marked "Committee Exhibit No 6, May 4, 1934", and are as follows )

COMMITTEE EXHIBIT No. 6, MAY 4, 1934

COMPENSATION TO OFFICERS

It is interesting to note in analyzing the income and expenses of Union Trust Co , that while earnings (before depreciation) decreased over \$2,000,000 from 1928 to 1932, the decrease in compensation paid to officers was less than \$300,000

(U-17-1, 5, 6, 9)

According to bank records, the total compensation paid to officers for the year 1928 was \$1,304,409, and for the year 1932, \$1,008,605, indicating a decrease of \$295,804, whereas, the net operating income before depreciation for the year 1928 was \$4,997,152 67, and for the year 1932, \$2,929,636 57, indicating a decrease of \$2,067,516 10. Considering each decrease from a percentage viewpoint, earnings decreased 41 percent plus, officers' compensation decreased 22 percent plus

Below is a comparative statement compiled from the bank records showing for the years 1928 to 1932

(U-17-1 to 5, 6 to 9)

	Compensation paid to officers	Total operating expenses	Net operating income before depreciation
1928.....	\$1,304,409 00	\$5,135,926 70	\$4,997,152 67
1929.....	1,345,901 08	5,642,469 72	5,026,480 37
1930.....	1,296,132 00	4,249,744 65	4,566,259 33
1931.....	1,286,910 00	5,211,016 28	4,355,605 13
1932.....	1,008,605 00	4,252,310 59	2,929,636 57

The head of this banking institution should be questioned as to the efforts made to decrease compensation paid to officers so as to be in line with the corresponding decrease in earnings

In 1932 there appears to have been a general decrease in officers' salaries of from 10 to 20 percent, which, in our opinion, and in view of the vast decrease in earnings, was insufficient

There were no bonuses paid to officers during the years under review.

Comparative salaries of the "key men" for the years under review are as follows

	1928	1929	1930	1931	1932
W. M Baldwin.....	\$45,000	\$48,333	\$50,000	\$50,000	\$44,166
G A Coulton.....	50,000	50,000	50,000	50,000	40,916
J R Kraus.....	45,000	48,333	50,000	50,000	44,166
J R Nutt.....	50,000	50,000	50,000	50,000	1 22,916
Allard Smith.....	35,000	37,500	40,000	40,000	33,333

<sup>1</sup> For half year only

WALTER H. SEYMOUR,  
*Senior Examiner.*

This report based upon preliminary report and complete investigation by Committee Examiner M. J. La Padula.

Mr SAPERSTEIN. I now hand you a report entitled "The Union Trust Company—Loans to directors", and ask you if that report was made by members of the investigating staff of the committee under your immediate supervision

Mr. MEEHAN It was.

Mr SAPERSTEIN. Mr. Chairman, I offer the report in evidence, together with the exhibits mentioned thereon, which exhibits are now at the Government Printing Office

The CHAIRMAN. The report and exhibits will be received in evidence and appropriately marked

(The report entitled "The Union Trust Company—Loans to directors", together with the exhibits connected therewith and which exhibits are now at the Government Printing Office, were received in evidence and marked "Committee Exhibit No. 7, May 4, 1934", and are as follows:)

#### COMMITTEE EXHIBIT No 7, MAY 4, 1934

##### LOANS TO DIRECTORS

(U-6-54-a, b)

According to an analysis prepared and furnished to us by the liquidator of the Union Trust Co, directors of the Trust Co. were indebted to the bank on February 25, 1933, the day the bank closed, as follows:

Direct liability.....	\$7,393,805 63
Contingent liability.....	859,460 12
<b>Total.....</b>	<b>8,253,265 75</b>
Less duplications account of joint liability.....	104,477 39
<b>Total.....</b>	<b>8,148,788 36</b>

On February 17, 1934 (this date was selected as being nearest to the termination of our investigation), the liability of directors to the bank was as follows:

(U-6-54-a, b)

Direct liability.....	\$5,549,384 41
Contingent liability.....	589,940 67
<b>Total.....</b>	<b>6,139,325 08</b>
Less duplications account of joint liability.....	10,833 72
<b>Total.....</b>	<b>6,128,491 36</b>

Special reports have been prepared on the following directors: William G. Mather, Kenyon V. Painter, hence no specific comments relative to these directors are contained in this report

## LENIHAN REPORT

(U-1-1 to 45)

Conditions in regard to loans to directors of the Union Trust Co. were brought to the attention of directors in the so-called "Lenihan report," dated February 3, 1933. This report was the result of an examination as of December 20, 1932. Page 9 of this report indicates the directors' liability as of that date amounted to \$9,252,586 80, made up as follows

	(U-1-7)	
Direct.....	-----	\$8, 470, 478 05
Contingent.....	-----	782, 108. 75
Total.....	-----	<u>9, 252, 586. 80</u>

(U-1-8)

Page 10 of the report contains the following comments:

*Loans to directors—undersecured*

Wm P Belden.....	-----	\$12, 700. 00
Geo. P. Comey.....	-----	82, 000 00
T M Girdler.....	-----	10, 000 00
G W Grandin.....	-----	313, 000 00
T S Grasselli.....	-----	371, 530 70
John A Haddan.....	-----	16, 839 00
W S Hayden.....	-----	90, 900 00
Adrian D Joyce.....	-----	709, 500 00
Ralph T. King.....	-----	38, 743. 64
Bascom Little.....	-----	37, 343. 44
R V Mitchell.....	-----	15, 400 00
C N. Osborne.....	-----	90, 000 00
Whitney Warner.....	-----	149, 143 20
Total.....	-----	<u>1, 937, 099 98</u>

## Now on nonaccrual basis

W. J. Crawford, Jr.....	-----	61, 400. 00
Parmely W. Herrick.....	-----	808, 800 00
Otto Miller.....	-----	<sup>1</sup> 919, 000. 00
K. V Painter.....	-----	2, 930, 000. 00

Total..... 4, 718, 200. 00

(U-1-8)

*Committee comment.*—While these loans should be among the best loans in the bank and be predicated upon the highest type securities, in some cases the reverse is true and the bank now finds itself with loans greatly undersecured or secured by other items for which there is no market value whatsoever. Further, some of these loans have necessarily been placed on a nonaccrual basis.

The committee knows that in some cases, even though our loan is still undersecured, the borrower has come forward and offered such other security as he may have had and such action is highly commended. However, there are other loans on which we should bring pressure to get a mortgage on their homes, and insist that they arrange for the payment of delinquent interest and reduction of the principal

<sup>1</sup> Only \$520,000 on nonaccrual basis.

It will be noted that at that time (February 3, 1933), out of total loans to directors of \$9,252,586 80, the total undersecured amounted to \$6,655,299 98, or over 71 percent of the total loans to directors

If this laxity were followed in the case of all loans, the results obviously would be disastrous. However, the fact that the borrowers were directors of the bank undoubtedly influenced the policy in regard to these loans

(U-1-2)

The total amount of collateral loans on December 20, 1932, were \$64,876,214 05. With the possible exception of \$100,000 the direct loans to directors of \$8,470,478 05 were collateral loans, indicating that directors were borrowing approximately 12 percent of the total collateral loans

#### COMMENTS ON INDIVIDUAL LOANS

Below is a brief history of individual directors' loans. Those loans which have been paid since the closing of the bank February 25, 1933, have been eliminated.

*Otto Miller*—On January 20, 1933, the date of the last examination by the Ohio State Banking Department, Otto Miller was indebted to the Union Trust Co in the amount of \$894,000. We quote from the bank examiners' report.

(U-5-3, p 107)

*Otto Miller (director) \$894,000—Iroquois Securities Inc, \$50,522 25*—Miller's personal loans amount to \$805,000, \$420,000 of this amount is delinquent in interest since April 1, 1932, and \$100,000 is delinquent in interest since July 1, 1932. His personal loans are collateralized by various listed and unlisted securities having a present estimated market value of \$328,000. The bank also holds 1,578 shares of Malvery Land Co., which had a book value of \$72 per share on July 11, 1932. This company is a real-estate holding company whose holdings consist principally of Shaker Heights properties. It is impossible to determine the true value for this stock. No reductions have been made on Miller's personal loans in more than 1 year. He is probably broke and it is apparent that a substantial loss must eventually be taken. For the purpose of this examination \$475,000 has been classed doubtful. The balance of the loans charged against Miller, which amount to \$89,000, are obligations of Hayden Miller & Co., of which he is a partner. These loans are being kept in current condition but the value of the collateral pledged against them amounts to only \$28,000. It is believed, however, that the other partners in this firm are financially responsible. The Iroquois Securities, Inc., is owned equally by W S Hayden, L B Williams, D W Myers, and Otto Miller. The value of the marketable collateral pledged against this loan is \$35,000. Other collateral pledged is 3,520 shares Wood Chemical Products Co., class B stock, and 135 shares Cushman Willis Co. It is believed that these two latter stocks have sufficient intrinsic value to cover the loan.

(U-6-54)

On February 25, 1933, the date the bank closed, Mr. Miller owed \$805,000, and on December 31, 1933, \$726,920.71. Since that date and to the present writing there have been principal reductions of \$8,647.20. These reductions were the results of sales of collateral pledged for the loans.

Attention is directed to the examiner's comments above, wherein he declared that the bank will eventually sustain a loss of approximately \$475,000.

(U-1-8)

In the so-called "Lenihan report", dated December 20, 1932, page 10, loan to Otto Miller, in amount of \$919,000, is shown under the caption "Loans to directors—Under-secured—Now on nonaccrual basis," to the extent of \$512,000 This caption is followed by several comments of the committee on the general policy of loans to directors

(U-6-55)

The attached exhibit from the files of the receiver clearly indicates that a large loss will eventually be incurred by the bank in the liquidation of this loan

*Adrian D. Joyce*—On January 20, 1933, date of last examination by Ohio State Banking Department, Mr Joyce was indebted to the bank in the amount of \$709,500 In commenting on the loan the examiner stated

(U-5-3, p 100)

*Adrian D Joyce \$709,500 loan*—Maker is president of the Glidden Co Loans is collateraled by various listed stocks worth approximately \$168,000 at the present market prices, together with an assignment of a living trust which has an estimate worth of \$265,000 The principal item of collateral held is a block of 700 shares of Glidden Co, which is currently quoted at \$16 per share The loan depends largely on a recovery in market value of Glidden stock Two hundred and seventy-five thousand dollars is the approximate shortage at this time, and this portion has been classed undetermined

(U-6-71 to U-6-74)

On February 25, 1933, Mr Joyce owed \$708,841 50, and on December 31, 1933, \$707,539 06 No other reductions have been made since June 30, 1933; Mr Joyce's liability at this writing being \$707,539 06

The so-called "Lenihan report" dated February 3, 1933, shows the total loans \$709,500, secured by collateral valued as follows

Securities.....	\$353, 297
100 shares Joyce Realty Co capital stock, being entire capitalization of company whose main asset is a 153-acre farm and equipment valued at.....	200, 000
Life insurance assigned.....	150, 000

(U-1-16)

*Committee comment*—We do not approve of personal holding companies such as Joyce Realty Co Why not get a mortgage on the farm instead of the capital stock and additional collateral?

*Whitney Warner*—On January 20, 1933, the date of the last examination by Ohio State banking department, Whitney Warner was indebted directly in the amount of \$9,925 20, and indirectly in amount of \$590,082 49 We quote from the bank examiner's report

(U-1-28-, 28a)

W H. Warner Coal Co.....	\$103, 980 00
Warner Collieries Co, end W H Warner Coal Co.....	300, 000 00
Whitney Warner.....	9, 925 20
Ralston Fox Smith, end Whitney Warner.....	20, 000 00
Ohio River Edison Coal Co, end W H Warner Coal Co.....	120, 000 00
W H Warner & Co.....	36, 227 49
K B Whitworth, end Whitney Warner.....	9, 875 00
<b>Total.....</b>	<b>600, 007 69</b>

(U-5-3, p 125)

The W H Warner Coal Co is a holding company for a number of coal companies. W H Warner & Co is a partnership which owns the majority of the stock of W H Warner Coal Co, and also functions as a sales company for the various subsidiary coal companies. The above detailed lines of credit have been in the bank for a number of years, but are being gradually worked out under the direction of vice president Steele. The various loans are collateralized by stocks and obligations of the various subsidiary companies. Due to the interlocking nature of the various companies and the interdependence of one company on another it is impossible to determine any dollar values for these stocks. In discussing the above loans with vice president Steele, he stated that the companies are ably managed and feels confident that reductions will continue on same proportion that they have in the last few years.

Balances of these loans as of February 19, 1934, are as follows

(U-6-54)	
W H Warner Coal Co	
Feb 25, 1933.....	\$103,980 00
Feb 19, 1934.....	103,980 00

(U-6-54)	
Warner Collieries Co	
Feb 25, 1933.....	300,000 00
Dec 31, 1933.....	203,887 52
Feb 19, 1934.....	199,887 52

(U-6-54)	
Ralston Fox Smith	
Feb 25, 1933.....	20,000 00
Feb 19, 1934.....	20,000 00

This note entered the assets of the bank Nov 10, 1924, in the amount of \$26,000. Only reduction May 12, 1928 (4 years later) Still in assets of bank, \$20,000

(U-6-54)	
K. B. Whitworth:	
Feb 25, 1933.....	9,875 00
Feb 19, 1934.....	9,875 00

*George P. Comey*—On January 20, 1933, date of last examination by Ohio State Banking Department, Mr Comey was indebted to the bank in the amount of \$32,000. In commenting on the loan the examiner stated

(U-5-3, p. 86)

*\$32,000 loan*—George P. Comey, value of collateral pledged is \$20,000, which includes 400 shares of the Union Trust Co. It is impossible to obtain any additional collateral and payment depends on recovery of stocks held.

(U-6-75)

The liability of \$32,000 of Mr Comey has existed since January 2, 1932, the only reduction is \$645.84 on June 30, 1933, which makes his liability at this writing \$31,354.16.

(U-1-12)

The so-called "Lenihan report", dated February 3, 1933, shows the total loan \$32,000, secured by collateral valued at a total of \$18,340, undersecured at that time \$13,660.

(U-5-3, p 87)

*W. J Crawford, Jr* —On January 20, 1933, date of last examination by Ohio State banking department, Mr Crawford was indebted to the bank in the amount of \$59,100 In commenting on the loan the examiner stated:

*W J Crawford, Jr, \$59,100* —Interest is delinquent since April 1, 1932 The loan is collateralized by listed stocks worth \$9,000, together with various other real estate, stocks, and bonds of undetermined value Maker is heavily in debt at practically all of the other local banks A creditors' agreement has been made and all of his unpledged assets are held for the pro rate benefit of the banks interested Outcome of this loan cannot be determined at this time.

(U-6-76, 77, 78)

On February 25, 1933, Mr. Crawford owed \$59,100, and on December 31, 1933, \$57,997 24. Since that date and at the present writing there has been only one small reduction in the amount of \$71.25.

(U-1-11)

The so-called "Lenihan report" dated February 3, 1933, shows the total loan \$59,100, secured by collateral valued at a total of \$15,200, undercollateralized at that time \$43,900

*Parmely W. Herrick.*—On January 20, 1933, date of last examination by Ohio State Banking Department, Mr. Herrick was indebted to the bank in amount of \$805,642 50. In commenting on the loan the examiner stated

(U-5-3, p 98)

*Parmely W Herrick loan of \$805,642 50* —Interest is delinquent since July 1, 1932 Value of collateral pledged is \$517,000 On November 7, 1932, Herrick owed \$1,069,000 to various Cleveland banks At that time an extension agreement was signed by all the banks and the above borrower His worth is represented largely in stock ownership in the Union Carbide & Carbon Co., and there are 10,525 shares of that stock pledged on this loan Although the borrower is greatly overextended at this time, it is believed that he can work out of his present difficulties Loan is classed as undetermined at this time

(U-6-54)

On February 25, 1933, Mr Herrick owed \$805,642 50, and on December 31, 1933, \$751,499 12 Since that date and to the present writing there have been principal reductions of \$42,245 41. The liability of Mr. Herrick at this writing is \$709,253 71.

(U-1-15, U-6-79, 80, 81)

The so-called "Lenihan report" dated February 3, 1933, shows the total loans \$808,800, secured by collateral valued at a total of \$499,212, under-collateralized at this time \$309,588.

(U-5-3, p. 94)

*G W Grandin* —On January 20, 1933, date of last examination by Ohio State Banking Department Mr Grandin was indebted to the bank in the amount of \$312,000 In commenting on the loan the examiner stated.

*G W Grandin, \$312,000* —Loan is collateralized by various marketable stocks worth \$123,000, together with 865 shares of the Grandin Coast Lumber Co.,

which has a book value of \$116, and 950 shares of Louisiana Central Lumber Co, which has a book value of \$283 per share Collateral is believed to have sufficient value to protect the loan and substantial reductions have been made during the last 2 years

(U-6-54a)

On February 25, 1933, Mr Grandin owed \$312,000, and on December 31, 1933, \$206,935 75 The total reductions of \$105,064 25 were cash payments

His total liability at the present writing is \$206,935 75, secured by collateral valued on February 10, 1934, in the amount of \$265,563

(U-1-13)

The so-called "Lenihan report" dated February 3, 1933, shows the total loans \$313,000, secured by collateral valued at a total of \$131,000 undercollateralized at this time, \$182,000

(U-1-13)

Committee questions the value of stock in privately conducted enterprise as collateral to loan, therefore classes this loan as undersecured Recommends securing other collateral

WALTER H SEYMOUR,  
*Senior Examiner*

This report based upon preliminary report and complete investigation by Committee Examiner M J La Padula

Mr SAPERSTEIN I hand you a report entitled "The Union Trust Company—Loans to Officers and Directors of Other Banks", and ask you if that report was made by members of the investigating staff of the committee under your immediate supervision

Mr MEEHAN It was.

Mr SAPERSTEIN Mr Chairman, I offer the report in evidence, together with the exhibits referred to therein, which exhibits are now at the Government Printing Office.

The CHAIRMAN. The report and exhibits will be received in evidence and appropriately marked

(The report entitled "The Union Trust Company—Loans to Officers and Directors of Other Banks", together with the exhibits connected therewith and now at the Government Printing Office, were received in evidence and marked "Committee Exhibit No. 8, May 4, 1934", and are as follows )

#### COMMITTEE EXHIBIT NO 8, MAY 4, 1934

#### LOANS TO OFFICERS AND DIRECTORS, OTHER BANKS

(U-11-1, 2)

In a consideration of loans made by the Union Trust Co, to officers and directors of other banks, consisting of over 6½ percent of the total loans, it is noted that in most instances other collateral was presented in addition to bank stock Consequently, it would appear that it was much easier to obtain loans through the Union Trust Co than through the bank with which the officer or director was connected. If the loans were based only on capital stock of these other banks for collateral, the situation could be readily understood, inasmuch as a

director or officer may not borrow from his own bank, using that bank's capital stock as collateral.

There is no doubt that a large number of these borrowers from the Union Trust Co, were also borrowers from other banks, and from what files have been reviewed, this fact had very little consideration in determining whether a loan was acceptable to the Union Trust Co.

The loan history of several of these borrowers is given in the following as representative of the group

J A HOUSE, PRESIDENT, GUARDIAN TRUST CO.

(U-11-3a)

Among the officers of other banks who borrowed heavily from the Union Trust Co was J Arthur House. At the time the Union closed in February 1933, Mr. House was indebted to the bank in the amount of \$67,900. In January of 1933 when the Union Trust was examined by the State Banking Department, the examiner, commenting on this loan, stated:

(U-5-3)

Value of listed collateral pledged is \$13,000. Bank also holds 500 shares of M A Hanna Co common stock which has book value of \$30 per share. House is known to be heavily in debt, and is unable to make reductions or furnish additional collateral; \$55,000 has been classed doubtful and will probably result in a loss.

(U-11-3b, 4)

Since the bank has been closed the liquidator has credited the loan with the amount of dividends (totaling \$157 55) received from the collateral and has sold some of the collateral, realizing \$4,875 25. The balance of the loan still unpaid is now \$62,840 40. On January 23, 1934, Mr Cox, bank liquidator, wrote to Mr House stating that an undue insurance premium was due in the amount of \$207 40. House, using the unused portion of the letter, replied

(U-11-5)

I regret to advise that I am at present unable to pay the premium due on the policy in question. I have heretofore explained my situation to you, namely, that I am unemployed—all of my securities are pledged to various loans at different banks—and all dividends and income are impounded. \* \* \*

On January 25, 1934, Mr House called the Union Trust and—

(U-11-4)

He is rather indignant about our having sold the Industrial Rayon stock, which he claims caused him a loss of approximately \$5,000, and asked that in the future before we sold any of his securities to get in touch with him \* \* \*

(U-11-4)

\* \* \* He said that the Cleveland Trust loan to him is secured entirely by Guardian stock and that his loan in New York with the Chemical is also undercollateralized, but that institution permitted him to make a switch in his securities in order that he could buy some Industrial, inasmuch as he was a member of the executive committee of the latter company. Our action in selling the Industrial Rayon caused him considerable embarrassment \* \* \*

The conservator has adequately expressed the situation upon an analysis of the financial condition of J A House, as appears in a memorandum from a report dated August 25, 1933, as follows:

(U-11-6a)

Mr House, formerly president of the Guardian Trust Co, appears to be in a hopeless financial condition. His obligations are in excess of \$800,000, and all his assets are pledged thereunder. He is not able to make interest payments, nor even keep up insurance premiums on policies pledged with various institutions.

THOMAS E. MONKS, VICE PRESIDENT, GUARDIAN TRUST CO

(U-11-7a)

The indebtedness of Mr Monks to the Union Trust Co is \$18,000. Comments from State bank examiner's report of January 20, 1933, regarding this loan was as follows:

Maker is a vice president of the Guardian Trust Co. Loan is collateralized by stock of a local real-estate holding company, value questionable. Bank also has a \$38,000 note and first-mortgage request-allotment property located in Cleveland Heights. No appraisal of this property is on file. Maker is unable to make any reductions at this time. An asset of undetermined value.

This loan of Mr Monks is dated January 31, 1931, and was originally due on July 31, 1931. There have been five renewals of the loan and no payments have ever been made of the principal. The last interest payment was January 20, 1933.

A perusal of the credit file regarding the borrowings of Thomas E. Monks revealed loans to him as early as August 1921. These loans were evidently paid. The conservator in an attempt to liquidate Monks' indebtedness of \$18,000, reports:

(U-11-8)

He states he is without immediate funds to make payments at this time as he has been without employment since the closing of the bank, and income from his real-estate investments is practically nil.

(U-11-8)

Besides our loan, he is owing a considerable sum to the Guardian Trust Co, and the Society for Savings, which he stated would be paid within a reasonable length of time.

It should also be noted that Thomas E. Monks holds stock of Guardian Trust Co, which will mean a double liability, further establishing his inability to pay.

BELDEN SEYMOUR, DIRECTOR, CLEVELAND TRUST CO

(U-11-9a)

Mr. Seymour is indebted to the Union Trust Co in the amount of \$37,215 from loans originating in October 1928. He last paid interest on his loan on April 1, 1932.

In his report of January 20, 1933, the State examiner stated:

(U-5-3)

Loan is delinquent in interest since April 1, 1932. Maker is a director of the Cleveland Trust Co. Value of the collateral pledged is \$12,000. Payment depends largely on collateral held; \$25,000 is classed as doubtful.

The liquidator has tried to collect some payment from Seymour but without success. A memorandum dated October 10, 1933, states

(U-11-10)

Mr Seymour called at our request. He stated he is still unable to make payments, but his insurance business has picked up considerably and he has hopes of selling three unencumbered lots within the next short while and that we will receive our proportionate share of the net amount realized. He has previously refused to give us mortgages on these lots or the assignment of any life insurance.

M J MANDELBAUM, DIRECTOR, CLEVELAND TRUST CO

(U-11-11a, 11b)

Mr Mandelbaum is indebted to the bank for two loans, one dated June 23, 1930, with a balance in the amount of \$7,000 and the other dated July 1, 1932, in the amount of \$102,812 68. Concerning these loans the State examiner stated in his January 20, 1933, report

(U-5-3)

Maker is a director of the Cleveland Trust Co. Collateral pledged is 273 shares Cleveland Trust Co stock, together with 8% shares Manning Realty Co. Latter company owns a leasehold on property located at 2020 Euclid Avenue, but the value of the stock cannot be determined. Maker is unable to make any reductions, and claims that he has no additional collateral which can be pledged. For the purpose of this examination, \$78,000 has been classed doubtful.

A perusal of the correspondence in the credit files of M J Mandelbaum shows his first loan connection in December 1916. His borrowings were frequent and were paid, consequently, he was considered a good customer. This favorable attitude continued until it was discovered he could not pay on his latest loans totalling \$109,812 68.

On May 31, 1932, a letter to G B Bliss, Canadian Bank of Commerce, reflects the changed opinion in a sentence as follows

(U-11-12)

Confidentially, we are of the opinion that he, like other large investors, has felt very keenly the present condition of the securities market.

(U-11-13)

Subsequent inquiries on the part of the conservator have disclosed that there is little possibility of recovery on this loan aside from the pledged collateral.

F. H. HOBSON, VICE PRESIDENT CLEVELAND TRUST CO.

Mr Hobson is indebted to the Union Trust Co. in the amount of \$54,193 07. Concerning this the examiner pointed out on January 20, 1933:

(U-5-3)

Value of collateral pledged is \$20,000, of which the principal item of collateral is 147 shares of Cleveland Trust Co, and payment depends largely on the future of that bank. Hobson is unable to make any payments at this time, \$35,000 is classed as doubtful.

On June 7, 1933, the value of collateral had dropped to \$15,829 00; this would increase the doubtful amount to \$39,271 00. Hobson's income for 1933 was from his salary as vice president of the Cleveland Trust Co —\$20,000. Of this, he stated in a statement required by the liquidator on June 15, 1933, \$7,000 would go for interest, \$3,000 for insurance, and \$6,000 for alimony to his divorced wife. This would leave a balance of \$4,000 for living expenses and other obligations. This would seem to prove the doubtful character of the loan and undoubtedly substantiate the State examiner's conclusions.

Certainly the examples presented in this report cannot be construed as loans of good policy. Granted that the declining period has its effect, nothing can justify anything but a conservative policy for a bank or its bankers. No liberal attitude was shown the "man in the street" nor the small depositor, the mask of conservatism was donned for them, but to a bank president the vaults were open, a situation apparently justified because of the borrower's connections.

WALTER H SEYMOUR,  
*Senior Examiner*

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Mr SAPERSTEIN I next hand you a report entitled "The Union Trust Company—Loan to J. P. Harris", and ask you if that report was made by members of the investigating staff of the committee under your immediate supervision.

Mr MEEHAN It was.

Mr SAPERSTEIN Mr Chairman, I offer the report in evidence, together with the exhibits referred to therein, which exhibits are now at the Government Printing Office.

The CHAIRMAN. The report and exhibits will be received in evidence and appropriately marked.

(The report entitled "The Union Trust Company—Loan to J. P. Harris," together with the exhibits referred to therein, which exhibits are now at the Government Printing Office, were received in evidence and marked "Committee Exhibit No 9, May 4, 1934", and are as follows.)

#### COMMITTEE EXHIBIT NO 9, MAY 4, 1934

#### LOAN, J P HARRIS

In reference to the loan made December 22, 1930 by the Union Trust Co. to J. P. Harris, former vice president of the Union Trust Co., your examiners are of the opinion that J. R. Nutt, formerly chairman of the board of directors of the Union Trust Co., was directly responsible for a loss of \$165,056 61 suffered by the bank in the above-mentioned loan.

(U-22-7)

Mr Harris in December 1930 was carrying a brokerage account with Hornblower & Weeks, and included in the collateral were 1,500 shares F. E. Myers & Bros. stock which had been "loaned" to him by Mr Nutt. The brokers were pressing Mr. Harris for additional collateral, whereupon Mr Nutt "loaned" Harris 500 additional shares of

F. E. Myers & Bros. stock and transferred Harris' loan in the amount of \$263,000 to the Union Trust Co.

When the loan was placed with the Union Trust Co., the collateral was valued at \$291,300 as follows

Shares	Security	Approximate market value	Total
10	Hidden prior preferred.....	73.....	\$730
1,000	United States Fidelity & Guaranty.....	25b-23a.....	26,500
500	Insurance shares.....	No market.....	.....
600	Thatcher Manufacturing.....	14½.....	8,400
2,000	Pennsylvania Dixie Cement.....	2¾.....	2,750
100	United Fruit.....	45½.....	4,850
6,200	F E Myers & Bros.....	40½.....	248,000
	Total.....		291,230

(U-22-4)

Mr. Harris gave his promissory note dated December 22, 1930, to the Union Trust Co. in the amount of \$263,000. This note bears the following notation: "O.K. J R N.", which notation refers to J. R. Nutt, formerly chairman of the board of directors of the Union Trust Co.

(U-22-5, 5a, 6)

The proceeds of the note, \$263,000, were deposited on December 22, 1930, to the account of J P. Harris and on the same day Harris paid Hornblower & Weeks, stockbrokers, the amount of \$264,344 52.

The collateral pledged for the loan, with the exception of 2,000 shares of F E. Myers & Bros. Co. stock, was the property of J. P. Harris

(U-22-7, 8)

The 2,000 shares of Myers & Bros Co stock, as above, were the property of J R. Nutt This is supported by a written memorandum furnished your examiners by Mr. Nutt on February 13, 1934, in which he gives his version of the transaction under review and by a letter from J. P. Harris to Oscar L Cox, conservator of the Union Trust Co, in which Mr. Harris' attempts to explain the transaction

At a meeting of the finance committee of the Union Trust Co. held December 19, 1930, the following comment appears:

(U-22-1)

It was agreed to loan J. P. Harris \$263,000 secured by collateral

At the meeting held December 23, 1930, the loan was approved in the following notation:

(U-22-2)

Loans made at the main office under date of December 22, 1930, as described below, were approved

\* \* \* \* \*

Collateral loans nos 80553 to 80635, \$1,643,036 49

(U-22-3)

Reference to the attached exhibit "Demand Collateral Loan Register" of December 22, 1930, indicates loan no 80609 in the amount of \$263,000 was made to J P Harris on the following collateral.

	<i>Shares</i>
F E Myers & Bros Co.....	6,200
Thatcher Manufacturing Co.....	600
Insurance Share & General Management Union Trust Co.....	500
United Fruit Co.....	100
Pennsylvania Dixie Cement.....	2,000
United States Fidelity & Guaranty Co.....	1,000
Glidden Co.....	10

The comments in the so-called "Lenihan Report" dated February 3, 1933, state as follows in reference to the loan:

(U-1-38)

J P Harris Value of collateral, \$61,000, amount of loan, \$284,000.

(U-22-9)

*Committee comment*—We should get life insurance Committee was under the impression Mr J R Nutt guaranteed this loan, but has not been able to find such a guarantee on files

On January 3, 1934, the collateral to the loan was sold at public auction and the sale resulted in a loss to the bank of \$165,056 61

(U-22-9)

On February 15, 1934, the superintendent of banks of the State of Ohio instituted suit against J R Nutt for recovery of the loss sustained by the bank, J P Harris having gone into voluntary bankruptcy

In commenting on this loan, the Ohio State banking department in its report of January 20, 1933, page 96, stated as follows

(U-22-14)

J P Harris, \$284,000 Maker, a former vice president of the bank, is now unemployed. The loan is collateralized by various listed stocks worth \$54,000 at the present market prices Other collateral held is 356 shares of the Georgian Apartment Co Value undetermined Payment depends entirely on the collateral held and on the future ability of the borrower to earn For the purpose of this investigation \$100,000 has been classed as a loss and an additional \$120,000 has been classed as doubtful

(U-22-15, 16)

There are several factors in this case which indicate that J. R. Nutt should reimburse depositors of the Union Trust Co. for the loss suffered

There have been insinuations that Mr. Harris' account at Hornblower & Weeks was a joint account between Nutt and Harris and when it was transferred to the Union Trust Co the joint participation

(U-22-10)

still existed. A letter written by Harris to Nutt on January 11, 1928, states as follows:

I hereby acknowledge receipt from you of your check for \$10,000 which is to be used in our joint account as discussed in our conversation this morning

(U-22-11)

Further there is a letter addressed to Nutt by Harris under date of July 22, 1928, which discusses the advisability of selling certain securities. These securities were apparently in the bank's portfolio, but the letter is an indication of the relationship existing between Nutt and Harris in regard to stock market conditions and seems to indicate Nutt relied on Harris as to market forecasts, hence the handling of a joint brokerage account by Harris.

If the account at Hornblower & Weeks was a joint account and this fact was not disclosed to the bank when the loan was made, Nutt is certainly responsible for the deficiency in the account.

(U-22-12)

Further, in our opinion, the loan at the time it was made was not properly collateralized. It will be noted that the total value of the collateral was \$291,230 and that 6,200 shares of F. E. Myers Co. stock were valued at 40% or a total value of \$248,000. Thus 85 percent of the value of the collateral was in one block of stock. It is quite obvious that if the stock, which was a very inactive and closely held stock, had been sold it would not realize a market value of 40% since the unloading of a 6,200-share block would undoubtedly knock down the market price to much lower levels. The price range in December 1930 was 37%—41.

The loan was undoubtedly made on the strength of Mr. Nutt's approval and it was the opinion of the Lenihan committee as noted above "that Mr. Nutt had guaranteed the loan", though no such guarantee was found in the credit files.

The bank's major contention is that Mr. Nutt transferred the loan to the bank to protect his own interests in the loan, namely, the 1,500 shares F. E. Myers stock which he had loaned Mr. Harris. Had Hornblower & Weeks "sold out" Harris' account Mr. Nutt would have suffered to the extent of some \$60,000. His being chairman of the board of the Union Trust Co., and since it was the general belief among directors of the bank that he had an interest in the loan, undoubtedly influenced the granting of the loan.

There is no written evidence that Mr. Nutt advised directors or officers of his interest in the Harris loan.

At the time the loan was made Harris was in no way financially able to meet any deficiency in the loan if such did occur, his only method of repayment would have been an enhancement in the value of the collateral, which to our minds was entirely speculative. Mr. Nutt, of course, was entirely familiar with this when he "saddled" the loan onto the depositors of the Union Trust Co.

WALTER H. SEYMOUR,  
*Senior Examiner*

This report based upon preliminary report and complete investigation by committee examiner, M. J. La Padula.

Mr. SAUERSTEIN. Mr. Meehan, I now hand you a report entitled "Union Trust Company, Loans to Directors—William G. Mather", and ask you if that report was made by members of the investigating staff of the committee under your immediate supervision.

Mr. MEEHAN. It was

Mr SAPERSTEIN Mr Chairman, I offer the report in evidence, together with the exhibits referred to therein, which exhibits are now at the Government Printing Office

The CHAIRMAN The report and exhibits will be received in evidence and appropriately marked by the committee reporter

(The report entitled "Union Trust Company, Loans to Directors—William G. Mather", together with the exhibits referred to therein, which exhibits are at the Government Printing Office, were received in evidence and marked "Committee Exhibit No 10, May 4, 1934," and are as follows )

### COMMITTEE EXHIBIT No. 10, MAY 4, 1934

#### LOANS TO DIRECTORS

##### WILLIAM G. MATHER

Mr. William G Mather, a director of the Union Trust Co., Cleveland, Ohio, was considered one of the wealthiest men in Cleveland. He was associated with many large companies, including the following:

Cleveland Cliffs Iron Co , president; Munising Paper Co ; Mesaba Cliffs Iron Mining; Negaunee Mine Co ; Cleveland Steamship Co ; Trumbull Cliffs Furnace Co ; Kelly Island Lume & Transport Co , director; Otis Steel Co , director; Central Steel Co , director; Central Furnace, director

(U-6-4A)

On June 15, 1932, W m G Mather had direct liabilities of \$2,282,-546 39 and indirect liabilities of \$61,240 89, or a total of \$2,343,787.28 due to six different banks.

The greater part of his collateral was stock of Cleveland Cliffs Iron Co , the value of which had decreased greatly and consequently the banks found themselves facing the possibility of incurring heavy losses on the loans made to Mather in the event the loan had to be liquidated.

#### COLLATERAL TRUST INDENTURE

On July 21, 1932, a collateral trust indenture was entered into between William G. Mather and the Union Trust Co. of Cleveland, Ohio, the Union Trust Co to act as trustee The purpose of this trust indenture was to rearrange the personal assets and liabilities of Mr. Mather. It is based upon the principle of utilizing his total assets to secure the payments of his total liabilities, and so provide as to insure the regular payment of his current interest obligations to banks and trust companies as they mature

(U-6-1, pp 1 and 2)

Mr. Mather's obligations to banks and trust companies as shown in the collateral trust indenture as of that date are as follows

Union Trust Co , Cleveland.....	\$800, 000 00
Cleveland Trust Co , Cleveland.....	125, 000 00
Central United National Bank, Cleveland.....	250, 000 00
Guardian Trust Co , Cleveland.....	348, 031 39
Miners National Bank, Ishpeming, Mich.....	50, 000 00
Irving Trust Co , New York, N Y.....	9, 000 00

**Total.....** 1, 582, 031 39

(U-6-1 p 1)

The indebtedness of \$800,000 to the Union Trust Co. consists of the following promissory notes

(U-6-2, 3)

Date	Amount	Interest rate	Maturity
Mar 9, 1932.....	\$450,000	Percent 6	Demand.
Do.....	350,000	6	Do

(U-6-1, p 1)

The above notes were secured by a promissory note of the Cleveland Cliffs Iron Co. in the amount of \$200,000, issued under and secured by a trust agreement dated March 23, 1932, between said company and the Union Trust Co.; a \$2,000 promissory note of the Cleveland Cliffs Iron Co.; 31,253 preferred shares of the Cleveland Cliffs Iron Co.; and 8,000 common shares voting trust certificates of the Cliffs Corporation

(U-6-4, 4A)

The annual interest accruing on these notes beginning 1933 amounts to approximately \$102,000, and as appears from the exhibit attached taken from the credit file of W. G. Mather, Mr Mather would not be able to meet these interest obligations without additional borrowings from the banks.

Additional loans were made by the Union Trust Co to Mr. Mather subsequent to the trust agreements and were also secured by the collateral trust indenture, and are as follows

(U-6-5 and U-6-10)

Date	Amount	Interest rate	Maturity
Jan 1, 1933.....	\$12,322 50	Percent 6	Time loan.
Oct 1, 1933.....	10,474 11	6	Do
Apr 18, 1933.....	12,322 50	6	Do
July 1, 1933.....	6,777 39	6	Do
Jan 1, 1934.....	2,811 70	6	Do.
Sept 30, 1932.....	24,645 00	6	Do
Total.....	69,353 20		

(U-6-1, p 3)

In addition, Mather is indebted to colleges and universities on unsecured notes as follows

Trinity College.....	\$75,000
Kenyon College.....	75,000
Diocese of Marquette, Mich, musical arts.....	21,000
Association Western Reserve University.....	216,000
Cleveland Museum of Art.....	3,265
Total.....	390,265

(U-6-1, p 3)

Also, a note to Trinity College for \$60,000, secured by 5,000 preferred shares of the Cleveland Cliffs Iron Co.

(U-6-1, p 3)

To individuals and corporations he is indebted on unsecured notes as follows.

Katharine L. Mather.....	\$36, 000
Marian S Bower.....	100, 000
Cleveland Cliffs Iron Co.....	4, 250
The Union Trust Co , Burgwin.....	10, 000
<b>Total.....</b>	<b>150, 250</b>

(U-6-11 to U-6-17)

An analysis of the notes to the Union Trust Co which total the \$800,000 promissory note under the collateral trust indenture indicates the following:

Proceeds.	<i>Notes Union Trust Co</i>
Interstate Foundries, Inc.....	\$174, 000
Wm G. Mather, personal.....	425, 000
To purchase Continental shares.....	200, 000
Cashier's check, W G Mather.....	1, 000
<b>Total.....</b>	<b>800, 000</b>

(U-6-17A)

The note of \$174,000 is a consolidation of three notes which entered the assets of the Union Trust Co in 1922, 12 years ago, in a total amount of \$220,000 secured by Interstate Foundries, Inc first-mortgage bonds. The only reduction on the loans, were on February 7, 1928, of \$20,000, and on November 16, 1929, in the amount of \$26,000

The note of \$425,000 is a consolidation of three notes secured by Cleveland Cliffs Co which entered the assets of the Union Trust Co. in 1928, 1929, and 1931. No reductions were ever made on these loans.

The note of \$200,000 entered the assets of the Union Trust Co May 23, 1931. The proceeds were used to purchase 40,000 shares of Continental shares. No reduction was ever made on this loan.

In 1931, Mr. Mather agreed with his associates to purchase shares of Continental stock which were up as collateral for Otis & Co's loans at banks and trust companies.

#### OTIS & CO PARTICIPATION LOAN

In order to explain the loan of \$200,000, it is necessary to review the general history of the participation loan made to Otis & Co. by a number of Cleveland banks.

Otis & Co, investment bankers, were founded in 1900 and in 1931 operated 21 offices in the larger cities of the United States. The Cleveland members of the firm were M C Harvey, C. S Eaton, Richard Inglis, J O Eaton, S E Klune

Otis & Co is a national organization engaged in underwriting and distribution of investment securities, is a member of the principal exchanges in the country, including New York and Chicago

In April 1931 Otis & Co., disposed of their commission brokerage business by selling it to E. A. Pierce & Co, but continued to do business in the brokerage line as agents of E. A. Pierce & Co.

This was done in an effort to take Otis & Co. out of the difficulties gotten into during the boom years.

(U-6-18 to 26)

On May 21, 1931, the total liability of Otis & Co. to the Union Trust Co. amounted to the sum of \$950,823.31, consisting of eight notes as follows. \$163,429.50, \$68,680, \$631,329, \$4,940, \$2,900, \$2,200, \$43,000, and \$34,344.81, totaling \$950,823 31; which notes on May 22, 1931, were consolidated into a participation loan in the amount of \$3,684,000 distributed among four Cleveland banks as follows

(U-6-27 to 30)

Union Trust Co.....	\$1, 252, 560
Cleveland Trust Co.....	1, 252, 560
Guardian Trust Co.....	736, 800
Central United National Bank.....	442, 080
<b>Total.....</b>	<b>3, 684, 000</b>

(U-6-31, 32)

These banks agreed to loan Otis & Co. up to a total of \$4,182,000 secured by collateral which has been valued at approximately \$4,716,968. This collateral includes 179,226 shares of Continental Shares, Inc., common, valued at \$3 per share on May 22, 1931.

(U-6-33)

In addition to the assistance granted by the four Cleveland banks to Otis & Co., on May 21, 1931, Mr. Wm. G Mather in behalf of himself and his associates agreed to purchase from Otis & Co 300,000 shares of the fully paid and nonassessable common stock of Continental Shares, Inc., at \$5 per share.

The bank's records indicate 300,000 shares were taken up by the following persons in the proportion indicated below

Delivered to—	Number of shares	Amount	Delivered to—	Number of shares	Amount
Wm G Mather.....	65, 000	\$325, 000	E B Green.....	4, 000	\$20, 000
Seaboard By-Products			J H Wade, Jr.....	6, 000	30, 000
Coke Co.....	100, 000	500, 000	G G Wade.....	15, 000	75, 000
Southern Ohio Power Co.....	20, 000	100, 000	Helen W Green.....	15, 000	75, 000
H A Hanna Co.....	20, 000	100, 000			
Newberry Investment Co.....	25, 000	125, 000	<b>Total.....</b>	<b>300, 000</b>	<b>1, 500, 000</b>
Finance Corporation of America.....	30, 000	150, 000			

The above 300,000 shares were released from loans of Otis & Co. at the following banks:

(U-6-34 to 39)

Name	Shares	Amount	Name	Shares	Amount
Union Trust Co.....	179, 226	\$396, 130 00	Cleveland Trust Co , Cleve- land Chase National Bank, New York City.....	62, 000	{\$250, 729 17 59, 270 83
Philadelphia National Bank Philadelphia, Pa..	6, 300	31, 500 00			
Commercial Exchange Na- tional Bank & Trust Co , Philadelphia, Pa. ....	10, 460	52, 300 00			
			Total.....	300, 000	1, 500, 000 00

In order to accomplish this, the following associates of Mather borrowed from the Union Trust Co. to pay in part for the Continental Shares, Inc.

(U-6-40 to 44)

Name	Number shares	Amount of note	Name	Number shares	Amount of note
Southern Ohio Power Co...	20, 000	\$50, 000	Edward B Green.....	4, 000	\$20, 000
Newberry Investment Co...	25, 000	62, 500	Wm G Mather.....	40, 000	200, 000
G G Wade.....	15, 000	37, 500			
J H Wade, Jr.....	6, 000	30, 000	Total.....	110, 000	400, 000

The balance of \$1,100,000 for the remaining 190,000 shares of Continental shares was paid for by checks drawn by Mr. Mather and his associates

There was additional collateral to secure the above loans when made, all of which loans have been paid with the exception of the \$200,000 loan of Wm. G. Mather, which note at this time is a part of the \$800,000 collateral trust indenture as explained above.

The following are excerpts taken from the State bank examiner's report of January 20, 1933, in regard to the loans of Mr. W. G. Mather and Otis & Co.:

(Complete copy of State bank examiner's report to be in Washington if needed)

*Wm G Mather, \$857,523 99*—Loans are based principally upon preferred stock of the Cleveland Cliffs Iron Co, and common stock of the Cliffs Corporation Bank also holds \$204,000 notes receivable of the Cleveland Cliffs Iron Co It is impossible to make an accurate appraisal of any of the securities held as collateral Quotations on the Cleveland Cliffs Iron preferred stock vary all the way from \$5 per share to \$25 per share Mather's total indebtedness to all banks is known to be in excess of \$2,000,000 Under the terms of a creditors' agreement between Mather and his various creditor banks his indebtedness was extended to January 1, 1936 Mather in turn has trusted all of his tangible assets for the prorata benefit of the various creditor banks The outcome of this credit depends largely upon the future of the Cleveland Cliffs Iron Co Officers believe that the line can eventually be worked out

*Otis & Co, \$713,987 65*—Interest paid to May 1, 1932 A former local brokerage house whose activities have now been practically discontinued This loan is a participation with other local banks in a total loan of \$2,100,000 It is collateralized by marketable stocks having a present market value of approximately \$143,000, together with a great many other issues which are unlisted and on which the value cannot be determined A loss of \$450,000 is estimated, and this estimate was agreed upon by officers of the bank.

Excessive loans to directors, we believe, were a contributing factor to the eventual collapse of the Union Trust Co. This case clearly indicates that the bank was absolutely negligent in its loan policy and was guided principally by the fact that Mather was a director of the

bank and that he was prominent in many companies in which other directors and officers of the Union Trust Co. had heavy interests

(U-6-17A)

The loan of \$174,000 was allowed to run for 12 years in the assets of the bank

The loan of \$425,000, 50 percent of the entire Otis & Co. participation was withdrawn from the institution by Mather and used for his personal use

The loan of \$200,000 was loaned to him for his participation in a speculative venture and involved the bailing out of a brokerage firm with funds of the bank

The action of the bank in this particular loan is subject to severe criticism

The \$200,000 was used to liquidate part of his participation in the purchase agreement to acquire 300,000 share of Continental Shares Inc

WALTER H. SEYMOUR,  
*Senior Examiner*

This report based upon preliminary report and complete investigation by committee examiners, M. J. La Padula and T. A. Donaldson.

Mr SAPERSTEIN I now hand you a paper entitled "The Union Trust Company—Loans—K V Painter", and ask you if that report was made by members of the investigating staff of this committee under your immediate supervision.

Mr. MEEHAN. It was

Mr SAPERSTEIN Mr Chairman, I offer the report in evidence, together with the exhibits referred to therein, which exhibits are now at the Government Printing Office

The CHAIRMAN. The report and exhibits will be received in evidence and appropriately marked

(The report entitled "The Union Trust Company—Loans—K V. Painter", together with the exhibits referred to therein, which exhibits are at the Government Printing Office, were received in evidence and marked "Committee Exhibit No. 11, May 4, 1934," and are as follows )

COMMITTEE EXHIBIT No 11, MAY 4, 1934

LOANS

K V PAINTER

Kenyon V Painter has been a director and a member of the executive committee of the Union Trust Co for more than 10 years. As we pointed out in our report regarding the "Painter, Bradley, Nutt Syndicate", Mr Painter has been very closely associated with Mr Nutt for a great many years

When the Union Trust Co closed on February 25, 1933, Mr K. V Painter was indebted to the trust company in the amount of \$2,930,000—an indebtedness which has not as yet been paid

(U-4-1)

Mr Ira J Fulton, superintendent of banks of Ohio, appointed a Mr Robert M Huston as "special deputy" to make an investigation of certain transactions of the Union Trust Co. Among the matters investigated by Mr Huston were the loans made to K V. Painter. Mr Huston completed his task and submitted his report to Mr. Fulton on September 18, 1933. We have obtained a copy of this report and shall refer to its comments, as made by Mr Huston, frequently in our report.

Regarding Mr Painter's loans and his acts as director, the report states.

(U-4-1a, p. 1)

Kenyon V Painter is 66 years of age and has been a director of the Union Trust Co for approximately 10 years. He has also been a member of its executive committee for about the same period of time. From the evidence at hand it appears that Painter has never seriously recognized the responsibilities of a bank director, but has construed his official position with the Union Trust Co as one of unusual and irregular liberties and privileges. It further appears that both Wilbur M Baldwin and Charles W Carlson, president and vice president, respectively, of the Union Trust Co, had the same mistaken idea regarding the duties of their respective positions as well as the courtesies and privileges due a director.

(U-4-1a, p. 1)

Wilbur M Baldwin is 58 years of age and has been a director of the Union Trust Co for approximately 10 years. March 25, 1930, Baldwin was elected to the presidency of the Union Trust Co. and continuously served in that capacity until the early part of this year (1933).

(U-4-1a, p. 2)

Charles W Carlson is about 48 years of age and was a vice president of the Union Trust Co from January 11, 1928, to the date of failure. Carlson was never a director of the bank nor was he ever considered a senior loaning officer or a member of any important committee.

At the date of failure of the Union Trust Co, Painter was indebted to that bank to the enormous amount of \$2,930,000, only a small fraction of which sum was adequately or properly secured. Our investigation discloses that virtually all of this indebtedness resulted from unlawful collusion between Painter, Baldwin, and Carlson for the purpose of willfully misapplying the moneys, funds, and credits of the bank for the direct use, benefit, and advantage of Painter and indirectly for the use, benefit, and advantage of Baldwin and Carlson.

(U-4-1a, p 2)

In substance the general scheme of operation was as follows. Painter would convey to the bank certain real-estate holdings, leaseholds, and real-estate equities together with certain unlisted and unknown stocks of doubtful worth, all to be held by the bank in trust as collateral security for future borrowings. Subsequently, Painter would execute his demand promissory note, or notes, for sums averaging about \$300,000 each. These notes would not immediately be recorded on the bank records for their face amounts and like credits passed to Painter's account, but instead would be withheld by Baldwin or Carlson and used only at such times and in such amounts as would be necessary to avoid an overdraft in Painter's personal account.

(U-4-1a, p 2)

By this arrangement each note was recorded as constituting a series of loan transactions rather than as one independent borrowing. Furthermore, such irregular procedure was decidedly beneficial to Painter in view of the fact that at no time was he required to pay interest on any unused portion of his loans. He also enjoyed a preferential interest rate on his loans, being charged a lesser rate of interest than other customers of the bank were required to pay

(U-4-1a, p 5)

The indebtedness of Painter began on July 1, 1930, and continued up to and including October 1931, and totaled, as we have already pointed out, \$2,930,000 at the time the bank closed. There was also due the Trust company accrued interest, delinquent as of April 1, 1933, of \$224,411 55.

(U-4-5, 8, 4)

The Union Trust Co., through its president, Mr. Baldwin, and vice president, Mr. Carlson, loaned these moneys to Painter to be used by him for the most part in the purchase of the stock of the bank. The shares of stock were purchased almost daily and registered in Painter's name

(U-4-18)

During our investigation rumors were expressed around the bank that the loans to Painter and the stock market activities of Painter were really for the account of Mr. Nutt and Mr. Painter, an allegation we have been unable to substantiate. However, we do know that Mr. Baldwin personally handled the transactions for Painter, and that Baldwin, it has been claimed, was Mr. Nutt's right-hand man.

(U-1-22, 22a)

In their December 1932 report the directors' examining committee devoted a great deal of space to the Painter loan and showed that the \$2,930,000 was made up of about 78 separate advances ranging, generally, from \$10,000 to \$50,000 each. It is also noted in this report that the interest rate being charged to Painter was as follows:

(U-1-22, 22a)

Date	Interest rate	Principal of loan
	<i>Percent</i>	
July 1, 1930.....	5½	\$950,000
Dec 10, 1930.....	5	1,050,000
July 1, 1931.....	4½	2,210,000
Nov 10, 1931.....	5	2,850,000
Jan 1, 1932.....	6	2,930,000

(U-1-23)

The committee also states the value and the details of the present collateral and of the collateral released. They value, as of December 13, 1932, the collateral at \$1,131,960 but we will take this particular item up later in this report.

(U-1-21)

*Committee's comment*—The directors' examining committee, in reporting the facts of the Painter loan, made, in part, the following comments.

Your committee submits herewith the result of its investigation into the K. V. Painter loan, which is now on a nonaccrual basis:

Balance due on principal.....	\$2, 930, 000 00
Accrued interest due from Jan 1, 1932, to Dec 31, 1932.....	183, 613 37

We submit various data in connection with this transaction in the order named:

(U-1-22, 23, 24, 25, 26)

1. Transcript of his loan record.
2. List of present collateral.
3. Itemized list of collateral released.
4. Copy of release dated September 30, 1931.
5. Transcript of Union Trust stock record of borrower.
6. Transcript of the commercial account of W. M. or John Wyeth (K. V. Painter's brother-in-law)

(U-1-21)

Your committee wishes to call your attention to the transcript of the loan account and a comparison of it with the stock record purchase of the borrower. By a comparison of the two accounts it is the conclusion of the committee that the funds advanced by the bank from time to time were used to purchase Union Trust Co. stock, and further, from an investigation of the receipts for the stock certificates that the officers in charge of the loan had full knowledge that the funds were being so used

(U-1-21)

From November 24, 1930, to September 30, 1931, Mr. Painter purchased 13,680 shares at an approximate cost of \$860,000

(U-1-21)

The loan records also show a release on October 3, 1931, of marketable securities, having an approximate market value of \$316,000, to K V Painter without payment, approved by W. M. B. We are unable to find that the finance committee approved the release of this collateral before it was made

The loan department register shows that the transaction was approved by the finance committee on October 13, 1931 (sheets are initialed F P R ) (F P Root, a director )

(U-1-21)

Your audit committee fully realizes that some releases must be made before being formally approved by the finance committee. However, the committee does not believe that releases such as the above come under this classification, inasmuch as the loan was greatly under-secured before any collateral was released, and, therefore, the borrower should have been asked to pledge additional security instead of receiving collateral already pledged.

(U-1-21a)

Other facts found by the committee are that on June 15, 1931, Mr Painter's fairmount boulevard estate was deeded to his brother-in-law, W M Wyeth On October 7, 1931, our bookkeeping department opened a new account in the name of W M or John Wyeth with a check of Vickers operating and running expense account, which is a K. V Painter account Further investigation of the transcript of this account shows other credits from the same source and likewise, charges against this account and credits to Vickers operating and running expense account It would appear that these are K. V. Painter's funds.

On December 15, 1931, the Painters closed their safe-deposit box here

(U-4-3, 6, 7, 10, 14, 15, 16, 25)

We have carefully perused the files of The Union Trust Co regarding Kenyon V. Painter and have taken photostatic copies of several letters typical of hundreds in the files These letters are simply confirmation letters written by Mr Baldwin and addressed to Mr Painter saying that he had purchased a blank number of shares of Union Trust Co stock for blank dollars However, as an indication to whether or not the transactions of Painter were for the sole account of Painter, the following are excerpts of some of the letters between Mr. Baldwin and Mr. Painter A longhand letter, dated November 23, 1930, on the stationery of Mr Kenyon V. Painter and addressed to Mr. Baldwin, states, in part, as follows

We are leaving this morning for St Joseph I see yesterday about 400 Union Trust sold Would it not be a good thing to lower our bid As I said, I am very glad to try to take up all Union Trust sold, but of course we do not want to give more than necessary for it

(U-4-13)

On January 15, 1931, Mr Baldwin wrote to Mr Painter in care of the Biltmore Hotel after having talked with Mr Painter over the long distance telephone Mr Baldwin stated

Briefly, my reason for wanting to talk to you was the sudden break in the market price of Union Trust stock yesterday

(U-4-13)

Mr Baldwin stated that there were 1,000 shares offered at 74 and that when it was offered to him he knew of no one interested at that price, and that the price had kept dropping until it reached 69½, of which I bought for you 474 shares at that price

(U-4-13)

It is quite apparent to me that this particular holding was some distressed stock—that the owner had to have some money quick

(U-4-17)

And on April 6, 1931 Mr Baldwin wrote a memorandum to Mr. Carlson in which he stated

I wish you would say to Mr Painter that I am very glad that he reduced the bid on the remaining block of 193 shares to 68½, because I had a memorandum

to talk to him about that this morning, but was not permitted to come to the office or use the telephone; and for the next week or 10 days I would not feel adverse to having the bid reduced to even 68, and then watch the market so that if a block of 200 shares or more should be offered, drop the bid a full point at once and let it stay down for a few days to see if the stock is purchased elsewhere

(U-4-23)

As we have stated above, the borrowings of Painter began on July 1, 1930, with a loan of \$950,000, and continued, increasing bit by bit, until October 1931, when the balance had reached a total of \$2,930,000.

However, the advances to Painter ceased rather abruptly in October 1931. Obviously, Baldwin had intentions of extending further credit to Painter, as is evidenced by a \$300,000 note of Painter's, dated August 31, 1931, having an unused balance of \$235,000. Upon this note there is an unsigned notation: "No more advances", which, we understand, is in the handwriting of a loan clerk (one R. J. Rutenbeck) Mr Rutenbeck claims not to remember by whose authority the advances were stopped.

(U-4-1-a, p. 20)

Mr Huston claims that there was also another note in the amount of \$300,000 signed by Painter, as of October 5, 1931, "in Baldwin's possession".

We have not been able to find any copy of this note in the files of the Union Trust Co and have not contacted Mr Baldwin. However, we have definite knowledge that Baldwin did have the note and that he returned it to Painter on October 8, 1931, a transaction to be taken up later in this report.

#### COLLATERAL PLEDGED AND COLLATERAL RELEASED

(U-4-2-a, p 1)

On July 13, 1931, Mr. Painter executed a new agreement with the Union Trust Co, pledging certain real estate. With this pledge agreement Mr. Painter submitted a financial statement showing his estimate of the value of his holdings. Messrs. M. G. Lutsch and P. A. Frye, of the bank, each made appraisals of Painter's property, and Mr. R. Huston, State investigator, submits a comparative statement of the Painter, Lutsch, and Frye appraisals, the totals of each of which are as follows

(U-4-2-a, p 2, U-4-1-a, p 14, 15)

Painter appraisal.....	\$5, 127, 714 50
Lutsch appraisal.....	1, 056, 090 00
Frye appraisal.....	1, 253, 930 00

(U-4-1-a, p. 15)

As pointed out in Mr Huston's report, Mr Painter valued (as of July 13, 1931) 8,000 shares of Akley Camera stock at \$138 a share, while a statement of the company as of December 31, 1931, shows a book value for the stock of \$12.08 a share. Mr. Huston states that Baldwin claims to have no knowledge of these appraisals; but a

memorandum found in the files of the Union Trust Co. from one officer to another states, in part:

(U-4-21)

I am also returning for your loan files the appraisal Mr Painter signed on the 21st of May, 1931, together with some appraisals of Mr Stuber and other data Mr Baldwin handed to me

On October 3, 1931, certain of the collateral securing the Painter loan was released. We quote Mr. Huston's comments regarding this release, in full

(U-4-1-a, p 18)

October 3, 1931, the bank released a large block of listed securities as collateral to Painter's indebtedness, without consideration or payment on his indebtedness. These securities were, in substance, the same as those securities received from the New York Trust Co July 13, 1931, at the time Painter borrowed \$575,000 from the Union Trust Co with which to pay a note in that amount held by the New York Trust Co. We have caused these securities to be valued as of October 3, 1931, by the Directors' Research Association, Inc, of Cleveland, Ohio, located in the Federal Reserve Bank Building

(U-4-1-a, p 19)

The following schedule shows the securities released, the amount of each, and the valuation placed thereon by the Directors' Research Association, Inc, as of October 3, 1931:

4,800 shares Manufacturers Trust Co of New York.....	\$154, 800 00
6,684 shares the Glidden Co common.....	34, 250 50
2,000 shares the White Motor Co capital.....	16, 000 00
1,100 shares Chesapeake & Ohio Ry common.....	28, 600 00
600 shares the Midland Steel Products common.....	4, 500 00
400 shares the Gillette Safety Razor Co.....	4, 450 00
100 shares the Midland Steel Products Co 8-percent cumulative preferred.....	4, 500 00
100 shares the American Chicle Co common.....	3, 300 00
800 shares the Richman Bros Co.....	28, 000 00
200 shares the Missouri Pacific Ry preferred.....	5, 400 00
100 shares United States Steel common.....	6, 800 00
100 shares the Goodyear Tire & Rubber Co common.....	2, 100, 00
400 shares Chesapeake Corporation.....	6, 800 00
100 shares the New York, New Haven & Hartford Ry.....	3, 600 00
500 shares the United Corporation common.....	6, 000 00
100 shares the New York Central capital.....	5, 500 00
Total.....	314, 600 50

With the exception of 3,300 shares of Manufacturers Trust Co stock and 2,684 shares of Glidden Co. common, all of the aforementioned securities were sent to the Chemical Bank & Trust Co. of New York City, to be held by that bank as additional collateral to Painter's note for \$305,000 to that bank.

(U-4-23)

In connection with the above release of collateral, it should be borne in mind that the bank held Painter's note, with an unused balance of \$235,000, and Baldwin had in his possession another note in the amount of \$300,000, but someone, evidently with higher authority than the bank president, said, "No more advances"

Therefore, Baldwin arranged a loan for Painter in the amount of \$305,000 from the Chemical Bank & Trust Co, New York, taking the necessary collateral from that securing the Painter loan at the

Union Trust Co Mr Baldwin then wrote a letter to Mr Painter, dated October 8, 1931, stating

(U-4-22)

Referring to your letter of October 3, I wish to report that under date of October 6 I arranged a loan at the Chemical Bank & Trust Co of New York of \$305,000, which loan is dated October 6, 1931, and payable April 6, 1932, with interest at 4 percent per annum

Mr Baldwin then states

(U-4-22)

I return herewith your note dated October 5, 1931, for \$300,000 which you gave me to use

(U-4-1a, p 21)

Again, on October 26, 1931, the bank released 7,000 shares of Manufacturers Trust Co. capital stock in consideration of Painter's paying \$150,000 on his loan. According to a valuation made for Mr. Huston, this stock was worth, on October 26, 1931, \$38 a share, a total of \$266,000

#### GENERAL

As of January 20, 1933, the State banking department made an examination of the Union Trust Co, and the examiner stated, regarding the Painter loan

(U-4-11)

In passing this loan at the time of previous examination, the examiner was compelled to rely solely upon verbal information furnished by bank officers.  
\* \* \*

The examiner has classed \$1,000,000 as doubtful and believes that he is very charitable in this classification

In the files of the liquidator at the bank there is a memorandum of a conference between Mr Cox, the liquidator, and Mr Nutt This memorandum states

(U-4-12)

Mr Nutt never trusted Painter fully He told the bank's income-tax man to "watch his step" in preparing Painter's documents in connection with taxes, and was impelled to this caution because Painter was notoriously a small income-tax payer, "paying less than my young son"

In conclusion we wish to call attention to exhibit U-4-20, which is a copy of section 13105-1 of the General Code of Ohio. We believe that the acts of Mr. Painter in submitting his financial statement on May 21, 1931, with his appraisal, and the acts of Mr Baldwin in accepting this statement and allowing Painter to borrow Union Trust Co funds, were direct violations of the Ohio law We also believe that Mr Baldwin violated his duties as an officer and director of the Union Trust Co. throughout the transactions with Mr Painter, and especially in allowing the release of the collateral and the arranging of a loan from another bank with the collateral released, after further credit was refused by the Union Trust Co

WALTER H SEYMOUR,  
*Senior Examiner*

Mr SAPERSTEIN. Mr. Meehan, I hand you a report entitled "Loans Made by the Union Trust Company to Van Sweringens and Controlled Companies", and ask you if that report was prepared by the members of the investigating staff of the committee under your immediate supervision

Mr MEEHAN It was.

Mr. SAPERSTEIN. Mr Chairman, I offer the report, together with the exhibits referred to therein, which exhibits are now at the Government Printing Office in order to facilitate printing, in evidence and ask that same be received

The CHAIRMAN The report and exhibits will be received in evidence and appropriately marked

(The report entitled "Loans Made by the Union Trust Company to Van Sweringens and Controlled Companies," together with exhibits referred to therein, which are now at the Government Printing Office, were received in evidence, marked "Committee Exhibit No 12, May 4, 1934", and are as follows )

#### COMMITTEE EXHIBIT No 12, MAY 4, 1934

#### LOANS MADE BY THE UNION TRUST CO TO VAN SWERINGENS AND CONTROLLED COMPANIES

(Brought out in detail; pp 7, 23 to 25, 27, 28, 30, and 36)

The troubles and the closing of the Union Trust Co are due, in a large measure, to the loans made by the Union Trust Co to and the investments it made in the Van Sweringen enterprises There is little doubt that the policies and business management of the Union Trust Co, as will be shown in almost every report, were dictated by Mr Joseph R Nutt Neither is there much doubt but that the policies and business management of Joseph R Nutt were influenced and dictated by the Van Sweringens As nominal head of this large institution, Nutt allowed the Vans to borrow in excess of the legal limit; he allowed them to substitute worthless collateral for good, and when a loan to the Vans was refused in the main office of the Union Trust Co it was granted at a branch of the Union Trust Co, upon the oral approval of Mr. Nutt.

In the report, "Van Sweringen Enterprises", written in connection with our examination of J P. Morgan & Co, we covered fully the details regarding the formation of the Vaness Co and the voting trust agreement of the Van Sweringens However, at the expense of repeating, we believe that the details should again be brought out in this report in order to show the relationship between the Van Sweringen brothers and certain officers and directors of the Union Trust Co.

#### VANESS CO AND VOTING TRUST

(U-2-2)

The Vaness Co was incorporated under the laws of Delaware on January 9, 1922, as a personal corporate vehicle for O. P. and M. J.

Van Sweringen and their associates. The original shareholders were as follows:

	<i>Shares</i>
J R Nutt, chairman of the board, the Union Trust Co.....	16, 250
C L Bradley, director, the Union Trust Co.....	16, 250
W. S Hayden, director, the Union Trust Co.....	16, 250
Otto Miller, director, the Union Trust Co.....	16, 250
O P and M J Van Sweringen.....	97, 500
Total.....	162, 500

On July 15, 1922, a voting trust agreement was entered into between the above-named persons and the Union Trust Co., as trustee—

(U-2-2, 2-3)

Whereby the trustee, held, as trustee, all the voting common stock for the lives of the six persons named and for 21 years after the death of the last survivor. The trustee was required to deliver proxies to vote the stock to the two Van Sweringens, Nutt, Bradley, Hayden, and Miller for the stock deposited by them respectively during the life of the agreement, regardless of who owned the "certificate of interest"

(U-2-2)

On January 11, 1934, the Messrs, Hayden and Miller sold their interest in the Vaness Co. to the Van Sweringen brothers. Since then the stock of the Vaness Co. has been owned as follows

	<i>Shares</i>
J R Nutt.....	16, 250
C L Bradley.....	16, 250
O P and M. J. Van Sweringen.....	130, 000
Total.....	162, 500

(U-2-3)

At the time of the sale of their holdings by Hayden and Miller to the Van Sweringens a new voting trust agreement was entered into. Provisions of the new voting trust agreement were substantially the same as those contained in the previous agreement. This second agreement terminated in 1927 at which time options were granted by J. R. Nutt and C L Bradley to O P and M J Van Sweringen covering the purchase by the Van Sweringens of the interests owned by J R Nutt and C. L. Bradley in the event of their death.

(U-57)

In addition to the above-named directors of the Union Trust Co associated with the Van Sweringens there are others, two of whom stand out rather prominently, viz, the Messrs F H Ginn and W M. Baldwin

(Committee hearings, J P. Morgan & Co ), (Exhibit with directors and officers)

Mr. Ginn, as evidence already presented before the committee clearly states, has for a good many years actively represented the various Van Sweringen corporations as counsel. Evidence has also been presented to show that Mr Ginn has acted as counsel and was a director of the Union Trust Co and was a member of the so-called Morgan & Co. "preferred list" It should also be borne in mind that

Mr Ginn was a member of the board of directors (1925 through 1933), executive committee (1925 through 1933) of the Union Trust Co

(Related orally by Mr. Norton to Mr Seymour)

Mr Robert C Norton, another director of the Union Trust Co. and member of the examining committee of December 1932, informed the writer that Mr Ginn had been very active around Cleveland for the Van Sweringens, and by getting himself appointed to this important committee (executive) had aided Mr. Nutt a great deal in his domination of the trust company business

(Minutes of meeting of board of directors, May 24, 1932, p 1041)

Wilbur M Baldwin was formerly vice president and later president of the Union Trust Co He is, we understand, in some way related to the Van Sweringens and, as it has been very adroitly expressed, is Mr Nutt's "Man Friday" J R Nutt put Baldwin in the trust company and when Nutt resigned the presidency and was elected chairman of the board, he had Baldwin elected president The association of Nutt and Baldwin will be shown in several of the reports on the affairs of the Union Trust Co The Van Sweringens, individually and through their various corporations, were constant borrowers from the Union Trust Co almost from the formation of the trust company. J R Nutt was one of the organizers of the trust company and was its first president He retained the position of president of the Union Trust Co until December 30, 1931, when he was elected chairman of the board, which he resigned on June 30, 1932

The Van Sweringens borrowed heavily from the Union Trust Co. and later borrowed even more heavily from J. P. Morgan & Co and other New York banks In order to make these New York loans, valuable collateral had to be pledged. All the collateral of any value whatsoever was taken from the loans of Cleveland banks and used as security for the New York banks Conditions in Cleveland kept getting worse and worse and finally, early in 1933, the Union Trust Co, loaded down with loans of all kinds (the Van Sweringens being the principal borrowers), was forced to close We shall review the loans made to the Van Sweringens in detail, taking each loan separately and following through its history, feeling that to report on the total loans chronologically would only complicate the report. Before giving the details of each loan, however, we should like to give a summary of the loans as shown by a report of examination as of December 1932 and a summary as prepared by the staff of the liquidator of the trust company

(Related by Mr. Norton to Mr. Seymour)

#### BOARD OF DIRECTORS' EXAMINATION COMMITTEE, DECEMBER 20, 1932

Certain directors of the Union Trust Co. had been "fed up" for some time with the domination of its management and its business by Mr Nutt and his associates In June of 1932 they had been successful in forcing Mr Nutt to resign as chairman of the board, and late in December 1932 insisted on a committee being formed to examine the affairs of the trust company

(U-1-1)

As of December 20, 1932, an examining committee was appointed by the board of directors to make an examination and report on the condition of the Union Trust Co. The committee completed and submitted its report on February 3, 1933. The committee was composed of the following directors.

(U-1-4-45)

E P Lenihan, R C Norton, R T. King

In its report, the committee pointed out to the board the status of the Van Sweringen loans. J R Nutt was no longer with the bank and evidently the committee felt that for once it could speak freely. The committee listed total loans made to the Van Sweringens and their various interests and enterprises, with delinquent interest as of January 1, 1933, as follows

(U-1-30, 1-9)

	Principal	Interest delinquent Jan 1, 1933
Collateral loans to Van Sweringens and controlled companies.....	\$11,702,594 15	\$1,000,964 50
In addition, there was listed in "doubtful" loans Higbee Co and "under-secured".....	317,000 00	-----
Pittsburgh & West Virginia R R land contract.....	450,000 00	-----
O P and M J Van Sweringen .....	1,000,000 00	-----
Total.....	13,469,594 15	-----

We quote the committee's comment regarding these loans to the Van Sweringens in full

(U-1-30)

The above loans, totaling over \$11,000,000 have been the subject of public criticism against the Union Trust Co., and in our opinion, have done more than any other single factor to undermine public confidence in this institution

(U-1-30)

Owing to the various ramifications in interlocking companies, your committee admits that it is at a loss to establish in a reasonable time without considerable expense, the value behind these loans. However, it is of the opinion that these loans cannot be classed as being worth more than 25 cents on the dollar at the present time; this is more or less of a guess

(U-1-30)

These immense loans, we understand, were sponsored by Mr J R Nutt, C L Bradley, and their associates in the Van Sweringen deals, who, although connected with the bank in an official capacity, were also prominently connected with the Van Sweringen operations

(U-1-30)

It is your committee's recommendation that the bank employ a capable independent attorney, without any present or past connection with the Van Sweringens, to thoroughly investigate the entire situation and to take any action necessary to protect the interests of this bank without delay

(Related orally by Mr Norton to Mr Seymour)

During the course of our investigation, the writer attempted to contact Mr Lenihan to discuss with him the various matters brought out in the committee's report. Mr. Lenihan was out of town

Therefore, the contact and discussion were had with Mr Robert C. Norton. When asked for a little more explanation regarding the last paragraph quoted above, Mr Norton stated that the Van Sweringens had made a habit of "throwing" cases now and then to practically every law firm in Cleveland and that it was almost impossible to get any lawyer of Cleveland to take a case against the Van Sweringens

(U-1-30-A)

*Daisy Hill Co loan.*—The Daisy Hill Co. is the name of the corporation through which the Van Sweringen brothers own the "farm" on which they live in Shaker Heights, Gates Mills, Cleveland. The Union Trust Co had loaned to this company \$51,000 on March 7, 1930, and \$487,000 later in the same year—the details of which will be given later in this report. The committee, commenting on these loans to the Daisy Hill Co, stated:

(U-1-30-A)

This bank has loaned to the Daisy Hill Co. \$538,000. Besides the questionable value of the collateral, interest has not been paid. The Van Sweringens occupy these premises as their residence and therefore should pay some manner of rent. As we understand it, they receive a substantial income.

We are informed that the loan of \$51,000 made at the terminal office on March 7, 1930, was declined at the main office and subsequently made through the terminal office on the authority of Mr Nutt.

(Related orally by Mr. Norton to Mr Seymour)

During our discussion with Mr Norton, we asked for the name of the officer at the main office who had refused this loan to the Daisy Hill Co. When asked the name of the officer who had made the refusal, Mr. Norton stated that it was probably himself, that he and a few of the other directors had at various times expressed a very strong dislike and disapproval of any more Van Sweringen loans being made until after they had been approved by the finance committee (the efforts of the dissenting directors—if seriously made, were unsuccessful in preventing loans to the Van Sweringens, as will be shown later in this report. No mention was made of any dissension in the minutes of the trust company). At any rate, it is claimed by Mr Norton and the other members of the examining committee that the loan of \$51,000 to the Daisy Hill Co was refused at the main office but was granted by Mr Armstrong of the terminal office of the trust company. Mr. Norton stated that the examining committee called upon Mr Armstrong to appear before the committee and that he (Armstrong) stated that he had accepted this loan upon the instructions of Mr Nutt and that it is believed by the committee that subsequently to this (the appearance of Armstrong before the committee) Mr. Nutt had a talk with Mr Armstrong and encouraged Armstrong to deny any participation by Nutt in this transaction. Mr. Norton stated that the committee had thought of obtaining an affidavit from Armstrong regarding this matter, but had not done so, feeling that he was right here in the city of Cleveland and that if any court action was taken, he could be sworn.

*Other committee comments*—The committee in its report then pointed out that the total capital stock of the Vaness Co consisted

of 50,000 shares of preferred and 162,500 shares of common and that the Union Trust Co had:

(U-1-33)

Pledged on loans		Shares
Preferred stock		
The Daisy Hill Co.....	-----	7, 935
O P & M J Van Sweringen.....	-----	9, 000
John Hecker.....	-----	150
J J McGinty.....	-----	225
S J Gibbs (terminal).....	-----	750
Total (0 3612 of total outstanding).....	-----	<u>18, 060</u>
Common stock:		
O. P. & M. J. Van Sweringen.....	-----	97, 500
Do.....	-----	16, 250
Total (0 70 of total capitalization).....	-----	<u>113, 750</u>

(U-1-34)

With holdings of this size, why are we not controlling the board of directors?  
Do we know the salaries paid to officials?

Regarding other corporations in which the Van Sweringens were interested, and stock of which had been pledged securing loans, the committee stated:

## METROPOLITAN SECURITIES CO

By pledge of stock of the above company we control 10,296 shares.  
Why did we permit a vote in favor of the Vans' control for another 3 years?  
Why do we not control the board of directors?  
Do we know what salaries are paid?

## CLEVELAND BASEBALL CLUB

Total capital—500,000% at \$100 per share  
Alva Bradley loan, 378 shares  
Vaness Co loan, 1,250 shares

## CALUMET TRUST

Total certificates of interest outstanding, 25,203½  
O P Van Sweringen, managing trustee  
Otto Miller, trustee  
Mitchell D Follansbee, trustee  
We hold as collateral 17,999½ shares, or 0 7142 of total outstanding  
Statistical department file contains a copy of a letter to Otto Miller, February 2, 1932, from L M Nicholson, secretary of trust, stating that he checked assets and liabilities with the idea of determining the actual or real value of the trust certificates, shows

Assets.....	-----	\$841, 166 32
Liabilities.....	-----	55, 000 00

Net worth (\$31 19 per share)..... 736, 166 32

Comment Why do we not have representation on or control board of directors?

By the time the examining committee had an opportunity to present its report to the board of directors, the bank was closed, and it was too late to answer the above questions

(U-34, 34-A)

However, Mr Nutt, answering the references made to him in the committee's report, wrote a letter to the Union Trust Co on April 13,

1933, which he requested be filed with the report of the examining committee

Referring to the charge that he had sponsored the Van Sweringen loans, Mr Nutt said.

(U-34-A)

The understanding of the Committee is not correct. I never sponsored loans to the Van Sweringen interests. These loans were approved by the finance committee, of which Mr J R Kraus is chairman (of which I have never been a member) before being made.

Mr Nutt also denied any knowledge of approving the Daisy Hill loan, stating, in part

(U-34-A)

If Mr Armstrong at the terminal office asked me about the loan, I doubtless told him I thought it was all right, but I do not remember that he ever made any inquiry

#### APPOINTMENT OF LIQUIDATOR

The Union Trust Co closed on February 25, 1933, and on April 8, 1933, Mr Oscar L Cox was appointed conservator, which title he held until June 15, 1933, when he was appointed liquidator. Immediately after his appointment as conservator, Mr Cox designated a Mr C C Merrifield, who was assistant treasurer of the Union Trust Co, to make a study and report on the Van Sweringen loans. Mr Merrifield completed his task and submitted his report on June 3, 1933. He submitted a detailed analysis of all of the Van Sweringen loans covering some 25 pages of schedules (exhibits U-69 to U-69-X), copies of which we have. However, each of these schedules and each of several memoranda written in connection with them bears a statement from Mr Cox that the memorandum or schedule is not part of the Trust Co's records, that it was prepared by a "junior" member of the staff, and that it has not been verified as to facts. Mr Merrifield was assistant treasurer of the Union Trust Co and could hardly be classed as a "junior" member of the staff not capable of making up a correct statement. Incidentally, so far as we have been able to check his statements, they are a true statement of the facts.

Mr Merrifield classes the loans due from the Van Sweringens and their controlled companies as follows

(U-69)

Commercial and collateral loans.....	\$11, 412, 908 54
Mortgage loans.....	772, 064 57
Land contracts.....	1, 000, 000 00
<b>Total.....</b>	<b>13, 184, 973 11</b>
With interest delinquent May 1, 1933.....	1, 089, 045 83
<b>Total.....</b>	<b>14, 274, 018 94</b>

We shall refer to these memoranda in closing the history of each of the several loans.

**\$2,800,000 PARTICIPATION IN TOTAL DEMAND COLLATERAL LOAN OF  
\$9,000,000 DUE FROM O. P AND M J VAN SWERINGEN**

(U-2-10)

A loan to the Van Sweringen brothers, personally, in the amount of \$9,000,000, is still unpaid and is participated in by four Cleveland banks, as follows

(U-2-10)

The Union Trust Co.....	\$2, 800, 000
The Guardian Trust Co.....	2, 500, 000
The Cleveland Trust Co.....	2, 500, 000
The Midland Bank.....	1, 200, 000
Total.....	9, 000, 000

(U-20-A; U-69-T to 69-X)

This obligation of the Van Sweringens grew out of some loans that had originally been made to the Vaness Co. We shall detail the history of this loan from July 1928 until the present, and show just how Mr. Nutt allowed the Van Sweringens to use the Union Trust Co. Even as far back as 1928 the Van Sweringens were allowed to substitute collateral having no market value for that which was marketable. The Vaness Co. had made many loans prior to 1926, but on April 19, 1926, was entirely paid out at the Union Trust Co.

(U-69-A, 2-3)

On July 21, 1926, the Vaness Co. started its borrowing again with a loan of \$225,000. The loans increased gradually, reaching a peak on July 1, 1927, of \$2,250,000. There was \$1,900,000 paid off on October 4, 1927, after which loans again increased until they reached a total of \$4,350,000 on June 23, 1928. The million dollars was paid off at the end of June 1928, and on July 28, 1928, with the debts totaling \$3,350,000, the loans were revamped in respect to \$2,000,000. The remaining \$1,350,000 was gradually paid off to July 23, 1929. On July 27, 1928, there were five loans exclusive of the \$1,350,000 mentioned above unpaid, in the name of the Vaness Co., as follows:

(U-20-A, 77)

Date	Loan no	Amount
Dec 28, 1927.....	26399	\$250, 000
Feb 17, 1928.....	29180	500, 000
Feb 20, 1928.....	29182	500, 000
Jan 14, 1928.....	27338	500, 000
Mar 1, 1928.....	29700	250, 000
Total.....		2, 000, 000

On that day (July 27, 1928) the above loans were canceled and a new loan, no. 36759, was set up in the name of the Vaness Co. in the amount of \$2,000,000

(U-2-4)

In November 1933 special investigators for the Ohio State Banking Department made an examination of certain loans at the Union Trust

Co In their report on loans made to the Van Sweringens and their controlled companies, the examiners detailed these loans and the collateral carefully Referring to the above transaction by which the five loans were refunded and a new one set up; the examiners pointed out that—

(U-2-4)

Comparison of the collateral given to secure the loans which were refunded for that given to secure the new note is stated below

	Loans nos 26599, 29160, 29162, 27338, and 29700 total amount, \$2,000,000	July 27, 1928, loan no 38759, amount, \$2,000 000
New York Chicago & St Louis R R common.....	Shares 18, 000	Shares
The Terminal Properties Co		
First preferred.....	32, 600	32, 631
Second preferred.....	27, 300	30, 265
Common.....	93, 300	95, 600

(U-2-4)

The collateral security covering the new note did not include the 18,000 shares of New York, Chicago & St Louis Railroad common which, together with the Terminal Properties Co stock, was pledged on the refunded loans The Nickel Plate shares, having a market value of \$2,263,500, were released to the Vaness Co and additional shares of the Terminal Properties Co stock were substituted as follows

First preferred, 31 shares, par value.....	\$3, 100
Second preferred, 2,955 shares, par value.....	295, 500
Common, 2,300 shares, par value.....	230, 000

Total, par value..... 528, 600

The above Terminal Properties stock pledged was owned as follows

	Vaness Co	O P & M J Van Sweringen
First preferred.....	Shares 23, 044	Shares 9, 587
Second preferred.....	29, 425	330
Common.....	43, 960	51, 980

The common stock of Terminal Properties Co was owned on July 27, 1928, as follows

(U-2-4)

	Shares
Vaness Co.....	44, 045
O P & M J Van Sweringen.....	51, 980
Others.....	3, 975
Total.....	100, 000

The unpaid dividends on the preferred stock totaled \$5,505,510

(U-2-4)

Here we have a case as far back as 1928 (and, incidentally, as far back as we have gone) where good collateral was released for that of less value when The Union Trust Co released stock with a market value of \$2,263,500 and received in return stock of a closely held corporation

on which there was no market whatsoever. Not only that, but Terminal Properties Co had continually operated at a loss and a consolidated balance sheet as of December 31, 1927 showed a deficit of \$19,696,007 16

*Approval of \$2,000,000 loan*—The acts of the officers of the Trust Co in making loans were ratified and approved by two committees namely, the discount or finance committee, and the executive committee, before being approved by the board of directors. In analyzing the minutes of these meetings, some curious facts present themselves, which we will try to outline as clearly as possible

(Minutes of discount committee, The Union Trust Co, p 2655)

At the meeting of the discount committee held July 30, 1928 the loan to The Vaness Co was approved. This meeting was attended by the following Messrs Otto Miller, Thomas P Robbins, G. A. Tomlinson, Whitney Warner, J. R. Kraus, W M Baldwin, J. G. Geddes, vice president, John Sherwin, Jr vice president, George P. Steele, vice president; W Tonks, vice president, R S Crawford, vice president

(Minutes of executive committee, p 695)

It will be noted that five of the persons that were present at this meeting were officers of the bank, who, according to the bylaws in effect at that time, were not qualified to act as members of the discount committee. Therefore, only four votes were necessary to ratify the loan. On August 6, 1928, the executive committee ratified all loans approved by the discount committee on July 30, 1928. According to the executive committee minutes there were nine members present, which constitutes a quorum (there were also present the Messrs Farnsworth and Harris, who were not qualified to vote). Included in the nine qualified to vote were five members who had acted upon the loan as members of the discount committee and J R Nutt, who was financially interested in the borrower. The five members of the executive committee who had previously voted on this same loan were as follows: W M Baldwin (J R Nutt's lieutenant), Otto Miller (Van Sweringen associate), J R Kraus, Thos P Robbins, Whitney Warner

(Minutes of board of directors, the Union Trust Co p 704)

On August 14, 1928, the board of directors approved and confirmed the action of the executive committee, but there was not a quorum present

(Board of directors p 704)

On September 11, 1928, the following resolution was adopted by the board of directors:

Upon motion duly made, seconded and unanimously carried it was

*Resolved*, That the minutes of the meeting of June 26, 1928, be and the same are hereby approved, and the actions taken at the meetings of July 10, 1928, July 24, 1928, August 14, 1928, and August 28, 1928, at which quorums were not present, are hereby ratified, adopted, and confirmed as the actions of this board

An analysis of the directors present at the meeting set forth in the above resolution gives the following information:

Name	Voted as member of discount committee July 30, 1928	Voted as member of executive committee Aug 6, 1928	Voted as member of board of directors Sept 11, 1928
W M Baldwin	Yes	Yes	Yes
Otto Miller	Yes	Yes	Yes
J R Kraus	Yes	Yes	
T P Robbins	Yes		Yes
Whitney Warner	Yes	Yes	Yes
Emil Joseph		Yes	Yes
E J Kulas		Yes	Yes
J R Nutt		Yes	Yes
G A Tomlinson	Yes		Yes

(a) Seven of the directors who voted on September 11, 1928, for the above resolution were not present at any of the four meetings, the actions of which they ratified.

(b) Fourteen of the thirty-five directors who voted for the foregoing resolution were not present at the meetings held on July 10 and July 24, 1928

(c) Of the 14 members of the board who were present at both of the directors' meetings on August 14, 1928, and September 11, 1928, 4 (Messrs Nutt, Joseph, Baldwin, and Robbins) had previously voted at least once on the merits of this particular loan. Of those present at the board of directors' meeting on September 11, 1928, 4 had voted twice previously in favor of this loan, and 3 had voted once previously as members of either the executive or discount committees.

No payments were made on this \$2,000,000 loan during 1928 and 1929. On November 1, 1929, the Vaness Co negotiated a new and larger loan, canceling the \$2,000,000 loan

(Committee hearings, J P Morgan & Co)

*Brokerage loan paid off*—It will be remembered from other data previously acquired and from the reports previously written in connection with our examination of the Van Sweringens that the Vaness Co had maintained an active brokerage account with the New York Stock Exchange firm of Paine, Webber & Co. It would also be recalled that one of the senior partners of this brokerage firm, Mr. Kenneth Steere, was included on J P Morgan's so-called "selected list" in the sale of Alleghany Corporation common stock. At the committee's hearings held in the spring of 1933, information was presented (with Mr O P Van Sweringen as the witness) showing that large borrowings had been made by the various corporations controlled by these two Van brothers, the proceeds of which have been used, in part, to pay off the indebtedness of the Van Sweringens' margin account at Paine, Webber & Co.

(U-59, 69-B; U-59-A)

In studying the data pertaining to loans made by the Cleveland banks to the Van Sweringens' interests, one finds the same situation existing. The Van Sweringens, operating an active margin trading account with Paine, Webber & Co, evidently in an effort to support the market of the Chesapeake Corporation and the Alleghany Corporation stocks. Their tradings during 1929 were very heavy and during the stock market crash they lost heavily and incurred an indebtedness at Paine, Webber & Co running well over \$30,000,000.

On December 31, 1929, the Van Sweringens owed Paine, Webber & Co \$25,031,736. In order to pay off the indebtedness of their margined account, the Van Sweringens had to obtain money somewhere; and so they increased their loan from 2 to 9 million dollars, using the proceeds to pay off some of the Vaness Co indebtedness to a large extent, at Paine, Webber & Co. The Union Trust Co took a \$2,000,000 participation in this total loan of \$9,000,000, the remainder being split up by three other Cleveland banks.

(U-2-5)

The Union Trust Co. was trustee for the participants in this loan. The participants and the amount of their respective participations were as follows:

(U-78)

The Union Trust Co.....	\$2, 000, 000
The Guardian Trust Co.....	2, 500, 000
The Cleveland Trust Co.....	3, 300, 000
The Midland Bank.....	1, 200, 000
Total.....	9, 000, 000

(U-2-6)

The collateral securing the above loan was almost the same as that securing the \$2,000,000 loan, with the addition of 122,000 shares of Van Sweringen Co. common stock and 100 shares of Cleveland Terminal Building Co. common. Both of these latter companies were wholly owned subsidiaries of the Terminal Properties Co. It is difficult to figure out how this additional collateral materially strengthened the security behind this loan.

#### APPROVAL OF PARTICIPATION IN \$9,000,000 LOAN

(Minutes of the Union Trust Co. finance committee, p. 5161; executive committee p. 820; board of directors, p. 737)

The finance committee approved this loan on November 2, 1929; and the executive committee approved and confirmed the action of the finance committee on November 4, 1929. There were 11 members present at the meeting of the executive committee. The vote of the executive committee was unanimous, however. Approval of the loan to the Vaness Co. was assured, because 4 of the 11 members present had previously voted favorably on the loan as members of the finance committee, and the vote of these 4, together with the vote of J. R. Nutt (who was interested in the borrower) and W. M. Baldwin (Nutt's right-hand man) constituted a majority. On January 9, 1929, by action of the board of directors, the bylaws of the Union Trust Co. were amended in several respects one of which was as follows:

Article 2, section 3, to read as follows:

"Certain loans. No loans shall be made to an officer of the bank, or to a syndicate or partnership in which an officer is a participant or a partner, unless first approved by the executive or finance committee. When a loan is applied for or has been currently made, by or to a corporation in which an officer has a substantial interest, it shall be the duty of that officer to state immediately the fact of his interest therein to the executive or finance committee."

Mr. Joseph R. Nutt was 1 of the 4 stockholders of the Vaness Co., owning 16,250 shares. The records of the finance and executive com-

mittees failed to show any mention of this fact's being made by Mr. Nutt when the question of these loans was discussed

(U-2-8)

Although in May 1930 the Alleghany Corporation carried out some new financing, through J P Morgan & Co and the Guaranty Trust Co of New York (issuing \$12,500,000 par value of preferred stock, and the \$25,000,000 third bond issue of the Alleghany Corporation) the Vaness Co was unable to pay off its \$9,000,000 indebtedness in Cleveland; and on May 13, 1930, the total loan was renewed

(U-39, 72)

The Union Trust Co increased its participation by \$800,000. The participation of the Cleveland Trust was reduced from \$3,300,000 to \$2,500,000 and the participation of the Union Trust Co was increased from \$2,000,000 to \$2,800,000. When this new loan of \$9,000,000 was renewed May 13, 1930, the Terminal Properties Co stock and the 100 shares of Cleveland Terminals Building Co. were released, 600,000 shares of Van Sweringen Corporation stock being pledged instead. Comparison of the collateral securing this \$9,000,000 obligation on November 1, 1929, and May 13, 1930, is as follows

(U-2-8)

*Loans by the Union Trust Co to the Vaness Co*

	Nov 1, 1929, loan no 61049, \$2,000,000 partic- ipation in \$9,000,000 loan	May 13, 1930, loan no 70739, \$2,800,000 partic- ipation in \$9,000,000 loan
<b>The Terminal Properties Co</b>	<i>Shares</i>	<i>Shares</i>
First preferred.....	32,893	0
Second preferred.....	33,187	0
Common.....	99,222	0
<b>The Van Sweringen Co Common.....</b>	122,000	122,000
<b>The Cleveland Terminals Building Co Common.....</b>	100	0
<b>Van Sweringen Corporation Common.....</b>	0	600,000

(U-33)

On May 10, the other participants with the Union Trust Co. agreed to the renewal of this loan and the substitution of 600,000 shares of Van Sweringen Corporation stock in place of the 100 shares of Cleveland Terminals Building Co. stock, but, as was pointed out by the State Banking Department examiner in his special report of November 13, 1933—

(U-2-8)

\* \* \* no mention is made regarding the release of 32,893 shares of the Terminal Properties Co first preferred; 33,187 shares of the Terminal Properties Co second preferred, and 99,222 shares of the Terminal Properties Co common, which shares have been pledged to secure the loan being refunded. However, consent was given to the substitution of 600,000 shares of Van Sweringen Corporation common for 100 shares of the Cleveland Terminals Building Co

(U-2-8)

No reasons are given in the directors' minutes of the Union Trust Co. or the Guardian Trust Co for refunding of this loan at this time or for the release of the

collateral security consisting of the Cleveland Terminals Building Co stock and substitution therefor of 600,000 shares of Van Sweringen Corporation common stock

The substitution of collateral was made because the Van Sweringen brothers had formed the Van Sweringen Corporation to acquire the assets of Terminal Properties and Cleveland Terminals Building Co. The Van Sweringen Corporation then (May 15, 1930) sold through the Guaranty Trust Co of New York \$30,000,000 5-year 6-percent gold notes and issued 1,744,800 shares of its common stock at \$25 a share (or \$43,620,000) to the stockholders of Terminal Properties Co for the assets acquired. The Examiner pointed out that—

(U-2-9)

(3) On or about May 13, 1930 the Cleveland Terminals Building Co (wholly owned by the Terminal Properties Co) caused an entry to be placed on their books setting up the appraised value of certain building sites (air rights) in the Terminal group at \$16,285,000, which apparently had not previously been carried on the books as an asset

These "air rights" were the principal assets which the Van Sweringen Corporation received and, as was pointed out by the State examiner—

(U-2-9)

The collateral released, namely, the Terminal Properties Co. and the Cleveland Terminals Building Co stock, was valued by the stockholders thereof at approximately \$43,620,000 on or about May 13, 1930, at which time the assets of the company were sold to the Van Sweringen Corporation

(U-2-9)

The value of the collateral substituted (600,000 shares Van Sweringen Corporation common), valued on the same basis, would have been worth \$15,000,000<sup>1</sup>. However, both valuations are arrived at after adding \$16,285,000 appreciation covering an appraised value of "air rights"

(U-2-9)

To have secured the new loan as fully as the loan which was refunded, there should have been a pledge of approximately all of the Van Sweringen Corporation shares issued (1,744,800) instead of only 600,000

(Committee hearings, J P Morgan & Co, May 1933; U-79)

No payments were made on the principal of this loan from the date it was made to October 30, 1930. On that day the Van Sweringens, through their two companies, the Vaness Co and the Cleveland Terminals Building Co, borrowed from a group of New York banks, headed by J P Morgan & Co, \$39,500,000. In making this loan in New York, the Van Sweringens pledged, among other collateral, all of the assets of the Vaness Co. Also, the Vaness Co agreed with J P Morgan & Co that it would not incur any other indebtedness of more than \$1,000,000, than that due to Morgan. In order to do this, a "switch" or substitution of collateral had to be made with the security pledged on the Cleveland loans. In accordance with the Morgan agreement, the Vaness loan at the Union Trust Co had to be paid off. This was easily handled—not by the payment of any money to the trust company but by simply transferring the debt to one in the name of the Van Sweringen brothers.

<sup>1</sup> The examiner based this \$15,000,000 on the fact that the stock was sold at \$25 a share in the trade with Terminal Properties

(U-2-9)

Accordingly, on October 30, 1930, this \$9,000,000 obligation of the Vaness Co was canceled and a new note signed by O. P. and M. J. Van Sweringen. It might be well to state at this point that on the same day (Oct 30, 1930) there was another loan of the Vaness Co in the amount of \$5,000,000 transferred to the name of the Van Sweringen brothers with the "switch" of unmarketable collateral for marketable security. The details of this switch will be given later in connection with the \$5,000,000 loan. This \$9,000,000 loan of the Vaness Co was credited in full, and a new loan, no 78310, was set up in the name of O. P. and M. J. Van Sweringen. This new loan was participated in by the other banks in the same ratio as the old loan; that is

(U-2-9)

The Union Trust Co.....	\$2,800,000
The Guardian Trust Co.....	2,500,000
The Cleveland Trust Co.....	2,500,000
The Midland Bank.....	1,200,000
<b>Total.....</b>	<b>9,000,000</b>

(U-2-9)

The collateral pledged to secure the new note was as follows:

(U-79)

97,500 shares the Vaness Co common, issued in the name of Winifred C Bloom

Comparison of the collateral security for each of the foregoing loans is set forth as follows

(U-2-10)

	July 27, 1928, loan no 37659, by the Union Trust Co to the Vaness Co, amount \$2,000,000	Nov 1, 1929, loan no 61949, by the Union Trust Co to the Vaness Co., \$2,000,000 Participation in \$9,000,000 loan	May 13, 1930, loan no 70739, by the Union Trust Co to the Vaness Co., \$2,800,000 Participation in \$9,000,000 loan	Oct 30, 1930, loan no 78310, by the Union Trust Co to O. P. & M. J. Van Sweringen, \$2,800,000 Participation in \$9,000,000 loan
	Shares	Shares	Shares	Shares
The Terminal Properties Co., first preferred.....	32,631	32,893	-----	-----
The Terminal Properties Co., second preferred.....	30,255	33,187	-----	-----
The Terminal Properties Co., common.....	95,600	99,222	-----	-----
The Van Sweringen Co., common.....	-----	122,000	122,000	-----
The Cleveland Terminal Building Co., common.....	-----	100	-----	-----
Van Sweringen Corporation, common.....	-----	-----	600,000	-----
The Vaness Co., common.....	-----	-----	-----	97,500

(Minutes of finance committee, the Union Trust Co., p 6359)

We have carefully checked the minute books of the finance and executive committees and the board of directors regarding the approval of this loan. No specific reference is made in either the finance or executive committees' minutes to this loan, and no reasons are given in any of the minutes of the Trust Co for the retirement of the Vaness Co note and the substitution thereof of a note of like amount signed by O. P. and M. J. Van Sweringen, or for the release of the stock pledged to secure the Vaness Co and the substitution of the Vaness Co stock on the new loan, except at a meeting of the finance committee on October 28, 1930, 2 days before the transaction

(Minutes of finance committee, the Union Trust Co , p 6359)

It was agreed to accept participation of \$2,800,000 in a loan of \$9,000,000 to O P and M J Van Sweringen, to be secured by 60 percent of the entire issue of common stock of the Vaness Co. The other participants in this loan are the Cleveland Trust Co , the Guardian Trust Co , and the Midland Bank

No payments have ever been made on the principal of the 9 million-dollar loan. Unpaid interest accrued by the Union Trust Co on their \$2,800,000 participation totaled \$391,774 64 on September 1, 1933.

(U-16)

On January 18, 1933, Mr O'Neil, vice president of the Union Trust Co., wrote to the other participants in the \$9,000,000 loan regarding the 97,500 shares of Vaness Co. stock, stating that—

(U-37)

Messrs O P. and M. J. Van Sweringen have now requested that we execute and deliver to Mr Charles W Stage, secretary of the Vaness Co , a proxy for said stock

Mr. Robinson, executive vice president of the Guardian Trust Co., answered on January 23, 1933, stating:

(U-38)

It seems to me that owing to the fact that the trustee has such a large stock interest he should be represented in some manner in a corporation set-up for 1933, especially in view of the fact that no payments are being made upon the interest or principal of the participated loan

I am aware of the fact that most of the securities in the Vaness portfolio, upon which we depended when we made the loan, have been shifted to New York. Whether or not the pledging of these securities was done with or without the knowledge of the trustee I am not advised, but, irrespective of that, it may be that in the future some policy may be taken by the Vaness management which would be harmful to our interests, and I feel that the banks should have some one representing them on the board who would know in advance of the establishment of any policy which might affect our loan one way or another and advise the interested banks promptly in reference thereto

Mr. O'Neill answered Mr Robinson on January 26, 1933, in part, as follows

Referring to the suggestion in your letter of the 23d instant as to the pledging of Vaness Co stock in New York, it appears that on or about October 30, 1930, the note of the Vaness Co for \$9,000,000, representing a loan in which the banks had participated, was canceled and the collateral surrendered, and there was substituted therefor the note of O P and M J Van Sweringen, with 97,500 shares of stock of the Vaness Co as collateral, and certificates of participation in this new loan were issued to the banks. Therefore, the banks, as participants in this loan, would not be in a position to object to the pledge made by the Vaness Co. in New York, and it is my understanding that all of the local banks knew at that time that the New York pledge was being made

We have been unable to find, anywhere in the files of the Union Trust Co , any notice to the participants by the trustee of this collateral switch.

O P AND M J VAN SWERINGEN COLLATERAL LOAN, \$4,100,000

(U-1-30)

There is also still due the Union Trust Co from O P and M J Van Sweringen personally a direct demand loan in the amount of \$4,100,000 Interest on this loan has not been paid since July 1,

1931, and there was delinquent on May 1, 1933, interest accrued of \$408,012 17 This loan, like the \$9,000,000 loan, arose out of original borrowings by the Vaness Co The Union Trust Co had loaned to the Vaness Co. the sum of \$5,000,000 on October 29, 1929, secured by collateral having a market value of \$7,295,750, as follows.

(U-20-C)

	Price per share	Market value Oct 29 1929
32,000 shares Cleveland Railway Co.....	100	\$3,200,000 <sup>1</sup>
6,500 shares Midland Bank.....	465	3,022,500
30,000 shares Alleghany Corporation, common.....	205%	618,750
6,000 shares United Corporation, common.....	25%	154,500
3,000 units Western Reserve Investment Corporation, 6 percent preferred.....	100	300,000
Total.....		7,295,750

<sup>1</sup> No market Indicated value \$100.

(U-20-C, 11-A)

On October 30, 1930, when all the other financing was being done for the Vaness Co and the 9-million-dollar loan was being renewed in the name of the Van Sweringen brothers, this \$5,000,000 loan in the name of the Vaness Co was refunded by a new loan of the same amount in the name of O P and M J Van Sweringen The collateral which had been pledged on the Vaness Co loan and which had an estimated market value of \$4,942,000 was released, and collateral having a market value of approximately \$672,000 was accepted as security for this \$5,000,000 loan to the Van Sweringens The following is the collateral accepted:

(U-11-A, U-79)

	Market value Oct 30, 1930
4,000 shares Niagara Hudson Power Corporation, common, at 12½---	\$50,000
5,000 shares Standard Brands, Inc, common, at 16¼-----	81,250
3,000 units Western Reserve Investment Corporation, common, at 85--	255,000
1,400 units Newton Steel Co, common, at 20½-----	28,700
33,000 units Peerless Motor Car Corporation, common, at 3¾-----	123,750
6,000 units United Corporation common, at 22¼-----	133,500
9,000 units Vaness Co, preferred, no market	
16,500 units Vaness Co, common, no market	
3,000 units Western Reserve Investment Corporation, no market	
17,999½ units Calumet Trust certificates, no market	
10,296 units Metropolitan Utilities, Inc, common, no market	
Total.....	672,000

and equity in the following, held in corporate trust department subject to previous pledge under Metropolitan Utilities, Inc \$3,100,000 loan:

(U-11-A, U-79)

100 shares Traction Stores Co, common, no market.  
 5,800 shares Cleveland & Youngstown R R, common, no market.  
 100 shares Cleveland Traction Terminal, common, no market  
 1,465 shares Cleveland Interurban R R Co, common, no market.

Previously in this report we have shown how the Van Sweringens were able to substitute 97,500 shares of the stock of the Vaness Co,

which had no market value, for other marketable collateral, securing the \$9,000,000 obligation. Not only was this Vaness Co stock unmarketable but practically all of the assets of the Vaness Co, had been pledged with J P Morgan & Co

(U-II)

The "switch" of collateral on this \$5,000,000 loan was covered fully by the Ohio Senate banking committee during its hearings in September 1933. In order to be sure that a clear picture of the "switch" would be printed in the daily press, the committee issued a statement explaining the transaction. Mr. W M Baldwin, formerly president of The Union Trust, and, as we have pointed out previously in this report, Nutt's "Man Friday," then issued a statement

(U-II)

\* \* \* with the desire of giving the committee more complete information regarding this subject and to present more accurately the information which was before the officers of the bank and which entered into their decision in approving this transaction

In his statement, Mr Baldwin said:

(U-12, 12-B)

It was apparent to the officers of the bank that the stock of the Cleveland Railway and of the Midland Bank, being salable only on the local stock exchange, would not under the then conditions realize the quoted prices and that the proposed arrangement with the New York banks which contemplated the use of certain of the collateral then pledged under the Vaness Co loan and the payment of this loan by the personal note of O P and M J Van Sweringen had the advantage of the personal responsibility of O P and M J Van Sweringen, which we consider very substantial, as well as the additional collateral offered to back up this note, which included all of that then securing the Vaness Co loan except the 32,000 shares of Cleveland Railway stock and 8,260 shares of Midland Bank stock, and 50,000 shares of Van Sweringen Corporation stock—the latter being an unlisted security and entirely held by the Vaness Co

(U-12, 12-B)

Although the stock of the Vaness Co pledged on this loan was not listed, it was considered to have substantial value at the time in excess of \$7,272,000 above stated. The Calumet land trust certificates, representing ownership in valuable Chicago real estate, also had substantial intrinsic value, although no market quotations were available because it was not listed on any exchange

(U-12)

In his statement, Mr Baldwin claimed that the value of the Vaness Co. stock was not difficult to estimate and that its value was a great deal greater than that of the listed stock that was released. J. P. Morgan & Co. evidently did not agree with Mr Baldwin or they would have accepted some of the Vaness Co. stock as collateral themselves and would not have demanded this other collateral that had been pledged at the Union Trust Co

(U-5)

On December 16, 1930, Mr O'Neill, vice president, wrote a letter to Mr Coulton, vice chairman, regarding the stock of Cleveland Interurban Railway Co., Cleveland Traction Terminals, and Traction Stores Co. pledged to secure the Van Sweringen loan. Mr.

O'Neill pointed out that all this stock was in the name of Metropolitan Utilities, Inc., and that there was no authorization for the Van Sweringens to use this stock. He stated in his letter

(U-5)

I talked to Mr. Murphy on the telephone last night and he said that the Van Sweringens had borrowed the money on our \$5,000,000 loan and others, to enable the Vaness Co. to pay off certain obligations. He mentioned specifically one obligation of \$4,200,000. He also said that he thought this action warranted the Vaness Co. in allowing the Van Sweringens to pledge the stock in question for the \$5,000,000 loan. Even this does not show what warrant there is for using the asset of Metropolitan Utilities, Inc., which is a subsidiary of the Vaness Co.

Mr. Murphy then promised to obtain the proper authorization.

(U-70, 20-D)

On November 20, 1930, the Union Trust Co. loaned \$800,000 to the Vaness Co. and the \$5,000,000 loan to the Van Sweringen brothers was reduced by a like amount—\$800,000. All the collateral having any market value at all was released from the Van Sweringen loan to be pledged as security on the Vaness Co. loan. This collateral had a market value on November 20, 1930, of approximately \$671,450 securing a loan of \$800,000.

This loan to the Vaness Co., in the amount of \$800,000, came about in the following manner. Examiners for the State banking department had found the loans to O. P. & M. J. Van Sweringen to be in excess of the legal limit, which was a violation of section 710-122 of the Ohio banking act. The examiner evidently spoke to the officers about this matter while he was conducting the examination.

(U-59)

Mr. Herzog, an aide of Mr. Cox, the liquidator, stated, after a conference with D. S. Barrett, a Van Sweringen representative:

(U-59)

The switch of \$800,000 from the debt of O. P. & M. J. Van Sweringen to an obligation of the Vaness Co. was at the request of the bank. The Van Sweringens owed \$7,800,000, which was \$800,000 in excess of the legal limit.

On January 3, 1931, the superintendent of banks wrote to the Union Trust Co. and stated that on November 14, 1930

(U-23)

We note an excessive line of credit to O. P. & M. J. Van Sweringen. It is set up as excessive to the extent of \$2,249,455, which amount has been reduced since November 14 in the sum of \$2,222,500, leaving \$26,955 in excess of the loan limit or 20 percent of the bank's capital and surplus.

(U-80)

The above reduction of \$2,222,500 is made up of the \$800,000 and \$1,422,500 loaned to Metropolitan Utilities, Inc., on January 8, 1931. Mr. Baldwin answered the superintendent of banks, stating that:

(U-81)

Referring again to your letter of January 3, I wish to advise that the excess loan has been closed

Actually, the excess loan was simply transferred from the Van Sweringens to the Vaness Co and Metropolitan Utilities, their corporations

The remaining \$4,200,000 loan, after the above \$800,000 payment, of the two Van Sweringen brothers was then secured by the following:

(U-20-D)

	<i>Shares</i>
Vaness Co preferred (no market)-----	9,000
Vaness Co., common (no market)-----	16,250
Metropolitan Utilities, Inc , common (no market)-----	10,296

On January 24, 1931, the Van Sweringens paid off \$100,000 of their loan, leaving a balance of \$4,100,000, which is outstanding today (January 31, 1934)

## APPROVAL OF BOTH 9- AND 5-MILLION DOLLAR LOANS

(Minutes of the Union Trust Co finance committee, p 6359, Executive Committee, p 941)

The agreement to participate to the extent of \$2,800,000 in the total loan of \$9,000,000 to O P & M J Van Sweringen and the agreement to loan O P. & M J. Van Sweringen another \$5,000,000 was approved by the finance committee on October 28, 1930 The action of the finance committee was approved by the executive committee on November 10, 1930, at which meeting there were 13 members present, 5 of whom had attended and voted at the finance committee meeting, and 1 of whom (J R Nutt) was personally interested in the Van Sweringens.

(Minutes of Board of Directors, p 885)

The action of the executive committee was approved by the board of directors on November 12, 1930, which meeting was attended by 31 members Of these 31, the following members had voted in favor of this loan with either or both the finance committee and the executive committee

Name	Voted finance committee	Voted executive committee	Voted board of directors
W M Baldwin-----	Yes	Yes	Yes
G A Coulton-----	Yes	Yes	Yes
Otto Miller-----	Yes	Yes	Yes
T P Robbins-----	Yes	Yes	Yes
F P Root-----	Yes	Yes	Yes
Emil Joseph-----	Yes	Yes	Yes
J R Kraus-----	Yes	Yes	Yes
K V Painter-----	Yes	Yes	Yes
W T White-----	Yes	Yes	Yes

In his report to Mr. Cox, liquidator, Mr. Merrifield, assistant treasurer, speaking of the position of the Union Trust Co. as creditor, recommended—

Securing, if possible, a rescrumble of the collateral held by the various creditors, particularly obtaining the Cleveland Railway stock given up in 1930.

(U-58)

To help accomplish these ends, the Cleveland banks, and in particular the Union Trust, should have closer contact with the affairs of these companies

(U-35)

Ohio State bank examiners classed the loans due from the Van Sweringen brothers as an entire loss.

VANESS CO. DEMAND COLLATERAL LOAN, 304,183.75

(U-70)

As mentioned previously in this report regarding the \$4,100,000 loan to O. P. & M. J. Van Sweringen, the Vaness Co. borrowed from the Union Trust Co on November 20, 1930, the sum of \$800,000—the proceeds of which were applied against the Van Sweringens' loan. Collateral having a market value of \$671,540 was taken from the Van Sweringen brothers' loan and pledged as security on this Vaness Co. loan. Three payments have been made to the Union Trust Co. on the principal of this loan; one on November 19, 1931, in the amount of \$95,222.25, when 33,000 shares of Peerless Motor Car Corporation, common were released from the collateral, one in the amount of \$400,000 on November 31, 1931; and the third on December 12, 1931, when \$594 was paid. The \$400,000 payment resulted from the Van Sweringen Co. borrowing from the Union Trust Co. on November 31, 1931, the amount of \$400,000—pledging as collateral a \$645,000 note secured by deeds to real estate.

(U-1-30)

There remains due from the Vaness Co \$304,183 75 principal amount and interest from January 1, 1932, which, on January 1, 1933, amounted to \$18,979 60. The collateral securing this loan and its market value just prior to the closing of the Union Trust Co was as follows:

	<i>Market value May 31, 1933</i>
1,333 shares Niagara Hudson Power Corporation, common.....	\$13, 330
5,000 shares Standard Brands, Inc, common.....	100, 000
560 shares Corrigan McKinney Steel Co, voting common.....	5, 600
140 shares Corrigan McKinney Steel Co nonvoting common.....	1, 400
6,000 shares United Corporation, common.....	54, 000
3,000 shares Western Reserve Investment Corporation .....	No market
3,000 units Western Reserve Investment Corporation.....	No market
17,999½ shares Calumet Trust certificates.....	No market
1,250 shares Cleveland Baseball Co.....	No market
<b>Total market value.....</b>	<b>174, 330</b>

(U-45)

The banking department classed this loan as having an undeterminable value, and Mr Merrifield stated that—

(U-62)

\* \* \* information submitted by the company to date indicates that Vaness Co securities could at no time in the past 4 years have been considered satisfactory collateral in large amounts for commercial bank loans

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## TERMINAL BUILDING CO AND VANESS CO , COLLATERAL LOAN, \$557,000

(U-75, 67, 47)

On January 20, 1928, the Union Trust Co loaned to the Terminal Building Co. and the Vaness Co the sum of \$557,000. This borrowing was made by the Van Sweringens in order that they might exercise an option to purchase the property on which has been erected the Nickel Plate freight terminal. No payments have been made on the principal of this loan and interest has not been paid since January 11, 1932. The delinquent interest to May 1, 1933, amounted to \$45,626 08.

## METROPOLITAN UTILITIES, INC , PARTICIPATION LOAN, \$557,000

(U-74)

Metropolitan Utilities, Inc, was incorporated under the laws of the State of Ohio on March 21, 1929, and is a wholly owned subsidiary of the Vaness Co. It has general powers to participate in every kind of commercial, mercantile, mining, or industrial enterprise, etc., in the United States or any foreign country. It is through the Metropolitan Utilities, Inc, that the Van Sweringens own and control the Cleveland Interurban Railroad Co, the Cleveland & Youngstown Railroad Co, the Traction Stores Co., and numerous other corporations owning and operating real estate in the downtown section of Cleveland.

The Metropolitan Utilities, Inc, borrowed in four separate advances—on August 14, 1930, September 15, 1930, November 26, 1930; and December 15, 1930—the total amount of \$4,500,000. These were participated in by three Cleveland banks, as follows:

(U-74)

The Union Trust Co.....	\$2, 100, 000
The Guardian Trust Co.....	1, 400, 000
The Midland Bank.....	1, 000, 000
Total.....	4, 500, 000

(U-74, U-69-I, J)

This total loan was secured by the following collateral:

- (a) \$4,331,444.72 note of the Cleveland Interurban Railroad Co.
- (b) \$989,069 86 note of the Cleveland Traction Terminals Co.
- (c) \$73,569 95 note of the Traction Stores Co
- (d) 1,465 shares of the Cleveland Interurban Railroad Co.
- (e) 100 shares of the Traction Terminals Co, capital stock.

No payments have been made on the principal of this loan, and there was delinquent interest due on the Union Trust Co.'s participation of \$2,100,000 from November 14, 1932, to May 1, 1933, in the sum of \$229,799.24.

Regarding the value of the collateral pledged to secure this loan, a memorandum in the confidential files of the liquidator states:

(U-69-I, U-63)

“While there does not appear to be any possibility of Metropolitan Utilities and its subsidiaries earning sufficient money to pay interest

on the above bank loans, the collateral securing the bank loans undoubtedly has some value because of the necessity of maintaining the Cleveland Interurban Railroad for the present need and further development of Shaker Heights ”

THE DAISY HILL CO., DEMAND LOAN, \$487,000

(U-76)

The Daisy Hill Co , as we have mentioned before in this report, is the corporate vehicle by which the Van Sweringen brothers own their country estate or “farm” in the Shaker Heights section of Cleveland. On November 1, 1930, the Daisy Hill Co borrowed from the Union Trust Co \$387,000; and on January 24, 1931, borrowed an additional \$100,000. This total loan of \$487,000 is secured by 7,935 shares of the Vaness Co preferred stock, which has no market value

(U-1-30-A, U-69-E)

About March 7, 1930, the Van Sweringens attempted to obtain an unsecured loan at the main office of the Union Trust Co in the amount of \$50,558 33, but were refused Upon being refused at the main office the Van Sweringens applied at the terminal office of the Union Trust Co for this loan, and upon the verbal approval of Mr Joseph R Nutt, the loan was granted

No payment has been made on the principal of either of the above loans On May 1, 1933, the two loans were delinquent in interest in the amount of \$48,101 58.

HIGBEE CO LOAN

(U-27)

The entire common stock of the Higbee Co is owned by the Cleveland Terminals Building Co , which is a subsidiary of the Van Sweringen Corporation

(U-27-J)

On November 17, 1931, five banks participated in a loan to the Higbee Co , with the Cleveland Trust Co as trustee The five banks and the amount of the respective participation of each was as follows

(U-28, U-27-J)

Union Trust Co.....	\$317, 000
Guardian Trust Co.....	200, 000
J P Morgan & Co.....	533, 000
Midland Bank.....	250, 000
Cleveland Trust Co.....	300, 000
	<hr/>
	1, 600, 000

No payments have ever been made by the Higbee Co on the principal of this loan Interest has been paid to June 1, 1933.

Exhibit U-27 is a complete history of the Higbee Co. and its bank borrowings We quote below the first two pages of this report, which gives as complete a picture as any analysis we might make.

## CONTROL

(U-27)

Entire common stock is held by the Cleveland Terminals Building Co which is a subsidiary of the Van Sweringen Corporation. Voting control at the present time, however, is entirely vested in the first and second preferred stock issues due to the defaults in dividend payments. This voting control is, of course, subject to the rights of the creditors of the company who are in a position to dictate policies.

## MANAGEMENT

Asa Shiverick, president, W T Higbee, vice president, G E Merrifield, vice president and treasurer, E H Pierce, vice president and secretary, G P Mitchell, assistant treasurer.

(U-27)

The officers with the exception of G E Merrifield, have been with the concern for a number of years. Asa Shiverick, the president, has been with Higbee's for more than 17 years while W T Higbee, a former president, is the son of E C Higbee, one of the founders of the business. G E Merrifield became associated with the company in November, 1932 and has taken charge of financial matters. He is understood to be a representative of the Morgan interests and has had long experience in the department store field. His previous associations were with Franklin Simon & Co and Associated Dry Goods Co.

## DIRECTORS

Gardner Abbott, attorney, Tolles Hogsett & Ginn, representing Van Sweringen interests; T E Borton, Borton & Co, representing preferred stock interests; G E Merrifield, Morgan interests; E H Pierce, W T Higbee, and Asa Shiverick, management.

## HISTORY

(U-27)

The Higbee department store business was originally established in 1860 as a partnership of John G Hower and Edwin C Higbee. The Higbee Co was incorporated in Delaware in May 1913, and the charter amended in March 1929. The company has three subsidiaries: Renee, Inc, and Langley, Inc, organized in December 1929, and the Twelve Seventy Seven Euclid Realty Co, organized in 1919. The first two concerns were organized to carry on certain phases of the merchandising business but they discontinued operation on December 24, 1932, and their remaining assets were transferred to the Higbee Co.

(U-27)

The Twelve Seventy Seven Euclid Realty Co succeeded to the business of the Higbee Realty Co on June 9, 1932, by change of name. The Higbee Realty Co was originally organized in 1919 as a realty holding company, subsequently constructing a building on leased properties on Euclid Avenue at Thirteenth Street which it in turn leased to the Higbee Co. The lease from the Higbee Realty Co to the Higbee Co expired May 31, 1932, and was not renewed. The lease of the Higbee Realty still has some years to run but that company has no assets other than the store property which it is unable to rent and has not been in a position to keep its lease in good standing. The holder of the fee has given notice to its intention to forfeit the lease and can do so at any time. The name Higbee Realty Co was probably changed to prevent as much stigma as possible from attaching to the Higbee name by reason of the default of this subsidiary and the consequent default in the payment of rental on the Euclid East Thirteenth Chester Leasehold Trust certificates which at one time were commonly known as the Higbee Corner Leasehold Trust certificates.

(U-27)

The Higbee Co has been engaged in a general department store business and for many years was a direct competitor of Halle Bros Co with its store located at Euclid Avenue and East Thirteenth Street. Higbee's did not carry a complete line of men's furnishings, sport goods, and similar lines but specialized

in women's furnishings, household goods, and related products. As contrasted with the Halle Bros. Co. reputation for quality of merchandise and service, Higbee's emphasized a combination appeal of price and quality and used sales forcing methods.

(U-27)

Early in 1929 the Vaness Co., a Van Sweringen affiliate, purchased the entire common stock of the company for \$7,500,000. The stock was subsequently sold to the Cleveland Terminals Building Co. in May 1930. This change in ownership was a forerunner of the removal of the Higbee Co. from its location on Euclid Avenue to a specially constructed building in the terminal area where it is now located. The actual shift in location did not come until September 7, 1931.

(U-27)

In making this change the Higbee Co. occupied a store building with 1,000,000 square feet of floor space which compared with about 315,000 square feet in the Euclid Avenue store. The rental requirements were increased very substantially as were taxes which are payable by the Higbee Co. In addition, the occupancy of the larger floor space tended to make a larger personnel and larger inventory necessary. All of these factors combined made it imperative that the Higbee Co. change the character of its business materially. It was necessary to extend the scope of the business with the addition of the lines of merchandise commonly found in the modern department store, and in general, to increase the volume of business to the point where the larger overhead and operating expenses could be carried.

(U-27)

Obviously, the Higbee Co. needed additional capital to accomplish its purposes. Some financing was originally contemplated but it was never carried through and no capital was provided on a permanent basis.

(U-27)

The capitalization of the company at the present time is nominally as presented below. Actually the company is being financed by its various classes of creditors subject to a number of agreements establishing their respective priorities. Everything, however, is on a purely temporary basis pending the consummation of some plan of reorganization or permanent financing.

## CAPITALIZATION—MARCH 31, 1933

(U-27)

Term indebtedness (due Oct. 20, 1933, renewable for a period of one year)-----	\$1, 551, 042
First preferred stock, 7 percent <sup>1</sup> -----	1, 140, 000
Second preferred stock, 8 percent cumulative <sup>1</sup> -----	454, 900
Common stock, 100,000 shares-----	1, 900, 000
Profit and loss deficit-----	3, 852, 328

## CREDIT INFORMATION GIVEN OUT

(U-29, U-31)

In perusing the credit files of the Union Trust Co. we came upon numerous memoranda stating that the Higbee Co. was in a good financial position and that it had always been successful. Exhibits U-29 and U-31 dated May 20, 1932, and June 25, 1932, respectively, are copies of a form letter the Union Trust used in answer to inquiries regarding the Higbee Co., which states in part:

We know of no reason why the Higbee Co. should not be considered at this time as worthy of its mercantile requirements. The present management is experienced and has always been successful.

<sup>1</sup> No dividends have been paid on either class of stock since 1931 and at the annual meeting in June 1933 sole voting rights will rest in the preferred stock by reason of the default in dividend payments and other provisions of the preferred issues.

(U-30)

On June 23, 1932, which was between the dates of the above two letters, Mr. Kraus wrote to Mr. Frick, vice-president of the Irving Trust Co., in which he states

(U-30)

Now, we are not in a position to give any very pretty picture of the Higbee Co. They started in last year before the holidays in the new location. The Van Sweringens bought the Higbee Co. and paid a large price for it, built a building on the public square and moved the company into it. The rental is too high for any store to be able to pay and show a profit.

The company has lost money ever since they have been in business.

I am giving you more than I would give to an outside inquiry, and will ask you to treat it as confidential.

(U-30)

There must be some reorganization of this company, either by new capital or a readjustment of their current debt, but how that is to be accomplished I don't know."

Mr. Kraus' letter hardly reconciles with the general form letters that were being sent out at the same time.

## CHANCES OF BANK COLLECTING

(U-19, U-21)

On September 1, 1933, Mr. Herzog, an assistant of Mr. Cox, liquidator of the Union Trust, held a conference with Mr. Barrett, an associate of the Van Sweringens, regarding the "whole Van Sweringen picture." Mr. Herzog seems to be fairly well sold on the "Vans." He states in a memorandum written after this conference that

(U-19)

The two chief factors with which O P and M J Van Sweringen have to contend at the present time in connection with their railroad operations are the Alleghany reorganization. Concerning the former, Mr. Barrett said that with the increased dividends payable by the Chesapeake & Ohio to the Chesapeake Corporation and the possibility of an increase in the disbursements of the Chesapeake Corporation, the total income in all three issues of the Alleghany Corporation would be sufficient to take care of necessary charges, provided that the specific income were not held for specific issues. Under these circumstances he feels that the Messrs. Van Sweringen will not have much difficulty in borrowing in New York City to pay the interest on the Alleghany Corporation bonds due in 1950. Mr. Barrett feels that the time will be reached in the comparatively near future when the collateral securing the 44 and 49 issues will be adjudged at 50 percent of the bonds outstanding and as a result the income impounded will be released. This would enable the Alleghany Corporation to pay the funds borrowed with which to meet the interest on the 50's. Mr. Barrett feels that the longer the reorganization of the Missouri Pacific can be put off the better will be the position of the equities and it is primarily the equities in which the Messrs. Van Sweringen are interested. It is not to the advantage of O P and M J Van Sweringen to endeavor to rush through a reorganization at this time.

It will be noted in the above that "It is not to the advantage of O P and M J Van Sweringen \* \* \*" to cause an immediate reorganization of Missouri Pacific. We have not made a study of the Missouri Pacific's Railroad troubles (except that we do know they received a large loan in 1932 from the R F C to pay off Morgan) and are in no position to judge, or possibly even comment, on a contemplated reorganization. However, the general tenor of the above does bear out so much that it is a Van Sweringen plan.

"It is not to the advantage of the Van Sweringens", no mention is made as to what would be to the advantage of the bondholders and the stockholders that have invested their life savings and now must depend on the Van Sweringen brains (which have always worked "to the advantage" of the "Vans") for a possible return of their investments

It will also be noted from the above quotation that, as usual, the Van Sweringens plan on getting out of trouble by borrowing from the banks. It hardly takes the power of a seer to foresee that some one or more of the Van Sweringen corporations will more than likely issue bonds or preferred stock and transfer some of these bank debts to the public. After all, the "Vans" have been successful at that sort of thing for more than 20 years

WALTER H. SEYMOUR,  
*Senior Examiner.*

Mr. SAPERSTEIN. I hand you a report entitled "The Union Trust Company—Window Dressing", and ask you if that report was prepared by the members of the investigating staff of the committee under your immediate supervision

Mr. MEEHAN. It was

Mr. SAPERSTEIN. Mr. Chairman, I offer the report, together with the exhibits mentioned therein and which are now at the Government Printing Office, in evidence

The CHAIRMAN. The report and exhibits will be received in evidence and appropriately marked

(The report entitled "The Union Trust Company—Window Dressing", and exhibits mentioned therein, which are now at the Government Printing Office, were received in evidence, marked "Committee Exhibit No. 13, May 4, 1934", and are as follows )

COMMITTEE EXHIBIT No 13, MAY 4, 1934

"WINDOW DRESSING"

The purpose of this report is to present evidence that distortionary measures termed "window dressing" were resorted to during the year 1931 in the operations and functions of the Union Trust Co for the effect of presenting a financial statement of sound, liquid appearance which would place the bank in a very favorable position in the minds of the depositors and stockholders

(U-9-1, 2, 3)

The superintendent of banks of Ohio issued a "call" or demand upon the Union Trust Co for a statement of its condition as of September 29, 1931. At this point it might be well to observe that these "window dressing" transactions were consummated prior to the "call" date, as is shown, in the instance of "Government securities", by correspondence dated September 29, 1931, and, in the instance of "Repurchase agreements", appearing later in this report, by bank records dated as early as September 22 and 25, 1931. These circumstances support the conclusion that notice was given to the Union Trust Co. sufficiently in advance to permit them to negotiate these

transactions for the desired effect on their published financial statements of September 29, 1931. The "call" statement was requested on a form of the State of Ohio, division of banks, dated October 6, 1931, establishing the date of "call" as of September 29, 1931. Following this, a statement was submitted by the bank to the State department of banks and banking dated October 13, 1931, and a more condensed form published in the Cleveland News on October 15, 1931. It will be noted that the elapsed time between the earlier transaction and the call date was 7 days.

*Government securities*—In order to aid the Trust Co to publish a report with a good liquid position, the Van Sweringens were prevailed upon to "lend" 10 million dollars of United States Government certificates to the Union Trust Co through one of their corporations; namely, the Van Sweringen Corporation. These bonds were "loaned" for "window dressing" purposes only, and the "loan" was reversed 9 days after it was made.

This "window dressing" transaction was arranged by letter agreements between the Union Trust Co, Van Sweringen Corporation, and J P Morgan & Co. United States Government Treasury certificates and Treasury notes totaling at least 10 million dollars were being held by J. P. Morgan & Co in safekeeping for the account of Van Sweringen Corporation. The Union Trust Co agreed to purchase these 10 million dollars of bonds from the Van Sweringen Corporation, crediting a special checking account of the latter with the purchase price, and pledging the bonds as security for the "deposit." Actually the whole transaction was handled through book entries, physical possession of the bonds not changing hands, nor was there any exchange of cash.

(U-9-4)

The effect of the above transaction on the balance sheet of the Union Trust Co as of September 29, 1931, shows an increase in the assets under United States Government bonds owned by \$10,000,000 and a corresponding increase of demand deposits.

(U-9-7, 6, 5)

On September 29, 1931, the date of the published financial statement of the bank, the Union Trust Co "purchased" from the Van Sweringen Corporation \$10,000,000 of United States Government certificates and notes for \$10,030,000, plus accrued interest of \$82,540.98, or a total purchase price of \$10,112,540.98. Payment was made for the bonds by a journal entry on the books of the Trust Co, crediting an account called "Van Sweringen Corporation special account" in the amount of \$10,112,540.98.

The Union Trust Co addressed a letter to the Van Sweringen Corporation, dated September 29, 1931, confirming this "purchase", stating in part.

(U-9-8)

\* \* \* and we have today credited your checking account with the proceeds of such sale in the amount of \$10,112,540.98

This deposit is subject to demand withdrawal, and as security for such deposit we have simultaneously transferred to J P Morgan & Co for your account the above mentioned \$10,000,000 par value of United States Government Treasury certificates and Treasury notes.

The Van Sweringen Corporation addressed a letter dated September 29, 1931, to J P Morgan & Co. as follows:

(U-9-9)

We have today sold to the Union Trust Co. of Cleveland \$10,000,000 principal amount of United States Government Treasury certificates and Treasury notes now held by you for our account. Please hold these subject to the instructions of the Union Trust Co. of Cleveland.

The Union Trust Co. also wrote a letter to J. P. Morgan & Co. confirming the purchase and the pledge of the bonds and asked Morgan & Co. to—

(U-9-10)

Kindly hold these Treasury certificates and Treasury notes for the account of the Van Sweringen Corporation as security for this demand deposit with us, all in accordance with the terms of the annexed letter.

(U-9-3)

The Union Trust Co. published its statement of condition on September 29, 1931, declaring the Government bonds as being assets of the bank. No mention was even made in the statement that these bonds had been specifically pledged.

(U-9-2)

Nine days after the above "purchase" the Van Sweringen Corporation repurchased these bonds from the Union Trust Co. by an exchange of letters and a reversal of book entries. The Van Sweringen Corporation wrote a letter dated October 7, 1931, to Morgan & Co. stating that the bonds had been "purchased" from the Union Trust Co. and that—

(U-9-11)

Payment of the purchase price therefor is to be (has been) made by withdrawal of said deposit.

And instructing Morgan & Co. that—

(U-9-11)

Upon receipt of appropriate instructions from the Union Trust Co., please hold these United States Government obligations for our account.

The Union Trust Co. then addressed a letter to Morgan & Co. dated October 7, 1931, and altered by hand to October 8, 1931, as follows:

(U-9-12)

We have today sold to Van Sweringen Corporation the \$10,000,000 principal amount of United States Government Treasury certificates and Treasury notes now held by you as security for demand deposits made by the Van Sweringen Corporation with this company in accordance with advice to you contained in our letter dated September 29, 1931, signed by J. R. Nutt, chairman of this company.

(U-9-12)

We have received from the Van Sweringen Corporation payment in full for the above mentioned United States Government obligations, and wish you would, therefore, kindly hold them for the account of the Van Sweringen Corporation.

It is perfectly obvious that this whole transaction was arranged and carried through for no other purpose than to "window dress" the statement of the Union Trust Co. This is borne out, not only by the fact that the Union Trust Co published its statement with the additional—

U.S. Government bonds owned.....	\$10,030,000 00
Accrued interest receivable.....	82,540 98

Demand deposits.....	\$10,112,540 98
----------------------	-----------------

and then reversed the above entries 9 days later, but by the fact that interest was not charged by the Union Trust Co to the Van Sweringen Corporation for the intervening time between September 29 and October 8, 1931, the period during which the Union Trust Co claimed ownership of these Government securities

(U-9-25, 20-A, B)

*Repurchase agreements*—When an agreement is entered into between a buyer and a seller wherein the seller agrees to repurchase the consideration at the same price as that at which it was originally sold, and, in turn, the buyer receives whatever income accrues on the consideration, it is very evident that the matter becomes one of convenience accruing to the seller. That this convenience was resorted to by the Union Trust Co in order to increase its liquidity by exchanging loan paper, under agreement to repurchase, for cash, and thus issue a financial statement on September 29, 1931, affected thereby, is shown by the fact that on September 22 and September 25, 1931, the Union Trust Co sold to certain New York banks, through the facility of repurchase agreements, various loan instruments for which was received cash totaling \$12,296,422 44 and recorded on its books as \$3,555,141 19 from the Guaranty Trust Co, \$6,741,281 25 from the National City Bank, and \$2,000,000 from the Bankers Trust Co, all New York banks. The effect of this transaction appeared under "resources" on the records of the Union Trust Co, on September 22 and 25, 1931, as a reduction of "Total loans and discounts" of principally "time collateral loans" and "notes and bills" and also an increase of amounts "due from domestic correspondent New York City banks."

Again employing the post-dating policy on transactions for "window dressing" purposes, was the dating of the repurchase agreements as of October 6, 8, and 9, 1931; a period of about 14 days after the actual sale of the loans, and about 10 days after the issuance of the call statement of September 29, 1931.

The first post-dated repurchase agreement occurred in a letter dated October 6, 1931, the part "6th" by handwriting, confirming the agreement with the Bankers Trust Co on a \$2,000,000 loan, stating in part:

(U-9-21)

This confirms agreement made by the Union Trust Co, of Cleveland, with Bankers Trust Co, of New York, upon request to repurchase from Bankers Trust Co, at their face value, the loan and the certificate of participation in loans which you have to date purchased from us in the aggregate of \$2,000,000.

On October 8, 1931, a form of agreement was rendered to the Guaranty Trust Co regarding the sale and purchase of a loan in the amount of \$3,520,480.63. This refers to the \$3,555,141 19 transaction, the

difference being due to adjustments and part payments during the intervening period The agreement was substantially as follows:

(U-9-22a, 22b)

An agreement dated, by hand, the 8th day of October, 1931, between Union Trust Co., of Cleveland, Ohio, and Guaranty Trust Co., of New York, consisting of five articles which relate to the sale and subsequent repurchase of various loans totaling \$3,520,480 63 and the liability of one party to the other

There then was a letter dated October 9, 1931, to the National City Bank confirming the repurchase agreement on a loan of \$3,387,500 This was part of the \$6,741,281 25 transaction, of which \$3,500,000 was repurchased on October 7, 1931, details of which are given further on in this report The apparent difference, aside from the repurchased item, was due to adjustments and part payments The letter states in part

(U-9-23)

This is to confirm our repurchase agreement covering Certificate of participation of the Union Trust Co., of Cleveland, Ohio, in loan to the Cleveland Cliffs Iron Co., dated September 23, 1931, payable 6 months after date, in the amount of \$3,387 500 "Pursuant to our understanding, which we hereby confirm, you have agreed to resell the above certificate of participation to us and we hereby agree to repurchase same from you on or before December 23, 1931, on a 4½ percent per annum discount interest basis

These repurchase agreements were a costly convenience and only resorted to because of the desirability of presenting a financial statement of sound appearance on September 29, 1931 An idea of the cost is shown in a letter dated October 7, 1931, from the National City Bank to the Union Trust Co., as follows

(U-9-24)

Upon receipt of your telegram this afternoon with reference to the Cleveland Cliffs Iron Corporation, notes for \$3,500,000 payable on March 23, 1932, we charged your account with \$3,434,666 69 under advice The notes are returned to you herewith along with a memorandum covering the debit to your account

(U-9-26)

The apparent difference between the larger and smaller amounts is the discount charged by the National City Bank during the elapsed time between the original sale and later repurchase, an amount of \$65,333 91 The payment of such discounts as this was evidently not too much to pay in an emergency such as existed on September 29, 1931.

An illustration of the extremity of the situation was the disregarding of the Ohio banking act, which reads as follows

SEC 710-126 No bank may borrow money, bonds, or other securities in any sum exceeding the amount of its capital stock and surplus, except with the written consent of the superintendent of banks, provided that the rediscount of notes, bills of exchange, and acceptances shall not be considered money borrowed. Every such rediscount shall be entered upon the books of the bank, and the total amount thereof shall appear as a contingent liability on every report of condition made to the superintendent of banks or published by said bank

In accordance with this section of the law the Union Trust Co at the time of making these sales to the New York banks should have recorded the contingent liability of \$12,296,422 44 on its books and on its published statement of September 29, 1931. That they understood the law and complied with it later that year is evidenced by the

fact that on the published statement of December 31, 1931, the Union Trust Co showed among its liabilities "loans with repurchase agreement, \$5,772,320 63."

(U-9-27a, 27e)

We have carefully checked the files of the Union Trust Co. for letters or memoranda regarding the subsequent repurchase of these loans and could find none. However, we obtained copies of the loan ledger sheets which show the continuing reduction of the "collateral loans sold under repurchase agreements" indicating that the loans were repurchased over an extended time.

*Secured deposits*—The Union Trust Co as of September 29, 1931, held on deposit certain public funds and United States Government funds shown on the call statement of that date in the amount of \$15,124,218 11. This total was made up of

(U-9-2, 14)

Demand deposits	
United States deposit other than postal savings.....	\$2, 081, 945 19
Public funds (except postal savings).....	5, 783, 105. 39
Time deposits	
Public funds.....	6, 363, 457 86
United States postal savings.....	895, 709 67
Total.....	15, 124, 218. 11

(U-9-28a, 28m, 4)

On a statement prepared by the bank dated September 30, 1931, entitled "Bonds Pledged to Secure Public Funds", a description is given of the deposits and security for same and showing the amount of each as of September 30, 1931. No similar record being available as of September 29, 1931, this record was used to determine to what extent these public and United States Government deposits were secured by Government, municipal, or depository bonds. The daily consolidated financial statement of September 30, 1931, showed public and United States Government deposits totaling \$15,438,276 13, and the statement of bonds pledged to secure public funds showed bonds pledged to be \$22,237,000, which established the ratio to be in excess of 100 percent. It was determined, therefore, that on September 29, 1931, the same ratio applied, to be understood, as the bank agreed to pledge securities to at least 100 percent against amount of deposit as a guarantee of payment.

(U-9-14)

Based upon the foregoing, it will appear that again the bank employed a window-dressing transaction in that on the published financial statement of September 29, 1931, the Union Trust Co did not show in a total of \$50,603,752 43 United States Government and other bonds and securities any portion as having been pledged to secure deposits of public and Government funds. To the depositors it was, therefore, made to appear that he could look to this entire amount of \$50,603,752.43 as being behind his deposit however great or meager, whereas in reality he was being misled in this instance to the extent that \$15,124,218.11 were pledged securities.

(U-9-2, 3, 14)

*Bank building and real estate* —The Union Trust Co carried on its books bank building and other properties which it assumed by foreclosure and otherwise. On its financial statement of September 29, 1931, it was not disclosed that there existed a mortgage liability on the main bank building. This resulted in the cost of the property being understated, and by the same token the mortgage liability was not disclosed. In brief, only the equity in the property was shown. It should also be noted that the building values were not shown less depreciation. This had the effect of inflating the values by the amount of depreciation accrued to September 29, 1931. It is well to observe that for income-tax purposes, in which case depreciation is an allowable deduction, the bank kept a subsidiary record of its depreciation, so that it would lose no benefits from obtaining the maximum of deduction.

A true statement embodying the foregoing criticisms would show under resources, included in the bank-building item, the total cost of the property (not simply the equity) less the deduction of the accrued depreciation to September 29, 1931, and as a liability the unpaid balance due on the mortgage, as an encumbrance under the caption of mortgage payable on the real estate.

It is interesting to note some details on these transactions as they applied to the statement of September 29, 1931.

(U-9-15)

The mortgage on the main bank building of the Union Trust Co. was held by the Northwestern Mutual Life Insurance Co., in an original amount of \$6,300,000. On September 29, 1931, the balance due on this mortgage stood at \$4,200,000, by virtue of annual payments of \$300,000 each. This amount of \$4,200,000, therefore, should have appeared as a mortgage payable item under liabilities, thereby disclosing the encumbrance against the banking property.

(U-9-16, 16a)

The depreciation sustained by the bank to September 29, 1931, was approximately \$553,764 55. This amount, as mentioned before, was deducted on the income-tax report as an allowable deduction, but not deducted on its statement of condition as of September 29, 1931. The resource item, bank buildings and real estate owned, was, therefore, overstated by approximately \$553,764 55, as also was the income as reported to the depositors and stockholders on the published statement of condition under the caption of "Surplus and Undivided Profits", \$17,222,943 60.

See report on financial history of Union Lennox Co. for details of United Trust Co. building transactions.

*Union-Cleveland corporation* —There is an element of window dressing in the transaction between the Union Trust Co. and the Union-Cleveland corporation, in the latter's attempt to evade its personal property tax. This is fully described in the report on tax evasion.

Briefly, the Union Trust Co. purchased from the Union-Cleveland corporation securities of approximately \$2,000,000 in December 31,

1929, and \$2,780,000 in December 31, 1930 The Union-Cleveland corporation paid the Union Trust Co upon the result of this sale approximately the same amounts in reduction of their loans, and it is believed that the Union Trust Co acquired a much better asset for balance-sheet purposes by purchasing securities than it would have had if the transaction had not occurred, and it had shown as an asset loans receivable of an affiliated company

The loans by the Union Trust Co to the Union-Cleveland corporation were in the category of unsecured loans

*Adjusted statement*—It will be interesting to observe the effect of the transactions pointed out in this report had they been properly considered

(U-9-29, 30)

We have prepared a statement which offers an opportunity to compare the financial statement as issued by the Union Trust Co. as of September 29, 1931, with one that shows the actual condition. It will be readily seen to what extent certain items were misrepresented, and to what extremes the bank went in establishing these misrepresentations

(U-9-31)

*Extent of distortion*—An interesting exhibit appears in the special report entitled volume II, on the call statement of September 29, 1931, prepared by a Mr. Robert Huston, special deputy of the superintendent of banks In this report Mr. Huston shows a comparison of the statement issued by the Union Trust Co on September 29, 1931, and a true statement showing how it should have appeared if there had been included the transactions as of the correct date on the Government securities and repurchase agreement transactions. He also illustrates that the liquidity of the bank was distorted to the extent of 7 55 percent. His exhibit was as follows

(U-9-31)

	Statement as published by bank	True statement
<b>DEPOSIT LIABILITIES</b>		
Total demand deposits .....	\$124,699,552 90	\$114,587,011 92
Total time deposits.....	142,136,274 58	142,136,274 58
Total all deposits.....	266,835,827 48	256,723,286 50
Bills payable .....		12,431,903 12
<b>QUICK LIQUID ASSETS</b>		
Cash and cash items.....	3,998,080 77	3,998,080 77
Legal reserve, Federal Reserve bank.....	10,685,511 89	10,685,511 89
Due from banks and bankers, exchange, etc.....	44,471,671 71	44,471,671 71
Less bills payable.....	59,155,264 37	59,155,264 37
U S Government securities.....	22,117,016 83	46,723,361 25
	81,272,281 20	12,087,016 83
		58,810,378 08
Comparison of liquidity		
Published statement.....		Percent
True statement.....		80 45
Percentage of distortion.....		22 90
		7 55

As early as February 1930, methods were sought that would enable the Union Trust Co to present a more favorable appearing financial statement. It would appear that even at that early date the officers' thoughts were being warped into a channel which was so devious in its route that they failed to see its eventual return to engulf them.

On February 15, 1930, Mr Lewis, vice president, wrote a letter to the State superintendent of banks requesting an opinion as to whether or not they "would be criticized for showing amounts due from bankers" a resource item, "and balances due to bankers" a liability item, "at their gross amounts without any deduction for compensating balances." This plan "would", to quote the superintendent's reply of February 28, 1930, "have a tendency to undue inflation of resources." The letter of February 15, 1930, requesting the opinion, stated in part

(U-9-17)

As the Union Trust Co is a State bank, I am wondering if we would be criticized by showing the amount due from bankers and the balances due to bankers at their gross amounts without any deduction for compensating balances. The objection we find to the present practice is that the total amount shown on our daily statement as due from bankers does not show the total amount invested in such bank balances. In our case, it makes a difference on the average of from 3 to 5 million dollars. I will be pleased to have your opinion in this regard.

In a reply dated February 28, 1930, Mr O. C. Gray, superintendent of banks, pointed out the inflationary character of the plan in a paragraph of the reply as follows.

(U-9-18)

In reply we beg to advise it is the custom of this department, as well as of both the national department and Federal Reserve, to have the published statements show only the net. To do otherwise would have a tendency to undue inflation of resources. There can be no objection to a set-up as you suggest for your own convenience, but we respectfully request the published calls of condition be compiled as in the past.

A casual observer perhaps would consider the inquiry quite innocent, but viewing the matter in the light of the transactions as illustrated in this report on "Window Dressing", it is clear that situations of similar intent could have been considered and evidently were.

It is a matter of conjecture as to what the attitude of the depositors would have been had they been enlightened to the true condition of the Union Trust Co as of September 29, 1931, but the fact remains that they were not adequately informed, nor were they given the opportunity to form their own opinion.

WALTER H. SEYMOUR, *Senior Examiner.*

This report based upon preliminary report and complete investigation by committee examiner John H. Winchester

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Mr SAPERSTEIN. I hand you a report entitled "Union Trust Company—Trust accounts", and ask you if that report was prepared by the members of the investigating staff of the committee under your immediate supervision.

Mr MEEHAN. It was

Mr SAPERSTEIN Mr Chairman, I offer the report in evidence, and I believe there is no mention of any exhibits in connection therewith.

The CHAIRMAN. The report will be received in evidence and appropriately marked

(The report entitled "Union Trust Company—Trust accounts", was received in evidence and marked "Committee Exhibit No 14, May 4, 1934", and is as follows )

### COMMITTEE EXHIBIT No. 14, MAY 4, 1934

#### TRUST ACCOUNTS

An examination of the estate trust department of the Union Trust Co disclosed the fact that sales of securities to the trust clients at a profit was not wide-spread. It could be found in only a few isolated cases. The profits were made on issues in which the Union-Cleveland Corporation had participated in syndicates. The Union-Cleveland Corporation sold securities to the estate trust department at a profit. This department, in turn, sold said securities to its trust client at cost. This profit between the Union-Cleveland Corporation and the estate trust department was passed on to the trust client.

When the Union-Cleveland Corporation participated in a syndicate, it incurred not only a contingent liability for its commitment, but also had a penalty imposed on it for all the securities of its commitment that were sold in the market before the expiration date of the syndicate. This penalty was imposed by the underwriting house which evidently was supporting the market during the syndicate period. This penalty would be applied to the Union-Cleveland Corporation syndicate profit so that in some cases the penalty cut deeply into its profit.

The Union-Cleveland Corporation sold a comparatively small amount of its securities to the estate trust department. The bulk of its sales were to small Ohio banks and the general public.

Following are specific cases in which profits were made

On January 5, 1931, J C Hanna, trust no 133, and F H Moore, trust no 131, were sold \$100,000 of National Steel Corporation at \$99. These bonds the Union-Cleveland Corporation acquired at \$95½, a profit of 3½ points on \$100,000 worth of bonds, resulting in a profit of \$3,250 to the Union-Cleveland Corporation.

It is interesting to note that the Union Trust Co had authority to make investments in these two trusts, and that it selected securities in which the Union-Cleveland Corporation had a participation. Due to the fact that the Union-Cleveland Corporation's participation of \$1,778,000 in this issue, it is only logical for it to be in a better position to buy these bonds cheaper than the individual trust client.

No evidence of any investment charges to the trust clients was found

WALTER H SEYMOUR,  
*Senior Examiner*

This report based upon preliminary report and complete investigation by Committee Examiner R. F. Muir.

Mr SAPERSTEIN Mr. Meehan, the next report on my list would be no. 15, but I believe it is a report of which we have only one copy and that one copy was sent down to the Government Printing Office,

being entitled "Final Report, Union Trust Co.—Union Trust's directorate in other concerns." Is that the reason we have not a copy of that report here?

Mr. MEEHAN. Yes

Mr. SAPERSTEIN. Did you have a copy of that report, and do you know that it was sent down to the Government Printing Office?

Mr. MEEHAN. Yes.

Mr. SAPERSTEIN. And that was a report prepared by members of the investigating staff of the committee under your immediate supervision?

Mr. MEEHAN. Yes.

Mr. SAPERSTEIN. Mr. Chairman, I wish to offer that report, which I believe does not have any exhibits accompanying it, and which report is at the Government Printing Office, in evidence.

The CHAIRMAN. The report will be received and appropriately marked by the committee reporter.

(A report entitled "Final Report, Union Trust Co.—Union Trust's directorate in other concerns", was received in evidence, marked "Committee Exhibit No. 15, May 4, 1934," and is as follows )

#### COMMITTEE EXHIBIT NO. 15, MAY 5, 1934

### FINAL REPORT, UNION TRUST CO.

#### UNION TRUST'S DIRECTORATE IN OTHER CONCERNS

Among the business affiliations of the bank's directors and officers, as shown by authoritative records of directorships, are the following:

John C. Armstrong: Assistant secretary, the Union Trust Co ; other affiliations, Dreher Piano Co , Standard Land Co , Pemiscott Land & Cooperage Co , and Clardo Holding Co

John G. Armstrong. Vice president, the Union Trust Co ; other affiliations, J H R Products Co , Willoughby

W M Baldwin: President and chairman of trust committee, the Union Trust Co ; vice president and director, Union Cleveland Corporation, United States Coal Co., and the Stillman Co ; president and director, Canfield Realty Co , Canfield Apartments Co , Chester Realty Co , and Packard Holding Co. ; member of executive committee and director, Chesapeake & Ohio Railway Co , Pere Marquette Railway Co , and Virginia Transportation Corporation ; chairman of executive committee, Cleveland Clearing House ; director, National Refining Co , Kelley Island Lime & Transport Co , and Monarch Fire Insurance Co ; other affiliations, J B Savage Co , Union Lennox Co , Harbor View Co , J. S. Coal Co , Corrigan-McKinney Steel Co , Dillonvale & Smithfield Railroad, Union Club, and Mayfield Country Club.

Ernest S. Barkwill. Director, the Union Trust Co ; treasurer, the Common Brick Manufacturer's Association of America ; secretary, the Cleveland Builders Supply Co ; other affiliations, Cleveland Material Co., Cleveland Builders Realty Co , and Canfield Tank Line Co

George Bartol. Director, the Union Trust Co ; vice president and director, the Otis Steel Co ; other affiliations, Cleveland Lime & Transport Co , Beelick Knob Coal Co , and Cleveland Furnace Co

W P Belden. Director, the Union Trust Co and the Trumbull-Chiffs Furnace Co ; partner, Andrews & Belden ; general counsel, the Cleveland-Chiffs Iron Co. and Lake Superior & Ishpeming Railroad Co ; other affiliations, Belden, Young Veach, Piqua Handle & Manufacturing Co , Cleveland Industrial Exposition Co., and Low Volatile Coal Co

George P. Comey. Director, the Union Trust Co and the National Refining Co ; other affiliations, Comey & Johnson and Falls Rubber Co

Aims C. Coney. Vice president, general manager, and director, the Union Cleveland Corporation ; vice president, the Union Trust Co ; director, Automatic

Voting Machine Corporation, Union Trust Securities Corporation, Southeastern Coal Co ; other affiliations, Southern Coal Co , Monoc Coal Co., Dodge Manufacturing Corporation, and Automatic Registering Machine Co , Inc

Henry W. Corning Director, the Union Trust Co ; other affiliations, Cranwood Lumber Co , Investment Land Co , Standard Land Co , Lake Shore Realty Co , and Distillata Co.

George A Coulton (deceased) Vice chairman of board and director, the Union Trust Co ; director, Electric Controller & Manufacturing Co , Ferry Cap & Set Screw Co , Midland Steel Products Co , and Wheeling & Lake Erie Railroad Co ; other affiliations, Cleveland Window Glass & Door Co , Union Cleveland Corporation, Chagrin Falls Banking Co , Prospect and 22d Realty Co , Peerless Motor Car Co , Telling-Belle Vernon Co , and Van Dorn Iron Works

Robert S. Crawford: Executive vice president and secretary, the Union Trust Co ; other affiliations, Schaaf Hillcrest Co.

Willard J Crawford Jr Director, the Union Trust Co and Equity Savings & Loan Co ; vice president and director, Herrick Co ; president and director, Crawford Realty Co , Crawford Land Co., and Cleveland Realization Co.; other affiliations, Cuyahoga Valley Realty Co , Cleveland Realty Improvement Co , Crawford Woodhill Realty Co , Driving Park Realty Co , West Sixth Street Realty Co , Broad Rock Co , Courtney Leasehold Co , Western Reserve Club Co , Rayon Terminals Co , Cleveland Storage Co., Pepper Pike Club Co., Cuyahoga Co.

E. E. Creswell: Vice president, the Union Trust Co.; other affiliation, Rutzen Power Co.

Henry G. Dalton: Director, the Union Trust Co., Bethlehem Steel Corporation, Central Alloy Steel Corporation, Guardian Trust Co , Guaranty Trust Co of New York, Ohio Bell Telephone Co , Steel Co of Canada, Ltd , Youngstown Steel Door Co , Athens Iron Mining Co , Ashtabula & Buffalo Dock Co , Erie Dock Co , and Portage Coal & Dock Co ; partner, Pickands, Mather & Co ; president and director, Interlake Steamship Co , Balkan Mining Co , Bennett Mining Co , Boston Mine Co , Detour Dock Co , Hemlock River Mining Co , Hoyt Mining Co , James Mining Co , Mather Iron Co , Odanah Iron Co , Palmer Mining Co , Perry Furnace Co , James Pickands & Co , Plymouth Mining Co , Rugby Iron Co , Sagamore Ore Mining Co , Syracuse Mining Co , Vermillion Mining Co , and Verona Mining Co ; president, Perry Iron Co ; senior vice president and member executive committee, Youngstown Sheet & Tube Co ; vice president and director, Biwabik Mining Co , Corsica Iron Co , Crete Mining Co , Hobart Iron Co , Sunday Lake Iron Co , and Youngstown Mines Corporation, chairman of board and director, Interlake Iron Co ; vice president, Orwell Iron Co , Penn Iron Mining Co , Michigan, Penn Iron Mining Co , Wisconsin, Penn Store Co , and Mahoning Ore & Steel Co.; other affiliations, Bankers' Trust Co of New York, New Orleans, Texas & Mexico Railway Co , Mexican Railway Co , Missouri Pacific Railway, and Athens Mining Co

Charles E. Farnsworth Vice president, the Union Trust Co ; other affiliations, Conrad-Baisch-Kroehle Co , G C. Kuhlman Car Co , and Ellwell-Parker Electric Co.

Louis H. Fisher Vice president, the Union Trust Co ; other affiliations, Park Hill Land & Allotment Co.

Frank B. Fretter. Director, the Union Trust Co , and Canadian Oil Cos , Ltd , president and director, the National Refining Co.; president, Canadian Oil Co , Ltd ; other affiliations, Nor Oil Co., Atlas Oil Co., and Plomo Specialties Manufacturing Co.

William H. Freytag: Assistant vice president, the Union Trust Co ; other affiliations, Jaffa Co.

William H Gerhauser: Director, the Union Trust Co , Construction Materials Corporation, Union Savings & Loan Co.; president and director, American Ship Building Co.

Frank H. Ginn. Director, the Union Trust Co , the Telling-Belle Vernon Co , the National Refining Co , the Glenn L Martin Co., the Richman Bros Co , Industrial Rayon Corporation, Electric Controller & Manufacturing Co , the Midland Steel Products Co., the Otis Steel Co., the Chesapeake & Ohio Railway Co , Thompson Products Co , Inc , and Pere Marquette Railway Co ; partner, Tolles, Hogsett & Ginn; president and director, the Ohio & Pennsylvania Coal Co.; vice president and director, the Guarantee Title & Trust Co ; secretary, S.M A. Corporation; other affiliations, Moxahela Corporation of Delaware, Milk Products Co., Laboratory Products Co , Murray Ohio Manufacturing Co , Metropolitan Utilities, Inc , Covington & Cincinnati Elevated Railroad Co , C & O. Railway Co. of Indiana, Tiltonson & Woolcott Co , Cleveland Southwestern Railway & Light Co , Chesapeake & Hocking Railway Co , and Euclid Co.

Girdler, Tom L Director, the Union Trust Co ; other affiliations, Republic Steel Corporation, Goodyear Tire & Rubber Corporation, Goodyear Tire & Rubber Co , Trumbull Cliffs Furnace, Union National Bank of Pittsburgh, and Chase National Bank of New York

Charles B Gleason Vice president, the Union Trust Co ; other affiliations, Willoughby Terminals Co , Owens China Co , University Club Co , Distillata Co , and C T Investment Co

George C Gordon Director, the Union Trust Co ; president and director, the Park Drop Forge Co ; other affiliations, Ohio Crankshaft Co , and First Investment & Realty Co

George W Grandin Director, the Union Trust Co ; other affiliations, Missouri Lumber & Mining Co , Euclid Streator Co , Tavern Co , and F H. Hill Co

Eugene R Grasselli: Director, member of executive committee, member of finance committee, the Union Trust Co ; director, the Grasselli Chemical Co , and Cleveland & Pittsburgh Railroad Co. (Penn system)

Thomas S Grasselli Director, the Union Trust Co , the Wheeling & Lake Erie Railway Co , and E I du Pont de Nemours & Co ; president and director, the Grasselli Chemical Co ; other affiliations, Cleveland & Youngstown Railroad Co., Kirtland Country Club, and Grasselli Powder Co.

George F Gund Director, the Union Trust Co , the Kaffee Hag Corporation, Realty & Leasehold Co , Kellogg Co , Gund Realty Co , Sheriff Street Market & Storage Co ; other affiliations, Gund Co , Realty & Rental Co , and Cleveland Realization Co

John A Hadden Director, the Union Trust Co ; other affiliations, Andrews, Hadden & Burton, attorneys, Mentor Marsh Co., Haven Point Club Co , and Mentor Harbor Co

Howard M Hanna Director, the Union Trust Co , National Biscuit Co., Howe Sound Co , Hanna Coal Co , Hanna Iron Ore Co , and the Producers Steamship Co ; chairman and director, the M A Hanna Co and Susquehanna Collieries Co ; president and director, Hanna Ore Mining Co ; other affiliations, Marting Ore Co , Jefferson Coal Co , Lower Lake Dock Co , Wheeling & Lake Erie Coal Mining Co , M A Hanna Coal & Dock Co , Mead Iron Co , Massillon Coal Mining Co , Ohio & Western Pennsylvania Dock Co , Tod-Stambaugh Co , Valley Furnace Co , National Biscuit Co , Republic Iron & Steel Co , Calumet Transportation Co , Consumers' Ore Co , Eastern Coal Dock Co , Hanna Furnace Co , La Rue Mining Co , Susquehanna Ore Co , Wakefield Iron Co , and Richmond Iron Co.

William A Harshaw Director, the Union Trust Co. and the Laurel Realty Co ; president and director, the Harshaw Chemical Co ; Other affiliation, Stibium Products Co

Francis H Haserot Director, the Union Trust Co , Cherry Home Co , Highland Cherry Farm, Gypsum Canning Co., and Cherry Growers Factory, Inc.; president and director the Haserot Co

Warren S Hayden (deceased) Director, the Union Trust Co , Cleveland, Cincinnati, Chicago & St Louis Railway Co , Globe Machine & Stamping Co , Michigan Central Railroad Co., and New York Central Railroad Co ; partner, Hayden, Miller & Co ; vice president and director, Malvern Land Co ; also director, Strong, Carlisle & Hammond Co , West Shore Railroad Co , White Motor Co , New York & Harlem Railroad Co , and Zanesville & Western Railway; president and director, Cleveland Union Terminals Co.; other affiliations, New Western Railroad, Miami Paper Co , Nelson Rodgers, Inc., and Iroquois Securities Co

Parnely Webb Herrick Director, the Union Trust Co , National Surety Co , Harriman National Bank, New York Joint Stock Land Bank, Guarantee Title & Trust Co , and The Sun Investing Co ; president and director, Cuyahoga Co. and Thomas Young Nurseries, Inc (Delaware); vice president and director, Burkam-Herrick Publishing Co , Dayton, Ohio; trustee, Society for Savings, Cleveland; other affiliations, Mitchell, Herrick & Co , Crawford Realty Co., Crawford Land Co , Burkam-Herrick Publishing Co., Cuyahoga Valley Realty Co , Ohio-Pennsylvania Joint Stock Land Bank, Cleveland Land & Improvement Co , Cleveland Hardware Co , the Securities Co., Miami Securities Co., and Anable Avenue Factory Corporation of New York.

George H Hodgson Director, the Union Trust Co ; president and director, Cleveland Worsted Mills Co ; vice president and director, Sheriff Street Market & Storage Co

Grover H Hull Vice president, the Union Trust Co ; other affiliations, Cleveland & Baston Co , Union-Lennox Co , Akers-Folkman Co , Perkins Hough Realty Co , Gerecee Realty Co , and Sterling Realty Corporation, Inc.

John A Jackson Advisory board, the Union Trust Co ; other affiliations, Canfield Apartments Co , Chester Realty Co , Canfield Realty Co , Clinton Co , Canfield Tank Line Co , and Canfield Oil Co

Emil Joseph Director, the Union Trust Co ; attorney, 705 Union Trust Building; other affiliations, Tippecanoe Club Co

Adrian D Joyce Director the Union Trust Co , president and director, the Ghdden Co ; president Wood Chemical Products Co , and Owen Automatic Spring Machinery Co , other affiliations, Surkee Famous Foods Co , Chemical & Pigment Co , Ripahn Co , Metals Refining Co , Forest City Paint & Varnish Co , Wisconsin Food Products Co., and Joyce Realty Co

Ralph T King Director the Union Trust Co , vice president and director, the Realty Investment Co

John A Kling Director the Union Trust Co , Kelley Island Lime & Transport Co , Guardian Trust Co , Century Cement Corporation, Baker, R & L Co , Lithonia Granite Co , Northern Granite & Stone Co , Kling Realty Co , American Gypsum Co , Darlington Brick & Mining Co , and John A Kling Co ; president and director the Cleveland Builders Supply & Brick Co ; other affiliations, Roll Manufacturing Co , Cleveland Builders' Realty Co , Baker-Raulang Co , and Kelley Island Lime & Transport Co

Joseph R Kraus Vice chairman of board, chairman of finance committee, and director of the Union Trust Co ; vice president and director, the Pittsburgh & West Virginia Railway Co ; director, the Fremont Foundry Co , the Valley Mould & Iron Co , the United States Fidelity & Guaranty Co , and Union-Cleveland Corporation, other affiliations, Fisher Ohio Body Co , Donelsh Electric Co , General Tire & Rubber Co , Thompson Products, Inc , Rapid Transit Land Co , Cedar Heights Land Co , Northern Ohio Reconstruction Co , and Prudential Land & Home Building Co

Elroy J Kulas Member of executive committee and director, the Union Trust Co ; president and director, the Midland Steel Products Co , and the Otis Steel Co , director, the Perfection Heater & Manufacturing Co , the Pittsburgh & West Virginia Railway Co , and the Union-Cleveland Corporation; other affiliations, Beelick Knob Coal Co , Valley Railway Co , Parish & Bingham Co , Cleveland Lime & Transport Co , Cleveland Furnace Co , Cleveland Worsted Mills Co , and National Bond & Share Co

E. A. Langenbach Director, The Union Trust Co and First Trust & Savings Bank, Canton, chairman of board and director, Hercules Motors Corporation, Canton, R. V. Mitchell & Co , McCasky Register Co , and Ohio Alloys Corporation; president and director, Allied Coal Co and United Electric Co

Ernest P Lenihan Director, the Union Trust Co and Pittsburgh & West Virginia Railway; president and director, Lenihan & Co ; other affiliations, Johnson & Higgins and Wilcox, Peck & Hughes, Inc

Bascom Little Director, the Union Trust Co ; president, the Crowell & Little Construction Co ; vice president and director, the Cleveland Land & Securities Co and Bolton Square Improvement Co ; other affiliations, Cobb Realty & Investment Co , Reilly & Moriarty, Inc , Cleveland Land & Securities Co , Lakewood Land & Securities Co , Kerr Realty Co , Pilgrim Realty Co , and Tavern Co.

Philip R Mather Director, the Union Trust Co ; other affiliations, Mather Realty Co and Pickands, Mather Co

William G Mather Director, the Union Trust Co , Kelley Island Lime & Transport Co , and Cleveland & Mahoning Valley Railroad; president and director, the Cleveland-Chiffs Iron Co , the Lake Superior & Ishpeming Railroad Co , Gwinn (Mich) State Savings Bank, First National Bank of Alger County, Munising, Mich , and Corrigan, McKinney Steel Co ; vice president and director, Low Volatile Coal Co ; chairman and director, the Otis Steel Co ; member of executive committee and director, Republic Steel Corporation; other affiliations, Progress Steamship Co , Cleveland Chiffs Steamship Co , Negaunee Mine Co , Athens Iron Mining Co , Andaste Steamship Co , Presque Isle Transportation Co , Mesaba Chiffs Iron Mining Co , Chiffs Corporation, Cleveland & Mahoning Valley Railway Co , Medusa Portland Cement Co , Cleveland Industrial Exposition Co , and White Motor Co

Homer D Messick Vice president, Union Trust Co.; vice president and director, the Equity Savings & Loan Co ; secretary-treasury and director, Kalamazoo, Allegan & Grand Rapids Railroad; director, the Dreher Piano Co. and Acme Foundry Corporation; other affiliations, Ada Holding Co , Euclid-E 100th Co , Spencer Estates Co , and Stone Shoe Co.

Otto Miller Director, the Union Trust Co, the Chesapeake & Ohio Railway Co., the Pere Marquette Railway Co, the White Motor Co, the Globe Machine & Stamping Co, the Otis Steel Co, the Arthur G McKee Co, the Glidden Co, and the Cleveland Railway Co, partner, Hayden, Miller & Co; president and director, the Malvern Land Co; other affiliations, Iroquois Securities, Inc, White Co, Euclid-Streator Co, C U Q Railway Co, Covington & Cincinnati Elevated Railroad & Transfer & Bridge Co, Hocking Land & Development Co., Troop A Armory Co, White Motor Securities Corporation, White Motor Realty Co, Nelson Rodgers, Inc, Hocking Valley Railroad Co, Sparks-Withington Co., and Cleveland & S. W. Railway & Light Co.

Thomas Wm Miller: Chairman of board and director, the Faultless Rubber Co; director, the Union Trust Co., the First National Bank, Ashland, and the F. E. Myers & Bro Co

R V Mitchell Director, the Union Trust Co; other affiliations, Mitchell Herrick & Co, Harris Automatic Press Co, City National Mortgage Loan Co, Reliance Manufacturing Co, James Leffel & Co, Oblen-Bishop Co, Thompson Products, Inc, Henry Furnace & Foundry Co, Dill Manufacturing Co, Harris, Seybold-Potter Co, Ohio-Pennsylvania Joint Stock Land Bank, Troy Sunshade Co, Kaynee Co, Houghton Elevator & Machine Co, James Leffel Co, Byers Machine Co, Continental Shares, Inc

Herman Moss Director, the Union Trust Co, the Cleveland Worsted Mills Co, and the Citizens League; general agent, the Equitable Life Assurance Society of the United States

Charles A Nicola Advisory board, the Union Trust Co; other affiliations, Nicola, Stone & Meyers Co, Northern Ohio Lumber & Timber Co, Lakewood Lumber Co, Freehold Co, Saginaw Bay Transportation Co, and Myers-Parsons Lumber Co

Lawrence H Norton Director, the Union Trust Co, Oglebay, Norton & Co, and Cuyahoga Factory Development Co; vice president and director, Bristol Mining Co and Commonwealth Iron Co; treasurer and director, the David Z Norton Co; trustee, Society for Savings

Robert C Norton Director, the Union Trust Co, Lakeside & Marblehead Railroad Co, Baker-Raulang Co, the Independence Steamship Co, the Cleveland Storage Co, The American Ship Building Co, the Great Lakes Towing Co; president and director, Troop A Armory Co and the David Z Norton Co; treasurer and director, Oglebay, Norton & Co, Columbia Steamship Co, Castle Mining Co, Brule Mining Co, The St James Mining Co, the Ferro Engineering Co, Commonwealth Iron Co, Bristol Mining Co, and Bristol Holding Co; treasurer, Montreal Mining Co, the Nelson Mining Co, and the Fortune Lake Mining Co; other affiliations, Troop A Armory Co, Ferro Engraving Co, and Cleveland Storage Co

Joseph R Nutt Chairman and director, the Union Trust Co; vice president and director, New York, Chicago, & St Louis Railroad Co, director, the Faultless Rubber Co, the F E Meyers & Bros Co, the Quaker Oats Co, The White Motor Co, the Cleveland & Pittsburgh Railroad Co, the Goodyear Tire & Rubber Co, and the Alleghany Corporation; other affiliations, Union Cleveland Corporation, International Holdings, Wyoming Pocahontas Coal & Coke Co, F E Myers & Bros Co, Corrigan-McKinney Steel Co, Euclid-Streator Co, Cleveland Electrical Terminal, Cleveland & Youngstown Railroad Co, White Motor Securities Corporation, White Motor Realty Co, and Northern Ohio Power & Light Co.

Wilbert J O'Neill Vice president, the Union Trust Co; secretary-treasurer and director, the Damar Realty Co; secretary and director, the Superior-Doan Realty Co; president and director, the Ozolizer Co; vice president and director, the International Holding Co; treasurer and director, the Caston Land Co and the Miami Valley Brewing Co; director, the Chase Bag Co, Whitman & Barnes, Inc, the Whitman-Barnes Manufacturing Co, and the Superior Thirty Fourth Co, other affiliations, Sterling Realty Corporation, Inc, and Canton Land Co

Carl N Osborne Director, the Union Trust Co, the M A Hanna Co, and National Steel Corporation; secretary and treasurer, the M A Hanna Co; other affiliations, Tod-Stambaugh Co, Jefferson Coal Co, Lower Lake Dock Co, Valley Furnace Co, Stambaugh Iron Co, Ohio & Western Pennsylvania Dock Co, Mead Iron Co, La Belle Steamship Co, Marting Ore Co, East Steamship Co, Virginia Steamship Co, Wheeling & Lake Erie Coal Mining Co, and Chagrin Valley Hunt Club Co

Charles A. Otis Advisory board, the Union Trust Co; partner, Otis & Co; president and director, the Otis Safe Deposit Co; vice president and director,

**Kanawha & Hocking Coal & Coke Co** ; director, **Bulkley Building Co** and **William Edwards Co.**; other affiliations, **Otisito Mines Co.**, **Waite Hill Farms Co** and **Cuyahoga Co**

**Kenyon V. Painter.** Director, the **Union Trust Co.**; other affiliation, **Cleveland & Pittsburgh Railroad**

**James L. Paton.** Vice president, the **Union Trust Co** ; other affiliation, **Wheeler Realty Co**

**Charles P. Pimonka.** Vice president, the **Union Trust Co** ; other affiliations, **Cleveland Home Investment Co.**, **Arrowhead Beach Sales Co.**, **Willobee No 3 Land Co.**, and **Russell Realty Co**

**Henry J. Ranft.** Treasurer, the **Union Trust Co** ; other affiliation, **Union Cleveland Corporation**

**N. G. Richman.** Director, the **Union Trust Co** ; chairman of board, the **Richman Bros Co**

**Thomas P. Robbins.** Member of executive committee and director, the **Union Trust Co** ; first vice president and treasurer, the **Cleveland Hardware Co** ; director, the **Cleveland Hardware Co** ; president, the **Kirtland Mutual Co**

**L. J. Roeder.** Assistant treasurer, the **Union Trust Co** ; other affiliation, **Union Trust Securities Co**

WALTER H. SEYMOUR,  
*Senior Examiner.*

**Mr. SAPERSTEIN.** Mr. Meehan, I have here a report entitled "The Union Trust Company—Corrigan-McKinney Steel Co.", and ask you if that was prepared by the members of the investigating staff of the committee under your immediate supervision.

**Mr. MEEHAN.** It was.

**Mr. SAPERSTEIN.** Mr. Chairman, I now wish to offer that report in evidence, together with exhibits which are at the present time at the Government Printing Office for the purpose of facilitating printing.

The **CHAIRMAN.** The report and exhibits will be received in evidence and appropriately identified by the committee reporter.

(The report entitled "The Union Trust Company—Corrigan-McKinney Steel Co.", and exhibits referred to therein which are now at the Government Printing Office, were received in evidence, marked "Committee Exhibit No. 16, May 4, 1934", and are as follows:)

#### CORRIGAN-McKINNEY STEEL Co

This report relates to the interest of the **Union Trust Co.** in transactions which transpired in the eventual purchase of the **Corrigan-McKinney Steel Co** by the **Cleveland Cliffs Iron Co.**

The **Corrigan Steel Co.** was the original corporate name, having been formed in 1880. In 1917 the name was changed to the **McKinney Steel Co.**, and then in 1926 it was again changed, this time to the **Corrigan-McKinney Steel Co.** In May 1925, **J. R. Nutt** was instrumental in the formation of a corporation known as the "**McKinney Steel Holding Corporation**", which purchased control of the **McKinney Steel Co.** For the purchase by the **McKinney Steel Holding Co.** of a certain block of **McKinney Steel Co.** stock **Mr. Nutt** received a commission of \$130,000, which, although turned over to the bank by **Mr. Nutt** 7 months after he had received it, has been a transaction causing very much dispute and discussion. The **McKinney Steel Holding Co.** in 1925 issued \$7,250,000 par value of preferred stock, the entire issue of which was purchased by the **Union Trust Co.** Subsequently, in 1930, the **Union Trust Co.**, in participation with several other banks, arranged a loan of \$25,000,000 to the **Cleveland**

Cliffs Iron Co in order that the Iron Co. might purchase the McKinney Steel Co. stock. No payments have ever been made on these Cleveland Cliffs Iron Co. loans.

An interesting news item appeared in the Cleveland Press of March 22, 1930, in which was given a brief history of the Corrigan-McKinney Steel Co. and which stated in part:

The story of the Corrigan-McKinney Steel Co. is one of the most spectacular and dramatic fights in the history of Cleveland

Old Capt James C Corrigan founded the firm after a battle with John D Rockefeller here, in which John D. whipped the young upstart who had borrowed from him the money to get control of Lake Superior ore properties

After this whipping Captain Corrigan and Stevenson Burke founded the little independent steel firm here in the early eighties \* \* \* And Old Jim wrote a will that put his property in the hands of Price McKinney, his bookkeeper, to hold in trust \* \* \*

\* \* \* Meanwhile the name of the Corrigan Steel Co had been changed to the Corrigan-McKinney Steel Co, and finally to the McKinney Steel Co, the former bookkeeper voting the Corrigan stock he held in trust to write the name of the founder out of the firm name and his own name in

\* \* \* Then in 1925 Young Jim came back to Cleveland. He had in his pocket 40 percent of the stock He also had 13 percent, got from E S Burke. He dropped into a directors' meeting, and the announcement that came out of that session fell like a bomb in Cleveland circles

The name of the firm had been changed to the Corrigan-McKinney Steel Co., and the former bookkeeper had been ousted as president \* \* \*

(U-15-1a)

In the spring of 1919, Mr. J. R. Nutt was elected to the board of the then McKinney Steel Co at the request of Mr James W Corrigan. At that time, according to Mr Nutt, the ownership of the company was as follows:

	Percent
Mr. James W. Corrigan.....	40
Mr. Price McKinney.....	30
Mr E S Burke, Jr.....	13½
Mrs Ross (Burke's sister).....	8½
Mrs. Stevenson Burke.....	7½
<b>Total.....</b>	<b>100</b>

In the latter part of April 1925, Mr. E. S. Burke, Jr, called at the office of Mr Nutt and stated that he desired to sell his 13½-percent interest in the McKinney Steel Co, and asked Mr. Nutt to find a purchaser for the stock.

(U-15-2)

On May 1, 1925, Mr. Burke addressed a letter agreement to Mr. Nutt personally as follows:

I own 13½ percent of the authorized and issued capital stock of the McKinney Steel Co, which I give you exclusive authority to sell for \$7,000,000

If sold I will pay you a commission from the proceeds of sale of 2 percent of sale price

This authority is to you personally and good until June 15, 1925, 12 o'clock noon.

It is understood that you may yourself purchase or be interested in the purchase of the stock, and shall, in that event, be entitled to the commission stated.

(U-15-3, 4)

Mr. Nutt held conferences with Mr. Corrigan and with Mr. Burke for several days. It was planned to form a holding company which would issue preferred stock to Mr Burke in payment for his holdings

of McKinney Steel Co. On May 6, 1925, Mr Burke addressed a letter, on the stationery of the Union Trust Co, to Mr Nutt personally in which Mr Burke outlined the plan and then stated:

(U-15-3)

This letter will serve as your authority exclusively to represent me in this transaction and is given to you personally

Finally it was agreed that the holding company would be formed under the name McKinney Steel Holding Co. with an authorized common stock of 10,000 shares which were issued to Mr. James Corrigan in exchange for his 40-percent interest in McKinney Steel Co, and an authorized preferred stock of \$7,250,000 par value consisting of 72,500 shares which were issued to Mr E S Burke, Jr. in exchange for his 13% percent holdings of McKinney Steel Co. stock.

(U-15-7)

The stock of the McKinney Steel Co. which was represented by Corrigan's 40 percent and Burke's 13% percent was then turned over to the Union Trust Co. to hold as trustee—

(U-15-5)

\* \* \* for safekeeping and to assure conformity with the preferred stock provisions prohibiting the sale, pledge, or otherwise imposing a lien on said stock, \* \* \*

(U-15-6, 8)

Mr E. S Burke then entered into an agreement with the Union Trust Co to sell to the bank the entire issue of McKinney Steel Holding Co. preferred stock at 89 655 percent or \$6,500,000. It was from this \$6,500,000 received from the Union Trust Co that Burke paid his 2 percent commission or \$130,000 to Nutt and, evidently, it was from the participation of the Union Trust Co instead of Nutt in the transaction that the other directors felt the commission belonged to the bank and not to Nutt personally.

Mr Burke addressed a letter, dated May 13, 1925, to Mr. Nutt stating that upon receipt by him of the \$6,500,000 from the Union Trust Co in cash, "I will pay you a commission equal to 2 percent of the sale price or \$130,000"

(U-15-10, 13, 12, 11)

The Union Trust Co "banking department" purchased this entire McKinney Steel Holding Co. \$7,250,000 par value preferred stock from E. S. Burke at 89 655 percent, or \$6,500,000, paying Burke with official check No A83087 of the Union Trust Co. The "banking department" then sold the entire issue to the "bond department" at 93 percent or a profit to the "banking department" of \$242,500. The "bond department" then formed several groups each of which sold the stock as follows: Purchase group bought issue at 93; sold to special purchase group at 95½, which sold to banking group at 96½; which sold to selling group at 99½; which disposed of the stock to the public at 100.

(U-15-15)

The Union Trust Co. obtaining the following profits:

Banking department.....	\$242, 500. 00
Bond department.....	238, 355. 83
	<hr/>
	480, 855 83
Plus the 2-percent commission.....	130, 000. 00
	<hr/>
	610, 855. 83

(U-15-14, U-6-51)

Mr. Nutt received the \$130,000 commission from Mr. Burke on May 16, 1925, and it was not until 7 months later (Dec. 24, 1925) that the check was turned over to the bank for its own account

We have heard rumors expressed around the bank that Mr. Nutt considered this \$130,000 as a personal transaction and that it did not belong to the bank, an opinion that was not shared by the other senior officers and directors. According to these rumors Mr. Nutt refused to turn the \$130,000 over to the bank but on the other hand was afraid to take it himself, with the result that he held the check for 7 months before he turned it over to the bank. Mr. Nutt claims this is all untrue and that he always considered that he was acting as president of the Union Trust Co. in this transaction and that he did not "hold" the check at all but turned it over to the bank immediately. Further, Mr. Nutt states that it was a personal check of Mr. Burke's that he had and turned over to the bank. Actually Mr. Burke purchased Union Trust Co. official check no. A83106 in the amount of \$130,000 payable to the order of J. R. Nutt and gave that check and not his own to Mr. Nutt.

Shortly after the closing of the Union Trust Co. there was evidently some newspaper comment about this transaction and Mr. Nutt wrote to the Conservator of the bank on April 19, 1933, stating:

(U-15-17)

\* \* \* I welcome your most searching investigation. You will find that every transaction between myself personally, and as chairman of the Union, with the above was in accordance with the best type of banking practice, open and above board and clean in every respect, and that not one dollar of profit ever went directly or indirectly to any officer of the Union Trust Co.

Mr. Nutt has prepared several memoranda and has written letters to the liquidator of the Union Trust Co. about this \$130,000 transaction.

In one of these memoranda Mr. Nutt states:

(U-15-16)

Mr. Burke gave me his personal check for my 2 percent or \$130,000 and congratulated me, supposing I had earned this for my personal account, and in order that there should be no false impression I stated to Mr. Burke at the time that I was not earning one dollar personal profit; that the \$130,000 was an earning for the bank

And then, in a letter dated April 20, 1933, to Mr. Cox, then bank conservator, Mr. Nutt stated:

(U-15-1a)

When Mr. Burke gave me his check for \$130,000 he congratulated me on making this nice commission. I stated to him that this was not coming to me personally but would go to the Union Trust Co. as earnings.

This was corroborated by Mr Baldwin in a letter to Mr Cox on April 21. However, Mr Baldwin attempts to explain the 7 months' delay by stating that—

(U-15-18)

At the time the check was received, credit was deferred because we had under consideration the creation of a pension plan for the benefit of officers and employees \* \* \*

The open attitude expressed in the foregoing letters might be disarming if it were not for the facts presented in this report. To a man such as J. R. Nutt, accustomed to making important decisions frequently and quickly, it does not appear reasonable or creditable that it would take 7 months for him to decide whether he should keep the commission or turn it over to the bank. It does appear, however, that J. R. Nutt would like to create the impression of a magnanimous gesture, whereas the elapsed time would indicate the contrary and after much indecision.

Early in 1928 James W. Corrigan died, leaving in trust his estate for the benefit of his widow, Laura Mae Corrigan. The joint trustees were the Union Trust Co. and John H. Watson, Jr., president of the Corrigan-McKinney Steel Co. It was thought shortly after Corrigan's death that the stock of his company was for sale, and many inquiries were received from various reputable houses regarding its purchase.

There was considerable correspondence on this subject, but representative of them all was a letter from Dillon, Read & Co. to J. R. Nutt, dated February 6, 1928, stating in part:

(U-15-19)

We are very much interested in the possibilities of purchasing all or control of the McKinney Steel Co. and I would appreciate your advice as to whether there is anything that we can do at the present time to develop the situation. We would be glad to work on this business with you and your associates if the opportunity presents.

Mr Nutt answered this letter 2 days later, stating that the company was not for sale and that—

(U-15-20)

We elected Mr John H. Watson, Jr., as president of the company to succeed Mr. Corrigan, and we have announced that the property was not for sale, nor did we care to consider any scheme for consolidating it with other companies. Our plan is to go right ahead and operate the company. It is in splendid physical condition. Our costs are low, and if there is any business, we believe we will get our share of it and can handle it at a profit.

However, early in 1930 Cleveland Cliffs Iron Co. began negotiations toward the purchase of the McKinney Steel Holding Co. Mr. Nutt outlined this whole transaction to Mr. Cox in his letter of April 20, 1933, as follows:

(U-15-1b)

I think it was in March 1930, as president of the Union Trust Co., representing the Corrigan estate, I began negotiations with Mr. W. G. Mather for the sale of the Corrigan interest in the Steel Co., represented by 10,000 shares of the McKinney Steel Holding Co. common stock, which, as previously stated, controlled 53½ percent of the Corrigan, McKinney Steel Co. I also represented the 8½ percent owned by Mrs. Ross, or a total of 62½ percent. These negotiations finally resulted in a sale to the Cleveland Cliffs Iron Co.—the price agreed upon was to be on the basis of \$37,500,000 for the 62½ percent. Mrs. Ross' share amounted to \$5,250,000 and the Corrigan estate \$32,250,000. The Corrigan interest, however, was represented by common stock of the McKinney Steel Holding Co. and

the Steel stock was pledged as security for the preferred stock, so that from the \$32,250,000 there was deducted \$7,250,000 preferred at the call price of 105, or \$7,612,500, leaving a net of \$24,637,500—this amount being paid for all of the common stock of the McKinney Steel Holding Co. My recollection is that after Mr Corrigan's death the common stock of the McKinney Steel Holding Co was increased from 10,000 to 10,100 shares—this 100 shares being paid to Messrs M B and H H Johnson, with Mrs Corrigan's consent, in settlement of fees for a number of years of legal service—so that the net proceeds above mentioned were divided with all of these common stock shareholders. In the sale of Mrs Ross' 8½ percent for \$5,250,000 it might have been perfectly legitimate and proper to have charged her a commission or fee, but no charge of any kind was made to Mrs Ross

(U-15-21a, 23, 24a, 25)

On March 19, 1930, Mrs Laura Mae Corrigan, widow of the deceased Corrigan and principal participant in the transaction, in accord with proper legal license, consented to the sale of all of the common stock of the McKinney Steel Holding Co. This appeared in a letter to the Union Trust Co and John H Watson, Jr., trustees under the last will and testament of James W. Corrigan, deceased. In this letter, the sale price was stipulated as \$29,887,500, cash to be distributed \$24,152,500 pro rata to the holders of the common stock of the McKinney Steel Holding Co., \$5,060,000 to Parthenia Burke Ross, and \$675,000 as follows

Donald B Gillies.....	\$50,000
Henry T Harrison.....	50,000
James S McKesson.....	50,000
Edward G Resch.....	25,000
John H Watson, Jr.....	500,000

The distribution of \$675,000 to the above was for services rendered in the management of the Steel Co. and the estate, each of the stockholders bearing their pro rata share of the endowment.

(U-15-22a, 26, 27)

On March 21, 1930, the Cleveland Cliffs Iron Co. agreed to purchase the 10,100 shares of the McKinney Steel Holding Co. and the 218½ shares of the Corrigan-McKinney Steel Co., held by Parthenia Burke Ross, and pay the Union Trust Co. \$29,887,500. This they did and the Union Trust Co then distributed this sum as \$5,059,995.62 to Parthenia Burke Ross, \$675,000 endowment to officers, and the balance to the Corrigan estate.

In the financing of this purchase the Union Trust Co. participated in the amount of \$3,387,500 in a collateral-loan note, the aggregate principal amount of which was \$14,387,500. The participants in this loan, as evidenced by the collateral loan card, were:

(U-15-28c; 28d)

Union Trust Co, Cleveland.....	\$3,387,500
Guardian Trust Co, Cleveland.....	1,500,000
Central United National Bank, Cleveland.....	500,000
Cleveland Trust Co, Cleveland.....	300,000
Bankers Trust Co, New York.....	4,000,000
Continental Illinois Bank & Trust Co, Chicago.....	3,500,000
First National Bank, Chicago.....	1,000,000
William G Mather.....	200,000
Total.....	14,387,500

At the time of the Union Trust Co's participation in this loan it was considered by them to be well secured. This was not the opinion of J P Morgan & Co 2 years later, however, when the Union Trust Co. expressed a desire to sell this participation, on agreement to repurchase, to J P. Morgan & Co. In a letter of January 6, 1932, to Mr. T. W. Lamont, J. R. Nutt stated in part:

(U-15-29)

You will note under the Participated Secured Loans that the Union Trust Co. has an interest of \$3,387,500 I would like to sell this participation to you under our repurchase agreement or with our endorsement, whichever you prefer My thought is that if the Reconstruction Finance Corporation is authorized in Congress, and I believe it will be, as soon as it is in operation I can place this participation with that Corporation and relieve you of it I think this is only a matter of a very few weeks

In a reply dated January 13, 1932, Mr. T. W. Lamont, after presenting an analysis of the security for the loan, states:

(U-15-30a, b)

I am most regretful that the firm cannot see its way clear to take over this item, even under the repurchase agreement It falls too much in the category of dead-slow stuff You know how anxious we are to help in any way that is possible. We took over your British credit unhesitatingly We made an arrangement in the Higbee matter that was of relief to the Cleveland banks We have noted without objection the transfer of deposits from New York to Cleveland in an undue proportion, but in a way that would be of aid to the Cleveland banks, but this particular item, my dear Joe, is beyond us

(U-15-31, 32, 33)

The reply must have been discouraging, even though J. R. Nutt agreed with T. W. Lamont's analysis of the security for the loan, as evidenced in a letter to Lamont from Nutt, dated January 14, 1932, stating:

(U-15-34)

Thank you very much for your letter of the 13th. The man on your staff I think has analyzed the Cleveland Cliffs matter correctly I am, of course, sorry that you could not use the item in the way I suggested, but I understand the matter perfectly Be assured I deeply appreciate the careful consideration that you have given it.

(U-15-35i)

The discouraging aspect must have been due to the anticipation of an additional loan of \$3,500,000 to the Cleveland Cliffs Iron Co., which occurred on March 29, 1932, and which brought the total loans to approximately \$7,000,000. No principal payment having been made against these loans to April 25, 1933, must have restricted the bank's liquidity considerably.

(U-15-36; 37)

The Union Trust Co's beneficent attitude toward the Cleveland Cliffs Iron Co. changed when on June 23, 1932, a renewal of the loans was required, a 1-percent penalty in the form of a commission was applied against a total amount of \$6,887,500, or an amount of \$68,875. This is repeated on September 23, 1932, in the same amount, making a total commission charge of \$137,750 for the two renewals.

(U-15-37)

The commissions were received in the form of loans and so entered upon a loan card. The June 23, 1932, commission was carried on the books at full value, while the September 23, 1932, commission was carried at zero. The reason for not carrying the latter note at face value was that by doing so the Cleveland Cliffs Iron Co. would have loans in excess of its borrowing limit, namely 20 percent of the capital and surplus, that limit being \$7,000,000.

(U-15-38a)

It subsequently developed, as a result of a suit in court, that the commissions were considered usurious and the bank liquidator has been ordered to refund to the Cleveland Cliffs Iron Co. approximately \$145,000, representing excessive interest charges on loans to that company.

An interesting and pertinent point was brought out in the testimony during the cross-examination in the suit to recover the interest for the Cleveland Cliffs Iron Co., when W. J. O'Neill, a vice president of the Union Trust Co., was questioned by A. Kollin, an attorney, wherein it was established definitely that the bank knew the commissions were usurious from the beginning. The testimony was in part as follows:

(U-15-39d)

Mr KOLLIN But you had your doubts—not only a doubt, but you thought it was a usurious rate?

Mr O'NEILL I did not have any doubt at all. I was certain it was usurious.

(U-15-40)

Regardless of the knowledge of usury, the bank, nevertheless, pledged these commission notes on a loan from the Reconstruction Finance Corporation. The Reconstruction Finance Corporation, however, was informed of the usury after the loan was procured, in a letter dated August 8, 1933, to F. S. Collander, acting manager, Reconstruction Finance Corporation, from Oscar L. Cox.

(U-15-41, 42, 43, 44)

If only as a matter of record, it is interesting to note that after the bank closed, some of the stockholders gave considerable attention to J. R. Nutt's participation in the sale of the steel company stock when, on April 19, 1933, a firm of attorneys, Snyder, Thomsen, Ford, Seagrave & Roudebush, of Cleveland, Ohio, requested that Oscar L. Cox, conservator of the Union Trust Co., bring suit against Joseph R. Nutt on behalf of Zella S. Olmstead and other owners of a large number of shares in the Union Trust Co., basing the suit on the understanding that J. R. Nutt received a sum of nearly \$1,000,000 for his part in the sale of the stocks of the Corrigan, McKinney Steel Co. and the McKinney Steel Holding Co.

(U-15-45)

The fact remains that the attorneys were not in possession of a perfect understanding of the situation. Several exhibits are offered substantiating this, which were brought out when Mr. Cox investi-

gated the facts. These exhibits also present the opinions of several people regarding the Corrigan, McKinney transactions.

Concluding, it can be stated that the Corrigan, McKinney transaction was a profitable one for the Union Trust Co. This, no doubt, was the foundation for the leniency in the credit extension to that company which later developed into the frozen liquidity which prevented the depositors from a realization of approximately \$7,000,000.

That J. R. Nutt did not relinquish his commission of \$130,000 as a "grand gesture" but only upon pressure or for fear of "losing face."

That even under the protection of a repurchase agreement "Dear Lamont" could not see his way clear to help "Dear Joe" on the Cleveland Cliffs Iron participation loan, it was that poorly secured.

And last, but not least, appeared the descension of the Union Trust Co. into usury, in an attempt to recover on their mistaken judgment.

WALTER H. SEYMOUR,  
*Senior Examiner.*

(U-13-1, p. 1)

Mr. SAPERSTEIN. Mr. Meehan, I hand you a report which I understand was prepared by members of the investigating staff of the committee under your immediate supervision entitled "Painter-Bradley-Nutt Van Sweringen Syndicate". Will you please state whether that was prepared by members of the investigating staff under your immediate supervision?

Mr. MEEHAN. It was.

Mr. SAPERSTEIN. Mr. Chairman, I offer the report in evidence, together with exhibits referred to therein and which exhibits are now at the Government Printing Office.

The CHAIRMAN. The report and exhibits will be received in evidence and appropriately identified by the committee reporter.

(The report entitled "Painter-Bradley-Nutt Van Sweringen Syndicate", and exhibits referred to therein, which exhibits are now at the Government Printing Office, were received in evidence, marked "Committee Exhibit No. 17, May 4, 1934," and are as follows:)

#### COMMITTEE EXHIBIT No. 17, MAY 4, 1934

##### PAINTER-BRADLEY-NUTT-VAN SWERINGEN SYNDICATE

An illustration of the long and close relationship which existed between K. V. Painter, director and largest stockholder of the Union Trust Co., and J. R. Nutt, chairman of the board, is corporate trust no. 2975. There is nothing unusual or unethical about this trust. We are simply reporting it to further illustrate this close relationship which did exist, and had existed for a long time, between these certain individuals who controlled the Union Trust Co.

On August 5, 1915, an agreement was entered into between O. P. Van Sweringen, J. R. Nutt, K. V. Painter, and C. L. Bradley, to purchase and develop certain residential property in Cleveland Heights and on July 15, 1919, another similar agreement was entered into between the following: O. P. Van Sweringen, Van Sweringen Co., and Citizens Savings & Trust Co. (now the Union Trust Co.).

The Van Sweringens and their associates were desirous of developing and marketing the properties covered by the two agreements mentioned above, and on April 14, 1920, the beneficiaries of the two agreements conveyed their interests to a new syndicate, or trust, consisting of the following: K. V. Painter, C. L. Bradley, F. E. Myers & Bros., Citizens Savings & Trust Co., trustee, Van Sweringen Co.

(U-3-4, 5)

This agreement of April 14, 1920, provided that the Van Sweringen Co. would take the property over under an option at an aggregate price of \$1,000,000, with interest from January 1, 1920, at 6 percent for the benefit of the beneficiaries. The Union Trust Co., as successor by consolidation to the Citizens Savings & Trust Co., was appointed trustee. Certificates of equitable ownership in the allotment property were issued to the respective beneficiaries and the distribution was directed by O. P. Van Sweringen and C. L. Bradley as supervisors. Exhibit U-3-8 is a statement showing in detail how much each of the beneficiaries received from the corporate trust for the years 1924 to 1932, inclusive, summarized as follows:

(U-3-6, 8, 1, 2, 3)

Name	Percent	Amount
Van Sweringen Co.....	20	\$169,600
C L Bradley.....	20	150,800
Alva Bradley.....		
Estates department, the Union Trust Co		18,800
J R Nutt.....	20	169,600
K V Painter.....	20	169,600
Estate of F E Myers (J C Myers, administrator)	20	84,800
P A Myers.....		84,800
Total.....		848,000

WALTER H. SEYMOUR,  
*Senior Examiner.*

Mr SAPERSTEIN Mr Meehan, I show you a report entitled "The Union Trust Company—The United Milk Products Corporation" Will you please state whether that report was prepared by the members of the investigating staff of this committee under your immediate supervision?

Mr MEEHAN. It was

Mr SAPERSTEIN. Mr Chairman, I wish to offer the report in evidence, together with the exhibits referred to therein and which exhibits are now at the Government Printing Office for the purpose of facilitating printing.

The CHAIRMAN. The report and exhibits will be received and appropriately identified by the committee reporter.

(A report entitled "The Union Trust Company—The United Milk Products Corporation," and exhibits referred to therein, which exhibits are now at the Government Printing Office, were received in evidence, marked "Committee Exhibit No. 18, May 4, 1934," and are as follows:)

## COMMITTEE EXHIBIT No. 18, MAY 4, 1934

(U-13-1, p 1)

## THE UNITED MILK PRODUCTS CORPORATION

The United Milk Products Corporation was incorporated in the State of Delaware in December 1925. Its organization represented a consolidation of 11 companies operating between 40 and 50 plants located in New York, Ohio, Indiana, Illinois, Michigan, Wisconsin, and California. These plants were engaged in the production, condensation, and canning of milk, the principal and largest plant being the Western Reserve Condensed Milk Co of Cleveland, Ohio.

The corporation had an authorized capital consisting of: 250,000 shares \$100 par value preferred and 250,000 shares no par value common.

All the common stock has been issued and there was originally issued 134,044 shares of the preferred, making the original capitalization—

(U-13-1, p 1)

7 percent cumulative preferred stock.....	\$13, 404, 400
No par value common stock shares).....	250, 000

(U-13-4)

Mr J R. Nutt and his wife were stockholders of the Western Reserve Condensed Milk Co, one of the companies acquired at the organization of the United Milk Products Corporation. Shortly after the formation of the United Milk Products Corporation, J. R. Nutt was given the opportunity of purchasing 25,000 shares of its preferred stock at par of \$100 per share with 1 share of common stock being given as a bonus with each share of preferred purchased. Mr. Nutt took up some of the stock himself and interested certain of his friends in this deal and sold some of the stock to them at the cost price to him. He then interested several of the employees of the bank in the stock; sold some to outside customers of the bank, and sold the remainder to the individual trust estates of the bank.

In order to bring about these purchases the Union Trust Co. loaned money to certain of the individuals and to the trust estates, taking as security for the loans the stock of the United Milk Products Corporation. Most of the loans were made in the amount of from 89 to 100 percent of the par value of the stock and practically all of the loans were made on the approval of Nutt.

Subsequently Mr Nutt, and probably most of his close friends, disposed of the greater part of his holdings. However, no warning was given to the small investor and he was caught "holding the bag." The market on the stock dropped very badly. The Union Trust Co. still has several loans unpaid with the principal collateral being the stock of United Milk Products.

(U-13-1 and 2)

The charge has been made time and again that J. R. Nutt and his associates organized this company for no other reason than their own personal profit. No statements of the company were published, in

spite of continued requests, until some 2 or 3 years after it was formed and the stock had been sold. When it did issue statements the information given was grossly misleading. The liquidator of the Union Trust Co detailed a Walter G. Mitchell to make a study of the matter and report on it. Mr. Mitchell completed his examination and submitted two reports, one dated September 27, 1933, and the other on November 17, 1933. We have obtained copies of the narrative sections of both of these reports.

Mr Mitchell summarizes his findings in his supplemental report as follows:

(U-13-2, p. 1)

Placing the worst construction on all circumstances which have been indicated by this investigation, it may be assumed that the entire deal was a scheme to organize and float the United Milk Products Corporation for the personal benefit and profit of J R Nutt and/or other persons connected with the bank.

The first indication in the bank's files of the existence of such a company consists of a telegram in the credit department, dated November 2, 1925, in answer to an inquiry from J. H. Skinner, vice president, Bank of Italy, San Francisco, the contents of the telegram being the following:

(U-13-3)

Unable to get trace of company mentioned your night letter. Can you furnish address or names of principals.

This telegram was followed by a confirmatory letter to Mr Skinner signed by W. F. Copeland, assistant vice president of the bank in which he stated:

(U-13-5)

This concern is unknown to all of those with whom we talked including the leading milk companies, dairy supply houses, and brokers in the evaporated milk business.

In the short interval of only 1 month and 2 days Mr J R Nutt was sufficiently familiar with this corporation to prepare what amounts to a "sales letter" for the stock to be distributed, and to have an intimate knowledge of its financial condition to the degree that he wrote Mr Kraus, then vice president of the bank, the following on December 4, 1925:

(U-13-6)

I have never seen a deal quite like it in my life. Most new corporations of this kind want a lot of new money, but this company does not need nor want any, and they have had applications for eight and a half times the amount of stock they can prudently let out. In fact any stock sold is that amount additional of new cash in the treasury which is not needed.

Mr Kraus in a letter to C. S. Castle, president of the Standard Trust & Savings Bank of Chicago, used Mr Nutt's letter almost verbatim to inform Mr Castle that the available supply of the stock was very limited and

(U-13-7)

If you are allotted any of this stock, it will be on account of personal friendship of some one of the crowd.

Whether or not Mr. Nutt's statement concerning the applications for eight and a half times the amount of stock available is true or not is unknown.

There was no actual underwriting, nor were there any circulars or advertisements issued in the distribution of the stock.

(U-13-24a)

On December 31, 1925, Mr. Nutt subscribed to the 25,000 shares of preferred stock. The cash records of the United Milk Products show that Nutt paid for these 25,000 shares on January 2, 1926. Incidentally, Mr. Nutt's \$2,500,000 subscription was the first cash receipt by the corporation according to its records. On January 18, 1926, the certificates for 25,000 shares of the preferred and 25,000 shares of common were delivered to C. W. Carlson, vice president of the Union Trust Co. All of the close friends and business associates of Nutt were included in the list of persons receiving the stock. However, in the name of Nutt there appears to be only the following:

(U-13-9)

R. H. Nutt.....	500 shares of each
Mrs. Helen F. Nutt.....	50 shares of each

Approximately 8,000 shares were in the name of Carlson, however, and, as will be shown later, he acted as nominee for a group.

Mr. Mitchell points out in his report that—

(U-13-1, p. 2)

It appears that a large part of the opening capital of the United Milk Products Corporation was furnished by the Union Trust Co through the estates trust and collateral loan departments

(U-13-1, p 2)

As of December 31, 1932, pursuant to a reorganization agreement, the United Milk Products Corporation was dissolved and the United Milk Products Co. organized as a successor. This resulted in an exchange of stock as follows

(U-13-1, p 2)

United Milk Products Corporation	Exchanged for United Milk Products Co (new stock)
1 share (preferred).....	8/10 share (preferred) and \$3 cash.
1 share (common).....	1/6 share common).

(U-13-1, p. 2)

The preferred stock held as collateral to Union Trust loans has all been exchanged for stock in the new corporation with the exception of 100 shares held as security to a loan to W. J. O'Neil.

(U-13-1, p 4)

Mr. Mitchell then lists the total amount of loans which were based on the stock of United Milk during the first 6 months of 1926. These loans total \$2,163,206.74. Mr. Mitchell then states that:

(U-13-1, p. 4)

In the period from January 2 to June 30, 1926, covered by schedule I, numerous loans appear in which an apparent excessive amount was loaned. Certain borrowers deposited a small amount of other collateral, but the following tabulation is submitted covering loans on which 80 to 100 percent of par value was allowed, solely upon United Milk preferred stock as collateral (in each case "par value" refers to the preferred stock, with an equivalent number of common shares which were given as a bonus);

(U-13-1, pp. 4, 5)

Borrower	Approved by—	Amount of loan	Percentage of par value
Matilda B Dowling.....	R S C	\$855 00	85½
C N Osborne.....	C L B	20,000 00	100
Ralph H Sharpe.....	C W C	4,500 00	90
John R Killits.....	J R N	9,000 00	90
E N Wagley.....	C W C	4,500 00	90
Leslie O Carr, Jr.....	J R N	4,000 00	80
Robert A Weppner and J E Weil.....	do.	9,000 00	90
E R Fancher.....	do.	9,000 00	90
L H Stofer.....	C W C	4,400 00	88
C B Anderson.....	do.	4,500 00	90
Sam W Emerson.....	do.	200,000 00	80
Maude H Bruce.....	do.	8,500 00	85
Leon S Miller.....	J R N	90,000 00	85
C L Bartshe.....	O W C	25,000 00	100
C L Ayers <sup>1</sup> .....	J R N	125,000 00	+92
Grace D and Chas K Arter.....	O W C	25,000 00	100
Matilda B Dowling.....	W M B	850 55	85
M H Hurst.....	C W C	5,000 00	100
A M Kelly.....	do.	5,000 00	100
R T Taylor.....	do.	5,000 00	100
C T Nixton.....	do.	5,000 00	100
W L Fox.....	do.	5,000 00	100
H M Jones.....	do.	5,000 00	100

(U-13-1, p. 5)

<sup>1</sup> Attention is invited to the loan to C L Ayers, above noted, in the sum of \$215,000, made March 8, 1926, approved by J R Nutt, secured by 1,350 shares preferred and 1,000 shares common stock of United Milk. On this loan the bank suffered a large loss, having charged off \$102,000 to reserve for losses, as follows: Nov 5, 30, \$25,000, Dec 30, 1930, \$10,000, Dec 30, 1931, \$67,000, total \$102,000.

(U-13-1, p. 6)

In addition to the loans above noted at over 80 percent of par value, there were also \$590,000 of loans secured by United Milk Products at 100 percent of its par value. These loans carried the endorsement of Mr. C L Bartshe, president of the corporation. Mr. Crawford and Mr. Nutt were the bank officials who approved these loans.

From the above it can readily be seen that while individuals were the nominal purchasers of this stock, the acquisition was made possible by the Union Trust Co; and by the pursuance of a lenient credit policy, the depositors' money being risked.

The Trust Co. officials were very "bullish" concerning the future of the corporation, but in their replies to requests for factual information the statement is frequently made:

(U-13-12)

No statements of the company are available, but some of our officers have seen the company's statement, which we understand shows an excellent financial condition, the company having large cash balances, with no debt.

(U-13-14)

Mr. Nutt prepared a memorandum dated May 6, 1926, from which it appears most of the answers to inquiries were written. This memorandum has a notation on the bottom addressed to Mr. Tonks, vice president, as follows. "The above to be used by your department with discretion."

The first financial statements available to the public were those as of December 31, 1928, some 3 years after the formation of the corporation. During this period, investors and those extending credit

to the corporation were forced to accept information furnished by the bank's officials. Below are some excerpts of letters which are representative of the information disseminated by the Union Trust Co.

(U-13-10)

As yet the company has issued no financial statements, although we are told that one is to be issued some time soon. We understand the company is in a good financial position, with around \$6,000,000 of cash and practically no debts

(U-13-11)

Letter dated April 9, 1926, Mr. Tonks to Mr. W. K. Adams

The company is in strong cash position, and we hold the management of the company in very high regard, and feel that the people associated with it represent the best experience in the milk business in this country.

(U-13-13)

Letter dated January 27, 1928, Mr. J. P. Harris to D. B. A. Richardson.

Your inquiry in regard to United Milk Products Corporation has been handed to me in view of my knowledge of that situation, I am very sorry to report, however, that I cannot send you a financial statement of this company, although the company's operations are known to us rather intimately. As yet, the company has not seen fit to issue any statements of any sort, but it is not at all impossible that in the not distant future they will decide that the time has arrived when the complete statement may be given out to all stockholders. In general, however, I may say that the company is very highly regarded by us here, that we have the highest respect for the quality of the management, which to our minds is one of the best in the industry in America, and that we know the company to be doing very well. As you probably know, they do not owe a dollar to any one, and are in the habit of discounting all bills. They are in a very strong cash position, while their current position generally is exceptional.

An effort by the liquidator to determine under what circumstances the borrowers from the collateral-loan department were induced to purchase the stock, brought to light the following:

(U-13-1, p 17)

In connection with the latter point, an interview was had with Mr Charles L. Bethel, formerly assistant treasurer, in charge of the Detroit-Cook office, and now employed in the main office. Mr Bethel, together with his wife, Ida M., appears as a borrower in the collateral-loan department, his loan still being open as of July 15, 1933, with 56 shares of United Milk Products preferred and 3% shares common (formerly 70 and 20 shares, respectively, of the old company) as part collateral. Asked as to the circumstances under which he was induced to purchase this stock, Mr Bethel stated that he was on the list of those invited to subscribe for the original issue of stock, receiving 20 shares of the preferred with a bonus of 20 common. This was financed by Mr Bethel's payment of \$500, and a bank loan of \$1,500, dated February 1, 1926.

(U-13-1, p. 17)

About a year later, Mr Bethel states he had sold his residence and having some cash available from the proceeds, Mr Nutt advised his wife, Ida M. Bethel, to purchase an additional 50 shares United Milk preferred, stating at the time that he would personally guarantee that she would never suffer a loss through this purchase. Acting upon this advice, Mrs Bethel purchased the stock recommended. Needless to say, Mr Nutt's guaranty was never made good.

Other pertinent information concerning the collateral loans is obtained from the liquidator's confidential report, as follows:

(U-13-1, p. 11)

In an attempt to secure additional information not revealed in the bank's records, a discreet interview was had with Mr. Brown, resident partner of Hornblower & Weeks, who was known to have had some knowledge of the affairs of the company, this information having come to light at the time the J. P. Harris account was analyzed. Mr. Brown stated that shortly after the organization of the United Milk Products Corporation, he noted that the stock was drifting in as collateral to Hornblower & Week's accounts. He was highly opposed to this as collateral and ordered it cleared from all accounts as rapidly as possible.

His objection to this security was based upon the following.

(U-13-1, p. 11)

1. In his opinion the company was grossly overcapitalized and the set-up would not have been accepted or approved by his firm
2. No figures as to earnings were obtainable from the company's officers
3. Future earnings were very speculative

The Union Trust Co., through its estates trust department was also quite active in the distribution of these shares, for in the period from the corporation's organization to the end of 1932, a total of 18,902 shares of preferred stock were placed in individual trust estates as follows:

	Shares		Shares
January 1926.....	3, 990	November 1926.....	430
February 1926.....	2, 640	December 1926.....	50
March 1926.....	140	Year 1927.....	2, 948
April 1926.....	654	Year 1928.....	2, 340
May 1926.....	431	Year 1929.....	3, 062
June 1926.....	422	Year 1930.....	250
July 1926.....	446	Year 1931.....	619
August 1926.....	175	Year 1932.....	305
September 1926.....			
October 1926.....		Total.....	18, 902

And as Mitchell has pointed out in his report:

(U-13-1, p 7)

At May 5, 1933, the following preferred stock, representing shares in the reorganized company, was still in the estates trust department. Shares 10,094; carrying value, \$782,487 11; market value May 5, 1933, \$181,692

Of this total, 1,760 shares belonged to the Nutt family trusts, leaving a balance of 8,334 shares in the names of holders outside that family

Bank officials interested: Of the officers and directors of the bank who appear as principals in the transactions under review are the following: J. R. Nutt, president;<sup>1</sup> C. W. Carlson, assistant vice president;<sup>1</sup> Otto Miller, director<sup>1</sup>

Mr. Nutt originally subscribed to 25,000 units consisting of 1 share preferred and 1 common at \$100 per unit, and records of the corporation show a receipt of \$2,500,000 in cash. These shares were then sold by Mr. Nutt to officers and employees of the bank, "insiders", business associates, and the estates trust department of the bank. Apparently, Mr. Nutt derived no profit from these transactions.

(U-13-15a, 16b, 16c)

From Mr. Nutt's personal ledger we found that the total investment made by Mr. Nutt personally was \$204,000 in United Milk

Products stock, which he disposed of at various times during the 2 years following its acquisition, at an indicated profit of \$23,679 60. All of this profit was earned early in 1928 through the sale of 520 shares of common stock, the preferred having previously been sold out at the cost price. Although the above is the only profit Mr. Nutt's books show, we learn from his 1928 income tax return that he reported a total profit from the sale of United Milk stock in that year of \$85,613 80.

(U-13-1, p 14)

Mr C W. Carlson, vice president of the bank, had in his name at one time in 1926, 12,972 shares of preferred and 10,190 shares of common of United Milk stock Mr Carlson, upon receipt of the dividends on the preferred stock, usually purchased official checks from the bank and disbursed these dividends to the actual owners of the stock Apparently, he was acting only as a nominee for others, amongst whom Mr Nutt appears to be the owner of some shares. From the distribution of dividends, it appears that Mr Carlson had in his name 3,020 shares from which Mr Nutt derived the income, so it follows that he (Nutt) was the actual owner

*Market price of stock.*—The market prices of the stock of United Milk Products Corporation showed wide fluctuations, particularly in the common, as evidenced by the following tabulation obtained from Standard Corporation records:

(U-13-21)

Year	Preferred		Common		Year	Preferred		Common	
	High	Low	High	Low		High	Low	High	Low
1927-----	94	86	80	36	1930-----	65	44	6	$\frac{3}{4}$
1928-----	91	76	42 $\frac{3}{4}$	14	1931-----	37	15	2 $\frac{3}{4}$	$\frac{5}{8}$
1929-----	80	50	21	2 $\frac{1}{2}$	1932-----	12	10	1	$\frac{1}{2}$

Figures for 1926, the first year of the company's existence, are not available from public sources. However, from the liquidator's confidential file we obtained the following:

(U-13-1, p. 16)

Sales were made in January 1926 at prices ranging from 110 to 115

Other information pertaining to the market values of this stock from the liquidator's file is presented herewith:

(U-13-1, p 16)

With reference to market prices for United Milk stock, another set of circumstances is noted, which may possibly be of interest in connection with the holdings of the bank's officers One H E Collin, connected with the brokerage firm of Collin, Norton & Co of Toledo, Ohio, was a trustee for the stockholders of the National Dairy Co, with a plant at Morenci, Mich, one of the properties acquired by United Milk at organization The consideration therefor was 10,000 shares each of preferred and common stock of the United Milk Co, which was duly issued to Collin and his cotrustees, of which 7,000 shares of each class of stock were at once transferred to Campbell, Starring & Co., a New York brokerage firm, and 3,000 each to R L Corby

In addition to the stock above issued, Collin was given an option to purchase an additional 20,000 shares of common stock at prices ranging from \$45 to \$90 per share. This he exercised to the extent of 9,000 shares, paying therefor \$485,000 in cash

(U-13-1, p 16)

An immediate market was created for United Milk common stock, resulting in a price range from 110 to 115 during the month of January 1926 at the same time the preferred was being offered at 91. The officers of the company disclaim any responsibility for the high price for the common, stating that they were not interested in the market and did not profit thereby. They do state, however, that they believe Collin was responsible for creating this market in order to dispose of his common holdings at a profit. This is based partly upon the fact that letters have come to their attention dated about the time of organization, circulating various rumors calculated to enhance the value of the common stock, and also the fact that Collin at that time was attempting to sell units of 1 share preferred and 1 common at \$150, in the face of the company's subscription price of \$100 for the same unit.

*Financial position of company.*—We shall quote Mr. Mitchell's comments regarding the financial history of the company, in full:

(U-13-1, p. 9B)

*Financial position of company*—As previously stated, the company furnished no statements and did not make public any record of its earnings prior to those for the year 1928. During this year the files of the credit department seem to indicate that stockholders were becoming uneasy as to the affairs of the company probably due in large part to the low market price of the stock, resulting in numerous letters of inquiry to the bank. Replies thereto, usually by Mr J P. HARRIS, stated that the bank was using pressure to secure the issuances of public statements. Whatever the cause, a statement, certified by Messrs Arthur Young & Co., was issued for the year ending December 31, 1928.

(U-13-1, p 9B)

The credit files contain an analysis of the company's operations for the years 1926, 1927, and 1928. The source of the figures for the first 2 years is not indicated and they may not be reliable, but are set forth below, together with the certified figures for the following years

(U-13-1, p. 9B)

Year	Net operating income or loss	Dividends paid	Net operating credit or charge to surplus
1926.....	\$1, 285, 543 55	\$925, 204 00	\$360, 339 55
1927.....	653, 626 04	718, 744 25	‡ 65, 118 21
1928.....	604, 492 84	571, 655 00	32, 837 84
1929.....	526, 554 98	521, 095 75	5, 459 23
1930.....	‡ 134, 733 15	510, 170 50	‡ 644, 903 65
1931.....	‡ 107, 336 68	-----	‡ 107, 336 68
1932.....	57, 328 45	-----	57, 328 45
Total.....	2, 885, 476 03	3, 246, 869 50	‡ 361, 393 47

‡ Loss

‡ Charge

In addition to the above operating income, the company created a "profit" through the repurchase of its preferred stock at a discount, and obtained certain other nonoperating income set forth below

Profit on repurchase of preferred stock.

1927.....	\$439, 336 00
1928.....	148, 444 12
1929.....	63, 278 00
1930.....	173, 128 58
1931.....	24, 835 00

1932.....

\$849, 021 70

(U-13-1, p. 10)

Profit on sale of plants, sale of Liberty bonds, setting up cash surrender value of life-insurance policies and other nonoperating income

1927.....	\$84, 743. 96
1928.....	8, 029 18
1929.....	
1930.....	33, 122 07
1931.....	
1932.....	
Total.....	<u>145, 895. 21</u>
	<u>994, 916 91</u>

An analysis of surplus for the above period indicates the following

"Profit" on repurchase of—	
Company's preferred stock.....	\$849, 021. 70
Other nonoperating income.....	<u>145, 895 21</u>
	<u>994, 916 91</u>

(U-13-1, p. 10)

Less (excess of dividends paid over operating income).....	<u>361, 393 47</u>
Surplus, Dec 31, 1932.....	<u>633, 523 44</u>

It thus appears that a large part of the dividends paid were derived from the discount on stock repurchased—in reality a return of capital

With reference to the company's balance sheet, a certain item deserves consideration in relation to the transactions with the bank. To illustrate this point, the balance sheet at December 31, 1932, is set forth in brief form below

(U-13-1, p 11)

<b>Assets</b>	
Current.....	\$1, 996, 993. 20
"Milk supply".....	4, 364, 662. 08
Deferred.....	79, 275. 70
Permanent, less reserves.....	1, 929, 996. 88
Brands and trade marks.....	10. 00
Total assets.....	<u>8, 370, 937. 86</u>
<b>Liabilities</b>	
Current.....	259, 446. 05
Capital stock (preferred) outstanding.....	6, 940, 500. 00
Capital surplus, represented by 209,394 shares no-par common stock outstanding.....	537, 468 37
Earned surplus.....	<u>633, 523 44</u>
Total liabilities.....	<u>8, 370, 937. 86</u>

It will be noted that among the above assets of the corporation is an item of "milk supply" in the amount of over \$4,000,000. We are convinced that anyone, accountant or not, studying the balance sheet of the company would be led to believe that this particular item, carried on the statement of a corporation engaged in the canned milk business, was one of inventory. Actually this item is nothing but—goodwill. However, no indication of this fact is disclosed. Mitchell made an analysis of this account from the books of the United Milk Products Corporation and in his report states:

(U-13-1, p 18, 19)

\* \* \* the account represents only the difference between the consideration paid for the various companies acquired at organization and the appraised value of their respective physical assets. The greater portion of the account is concerned with the Western Reserve properties due primarily to the exchange of shares on a 2½ for 1 basis. A brief summary of the account follows:  
Set up in connection with valuation of assets of—

(U-13-1, p 19)

Western Reserve Condensed Milk Co, Jan 1, 1926.....	\$2, 098, 436. 01
National Dairy Co, Feb 26, 1926.....	300, 000. 00
All plants, Dec 31, 1926.....	1, 716, 401. 07
	<hr/>
	4, 114, 837. 08
Less (value of milk supply applicable to Standish plant sold during 1927).....	175 00
	<hr/>
	4, 114, 662. 08
Milk supply account set up on books of subsidiary, United Milk Products Corporation of California, representing difference between value of physical properties and cash paid Libby, McNeil & Libby for Loleta plant.....	250, 000 00
Milk supply account per consolidated balance sheet, Dec. 31, 1932.....	4, 364, 662 08

In connection with the above valuations, Mr P L Haymes, of the company, advises that as a general rule, appraisals of physical assets were placed at as low a figure as possible in order to reduce the burdens of local taxes upon their numerous plants. This would naturally result in a correspondingly higher figure for intangibles.

(U-13-18, 17a, 19)

*J. B. Nutt loan*—On June 2, 1926, Mr. Nutt borrowed \$500,000 from the United Milk Products Corporation. He had also borrowed on April 15, 1926, the sum of \$25,000 from the same source. We do not know what use was made of the \$25,000 but we do know that Nutt used the \$500,000 he borrowed on June 2 to purchase Southern Baking Co., 5,000 shares 8 percent preferred stock; 1,250 shares no-par common stock.

(U-13-20a)

On the same day Mr. Nutt sold one fifth of this purchase, or 1,000 shares preferred and 250 shares common to C. L. Bartshe, president of United Milk Products Corporation, at cost, or \$100,000. During the year 1927 Mr. Nutt disposed of the remainder of this stock at a loss of \$8,636.20.

*Corporation management.*—Concerning the character of the management, which the Union Trust Co officials thought was of the highest type, no concrete evidence is at hand which would permit a definite opinion.

However, the filing of suits charging fraud on the part of the management of United Milk Products Corporation creates, at least, a doubt in one's mind of the integrity and character of its officials.

Certain of the officers, principally C. L. Bartshe, chairman, and P. L. Haymes, vice president, have been sued at various times by stockholders because of their acts. A stockholders' protective committee was formed and made an investigation of the corporations' affairs, after which the committee wrote

(U-13-22, 23)

As a result of the investigation of the accountants thus made available, it is disclosed that the corporation received no money or property for all of its 250,000 shares of common stock, although at the time when the stock was issued the shares were selling and were purchased by many stockholders in the open market in New York at prices in excess of \$100 per share. It appears quite clear that certain persons then in control of the corporation profited improperly at the expense of the corporation and its stockholders.

A suit was discharged in court because the statute of limitations prevented any redress.

The following is an excerpt from the Cleveland News of September 22, 1932:

An injunction suit seeking to block the officers and directors of the United Milk Products Corporation from carrying out a proposed reorganization plan was filed in common pleas court late today by F. W. Lovell, of 2945 Eaton Road, Shaker Heights. Lovell, who says he owns 100 shares of preferred stock, charged that the proposed reorganization would be detrimental to the preferred stockholders and beneficial to the owners of common stock. He declared the officers and directors own 51,890 shares of common stock and 1,425 preferred.

The disposition of this suit is described in an item in the Cleveland Plain Dealer of February 24, 1934, which in part is as follows:

Five directors and officers of the United Milk Products Corporation yesterday were held to have committed fraud against preferred stockholders of the company in having proposed and obtained a reorganization with a view to enriching the value of the company's common stock.

Federal Judge Samuel H. West handed down an opinion holding that each petitioning holder of the company's preferred stock was entitled to \$49.66 in damages for each share held.

The judgment involved 925 shares, or about \$46,000 plus interest from January 1, 1933. It was awarded against G. E. Bartshe, president; C. P. Lindhal, secretary; W. L. Fox, treasurer; Philip L. Haymes, former director and vice president; and James L. Harris, director and vice president, all of whom were found to have participated in the fraud, and Sam W. Emerson, director, and W. A. Bartshe, vice president, who, the court held, were responsible because of their breach of trust as directors.

Any management that is required to spend the amount of time and money necessary to defend itself against the charges above described, cannot be above suspicion, and it would seem that a properly conducted business would not be compelled to defend its actions to the extent that this company has experienced.

The company went through reorganization in 1932, which probably was due partially to the economic crisis, but basically the result of the heavy burden of preferred dividends placed on its earning power.

WALTER H. SEYMOUR,  
*Senior Examiner.*

Mr. SAPERSTEIN. Mr. Meehan, the next report on my list, No. 19, Loans from the R.F.C. Will you tell the committee about that?

Mr. MEEHAN. The report in regard to loans from the Reconstruction Finance Corporation was sent to the Government Printing Office to facilitate printing. There being only one copy of that report we were unable to bring one here this morning. I ask, however, that that report be considered as offered in evidence at this time, the same as was done in regard to the report entitled "Union Trust's Directorate in Other Concerns."

Mr. SAPERSTEIN. Mr. Chairman, I should like to offer the report referred to by Mr. Meehan, together with the exhibits which are also in the possession of the Government Printing Office in order to facilitate printing.

The CHAIRMAN. The report and exhibits will be considered as in evidence, and will be appropriately identified by the committee reporter.

(The report entitled "Reconstruction Finance Corporation Loans", together with the exhibits mentioned in said report, which exhibits are now at the Government Printing Office, were received in evidence and marked "Committee Exhibit No. 19, May 4, 1934", and are as follows:)

COMMITTEE EXHIBIT No. 19, MAY 4, 1934

RECONSTRUCTION FINANCE CORPORATION LOANS

(U-19-1a)

Shortly after the formation of the Reconstruction Finance Corporation, and at a time when the Union Trust Co had borrowed extensively from the Federal Reserve Bank, New York City banks, and National Credit Association No. 1, an application was filed on March 10, 1932, with the loan agency of Reconstruction Finance at Cleveland, Ohio, by the Union Trust Co. after being duly authorized by the board of directors on March 8, 1932, for a loan not to exceed in the aggregate \$12,000,000 to mature in 6 months, or on September 10, 1932

The extent of the borrowings of the Union Trust Co. can be appreciated if one refers to the comparative statement of condition as of February 29, 1932, which reflects total borrowings of \$31,587,000.

The files of the Union Trust Co are not complete concerning the loans obtained from the Reconstruction Finance Corporation, so that complete information pertaining to the collateral offered for the loan is not available

(U-19-2a, 3)

The application of March 10, 1932, in amount of \$12,000,000 was amended and redated April 15, 1932, and the amount increased to \$14,000,000. The latter application was approved on April 27, 1932, and cash received amounting to \$13,947,106 on April 29, 1932

For some reason not disclosed by the files, the application of April 15, 1932, offered as collateral for the loan of \$14,000,000, \$27,843,-928 53 of real-estate mortgages. No information is available as to the location or type of property loaned upon, nor the status of the individual loans. The application of March 8, 1932, offered as collateral, bonds and other securities, secured and unsecured notes and real-estate mortgages, the latter being the smallest item in amount of the group. This collateral totaled in value \$19,233,188.01. Just why the collateral was changed from investments and short-term loans to real-estate mortgages is not readily determined, unless it was that the better type of collateral could always be borrowed upon, whereas the loans with real-estate mortgages as collateral would have to be obtained from the Reconstruction Finance Corporation.

(U-19-2a)

The purpose of the loan as stated in the application was "to pay 'other bills payable' which have been outstanding, for some time"

Examination of the loans payable ledger discloses that the following payments were made on April 29, 1932, the day the cash actually was received from the Reconstruction Finance Corporation:

Irving Trust Co.....	\$4, 156, 275
National City Bank.....	3, 786, 000
Bankers Trust Co.....	650, 000
Chase National Bank.....	700, 000
First National Bank.....	800, 000
Federal Reserve Bank.....	4, 000, 000

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14, 092, 275

so that the proceeds of the loan were used to liquidate obligations to other financial institutions

As of June 20, 1933, the balance owed the Reconstruction Finance Corporation on this loan amounted to \$11,253,195 81 The files indicate that this loan originally matured on October 15, 1932, and was renewed to mature April 15, 1933 No further extension is found in the files; however, some arrangement was undoubtedly made for future payment.

(U-19-4a, 5)

In addition to the above loan, an application dated June 30, 1932, in amount \$1,500,000, was also filed The files of the Union Trust Co show that this application was approved, and \$1,475,297 21 in cash was advanced on August 2, 1932

The purpose of this loan was also for "paying loans payable", which at the date of the application amounted to \$24,115,560 88, including the loan of approximately \$14,000,000 from the Reconstruction Finance Corporation, previously described.

The security for this loan is real-estate mortgages in amount \$3,002,-140.09 No detail was available to determine whether these mortgages were on business or residential properties, nor the condition of the loans

The original maturity date was December 30, 1932, which was extended to June 30, 1933 No further extension is found in the files

(U-19-7-a)

The balance unpaid on this loan as of June 2, 1933, amounted to \$1,397,477 62

(U-19-6)

An application was also filed on July 16, 1932, for a loan of \$2,000,000 from the Reconstruction Finance Corporation. This was approved and cash received, in amount \$1,967,461 76, on August 12, 1932

The purpose of this loan also was "paying bills payable."

Collateral for this loan was \$4,002,574 30 in real-estate mortgages, but no detail is available to ascertain what type of property was involved nor the intrinsic value of the loans

The original maturity date of this loan was January 16, 1933, which was renewed so as to mature July 17, 1933. No further extension is

noted This, however, was undoubtedly obtained as the unpaid balance on June 2, 1933, was \$1,831,565.43

The following is a recapitulation of the loans obtained from the Reconstruction Finance Corporation during the year 1932 directly by the Union Trust Co :

Loan no	Date	Amount cash received	Value of collateral	June 1933 unpaid
W-114.....	Apr 15, 1932	\$13,947,106 00	\$27,843,928 53	\$11,253,195 81
W-504.....	June 30, 1932	1,475,297 21	3,002,140 09	1,397,477 82
W-548.....	July 16, 1932	1,967,461 76	4,002,574 80	1,831,565 43
Total.....		17,391,864 97	34,848,642 92	14,482,238 86

(U-19-12, 13, 14, 15, 16)

Mr. Kraus, vice chairman of the board of directors of the Union Trust Co., was apparently quite influential in matters pertaining to the Reconstruction Finance Corporation. His assistance was asked in an effort to obtain loans for "patrons" of the Union Trust Co.

Information concerning the effectiveness and results of his efforts is not available.

#### WESTERN RESERVE MORTGAGE CO.

In February of 1933 the Cleveland banks comprising the Cleveland Clearing House Association caused the formation of a corporation known as "the Western Reserve Mortgage Co." This corporation was incorporated in Ohio for the "purpose of handling and dealing in and with mortgages, mortgage notes, and all forms of securities", however, the true purpose of its formation appears to be to aid the Cleveland banks in obtaining loans indirectly from the Reconstruction Finance Corporation without the general public being informed.

The Western Reserve Mortgage Co. issued a total of 32,336 shares of stock, par value \$100 per share, or a total capital of \$3,233,600, of which the Union Cleveland Corporation purchased 18,541 shares, or an investment of \$1,854,100. To consummate this purchase the Union Cleveland Corporation borrowed from the Union Trust Co. \$1,854,100, secured by the capital stock of the Western Reserve Mortgage Co. The proceeds of this subscription, to the extent of \$1,844,642.47, was invested by the Western Reserve Mortgage Co. in mortgages purchased from the Union Trust Co. Following this, the Western Reserve Mortgage Co. purchased from the Union Trust \$46,330,410.76 of real-estate loans. In payment of these loans the Western Reserve Mortgage Co gave its notes to the Union Trust Co. for the same amount, which notes were secured by a pledge of the mortgages so purchased.

The mortgage company then borrowed from the Reconstruction Finance Corporation \$21,162,626 and pledged mortgages so purchased as collateral for the loan, the Union Trust Co waiving its lien on said mortgages in favor of the Reconstruction Finance Corporation. The proceeds of this loan were then applied by the Western Reserve Mortgage Co. as a reduction of the respective notes given to the Union Trust Co.

From the above it can be seen that the real-estate loans with mortgages as collateral had been replaced with an asset which was collateralized with the same security, but subject now to the prior lien of the Reconstruction Finance Corporation. The proceeds of the loan were used to liquidate bills payable to the Federal Reserve bank and other banks

These transactions were made just 3 days prior to the restricted withdrawal status of the bank, which was in force beginning the morning of February 27, 1933. No substantial withdrawal of cash is noticed during the period in which the loans were made, nor immediately following the receipt of the cash. While this transaction improved the financial condition of the bank, in that it reduced the bills payable liability, no benefits are apparent which appear favorable to the depositor.

LOANS OBTAINED BY THE UNION TRUST CO. FROM NATIONAL CREDIT ASSOCIATION NO 1

The National Credit Association No. 1 was organized by the clearing-house banks of Cleveland on November 2, 1931.

This association was one of a group organized by member banks of the fourth Federal Reserve district for the purpose of borrowing from the National Credit Corporation, a Delaware corporation, which was a governmental-financed institution and the forerunner of the Reconstruction Finance Corporation.

(U-19-8)

The Union Trust Co. subscribed for \$3,500,000 of gold notes of the National Credit Corporation on December 17, 1931, of which \$1,050,000 was paid in cash during January 1932. This was refunded to the extent of 95 percent, or \$997,500, leaving an investment of \$52,500 on the books of the Union Trust Co.

(U-19-8)

On January 18, 1932, the bank borrowed from this association \$3,000,000 with collateral of certificate of participation in loan to the Cleveland Cliffs Iron Co. in amount \$3,387,500.

(U-19-10)

This association reported that all loans were paid in full as of December 13, 1932.

The Union Trust Co's loan was paid September 20, 1932

WALTER H. SEYMOUR,  
*Senior Examiner.*

This report based upon preliminary report and complete investigation by Committee Examiner.

J. J. SINNOTT.

Mr. SAPERSTEIN. Mr. Meehan, I show you a report entitled "The Union Cleveland Corporation", and ask you whether or not that report was prepared by the investigators on the staff of the committee under your immediate supervision.

Mr. MEEHAN. It was.

Mr. SAPERSTEIN. Mr. Chairman, I now wish to offer the report in evidence, together with the exhibits referred to therein, which exhibits were sent to the Government Printing Office in order to facilitate printing.

The CHAIRMAN. The report and exhibits will be received in evidence and appropriately identified by the committee reporter.

(The report entitled "The Union Cleveland Corporation", together with the exhibits referred to therein, were received in evidence, marked "Committee Exhibit No. 20, May 4, 1934", and are as follows:)

COMMITTEE EXHIBIT No. 20, MAY 4, 1934

## THE UNION-CLEVELAND CORPORATION

The Union-Cleveland Corporation, although not a bank subsidiary, was a component part of the Union Trust Co's operations. It was created primarily "for the organization and operation of a securities and investment company", and to relieve the Union Trust Co of some of its investments which it (the Union Trust Co) could not legally hold.

It was incorporated in the State of Ohio on July 20, 1929, and began operations with \$2,285,000 in cash contributed by the stockholders of the Union Trust Co. Its capital structure consisted of 228,500 shares of common stock without par value allocated as follows: \$2,000,000 capital stock, \$285,000 paid-in surplus.

(U-16-1)

Its first transaction occurred on August 20, 1929, and consisted of the purchase from the securities and investment department of the Union Trust Co of a group of securities aggregating \$407,202.51, the list being composed principally of real-estate mortgage bonds, railroad and industrial corporation bonds, and foreign government bonds, with coupon yields of 4½ percent to 7 percent.

The functions of this corporation were:

(a) Participating in the underwriting and distribution of security issues.

(b) Purchases and sales of securities for the convenience of bank customers.

(c) Also commitments were made for securities to be held by the corporation for investment and income.

The first mentioned above was its chief function, and involved the merchandising of first mortgage bonds to a large degree, and preferred and common stocks to a somewhat slighter degree.

The corporation's record of net earnings from its inception to October 31, 1933, is as follows:

(U-16-2, 3, 4, 5)

Loss (4 months ended Dec 31, 1929) .....	\$87, 477. 70
Profit (year ended Dec 31, 1930) .....	311, 687. 80
Loss (year ended Dec. 31, 1931) .....	25, 390. 25
Loss (year ended Dec. 31, 1932) .....	168, 784. 99
Loss (year ended Oct 31, 1933) .....	72, 241. 37

(U-16-12)

The principal source of income during the years 1929, 1930, and 1931 was in the underwriting and wholesale distribution of securities; however, losses were sustained from inventory depreciation resulting from write-downs from book value to market value, and sales of securities at prices less than cost or ledger value. These losses have created a deficit of \$1,960,999 14 at October 31, 1933, which have completely wiped out "paid in surplus account" and impaired the capital of the corporation to the extent that the stockholders' equity in the corporation is, at October 31, 1933, only \$35,793 90, with the likelihood that further write-offs will be necessary.

(U-16-6)

During the years of its existence the Union-Cleveland Corporation depended entirely upon the Union Trust Co for its financing. This was in the form of both unsecured and collateral loans which were payable on demand and were at the rates of 5 and 6 percent per annum, with the exception of one (no. 12985) made on May 1, 1930, in the amount of \$650,000, which was at 3 percent per annum, and was made to facilitate purchases of the capital stock of the Chagrin Falls Banking Co

The loans outstanding at October 31 in the years 1929, 1930, 1931, and 1932 were as follows (these dates have been chosen because they more clearly reflect the extent of the borrowing than the last day of the year, as in 1929, and 1930, loans were liquidated for tax evasion purposes (See special report )

(U-16-7, 8, 7-9, 10-11)

	Collateral	Unsecured
Oct 31, 1929.....	\$2,050,000 00	None
Oct 31, 1930.....	None	\$3,500,000 00
Oct 31, 1931.....	2,575,750 00	840,000 00
Oct 31, 1932.....	2,395,023 48	883,426 64

On October 31, 1933, the corporation's financial statements reflect the debts to the Union Trust Co as notes payable:

(U-16-12)

Secured.....	\$3,580,767. 11
Unsecured.....	984,361 36
Total.....	4,565,128. 47

From the above figures it can readily be seen that the depositors' funds of the Union Trust Co were used to finance the security affiliate's operations, and the loans now owed contributed to the situation now existing.

(U-16-13)

Also, the superintendent of banks in his report of January 20, 1933, questions the value of the collateral securing the notes, and is doubtful if the securities posted as collateral would ever be sold at prices equivalent to the extent upon which they have been borrowed. Some of the

securities posted as collateral are in default and the issuing corporations in receivership. Notable among those in this position are the Construction Materials Co. and the Sensibar Transportation Corporation. Also among securities owned and posted as collateral is the capital of the Chagrin Falls Banking Co., now in the process of liquidation, which is without value and has attached to it a double liability contingency.

These loans were apparently granted almost automatically upon application, and with little or no consideration give as to the ability to repay or to the sufficiency of the collateral.

The amount borrowed from and owed to the Union Trust Co. frequently exceeded the capital and surplus of the security affiliate by more than 100 percent. This arrangement can be severely condemned, especially if one considers that the funds of the depositors were being loaned almost promiscuously to finance transactions of a speculative nature, wherein the benefits derived would inure to the stockholders of the corporation, who were identical to those of the bank, and with little or no risks assumed by those destined to profit from the transactions. Certainly the corporation, were it not for its affiliation with the bank, could not have obtained financing with such ease as it enjoyed.

#### ACQUISITION OF CHAGRIN FALLS BANKING CO

(U-16-23)

On September 26, 1929, the Union-Cleveland Corporation began acquiring the capital stock of the Chagrin Falls Banking Co. at \$650 per share, plus accrued dividends. Since the files and records concerning this deal are practically sans any evidence which would tend to indicate the purpose of the acquisition, the greater portion of this report is assumption.

This much is certain: The Union-Cleveland Corporation was merely an instrument through which the Union Trust Co. could acquire control of the Chagrin Falls Bank without violation of the State law which prohibited a State bank from owning a similar institution.

(U-16-23, 24)

Though we were unable to locate any form of agreement concerning the price of \$650 per share, it is fairly certain that such an agreement was made, as the Union-Cleveland Corporation not only paid that price in September of 1929 but continued to do so until as late as November 1931 some 2 years after the market "crash." Certainly that price would have never been maintained unless the corporation was obligated to fulfill a contract at that price.

Among the larger stockholders of the Chagrin Falls Banking Co., prior to the purchase by the Union-Cleveland Corporation, were the following:

	<i>Shares</i>		<i>Shares</i>
Mary J. Frazer.....	170	S. P. Harris.....	60
Austin H. Church.....	70	A. C. Brewster.....	50
M. F. Brewster.....	60	John A. Church.....	50
John W. Stoneman.....	60		

These individuals were apparently all local persons of the community in which the bank was located, and appear to have no connection of any importance with the Union-Cleveland Corporation or the Union Trust Co. However, the Chagrin Bank did use the Union Trust Co as its principal depository, and during the years subsequent to its purchase borrowed frequently from the Union Trust Co.

(U-16-23, 24)

The funds necessary for the acquisition of Chagrin Falls Banking Co. were, as stated above, obtained by the Union-Cleveland Corporation from the Union Trust Co., and the fact that this \$650,000 loan was made at the rate of 3 percent per annum tends to prove that the acquisition was at the suggestion of the Union Trust Co. At the time of the purchase the Chagrin Falls Banking Co. was paying a dividend at the rate of \$18 per share per year. This amounted to a return of 2 77 percent on the \$650 per share investment of the Union-Cleveland Corporation, and probably accounts for the interest rate of the loan from the Union Trust Co (3 percent).

From conversation with Mr O C Morton, a former Union Trust Co. employee, and at present a member of the liquidator's staff, we were led to believe that the purpose of the acquisition was the first step of the creation of a State-wide banking chain, and at the time of purchase agitation was prevalent to change the State laws so as to permit State-wide branch banking.

(U-16-25)

It is, however, interesting to note that in 1931, Mr. B. L. Jenks, a Van Sweringen associate was indebted to the Chagrin Falls Banking Co. to the extent of \$269,914.83, which appears to be a large loan for an institution of \$100,000 capital. No information is available to judge just how good this loan was or if it is existent today and contributed to the failure of the Chagrin Falls institution to obtain a license to reopen after the national banking holiday. Whether or not this is the only loan which Mr. B L. Jenks had at this bank is also unknown.

(U-16-26)

The price of \$650 per share seems to be exceedingly generous even for the prosperous days of 1929. The indicated book value as ascertained from the only financial statements available was \$365 92 per share as of September 23, 1929. The indicated earnings per share were in 1928 and 1929 \$60.09 and \$69.50 respectively. The last figure is an estimate based on the first 6 months' earnings.

(U-16-26)

The deposits of the institution totaled \$3,335,222.18 at the original date of purchase, of this amount \$1,200,000 are shown as "public funds" which should be secured 100 percent by Government or surety bonds. However, the balance sheet as of September 23, 1929, showed only \$978,289.31 as total investments, which included corporation and foreign bonds in the amount of \$492,704 24.

(Minutes of meeting of executive committee, p 1138; Union Trust Co ,  
U-16-27)

In December of 1932 the Union-Cleveland Corporation borrowed \$100,000 from the Union Trust and contributed it as additional capital to the Chagrin Falls institution. This was necessary as a result of the write-downs on the book value of certain properties of the banking company which the superintendent of banks had ordered. To prevent this depletion of surplus being reflected on the books and statements of the Chagrin Falls institution, this contribution was made with the instruction that it should be shown on the books and statements as surplus

(U-16-29, 30, 31)

Soon after the capital stock had been acquired by the Union-Cleveland Corporation, it sold five shares each at \$650 per share to seven gentlemen, chosen to be directors. These individuals borrowed \$3,250 each from the Chagrin Falls Banking Co to pay for their directors' qualifying shares. For some reason not disclosed by the files, but probably due to criticism from the bank examiner, these notes were sold to the Union-Cleveland Corporation on September 20, 1932, and are now carried as accounts receivable on that corporation's books and statements. In conversation with Union-Cleveland Corporation's employees, information was obtained to the effect that suits have been filed to force payment of the notes. It is quite obvious that these directors never intended to pay for these shares, but were merely acting as agents for the bank in aiding it to comply with the law pertaining to stockholders and directors. Mr Allard Smith, when billed for interest on his note on May 3, 1933, wrote across the face of the invoice: "This is for Chagrin Falls Bank stock and I do not owe any interest." What he was endeavoring to convey, evidently, was that he had no personal interest in that bank, consequently, was not going to pay any interest on a loan which he directly had little or nothing to gain from by its creation. Other evidence that the directors were only figureheads is present in the option that each director gave to the Union-Cleveland Corporation offering to sell to the corporation at \$650 per share at any time up to and including 30 days after his resignation as director.

The Chagrin Falls institution is now in the hands of the conservator, and information concerning its progress is not available. In conclusion, this acquisition appears to have been handled verbally so that it is impossible to report specifically as to its merits or demerits as an investment financed by the Union Trust Co's depositors.

#### OTHER ACTIVITIES OF UNION-CLEVELAND CORPORATION

(U-16-18, 19)

The directors and officers of the Union-Cleveland Corporation were either former officers or directors of the Union Trust Co., as a result of which the policies of the corporation were dictated and prearranged by the bank officials, and the officials of the Union-Cleveland Corporation acted in more or less of a perfunctory capacity. At least in one instance the minutes of the directors' meeting were drafted in advance and ratified without discussion or comment.

Principal issues involving large sums in which the corporation was the house of issue or took a substantial position in the flotation, are as follows:

(U-16-14, 15, 16, 17)

Date of issue	Name of issue	Total issue	Union-Cleveland Corporation participation
Mar 15, 1933	Construction materials, 2 year 6 percent.....	\$1,500,000	\$625,000
Feb 1, 1930	Dow Chemical Co, 10-year 6 percent notes.....	3,500,000	1,400,000
Mar 30, 1931	Sensibar Transportation Co 6-percent bonds.....	1,650,000	660,000
Jan 1, 1930	Newton Steel Corporation, 2-year 6-percent notes.....	3,000,000	1,200,000

The corporation also participated in the flotation of numerous other issues which were sponsored or originated by New York or Chicago houses wherein its profits were relatively nominal. Among the houses with which it joined in marketing securities were: J. P. Morgan & Co., Kuhn-Loeb & Co, Halsey Stuart & Co., Harris, Forbes & Co, Guaranty Co. of New York.

The Union-Cleveland Corporation also purchased in the open market common stocks of some of the national and well-regarded industrial corporations. Among the issues so traded were: American Telephone & Telegraph, General Electric, United States Steel, New York Central, Electric Auto Late.

A commitment of \$500,000 was made in 1930 for this type of securities. Mr Hayden, a director of both the bank and security affiliate, criticized the practice of trading on the board and stated

(U-16-20-c)

\* \* \* while it was inevitable that the corporation at times suffer inventory losses in the course of merchandising and underwriting, he thought that the shareholders of the Trust Co, who of course were identical with the shareholders of the corporation, would be unhappily affected if it appeared that the corporation as a matter of customary policy were buying and selling on the board merely as a client of brokers. It would be his inclination to advise against trading of this sort as a part of the regular business of the corporation. He would not say that such operations should never be engaged in. In fact, in the immediate case, as an example, he would find it difficult to oppose buying some of the sound shares for which orders had been placed. Nevertheless he thought that all must recognize the seriousness of the risk; that if there were a rule generally forbidding trading on the board as a recognized policy, and exceptions to that rule were allowed, it would not be too much to say that the rule would almost certainly be drowned by the exceptions.

(U-16-20)

Mr. Baldwin, a director and officer of both companies, while opposed to trading on the board as a customary policy, was of the opinion that after considering the present investment and material loss, it would be advantageous to make this commitment in the hope of obtaining a profit from the market appreciation in this list of securities. The thought, as expressed by Mr Baldwin, was that at this time, there was prevailing a low price level for sound stocks, and this trading would offer a solution to financial situations confronting the directors

(U-16-20-c)

To which Mr. Hayden remarked:

\* \* \* to smack a little of the quality of the classic prayer of the sinner: "O, Lord, let me sin just this once more"

The funds necessary to finance this speculative venture were, of course, obtained from the Union Trust Co., and the losses sustained merely increased the total liability of the corporation to the bank, while it became a frozen loan with insufficient collateral from the standpoint of the depositor. It would seem that this practice, while not continued (possibly due to the continued decline of the market) can be severely criticized for its use of the bank's funds for general market transactions which more properly are the functions of a professional trader

The Union-Cleveland corporation, while still in existence, is now in the process of liquidation, and is primarily engaged in the disposal of its security portfolio, the proceeds to be paid on the loans at the Union Trust Co. It appears to be a matter of conjecture whether or not the corporation will ever be able to completely liquidate its loans at the Trust Co. Some improvement in their financial condition has been noticed, resulting from an enhancement of the value of their investment inventory.

(U-16-21, 22)

On December 31, 1933, the book value of the securities inventory amounted to \$4,603,185 63, and the notes payable due the Union Trust Co. as of that same date were \$4,552,844.31. The Union-Cleveland Corporation security inventory as of December 31, 1933, includes a column captioned, "Market value," which adds to a total of \$3,896,169.71. This figure (\$3,896,169.71), however, includes \$727,286 48 representing the cost of the stock of the Chagrin Falls Banking Co. which is of virtually no value, and also \$1,854,100 of Western Reserve Mortgage Co. stock of which the value is entirely dependent on the mortgages now up as collateral for loans from the Reconstruction Finance Corporation. In addition to these items, \$98,061.25 of Construction Materials Corporation's 6 percent notes due March 15, 1933, are carried at cost in the "Market value" column. This latter company is in default as to principal and interest as to this issue. Eliminating the above-mentioned items from consideration and the "Market value" figure, there remains \$1,216,721.98 market value of securities as of December 31, 1933, which if sold at the prices prevailing that day could be used to liquidate the loans for which they are collateral

WALTER H. SEYMOUR,  
*Senior Examiner.*

This report based upon preliminary report and complete investigation by committee examiner J. J. Sinnott.

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Mr. SAPERSTEIN. Mr. Meehan, I show you a report entitled "Union Cleveland Corporation—Market Activities in Trust Company Stock", and ask you if that is a report prepared by the investigating staff of the committee under your immediate supervision.

Mr. MEEHAN. It is.

Mr. SAFERSTEIN. Mr. Chairman, I wish to offer the report in evidence, together with the exhibits referred to therein and which exhibits have been sent to the Government Printing Office in order to facilitate printing.

The CHAIRMAN. The report and exhibits will be received in evidence and appropriately identified by the committee reporter.

(The report entitled "Union Cleveland Corporation—Market Activities in Trust Company Stock", together with the exhibits referred to therein, were received in evidence and marked "Committee Exhibit No. 21, May 4, 1934," and are as follows:)

#### COMMITTEE EXHIBIT No. 21, MAY 4, 1934

#### MARKET ACTIVITIES IN TRUST COMPANY STOCK

The Union-Cleveland Corporation, security affiliate of the Union Trust Co., did not actively trade through any pool participation in the stock of the bank. From the time of its formation in August 1929 to December 1932 the Union-Cleveland Corporation purchased and sold Union Trust Co. stock as follows:

1,416 shares purchased direct and sold to employees  
1,363 shares purchased in the market and sold to employees  
9,320 shares purchased and 3,590 shares sold in the market, leaving a balance of 5,730 shares still owned.

(U-18-1a, 1b)

When the Union-Cleveland Corporation was formed in August 1929 it purchased direct from the Union Trust Co., 1,416 shares of the Trust Co.'s stock at a par of \$100 per share. Between August 1929 and August 1931 this full block of 1,416 shares was sold to the employees of the Union Trust Co. at the cost price of \$100 per share.

(U-18-2, 4)

During 1931 the stock of the Union Trust Co. had dropped to approximately \$60 a share and the Union-Cleveland Corporation purchased in the open market from May 20, 1931, to July 1, 1933, 1,363 shares which were sold to the employees of the Union Trust Co. on the installment plan at \$60 per share. In his letter to the employees, offering the stock, Mr. Allard Smith, executive vice president, stated:

It is our wish that you continue to hold the stock as an investment and not purchase with the idea of selling it again in the immediate future.

Practically all of the stock was taken up by the employees, as on October 31, 1933, the balance sheet of the Union-Cleveland Corporation reflects only \$475 06 as accounts receivable employees stocks subscription

As stated above, in addition to the stock purchased and sold to employees, the Union-Cleveland Corporation purchased from August 1929 (with no purchases being reflected in 1931) through 1932, 9,320 shares and sold 3,590 shares. These purchases range in price from \$107 in August 1929 down to \$75.50 in October 1930, and \$27.26 a share in June 1932. It is not known whether or not these purchases were made in any effort to maintain the market of the stock, but it is

felt they were not, as there were only 9,320 shares traded in out of a total outstanding of 914,000 shares of Union Trust Co. stock.

WALTER H. SEYMOUR,  
*Senior Examiner.*

This report based upon preliminary report and complete investigation by Committee Examiner J J. Sinnott

Mr SAPERSTEIN Mr Meehan, the last report which we have to offer today is one entitled "Union Cleveland Corporation—Tax Evasion" Will you please state whether or not that report was prepared by members of the investigating staff of the committee under your immediate supervision?

Mr MEEHAN It was

Mr SAPERSTEIN Mr Chairman, I now offer the report in evidence, together with the exhibits referred to therein, which exhibits have been sent to the Government Printing Office in order to facilitate printing.

The CHAIRMAN The report and exhibits will be received in evidence and appropriately identified by the committee reporter

(The report entitled "Union Cleveland Corporation—Tax Evasion", together with the exhibits referred to therein, was received in evidence, marked "Committee Exhibit No 22, May 4, 1934" and are as follows:)

#### COMMITTEE EXHIBIT No. 22, MAY 4, 1934

##### TAX EVASION

(U-14-1)

The Union-Cleveland Corporation was subject to a personal property tax in the years 1930 and 1931. This tax was imposed under sections 5369, 5404, 5404-1, 5405, 5406, 5387-1, of the general code of Ohio. This tax was in effect only in these 2 years, 1930 and 1931, a different form of taxation being substituted for the year 1932 Taxable under these sections were various classes of assets, such as Cash, accounts receivable, merchandise inventories, and investments (bonds and corporate stocks) The provision of the law provided that accounts payable could be used to reduce accounts receivable, but in no other way could liabilities be used to reduce assets.

(U-14-2)

The Union-Cleveland Corporation, in accordance with the law, filed its return for the year 1930 on February 27, 1930, and for the year 1931, on February 19, 1931. A tax of \$27.69 was paid on the return for the year 1930, but no tax was paid on the return for the year 1931 In the year 1931 the tax law was revised, and there apparently was little effort made to collect taxes due for that year in small amounts The Union-Cleveland tax, if it had been paid upon the basis of its return, would have been approximately \$21 06.

(U-14-2a-3a)

The Union-Cleveland Corporation was organized to take over the security business of the Union Trust Co. The nature of its business

required a substantial investment in securities. The return for the year 1930 shows it owned securities in the amount of \$2,198,769.80, and that these securities were listed as preferred and common stocks of corporations domesticated in the State of Ohio, \$1,978,784.14, and United States Government bonds and Treasury notes totaled \$19,985.66. Similarly, in 1931, it owned \$3,147,284.91, distributed as preferred and common stocks of Ohio corporations—\$2,989,869, and Liberty bonds—\$157,415 91 Under the provisions of the code of the State of Ohio, referred to above, securities domesticated in the State of Ohio, and United States securities were exempt from this personal property tax. The corporation on the face of its return was, therefore, practically exempt from tax on its personal property.

(U-14-16a, 16h; U-14-5, 6, 9, 10)

The above picture does not represent the true situation. In order for the Union-Cleveland Corporation to place itself in the position wherein it paid no tax or a very nominal tax, it was necessary to arrange with the Union Trust Co to purchase from it on the last day of the years involved, all of its taxable securities. This transaction was brought about by the Union-Cleveland Corporation's billing the Union Trust Co. on December 30, 1929, a varied assortment of stocks and bonds of corporations domesticated without the State of Ohio, in the amount of \$1,762,118.82 and \$236,762 93 These totals, decreased by a sale on the same date, made the total purchases by the Union Trust Co. of taxable securities in the amount of \$1,997,972.37.

(U-14-7, 8)

This transaction relieved the Union-Cleveland Corporation of all its taxable securities, and placed them in possession of the Union Trust Co. The Union Trust Co. was not involved in any tax situation similar to the Union-Cleveland Corporation, hence this transaction had no effect from the tax standpoint upon them. The delivery of a check to the Union-Cleveland Corporation in payment of these securities would presumably place them in a position where they would have cash on their balance sheet instead of securities. This is not the case, however, because of the fact that the Union-Cleveland Corporation was a large borrower of the Union Trust Co, and immediately upon receipt of this check paid to the Union Trust Co. the amount of \$1,600,000 on December 30, 1929, and \$150,000 on December 31, 1929. It will be seen that the above transaction reduced the asset of securities and decreased loans payable as a liability. The transaction in no way affected profit and loss or net worth.

The Union Trust Co. reflected the transaction by increasing its investments and decreasing its loans receivable in the amounts stated above. The transaction also carried no element of profit and loss to the Union Trust Co. and in no way affected its net worth.

The Union-Cleveland Corporation on December 31, 1929, was, therefore, in a position to file a balance sheet as part of its personal-property tax return, showing that it owned no taxable securities and was only taxable for the small amount of cash on hand at that time.

(U-14-11)

The transaction having served its purpose, insofar as the tax situation was concerned, the Union Trust Co on January 2, 1930 sold back to the Union-Cleveland Corporation the same securities that it bought on December 29 and December 31, 1929. A check of \$1,997,972 37 was given to the Union Trust Co in payment. On this same date the Union Trust Co loaned the Union-Cleveland Corporation \$1,900,000. After this transaction the Union Trust Co and the Union-Cleveland Corporation were in exactly the same position they were prior to December 29, 1929. If this transaction had never been carried out the Union-Cleveland Corporation would have been taxable in addition to the cash shown to have been on hand December 31, 1929, on an amount of \$1,997,972 37, which at the tax rate of 27 1/2% a \$100 would have amounted to \$54,244 94. This transaction was purely a measure to evade taxation.

(U-14-13a, 13f, U-14-12, 14)

A similar transaction occurred at the end of 1930. On December 31, 1930, the Union-Cleveland Corporation billed the Union Trust Co securities consisting of bonds and stocks of corporations, in the amount of \$2,782,130 90, and was taken up on the books of the Union Trust Co at the same figure. The check of the Union-Cleveland Corporation was deposited by the Union Trust Co on December 31, 1930, in the amount of \$2,782,130 90. The Union-Cleveland Corporation on receipt of this cash paid the Union Trust Co as a reduction on its loan account the amount of \$2,720,600.

Again this transaction relieved the Union-Cleveland Corporation of its taxable securities and disposed of the cash received in payment therefor, by a reduction in its loan, and placed its balance sheet in such a position that the only taxable items appearing thereon were a small amount of cash on hand at that time.

(U-14-15)

January 2, 1931, the entire transaction was reversed; the Union-Cleveland Corporation purchased from the Union Trust Co the same securities and paid therefor an amount of \$2,782,246 86. On this same date the Union-Cleveland Corporation borrowed from the Union Trust Co in the amount of \$2,740,000. Both the Union-Cleveland Corporation and the Union Trust Co, after this transaction, were placed in exactly the same position as they were prior to December 31, 1930.

If this transaction had not been consummated, the Union-Cleveland Corporation would have been liable for taxes on an additional amount of \$2,782,130 90, which at the rate of tax in effect at that time would have amounted to \$76,786 82 in taxes. This transaction was purely a method to evade taxation.

In addition to the tax features mentioned above, other features present themselves in connection with this transaction which places the Union Trust Co. in a position of buying not only illegal securities but also of purchasing these securities from the Union-Cleveland Corporation at a value in excess of the current market value at the time of the purchase.

The "Section 710-111-Investments", which is a part of the laws of the State of Ohio relating to banks and trust companies, does not permit a bank to purchase stocks of corporations. The section of the laws stated above does not specifically state that stocks cannot be purchased, but it does state the class of securities that the bank can purchase.

It will be noted from the invoices furnished the bank by the Union-Cleveland Corporation that there are substantial amounts of stocks of corporations appearing on this list.

To show that the bank paid the Union-Cleveland Corporation more than the market value of the securities on the date of purchase, the following tabulation is submitted:

	Shares	Purchase price per share from Union-Cleveland Corporation <sup>1</sup>	Market price per share Dec 30, 1929 <sup>2</sup>
American Cyanamid.....	1, 815	\$30 00	{High \$28 625 Low *25 375
Baltimore & Ohio R R.....	500	125 25	{High 115 375 Low 114 00
Chesapeake & Ohio R R.....	1, 000	214 175	{High 200 75 Low 200 00
Electric Storage Battery.....	1, 000	81 045	{High 69 25 Low 68 00
Lehman Corporation.....	500	104 00	{High 78 00 Low *67 00
Manhattan Dea born.....	2, 000	51 00	{High 37 00 Low *32 00
New York Central R R.....	1, 000	186 851	{High 167 25 Low 166 25
Penroad Corporation.....	6, 000	16 50	{High 13 625 Low *13 00

<sup>1</sup> These prices included in Union-Cleveland Corporation's invoice dated Dec 30, 1929 versus the Union Trust Co., amount \$1,095,241 32

<sup>2</sup> These prices obtained from Commercial and Financial Chronicle, vol 130, pt 1 Those marked with an asterisk are the weekly range for the week Dec 28, 1929, to Jan 3, 1930 Those unmarked are prices as of that day, Dec 30, 1929

While the Union Trust Co apparently received no benefits from this transaction and acted its part only to save taxes for the Union-Cleveland Corporation, it did indirectly receive a benefit in the nature of securing a better class of asset at December 31 of each year in question, than the asset which it would have had, provided the transaction never had occurred. Otherwise, its advances to an affiliated company in the nature of loans was changed to an asset of investments of high-grade securities.

This would come under the classification of "window dressing." Whether it was intended as such by the Union Trust Co. has not been established, but there is no question but what it materially assisted in building up a more presentable balance sheet at the end of the years 1929 and 1930

WALTER H SEYMOUR,  
*Senior Examiner.*

This report based upon preliminary report and complete investigation by Committee Examiner Frank H. Ensign.

Mr. SAPERSTEIN. Mr. Chairman, I believe that is all that we have to offer this morning.

The CHAIRMAN. And I believe that concludes the Cleveland investigation. Are there any questions?

Senator ADAMS. I have no questions.

The CHAIRMAN. Is there anything further this morning, Mr. Saperstein?

Mr. SAPERSTEIN. Nothing further, Mr. Chairman. That concludes the presentation of data with regard to the Cleveland bank situation.

The CHAIRMAN. Very well. That is all, Mr. Meehan. The subcommittee will stand adjourned subject to the call of the chairman.

(Thereupon, at 10:50 a.m., Friday, May 4, 1934, the subcommittee adjourned subject to the call of the chairman.)