Vol. 1

The United States Senate

Report of Proceedings

Hearing held before

Special Subcommittee

of the Committee on Finance

H. R. 4182

EXECUTIVE SESSION

June 1, 1955

Washington, D. C.

WARD & PAUL
1760 PENNSYLVANIA AVE., N. W.
WASHINGTON, D. C.

NATIONAL 8-4266 8-4267 8-4268 8-4269

C O N T E N T S

STATEMENT OF | PAGE

Paul W. Walter,
Walter and Haverfield, Cleveland, Ohio,
Counsel for the Highway Construction
Company, Accompanied by:
Francis E. Kane ... 4

Colin F. Stam,
Chief of the Staff of the Joint Committee
of Internal Revenue Taxation, Accompanied
by:
Bryant C. Brown,
Attorney on the Staff ... 16

H. R. 4182

- - -

Wednesday, June 1, 1955

United States Senate,
Special Subcommittee
of the Committee on Finance,
Washington, D. C.

The committee met, pursuant to call, at 10:30 o'clock a.m., in Room 312, Senate Office Building, Senator W. F. Bennett (chairman of the subcommittee) presiding.

Present: Senators Bennett (chairman) and Williams (Delaware).

Also Present: Senator Bender.

Elizabeth B. Springer, Chief Clerk.

- - -

Senator Bennett. This is a meeting of a special subcommittee of the Finance Committee appointed to consider H. R. 4182. The subcommittee consists of Senators Williams, Frear and Bennett as Chairman.

The purpose of the hearing is to enable the subcommittee to understand the problems involved and make it possible to make a report to the full committee.

The Highway Construction Company, for whose benefit H. R. 4182 was introduced and has been passed in the House, is represented by Paul W. Walter and Francis E. Kane.

The record should also show the presence of Senator George H.

Bender of Ohio, author of the bill in the Senate for which the hearing is held.

The record should also show the presence of Mr. Colin F. Stam, Chief of the staff of the Joint Committee on Internal Revenue Taxation, and Mr. Bryant C. Brown, attorney on the staff of the Joint Committee.

(The bill referred to, H. R. 4182, is as follows:)

COMMITTEE INSERT

Senator Bennett. Now, Mr. Walter, the Chair acknowledges receipt of a rather complete statement in behalf of the Highway Construction Company, in reply to the report of Robert T. Stevens, Secretary of the Army, which will be made a part of the record at this point.

(The statement in behalf of the Highway Construction Company in reply to the report of Robert T. Stevens, Secretary of the Army, is as follows:)

Senator Bennett. Senator Williams and I will be happy to have you take us through the statement in any way you please.

At this point the record should show that Senator Frear is not able to be present at this meeting because of the death of a close friend in Delaware. He is there today acting as pallbearer at his funeral.

Mr. Walter, you may proceed.

STATEMENT OF PAUL W. WALTER

WALTER AND HAVERFIELD

CLEVELAND, OHIO

COUNSEL FOR THE HIGHWAY CONSTRUCTION COMPANY

ACCOMPANIED BY: FRANCIS E. KANE

Mr. Walter. Thank you, Senator.

The background of this case stems back into 1936. The Highway Construction Company was originally incorporated in the early twenties, and was engaged primarily in the paving and construction of roads and bridges and sewers. It had developed a very large business, and most of its business was with the State of Ohio.

In the early 1930s a conflict arose as to whether or not certain payments had been made to the Industrial Commission, which was a method of insuring employees in Ohio at that time. The argument went on for a number of years, and then under the provisions of the Ohio law, Section 1465-97, without notice to the Highway Construction Company the then Attorney General had a receiver appointed in the Franklin County Common Pleas Court.

That receiver immediately move in to take full possession of the Company's assets. Under Ohio law, Section 1465-75a, there is a penalty provision permitting ten times the amount claimed to be assessed as damages. The claim filed by the Attorney General was for $170,520.22, which is shown on our Exhibit C attached to this report. The assessment was, of course, ten times that much added to the original claim, which brought it in the neighborhood of 2,000,000 ~~$1,800,000~~.

In order to circumvent that receivership and to keep the company going, the Horvitz brothers, who were the principal stockholders in the Highway Construction Company, had a meeting of their board and decided to go into voluntary bankruptcy under Section 77-B. Exhibit C is a copy of the letter which was sent out to the creditors and claimants of the Highway Construction Company.

The whole matter then moved out of the Franklin County Common Pleas Court into the Federal court for the Northern District of Ohio, Eastern Division. That is where this story begins.

Senator Bennett. May I ask a question at this point. Are the Horvitz brothers for all practical purposes the only stockholders of the company?

Mr. Walter. Yes, they are the only stockholders.

Senator Bennett. The others simply hold qualifying shares?

Mr. Walter. That is right. These are the principal shareholders of the company, with S. A. Horvitz being the majority stock holder and Isadore Horvitz being the minority holder of the stock.

Senator Bennett. Proceed.

Mr. Walter. Now, as required under 77-B a plan for reorganization was presented. This plan contemplated that a new corporation called the Horvitz Company would be incorporated so that it could be properly qualified under the provisions of Ohio law, Section 1206, which requires that a corporation has to have certain features in order to qualify for bidding for Ohio highway projects. So the Horvitz Company was incorporated and was the one qualified to carry on construction work under Ohio law.

Then, to take care of the situation so that the Highway Construction Company could work itself out during this period of 77-B, an agreement was made. That agreement is exhibit B. That agreement was entered into between the Horvitz Company and the Highway Construction Company. It provided that the assets and personnel of the Highway Construction Company could be used by the Horvitz Company, and that a minimum payment of $5,000 per month would be made by the Horvitz Company for rental of equipment of the Highway Construction Company, and in any event one-half of any profits realized by the Horvitz Company in its operations would be payable to the Highway Construction Company for the purpose of carrying out the 77-B reorganization.

All this occurred back in 1936 and 1937. The reason I point it out is to refute the contention of the Army and the renegotiation people that this double corporate set-up was done to get around the Renegotiation Act.

That is the reason we are going into detail on this plan, and have set up the various exhibits.

That plan of reorganization went into effect, and eventually a special master, Mr. Wood of the Cleveland Bankruptcy Court, held that the claim of the State of Ohio was without merit, and reduced the size of that claim -- which was pretty close to $2 million -- down to less than $2,000.

However, the State of Ohio appealed that decision in the Circuit Court of the Sixth Circuit in our state. That was the Federal Court. That case went on for a number of years.

In the meanwhile the amended plan of reorganization was adopted by the Federal Court, and the Company continued until about 1945, I believe, in that state.

During the early days of the Second World War a lot of construction was contemplated and bids were taken. The Highway Construction Company furnished the equipment to the Horvitz Company. The Horvitz Company made the bids, and therefore the Highway Construction Company was in the role of a sub-contractor.

The first contract was taken 17 days before the 1942 Act was adopted.

At the time that the renegotiation began, the Horvitz Company was completely cleared, renegotiations were completed, they were given a certificate of clearance, and the Highway Construction case was still pending.

The Highway Construction case was pending at the time that the

1943 Fiscal Appropriation Bill was up. Finally, in 1943, in February, that Act was adopted which amended the original 1942 Act.

Senator Bennett. May I interrupt you at this point. You say the Horvitz Company was completely cleared. You are referring to their contracts entered into prior to the adoption of the 1943 Act?

Mr. Walter. That is right.

Senator Bennett. Did they have any contracts after the 1943 Act?

Mr. Walter. They had contracts after the 1943 Act, but they did not apply to any --

Mr. Kane. But they were given clearance in 1943.

Senator Bennett. In other words, there is no action pending now against the Horvitz Company?

Mr. Walter. That is right, they are completely clear. The only action pending is this question with the Highway Construction Company.

Now, when the 1943 Act was adopted, there had been previous to that, under the 1942 Act, a method by which judicial hearings were granted in these cases. The power for renegotiation at that time was put in the secretaries -- it is important that this be followed very carefully -- the power to renegotiate was given to the secretaries, and they in turn were given the power to delegate that renegotiation authority.

They set up boards for that purpose. Now, those boards were

entirely different from the board provided for in the 1943 Act, which took the power away from the Secretary and put it into a board which was set up by law, which was set up by the Congress.

When the 1943 Act came up there were a number of contracts which were then renegotiated and were in the process of renegotiation by the Secretary under his delegated power to the board that he had created. Those were pending at the time the 1943 Act was adopted.

So Congress, when it adopted the 1942 Act, was very careful to give a judicial hearing to each taxpayer involved in this sort of a matter.

If you will look at our statement of position on page five you will find that when the original Renegotiation Act of 1942 was set up on the floor for passage in the Senate, the House had adopted a bill which took any judicial review out of the law. That was passed by the House.

In other words, it made the Secretary the final word on renegotiation.

The Senators, however, were concerned about that, and felt that some judicial review should be granted. Senator McKellar had it taken out of the House-passed bill the language which prohibited any review by the courts. On page five you will note what happened on the floor of the Senate on April 7, 1942, when the bill was reported out.

Senator Danaher asked Senator McKellar this:

"Is it the Senator's understanding that at that time the contractor has a right to offer in a court whatever defenses are proper -- in computing profits, for example, to offer those elements of cost which he contends are not excessive?

"Mr. McKellar. Beyond controversy, he has such rights.

"Mr. Danaher. When the bill first was brought to us from the Senator's committee, it would have denied that right.

"Mr. McKellar. It would have denied that right; and it was upon the motion of the Senator from Connecticut, as I recall, that the provision was stricken out.

"Mr. Danaher. We amended it so that the contractor had a right --

"Mr. McKellar. So that the contractor had a right to sue, and the government had a right to sue.

"Mr. Danaher. And there is not any longer any question in anybody's mind that the contractor does have a right to go into court to determine whether a proper measure of damages, let us say, has been applied in a particular case?

"Mr. McKellar. None whatsoever."

Now, the section of the law about which they were talking is this:

"The Secretary may bring actions on behalf of the United States in the appropriate courts of the United States to recover from such contractor of subcontractor, any amount of such excessive profits actually paid to him and not withheld or eliminated by some

other method under this subsection."

(4) That contemplated that if the Secretary brought a suit in the District Court the taxpayer would have his day in court to defend himself and put on his affirmative position.

Now, in this particular matter the contract was negotiated and was processed under the 1942 Act. Any rights that they had to go to court were given to them under that particular act.

In the 1943 Act that was changed. For the first time a method of relief was granted to go to the Tax Court. Any taxpayer having a contract which became effective after July first, 1943 was given the exclusive remedy of appealing within 90 days after decision by the board -- the board, now, was set up by law -- to the Tax Court. If he failed in that appeal, he was forever barred. That appeared in the law for the first time.

But that law also very carefully protected the rights of people who had matters coming to a head before June 30, 1943. This was the place where we believed the Court, and the Supreme Court in the Lichter Case, got confused.

Justice Douglas in his dissent from the majority opinion says this -- I am reading now from page 7 of our statement -- Justice Douglas, dissenting to the majority opinion, said this -- and this is the nub of this case:

"Section 403(e)(1) relates to orders of the Board" -- and that is the Board created by law, by Congress -- "and provides that they may be reviewed by the Tax Court. And Section 403(c)(1) provides

that in the absence of the filing of such a petition with the Tax Court, the orders of the Board 'shall be final and conclusive'.

"We are concerned here not with orders of the Board but with an order of the Secretary. (The order in the Highway Construction Company Case was by the Secretary). Section 403(e)(2) provides that those orders, too, may be taken to the Tax Court. But Section 403(e)(2) by its terms makes inapplicable those provisions of the 1943 Amendment which are not made applicable as of April 28, 1942, or to the fiscal years ending before July 1, 1943. Thus, Section 403(c)(6) limits Subsection (c) 'to all contracts and subcontracts, to the extent of amounts received or accrued thereunder in any fiscal year ending after June 30, 1943.'"

Now, that is the Section which limits the appeal to the Tax Court. You will note it very carefully says in the law "fiscal years ending before July 1, 1943."

"Hence it is clear that the provision of Section 403(c)(1) which makes the orders of the Board final and conclusive in absence of filing of a petition with the Tax Court is not applicable here. Orders of the Secretary, at least as respects 1942 business, are therefore treated differently than orders of the Board, concludes that the purpose was to leave contracts and contractors who fall in that category with the right of access to the courts which they had enjoyed prior to the Revenue Act of 1943. In those cases jurisdiction of the Tax Court may be invoked at the option of the petitioners."

But it left them the choice of defending if the Secretary sued them.

When you read the Act you will find in several places Congress very carefully discriminated between businesses which had problems coming to a head in the fiscal year beginning July first, 1943, and businesses which had completed their contracts before June 30, 1943, because they had handled them differently, there were new exemption provisions, and so forth, which they did not intend to make retroactive.

So Congress very carefully discriminated in this situation.

Senator Bennett. Just for the record, the contract on which this claim is based, you said, was started 17 days before the 1942 Act was passed?

Mr. Walter. Before the 1942 Act was passed.

Senator Bennett. Was it completed before the 1943 Act, before July 1, 1943?

Mr. Walter. It was completed before July 1, 1943. So it fits perfectly into the discrimination Congress set up in treating these cases.

Senator Williams. Under the law in effect prior to this time, what recourse did you have in the courts?

Mr. Walter. Two kinds of recourse: 1. To let the Secretary make his determination and refuse to pay and have the Secretary come into your district court in your own bailiwick and sue you; 2. To come into the court here in the District of Columbia and

sue the Secretary here. Now, the taxpayer elected to have the claim asserted and then have the Secretary come into his own home, into his own district court and sue him, where he could defend. It should be noted that the Secretary never made one overt act to sue him, and waited for five years, waiting for the Lichter Case to be decided.

It was only after the Lichter Case was decided that they came to the District Court and sued and asked for judgment and cited the Lichter Case.

That was what was appealed in the Circuit Court of Cincinnati in this particular case.

Now, strangely enough, when they sued in the District Court in Cleveland, they used the authority of the 1943 Act and not the 1942 Act. We raised that question in the Circuit Court, and the Circuit Court did not answer the question. We contended that the only way he could have sued was under the law passed by Congress which gave jurisdiction to the District Court. The Circuit Court just avoided the decision on that point, because it would have differentiated this case completely from the Lichter Case. So that question has never been satisfactorily answered. It was out position that the case should have been remanded back from the Circuit Court to the District Court with orders that the petition be amended to properly state the cause of action. That was never settled by the court.

So there has never been a time when the Highway Construction

Company case, the merits of it, have ever been heard by any judicial body. We set back on our rights -- and not only Justice Douglas, but many other learned legal authorities and attorneys held that you have a clear right under the 1942 Act to sue and defend yourselves. That position was taken by many judges.

Parker Fulton, who was attorney for this company at that time, gave Mr. Horvitz the opinion that he did not have to take an affirmative action and did not have to go to the Tax Court. Justice Parker Fulton is one of our most esteemed attorneys in Cleveland, and was honored by appointment to the Common Pleas bench of our county because of his outstanding legal ability. But there is grave room for doubt, and Congress certainly intended to give the taxpayer his day in court.

Now, the government lay back and did not sue the Highway Construction Company, left it pending for four years until the Lichter Case was decided by the Supreme Court in 1948. I think the Supreme Court went off slightly by not doing what Justice Douglas did -- I will admit it takes some time to show it, and we spent a lot of time showing that there was a difference in the 1942 Act and the 1943 Act. The 1943 Act, if the Supreme Court was right that the Congress could retroactively do these things, then everything that Congress did in the 1943 Act was retroactive. And that was just ridiculous, they changed the exemptions, the method of treatment of many of these things. I say if the law is retroactive, the Highway Construction Company could be out completely,

because they were completely exempted from any renegotiation here.

Senator Bennett. Mr. Stam, was the same problem of break-off between the 1942 Act and the 1943 Act involved in the Lichter case?

STATEMENT OF COLIN F. STAM

CHIEF OF THE STAFF OF THE

JOINT COMMITTEE OF INTERNAL REVENUE TAXATION

ACCOMPANIED BY: BRYANT C. BROWN, ATTORNEY ON

THE STAFF

Mr. Stam. Mr. Brown.

Mr. Brown. The Lichter case involved profits of 1942, and apparently Highway made the same contention, that the District Court had jurisdiction to review, as in the Lichter case.

Senator Bennett. And the decision of the Supreme Court was that they did not?

Mr. Stam. Let me ask you this. I am a little hazy on the legislative history of the 1943 law. In spite of a lot of opinion in Congress I was told at the time that you didn't get an adequate review in the District Court under the 1942 Act. I mean, there was some question as to whether or not the kind of review that you would get there even in defending yourself to show whether or not the Secretary's action was arbitrary.

It seemed to me that what we were trying to do in the 1943 Act was to lay down some definite method of review which was before the Tax Court in which the taxpayer could get a review on the merits, because there was strong doubt as to whether under the 1942 Act

the taxpayer could do very much more in the Court than to show that the Secretary's action was arbitrary.

Mr. Kane. Not according to Senator McKellar and Senator Danaher on the floor.

Mr. Stam. He was not in charge of the bill, was he?

Mr. Walter. Yes, he was in charge of the bill.

There is no doubt that at the time the 1942 Act was passed that the Senate was convinced, by the amendment they made by deleting the clause that no judicial remedy was to be afforded, that every taxpayer would have his day in court at some point in the process, either by an affirmative suit by the Secretary involved in his own District Court or by a suit by the taxpayer in Washington.

Senator Bennett. Did the Senate position prevail over the House position?

Mr. Walter. It prevailed. And the adopted bill had the deletion of the limiting right of a day in court.

Senator Williams. Are you sure Senator McKellar was in charge of that bill?

Mr. Walter. I assumed that he was, because at that time he was leading the discussion and answering all questions on the floor debate. So I assume that he must have been in charge of the bill.

Senator Bennett, What committee was that handled in?

Mr. Brown. The Appropriations Committee.

Senator Bennett. He was chairman of the Appropriations Committee.

Senator Williams. What put that bill under the Appropriations Committee?

Mr. Stam. It came in as a sort of separate amendment to the Appropriations bill. And then the tax committees got hold of it and tried to revise it.

Senator Williams. It was an amendment which really should have come out of the Finance Committee.

Mr. Walter. That is right. It should have been a legislative bill standing on its own merits. But in order to get it in speedily they attached to to the 1942 bill. It came in as an amendment some time in February or March of that year to the Appropriation Bill that was coming in.

Mr. Stam. I think that was called the Case Amendment, former Senator Case.

Mr. Kane. They involved identically the same sets of facts. The Lichter case happened to be the test case. In the Highway Construction Case the government said, "We will run out the Lichter case first." And the Highway Construction Company had no knowledge of what was going to happen in this period.

Senator Williams. In the event Congress decided to give you the right to take this into Tax Court, would you have any objections on having the bill amended to give the government the same right to review the Horvitz Company in connection with making the

decision on this?

Mr. Walter. Yes, we would object, because of this reason -- several reasons, in fact. First, the Horvitz Company is a separate corporate entity.

Senator Williams. But these contracts were related to a certain extent?

Mr. Walter. No, only to this extent, that the renegotiating offices found that the payment of the rental to Highway Construction was fair and reasonable, and allowed a renegotiation procedure. They have decided that case, they have made their finding, and it has been closed. It is a separate corporation. The adjustments have been made and the case has been closed. To confuse the two, in my opinion, is merely a method of intimidating Highway Construction Company in this matter. The Highway Construction case should stand on its own feet, and the government once ruled it should. The Secretary raised it.

Senator Williams. I don't know that he did. The point that I raised would be that if the Tax Court in its wisdom decided that they should review both and give some consideration to the other related case, the bill would have to be so amended to give them that authority.

Mr. Walter. I fully agree that it would have to be amended, because the Tax Court has no authority to review any action by the government.

Senator Williams. The point I am raising is, because it was

raised in the committee, you would just as soon have no bill as to have that?

Mr. Walter. That is right, because it would completely defeat the purpose. We want a hearing on the Highway Construction case.

Senator Williams. Would there be any objection to not reopening the Horvitz case but merely giving them the right to consider that in reaching their determination.

Mr. Walter. We asked at the time that these two cases were being considered to have them considered together, and the government refused to do it, the government refused to give the company the benefit of any joint consideration at that time.

Mr. Kane. They had that right, and they wouldn't do it.

Senator Williams. Of course, you had a right, and you let that slip.

Mr. Walter. We didn't have a right to have it considered together.

Senator Williams. But you had a right to file an appeal, to go to the Tax Court.

Mr. Walter. If we had gone into Tax Court the Horvitz matter could not have been considered.

Senator Williams. I am not raising that, I am just asking you if you would have any objection to having this bill amended so that they could take that into consideration when they made a decision on this case, not opened --

Mr. Stam. Not increase the excess of profit of the Horvitz Company, but merely to consider the two cases together for the purpose of determination.

Senator Williams. That is what I mean, not to reopen the Horvitz case but just to have a right to review it, consider it together in making a decisions.

Mr. Walter. The only thing fair thing would be this. The renegotiating office at one time set the amount paid to the Highway Construction Company was reasonable, and allowed it as a credit to the Horvitz Company in figuring its renegotiation base.

Now, I would think that having once done that the matter is closed. I can see no advantage to reopening that part of the case on either side.

Senator Williams. The point we are raising is, we are considering reopening something that has been closed. And the question that came in my mind is whether a man can reach a fair decision on the Highway Construction matter without taking into consideration its relation to the other, not necessarily reopen it from the standpoint of raising the assessment or lowering it in the Horvitz case, leave that as it is, that has been settled, but at least consider that in the review.

Would you object to such an inclusion?

Mr. Walter. I would object to the matter in principle. I think that it does not clarify the issue, it only seeks to confuse it. And I don't mean to seem arbitrary, but I think this, that

that case was considered on its merits and closed. This one has never been considered on its merits.

Senator Bennett. Does your statement here demonstrate what you have said, that the renegotiation authority considered that those charges were fair and reasonable?

Mr. Walter. Yes.

Senator Bennett. That is contained in this statement?

Mr. Walter. Yes.

Senator Bennett. Could you find it for us?

Mr. Walter. Yes.

You will find it on the bottom of page two and the top of page three. If there was any basis for the claim --

Senator Bennett. What I am trying to get at is, can you give us reference to the decision by the government that they considered those charges fair and reasonable?

Mr. Walter. Yes. I can confirm that with their findings.

Mr. Kane. And copy of the clearance. I probably have that letter here. I will have to get some copies made.

Mr. Walter. All right.

Senator Bennett. In other words, this is your analysis?

Mr. Walter. That is right.

Senator Bennett. But I would like to go back to the original source.

Mr. Walter. We will give you a copy of that if we have it with us. If we don't we will furnish it to you.

Mr. Kane. They gave us a letter in 1943 clearing the Horvitz Company.

Senator Bennett. Did they make specific references to the charges of the Highway Construction Company?

Mr. Walter. I think we can go into detail and show you that they allowed that as a reasonable claim. I think we can support that.

Senator Bennett. I think that is vital to this question that Senator Williams has raised. It is one question, did they clear you with the understanding that they would move immediately to Highway Construction Company and capture there what they didn't capture with Horvitz --

Mr. Walter. That is exactly what they did, that is the reason they wouldn't consider the two together. Highway Construction was not finished until 1945, that is when the Secretary finally mad his ruling, almost two years after they closed Horvitz.

Senator Bennett. This may be a little bit hard for me to understand, but it seems to me that it is one thing to claim that they cleared Horwitz as a completely separate entity, and closed that, and then moved to consider another completely separate entity the Highway Construction Company, on the one hand to consider that they were operating on the theory that there was a relationship between the two of them, and that when they cleared Horvitz by which they hoped to recapture from Highway Construction Company.

Mr. Walter. I can assure that Horvitz was considered separate

ly, and closed as a separate entity, and they then proceeded to Highway Construction, and that was cleared up.

Senator Bennett. Will you also show us, if not in this statement in some other material you can furnish, that they actually refused to consider the two together?

Mr. Walter. Yes, we can show you that too. We can give you that information, because that is the reason we tried to have them take both cases at once, and they refused to do it, they went ahead and closed Horvitz and kept Highway Construction open, and it was two years later when they closed Highway Construction. We can give you the information.

Senator Bennett. I would like to have it based on the decisions or documents from the Department rather than any other.

Mr. Walter. Here is a notice of clearance from the War Department of the Horvitz case. This is the final --

Senator Bennett. Is there any reference in it to Highway Construction?

Mr. Walter. We will have to go back to the worksheets.

Mr. Kane. You are asking for some written evidence that they tied these two together. I don't know --

Senator Bennett. That they refused to tie them together.

Mr. Kane. I don't know that there is any written evidence of that.

Mr. Walter. As I recall, our written case in the Circuit Court of Appeal, there was some correspondence -- I think we can

probably dig it out -- in which they refused the clearance of both at the same time. I think it was about the time this one came along when they kept the Highway case open. I can check back.

Mr. Kane. I know it was present, but I don't know if it was in writing.

Senator Bennett. The question has been raised and some consideration was given to it in a general discussion before the whole committee, before this subcommittee was assigned to the problem. So I feel an obligation to go back to the whole committee and make a report on that fundamental question.

Mr. Walter. I think that is fair. But I think that there is absolutely no connection between the two cases, that the government never had a right to take the case to Tax Court, the government had control of the situation in the Horvitz case and the Highway Construction case, and they decided to split the cases and consider them separately in the first instance.

Senator Bennett. We would like to have evidence that they made that decision.

Mr. Walter. If we don't have that in our files, there must be something in the government files that would show that.

Mr. Stam. It seems a little peculiar that no officers of the Highway Construction Company received any salaries from the Highway Construction Company, it was all received from the Horvitz Construction Company, these officers received their salaries from the Horvitz Company.

A lot of expenses and all these things were taken by the Horvitz Company rather than by the Highway Company.

Mr. Walter. I am glad you raised that, because that is the reason we attached here, that there was no attempt to deviate from or circumvent the Negotiation Act, this was began in 1936, and under the order of the court they were not permitted to take any profit, and that did not end until 1945.

So it was impossible for Highway Construction under the court order to pay salaries or any profits to the Horvitz people. That is factual, there was none paid to them during this entire period of time. Under the provisions made, one half of the profits of Horvitz were to go to Highway as rental for this equipment.

Now, Highway can stand on its own feet, because its only source of income was the amount received from Horvitz and the profit that they got, their half of it. So when they closed off the Horvitz Company case they had come to a determination of what their profits would be and were entitled to be, and they had allowed the payment from Horvitz under these contracts and court orders to Highway Construction as a legitimate item of expense on that renegotiation.

That is the reason I stand firm on the fact that they are two different matters. Then this statement of profit that came over to the Highway Construction for payment of this rental became a separate renegotiable feature. It is there standing on its own, subject to sustaining by the taxpayer if he can in the Tax Court

W27

as to whether or not he is entitled to a different tax base or a different tax determination. And it is very clear that that is the picture. We start from that premise, that it came from that source.

Here we are claiming that we have a right to a different determination than was made by the Secretary under these circumstances.

Mr. Stam. Could I raise this question. It just seems to me that it is a matter of equity insofar as the Secretary is concerned, if you look at the gross amounts you will find that a certain portion of the salaries just as a matter of equity should be attributed to the Highway Company, and a certain part of it ought to be attributed to the Highway Company, because they actually own the property.

Mr. Kane. They got all the depreciation, Highway. They couldn't pay salaries because the creditors of the Highway Construction Company were objecting.

Mr. Stam. I mean, when you are looking at the picture as a whole to see whether there were excessive profits, do you think it would do any harm to say to the Tax Court that they could consider this whole picture in making the determination as to whether the Highway Company had realized excessive profits, but they could not open up the Horvitz case?

Senator Bennett. How can the taxpayer consider the Highway Construction Case without taking into consideration --

28

Mr. Kane. That is the point I was going to make. How could you stop them? They could do it anyhow.

Senator Bennett. The Horvitz Company was their only source of income.

Mr. Walter. That is right.

Senator Bennett. It seems to me that it would be impossible for them to consider the one --

Mr. Walter. They are going to have to start from the premise that all the money came from Horvitz. And the first question they are going to ask is, was this amount found to be reasonable by the renegotiating officers when they allowed this amount to the Highway Construction. That is where we start from.

Mr. Kane. I don't think that has to be any part of the legislation.

Mr. Stam. I think there was some question as to whether or not they would have the jurisdiction to look into the case that was before them.

Senator Bennett. I think it is vital to the present situation that if possible we be able to find out the attitude of the renegotiators with respect to the relationship between these two companies.

Mr. Walter. May we ask the Senator to do this for us, if it is within your province: One, if we can not bring you written evidence of that, would it be possible to ask the renegotiators to supply their departmental conclusions to you, because they came to that conclusion that they would separate them and not consider

them together.

(11) I am sure in my own mind that we have something that will support us, but I know that the answer was given to the Horvitz Company and the Highway Construction Company that they would not consider the case together, although requested to do so by the taxpayer, and they held the two cases apart in the whole renegotiating procedures, and that they gave clearance to the Highway Company, and it was almost two years later that they gave the answer to the Highway Construction Company.

Senator Bennett. Can you at least supply us with the evidence that the taxpayer requested joint consideration? That ought to be within your power.

Mr. Walter. We will check through our files on that and give you the background or affidavits to support it, one or the other.

Mr. Brown. I think that the Army Secretary's letter shows that one of Highway's contentions was that the two companies should be considered as a partnership.

Senator Bennett. Are you talking about this latest letter?

Mr. Brown. The latest letter -- I don't know whether it was the latest, the letter that the full committee had before it.

Mr. Walter. The February 18 letter.

Senator Bender. May I say something at this point. Two years ago, or a year ago, I introduced this bill in the House, and actually I am a little more conversant with it than I appear. Because of lack of time a person doesn't have an opportunity to --

we had three committees conducting hearings simultaneously -- but we went all through this with the Committee on the Judiciary, with the full committee, and then with a subcommittee. I think Mr. Miller, of New York, Congressman Miller, was the Chairman who wrote the report to the committee recommending passage of this bill.

Based on the work that had been done before, last year, the bill was passed in the House this year, because most of the members of the Judiciary were the same. They are conversant with this matter.

Senator Bennett. Can you -- or can Mr. Stam and Mr. Brown -- dig up the hearings in the House? Would that information have come out in the House hearings?

Senator Bender. Mr. Miller of New York, a member of the Judiciary Committee, was assigned to make the final report, which he did. It was a favorable report, but it was too late in the session for the House to act. I think it was a day or two before the House adjourned.

Mr. Brown. That is correct. We don't have the reports here, but I have seen them, the reports in which the action that Senator Bender mentioned was taken.

Senator Bennett. This is the material that is published in the reports.

Mr. Walter. This is a different letter. This is one that came over to the --

Mr. Stam. That is the No. 6 point that they raised here. It

was contended that they should be considered as a partnership. Now, it seems to me that this particular point emphasizes the point that has just been made, that if that were your contention, what would the objection be to having the Tax Court consider them related merely for the purpose of determining the excess profits of the company, the first company. That is the only one I wanted to raise.

Mr. Walter. I can answer that very quickly. When they made the contention to the Secretary back in the days of this renegotiation the law in Ohio was very clear that corporations could not be partnerships. I think that was one of the reasons they were denied.

Mr. Stam. That was the contention of the taxpayer.

Mr. Walter. The contention of the taxpayer was that they should be treated as partnerships in renegotiation. The War Department said they could not be. The law of Ohio, until two years ago, did not permit corporations to be treated as partnerships. So that in effect at the time they attempted to have it done and the government deprived them of the right, back in the days of renegotiation.

Mr. Stam. But now we are reopening it, and we would be in effect granting that request before the Tax Court.

Mr. Walter. The reason I strenuously oppose it is this. In this letter to Senator Byrd on page 9 the Secretary says this in the sixth argument -- and then he explains it on page nine, about the third paragraph --

(Quoting from page nine of the letter to Senator Byrd.)

Mr. Walter. That is the reason we gave you all this background, to show you that this is not the purpose the Secretary set forth, to show you these two corporations, but this was done back in 1936 by the Bankruptcy Court, and there was no design on the part of these two people -- ~~I won't~~ I want to show there was no desire on the part of the controlling shareholders to circumvent the law.

Senator Bennett. The Army has made no such official request of us. The idea that they be considered together was generated inside the committee. That is one of the questions this subcommittee has got to answer.

Mr. Walter. The Army made the request in their statement -- they made the statement here that the two should be considered together, and that the legislation should be amended. It says --

Mr. Kane. They make that statement -- they don't actually do it, but they throw the question in.

Senator Bennett. Let's see if we can get evidence that the company proposed that they be considered together and that the renegotiations authorities actually declined to consider them together.

Mr. Walter. We will gather that.

Mr. Kane. I hope we can. I know definitely that is what happened. If we don't have the written evidence we will prepare affidavits and submit them to you. I am sure in the renegotiation trials that the redeterminations are made, because it was given to them by the renegotiating officers.

Senator Bennett. There is one other point that a remark of Mr. Kane a little while ago immediately raised in my mind. It is your contention that this case is identical with the Lichter case, or sufficiently identical to justify a hearing?

Mr. Walter. I think it is identical in that the Lichter bill - not the first Lichter bill, the first Lichter bill attempted to appropriate money to pay the taxpayer, which I don't think was right. That was vetoed by the President. He sent a message back saying he would approve a bill which would give them the right to a day in court. All we are asking is that which was given in the Lichter case, the right to hear them in court. We don't want you to appropriate anything for us.

Senator Bennett. Is there a sufficient difference in the facts in this case as compared to the Lichter case so that you escape or come out from under the Supreme Court decision on the Lichter case?

I am not a lawyer, as you know, and it would seem to me that if these two problems are in fact identical, the Lichter case might serve as a final determination in your case.

Mr. Walter. It will serve, not on the merits -- you see, the Lichter case went to tax court and came up on its merits. We have not had a chance to do that; the legal questions in the Lichter case were considered by our Sixth Circuit Court, and by our Supreme Court. That is what barred the door to us from going up into the Supreme Court, the Lichter case. But the Tax Court heard the merits of the Lichter case and denied relief. We have not had a

34

chance to have our merits considered by any court, and all we are asking is that the same door be opened to us.

Senator Bennett. If I can put it back into layman's language, you are saying that the conditions which justified the hearing of the Lichter case on its merits are so close to the conditions in your case that you feel they justify your right to be heard on the merits.

13)

Mr. Walter. That is it.

Mr. Kane. That is absolutely correct.

Mr. Walter. That is our position.

Mr. Kane. The conditions are identical as far as the legal status in which we found ourselves.

Senator Bennett. Do you have any comment on that, Mr. Stam?

Mr. Stam. The question, as I recall, that was raised in the Secretary's letter was that if this particular action was taken it would open up a great many other cases which would seek to go through to the Tax Court by this same means. So that it would seem to me that it is important in framing any legislation of this sort that we should be careful to see that the case is in line with the Lichter case in all substantial respects so that it won't open the door to a lot of other cases coming in where the board has made a determination.

Now they didn't petition to the Tax Court, and the case is closed. I think that is the theory that seems to be expressed principally in the War Department letter. So I think it is im-

portant that it be established that if this action is taken it won't create a precendent to open up a lot of other cases.

Mr. Walter. We would not have any objection to having language included which would say that this case, "being similar to the Lichter case on its legal base," or language to that effect.

Mr. Stam. We could even fix the date when the action was taken about the same time.

Mr. Walter. We would have no objection to that at all.

Mr. Stam. So that wouldn't open up a lot of other cases.

Mr. Walter. We would have no objection to that if it was spelled out in the legislation.

Mr. Kane. The surrounding circumstances in which the two companies found themselves couldn't be more identical.

Mr. Walter. If you had duplicate paintings they couldn't be closer together than the Lichter case and our case. The facts are different --

Senator Bennett. Obviously.

Mr. Walter. -- but the legal questions are the same.

Mr. Stam. You raised all the issues in your petitions in the courts that are raised in the Lichter case?

Mr. Walter. Yes.

Mr. Stam. You raised the constitutional issue?

Mr. Walter. We raised the constitutional issue in this sense, we said that --

Mr. Brown. ~~It seems to me that~~ The suit in the Lichter case

was first begun on May 9, 1945. The order in this case for refund of the profits was made on the exact same date, May 9, 1945.

Mr. Walter. I am glad you pointed that out.

Mr. Brown. In view of the taxpayers knowing the Lichter people were litigating these questions, would you not wait -- I am just asking the question now -- to see what the outcome of that litigation was?

Now, the ground for the relief bill in the Lichter case, the one which was vetoed --

Senator Bennett. May I stop you at that point, just to make clear one thing in my mind. You say that the order was issued on the date of the decision --

Mr. Walter. The day the Lichter case was filed.

Mr. Stam. The suit began. The government started suit --

Mr. Brown. To recover the money in the Lichter case?

Mr. Walter. May 9, 1945.

Senator Bennett. But the final decision of the Supreme Court gave the Lichters their day in the Tax Court.

Mr. Walter. No. It denied them.

Mr. Brown. The relief legislation.

Senator Bennett. Wait a minute. Was it special relief legislation that gave the Lichters their trial?

Mr. Walter. That is right. Just a follow-through on that, on May 9, 1945 the government filed against the Lichters in the Cincinnatti District Court. On May 9, 1945 the Secretary made his

determination in the Highway case. The Lichter case did not reach a conclusion until 1948 in the Supreme Court involving the same legal questions. It was after that that it was decided that the government brought its suit against the Highway case in the Northern District.

Mr. Brown. Almost two years.

Mr. Walter. Two years later that they brought the case against the Highway Construction in Cleveland. Now, your legislation here which gave Lichter its day in court was given because the Lichter people never had any opportunity to have the merits of their case heard in any court.

(14)

So your legislation which previously was given -- the Lichters had their day in tax court, and that is all we ask here, that we have our day in tax court on the merits.

Mr. Stam. I think the War Department advised in the order that the reason the relief was given in the other case was because the case was ~~somewhat of a novelty because of~~ [illegible] the constitutionality of the act.

Mr. Kane. But we didn't know the outcome of that until after the Lichter case.

Mr. Walter. You see, the Lichters attempted to defend themselves on the merits, and the government moved for dismissal of their defense on the ground that the Tax Court was exclusive and they had not taken their appeals. So that thing was squarely on the nose of our situation. We raised the same defense in the

District Court, and the Lichter case was used as a precedent for denying us relief. So we are squarely on the nose of the Lichter case.

It would have been foolhardy to start a second suit up in Cleveland to go through all of that case to try the second case, because the Circuit Court and the District Court in Cincinnati or in the same circuit. And they did bring a suit against us like that.

Senator Bennett. Until the final decisions.

Mr. Brown. A couple of years after the final decision.

Mr. Kane. We had to wait until the government made an appeal.

Mr. Stam. Because in the Tax Court they had an express provision which gives the taxpayer and the commissioner -- probably the Secretary now -- the authority to enter into an agreement to waive the running of the statutes on bringing suits until the pending case is decided.

Mr. Walter. At that time you had no provision for renegotiation for that, and the statute was specific, and there was no other agency or court that intervened. That is where we have to come back to Congress, which created this new jurisdiction. The only place for relief is Congress.

Mr. Brown. If I can complete the point I started to make, in the Lichter case the original bill was vetoed for the reason that it didn't allow the Tax Court to find more profits than had been found in the determination. That veto message was the basis of

Senator Donnell's bill, which became law and gave relief in the Lichter case. The President's veto message stated in part:

"The record shows that there was considerable basis for the advice given the claimants that their contracts completed in 1942 were specifically exempt from the provisions of the renegotiation act, which accords with the United States Tax Court exclusive jurisdiction over review of certain renegotiation cases. Indeed, in the Supreme Court decision in this case (Lichter versus United States, 334 U. S. 742) Justice Douglas relied upon this very ground in dissenting from the majority opinion which denied that with respect to these claimants' case there was suggicient doubt about a basic procedural issue to have justified reliance upon a defense in the District Court to which they clearly had access prior to the 1943 amendment to the Renegotiation Act."

Senator Bennett. Did it wait for the suit until after the Lichter decision in the Tax Court?

Mr. Brown. Not quite two years.

Mr. Kane. They started suit in 1950. This Lichter relief legislation was passed in 1950. So they did not wait that long.

Mr. Walter. They did not wait for the merits of the case to be heard at all.

Mr. Kane. You are supporting our contention?

Mr. Brown. I am not supporting any contention. I am trying to raise this question. If in the Lichter case there was a reasonable doubt as to a basic procedural issue which was the basis of

cw40

the relief bill in the Lichter case, is there not a basis for another taxpayer, who is awaiting the outcome of the litigation in the Lichter case, and can't do otherwise than wait -- I think that is the question, the basic question as to ~~as to whether relief is justified~~ whether they should go to the Tax Court.

Mr. Stam. I think the question is whether they are on all fours.

Mr. Walter. I agree with you. That is the reason for our being here. We were powerless to do anything except wait for a decision.

Senator Bennett. Is there any question in your mind that the two cases were on all fours?

Mr. Walter. No.

Mr. Brown. ~~I think you know enough about the two cases~~. But ~~I asked~~ the ~~question a while ago~~, if the Lichters ~~you are~~ were testing the case in the Supreme Court, and I am standing on the same grounds, ~~I use the same arguments, I refuse to pay the money.~~ I say, "You should allow me to go in the District Court," but I don't know until the Supreme Court decides.

It seems to me like the taxpayer is due that, or due some consideration. I think they can be distinguished from other taxpayers in the cases that have been closed in this respect, that those taxpayers that did go to the Tax Court had their day in court.

The taxpayers that did not do that and did not pursue their

legal rights as Highway did, they stuck by their guns, right or wrong, they did try to pursue their rights. It seems to me that distinguishes them from those cases that are closed, and which won't get any kind of a redetermination by the Tax Court.

One more thing. In the Lichter case relief legislation was promptly introduced by Congressman Elston, and followed up eventually to passage. As soon as this litigation in the Highway case was ended in the Court of Appeals, Senator Bender introduced his bill just a month or so later, and started the same procedure just as promptly as Elston did in the Lichter case.

Mr. Walter. That is right.

Senator Bennett. Are there any other bills pending or any other cases that may not be material to this, but just for the information of the committee?

Mr. Brown. I haven't found any.

Senator Bennett. I would like to clear away, if possible, this charge that if this is passed there will be a flood of other cases.

Mr. Stam. I think that the War Department letter makes a statement in there, that the Lichter case is distinguishable from this case. I don't think in their letter they give any reason why -- they just say it is different -- I think they ought to be interrogated as to why they think it is different, because from the facts that we looked up at the moment, as Mr. Brown pointed out,

it is very hard for us to see any similarity between the two cases. They say that there is a very grave difference between the two cases in the letter that they wrote to the Chairman. And I think they ought to be asked to state specifically what the differences are.

(16)

Mr. Brown. Mr. Stam, you asked them to find out, and if I may remind you, I ~~was told that they~~ pointed to part of the letter which said -- where the letter cited the veto message in which they said that the Lichter case was the first case to test these issues. ~~That is the only distinction.~~

Senator Bennett. So that the hope of the taxpayer rests on his right to have the merits of his case tested rather than the constitutional issue? I assume that is where you rest?

Mr. Walter. I rest right now. We are past the constitutional statement, that is through.

Mr. Stam. That is true. But the question is, it was still an issue at the time -- the period for filing the petition in the Tax Court expired, it was still an open question at that time.

Mr. Walter. For two and one-half years.

Mr. Stam. For two and one-half years. So that is a point where the cases were very similar, it seems to me. Both were waiting the decision as to the constitutionality.

Mr. Walter. That is right.

Mr. Stam. And when that decision came down the period for petition for the tax court had expired in their case.

Senator Bennett. But that did not change the merits of the situation, and if Congress -- your contention is that if Congress would give Lichter an opportunity to be heard again, and this case is approximately identical or sufficiently identical to justify it, then this taxpayer should have the same right as Lichter, to be heard on the merits.

Is there any use of continuing this discussion. Haven't we brought out the principal points involved?

Mr. Walters. I think we have got everything in.

Senator Bennett. But to return again, because of this question of an amendment which would involve the Horvitz decision -- that probably isn't a fair thing to say -- which would give the court the right to take the Horvitz situation into consideration if the bill were passed allowing this case to be opened up -- because that question has been raised, I would appreciate it if you would furnish me evidence that the decision -- that the taxpayer asked to have both considered, and that it was the decision of the government which clearly separated the two as two completely separate cases.

Mr. Walter. We will furnish that.

Senator Bennett. Now, if you find you can't furnish it to your satisfaction, then we will see whether or not we can get information from the Department. But we would rather not go down to the Department if we can get it from you.

Mr. Walter. We will either do it by written document or

by affidavits of the people that were involved at the time.

Senator Bennett. Then we will attempt to pursue the second question, which is the comparative identity of the two cases, to make sure that you are in fact only asking for an opportunity that was given to Lichter by that private legislation.

Mr. Kane. That is all we are asking.

Mr. Walter. I think we stand right on all fours on that.

Mr. Kane. We searched through the legal ~~contracts~~ BULLETINS, and despite the Army's assertion that there would be other contractors in that situation, though we followed it through the years, we have never been able to discover any others in the same situation. There may have been some, but we couldn't find them.

Mr. Stam. There have been quite a number of suits filed attacking the constitutionality.

Mr. Kane. Part of the Lichter case was there there were four together. But no one else seemed to find themselves in this predicament.

Mr. Stam. In these particular contracts that you entered into there was no renegotiation clause?

Mr. Kane. Absolutely not. The first contract was entered into before the Act was passed.

Mr. Stam. I know in those days there was quite a lot of feeling by those people that the government had no right after entering into a contract for a fixed amount, they had no right to renegotiate a contract when there was no clause asking for re-

#45

negotiation, and that had to be settled.

Mr. Kane. That was one of the contentions in the Lichter case.

Mr. Stam. And did you raise those points too?

Mr. Walter. Yes, we did.

Mr. Kane. There were other cases, you know, the Alexander case, and others that went with Lichter, they were challenging the constitutionality. But I don't think they involved the 1942 Act, they involved the 1943 Act.

Mr. Brown. There was the Pownall case ~~in~~ involving 1942 and 1943, and the Alexander case ~~in~~ involving 1943.

Senator Bennett. Those contracts weren't negotiated before the first act?

Mr. Brown. I don't recall.

Mr. Stam. That is what we have got to do in this bill, we have got to put down the specific conditions under which they are granted this relief so it won't stretch out and bring in these other cases.

(17)

Mr. Kane. I doubt that it would be.

Mr. Stam. The Army seemed to fear that it would.

Mr. Kane. They made that assertion, but I don't know on what basis.

Mr. Walter. I think it might be well to provide a provision, if the committee feels that it is desirable, pointing out the likenesses between the case and the Highway Construction case.

Senator Bennett. And also so limiting the report as to exclude anybody from coming and claiming the privilege of a similar bill unless they fit the situation exactly on all fours.

We appreciate your coming in. This may seem to be a slow and laborious process, but the Senate Finance Committee is very chary of private bills. They don't like them, they don't have many, and so we are particularly careful when we do have them.

There will be included in the record the letter dated June 1, 1955, from Robert T. Stevens, Secretary of the Army, to myself.

(The letter referred to is as follows:)

Honorable Wallace F. Bennett

United States Senate

Dear Mr. Bennett:

Reference is made to your letter of May 19, 1955, regarding H. R. 4182, Eighty-fourth Congress, a bill "For the relief of the Highway Construction Company of Ohio, Incorporated." The bill is now pending before the Committee on Finance, United States Senate. In your letter, you advised that you had been appointed chairman of a subcommittee to investigate the matter and make recommendations to the full committee.

You indicate concern as to whether the question of jurisdiction raised by the company in its "Supplemental Brief of Appellant" presented to the United States Court of Appeals for the Sixth Circuit in the company's appeal of the District Court's judgment in favor of the United States. The question of jurisdiction raised by that brief was fully considered by the appellate court in its decision in the matter (Highway Construction Company of Ohio, Inc., v. U. S., 209 F. 2d 748, 750).

The portion of the United States Court of Appeals' decision which deals with the "Supplemental Brief" in question (Highway Construction Company of Ohio, Inc. v. U. S., supra, p. 750) is quoted below:

"Another question not before presented nor briefed was injected into the case at the hearing, namely, that the District Court was without jurisdiction to hear the action or to enter the

judgment appealed from. Appellant urges that Section 403(c) of the Renegotiation Act as amended by the Revenue Act of 1943, 58 Stat. 78, specifically limits the actions which may be brought in the District Court and that the instant cause is not one of those authorized by this section. Original Section 403(c) of the Renegotiation Act, 56 Stat. 245, provides that the Secretary 'may bring actions in the appropriate courts of the United States to recover' excessive profits paid to a contractor or subcontractor. Appellant concedes that if this form of Section 403(c) is applicable here the District Court has jurisdiction. But Section 403 (c) (1) on Renegotiation of War Contracts, 58 Stat. 78, 83, gives jurisdiction to the District Court when an order is entered by 'the Board,' that is, the War Contracts Price Adjustment Board, Section 403(d). Since the order was made by the Secretary and not by the Board, appellant vigorously urges that the District Court had no jurisdiction to enter the judgment appealed from.

"This question we think has been settled by the Supreme Court in the case of Lichter v. United States, supra. In that case the lower courts had squarely held that as to subcontracts awarded in 1942 and all executed prior to October 21, 1942 (the date of the initial amendment of the Renegotiation Act), the Revenue Act of 1943, 58 Stat. 78, was applicable. The Revenue Act of 1943, 58 Stat. 78, gave exclusive jurisdiction to the Tax Court and this provision was applied to the transactions of 1942. Moreover, the determination of excessive profits in that case was made by a Secretary and not by the Board.

"The Supreme Court affirmed this judgment in a holding which treated the Renegotiation Act, including its amendments (Lichter v. United States, supra, 334 U. S. 745, 68 S. Ct. 1297, court's footnote 1) as consisting of six separate legislative enactments, including the two forms of Section 403(c) involved here. The Supreme Court pointed out that the amendment by Section 701(b) of the Revenue Act of 1943, February 25, 1944, 'is sometimes called the Second Renegotiation Act . . .' but the Supreme Court said 'the entire 403, both in its original and amended forms may be properly cited as the "Renegotiation Act"'.

"The arguments advanced upon this contention, not urged until hearing before this count, are in substance the same as those rejected in the Lichter case, which held that an order determining excessive profits, made by a Secretary under the 1942 Act, was to be challenged under the procedure set up in the 1943 Act.

"The judgment of the District Court is affirmed."

Counsel for the construction company did not ask the United States Supreme Court to review the appellate court decision. Therefore, it is apparent that the construction company and its counsel realized that the question of jurisdiction had been conclusively and properly determined at law.

It is regretted that you feel that the question of jurisdiction was not fully considered by this Department in its report on the bill. However, the question of whether the Tax Court was to have exclusive jurisdiction in such matters had already been before

the United States Supreme Court in 1946 (Macauley v. Waterman S. S. Corp., 327 U. S. 540, 544, 90 L. Ed. 839, 66 S. Ct. 712) as was pointed out at page 6 of this Department's report in the summary of proceedings in the Lichter case. The "Supplemental Brief", to which you make reference, was considered at some length by the United States Court of Appeals in its denial of the construction company's appeal. In the light of such decision, it was the view of this Department that to deal more extensively with a question already thoroughly and specifically dealt with by the United States Court of Appeals would only have introduced in the report a question which had already become moot.

In the event that, after consideration of the above, you feel that it would still be desirable to have representation from the Department of the Army at any hearing to be held in such matter, this Department will be happy to provide such representation.

Sincerely yours,

Signed, Robert T. Stevens

Secretary of the Army.

Senator Bennett. We will adjourn.

(Whereupon, at 12:00 o'clock noon, the Committee adjourned.)

- - -

STATEMENT ON BEHALF OF
HIGHWAY CONSTRUCTION COMPANY
IN REPLY TO REPORT OF ROBERT T. STEVENS,
SECRETARY OF THE ARMY

From the beginning it should be clearly understood that The Highway Construction Company of Ohio, Inc., is not here asking that The Congress of the United States appropriate to it a refund of the $100,000.00 Renegotiation Rebate paid by it. It is merely asking that legislation be passed which would give it its "day in court" to have its case heard on its merits, that is, legislation which would afford it a hearing in a competent court to ascertain whether or not the determination of excessive profits made by the Secretary of War is reasonable. Secretary of The Army Stevens in his letter of June 16, 1954 to the Hon. Chauncey W. Reed answered the contentions of the Highway Construction Company categorically and we shall do likewise numbering do points similarly to his outline of points (letter set forth in Report #339 House of Representatives 84th Cong. 1st Session).

1. The statement that the first and larger of the two contracts was entered into 17 days before passage of the Renegotiation Act was not advanced as a contention that the law itself was unconstitutional since that question was already decided in the Lichter case. Although the law may have been constitutional it may have been unconstitutional in its application to this set of facts. The statement was made merely to show that the contracts were bid in good faith at a fair price and not in expectation that profits realized thereunder would be subject to renegotiation.

2 and 3. Statements to the effect that the contracts in question were let as a result of competitive bidding and that our price was $146,787.00 or 18% below the next lowest bidder were not made to show that there was no need for the Renegotiation Legislation in a general way or that excessive profits were never realized under contracts obtained as a result of competitive bidding. The statements were made to show under what circumstances the contracts here in question were obtained. Since the price of the Horvitz Company was 15% below the next lowest bidder it should be readily apparent that any profits realized were due primarily to the skill and business acumen of the contractor's organization rather than to an unstable condition in the market at the time of the award.

4. The statement that the contracting officers delay prevented the contractor from doing a much greater volume of work "was both immaterial and hypothetical", is not in accordance with the facts. The Highway Construction Company, at the time of the award of the contracts in 1942, owned various and diversified types of construction equipment valued in excess of $400,000.00. Pursuant to the terms of a contract which is marked Exhibit B and submitted herewith, all of this equipment was leased to The Horvitz Company. With the aforesaid equipment together with the personnel employed by The Horvitz Company, these two firms could have performed an amount construction work within the 1942 season at least two to three times in excess of that actually completed in 1942 if this equipment and personnel had not been unduly restricted by working conditions beyond its control.

5. As a means of showing that the rent received was reasonable the contractor stated that the rates of rental charged were lower than those authorized by OPA ceiling rates. The Army report does not deny the cogency of this statement but seeks to minimize it by stating that Overhead in the form of officer's salaries and major repairs customarily borne by the lessor of construction equipment were in this case borne by the lessee The Horvitz Company. Whatever officers' salaries were paid by The Horvitz Company were paid for services rendered to that company and not on behalf of The Highway Construction Company of Ohio, Inc. Pursuant to paragraph six of the equipment lease between the two companies, (Exhibit B hereto attached) The Horvitz Company, was required at its own expense to move, repair and maintain any and all equipment to be used by it and return same to lessor in good condition, ordinary wear and tear only, excepted. In accordance with trade practices, all major repairs were to be made by the Lessor The Highway Construction Company of Ohio, Inc., and to that end said Highway Construction Company did maintain a large storage yard and repair shop for the performance of such major repair work when the equipment was returned to it by the lessee.

6. The contractor made the statement that The Horvitz Company and The Highway Construction Company of Ohio, Inc., were actually operating as a partnership. This statement as an explanatory description of the relationship was made in the practical rather than on the legal sense since the laws of the State of Ohio in 1942 did not permit a corporation to become a member of a partnership.

The statement was made merely to show that if the rent paid by The Horvitz Company for said equipment was determine to be a reasonable amount and allowable as a deduction to The Horvitz Company as the Government itself found it to be when it renegotiated and gave clearance to that company, then the receipt of the same amount by The Highway Construction Company of Ohio Inc., was reasonable and not excessive. The statement that the "dual corporation arrangement was a device within the control of the owners of the two corporations and was entered into for their own purposes........and that it would provide a basis for duplication or pyramiding of profits to the corporate owners......the beneficiaries of this bill"......is absolutely and utterly without foundation in fact. When in 1936 unfounded claims for approximately Two Million Dollars ($2,000,000.00) were filed against The Highway Construction Company of Ohio, Inc. that company was forced into reorganization under Section 77B of the Bankruptcy Act. (See Exhibit C) Such unfounded claims were later settled in the Federal Courts for less than Two Thousand Dollars ($2,000.00). Nevertheless during the pendency of such reorganization proceedings, The Highway Construction Company of Ohio, Inc., was barred by law from bidding on or performing construction contracts for the Ohio State Highway Department which prior thereto had been its chief source of work. Pursuant to a Plan of Reorganization first made effective in 1937 and later amended by decree in Case #39051 District Court of the U.S. for the Northern District of Ohio, (See Exhibit D) Eastern Division for the benefit of the creditors of the Highway Construction Company of Ohio, Inc., The Horvitz Company was formed. The reorganization plan contemplated that the experienced and trained personnel of The Highway Construction Company of Ohio, Inc., would be transferred to The Horvitz Company and that The Horvitz Company would obtain the necessary prequalification permitting it to do work for the State of Ohio, since The Highway Construction Company was disqualified from bidding because of the bankruptcy proceedings this being one of the statutory disqualifications. The plan further provided that all of the equipment then owned by The Highway Construction Company of Ohio, Inc., should be leased to The Horvitz Company for a minimum rental of $5,000.00 per month or one-half of the profits realized by The Horvitz Company whichever was greater. Thus it is apparent

that the plan preserved the personnel organization of The Highway Construction Company of Ohio, Inc., utilized its equipment, and afforded the creditors a chance to realize full payment of their accounts. (See Exhibit "A", Resolution of Directors of The Horvitz Company). Any other plan would have involved a forced liquidation by sale of the equipment of The Highway Construction Company of Ohio at bankruptcy sale with a drastic monetary loss to its creditors. The plan of reorganization was carried out to the end that one-half of all profits realized by The Horvitz Company were paid over to The Highway Construction Company of Ohio, Inc. All of such profits including those realized under the contracts here in question were used to pay in full the creditors of The Highway Construction Company of Ohio, Inc., after 1939. No dividends or salaries to stockholder executives were paid whatsoever. Thus it is clear that the plan by which the rent here in question was paid was not conceived by or controlled by the stockholder and did not permit the duplication of or pyramiding of profits and did not inure to their benefit, but was actually conceived by the Federal Bankruptcy Court for the benefit of the creditors. The suggestion that relief legislation requested on behalf of The Highway Construction Company of Ohio Inc., should be granted only if The Horvitz Company consented to a reexamination of its profits for the year 1942 appears to be a cleverly conceived method of intimidating the former company to withdraw its request for legislative relief. It is preposterous to think that the Government, after having thoroughly examined the operation of The Horvitz Company for the year 1942 and determined that said company realized no excessive profits, should now reverse itself and contend that excessive profits were actually realized.

7. The statement made by the contractor that Congress intended that renegotiable sales should not be renegotiated downward below $100,000.00 is not "entirely contrary to the clear provisions of the Renegotiation Act". See the decision of the Tax Court in the case of George H. Wolff, et al., 12 TC 1217 (at Page 1223) in which Justice Johnson and Justice Arundell file a strong dissenting opinion supporting the views advanced by the contractor.

8. That the decision of the Supreme Court in the Lichter case was a

peculiar and unexpected interpretation of the act is clearly demonstrated by the following analysis of the particular section of the Act here in question:

The original Renegotiation Act of 1942 passed under date of April 28, 1942 provided in Section 403(c) (1) that the Secretary in his discretion may renegotiate and under (2) when he has completed such renegotiation he is authorized and directed to eliminate an excessive profits under any contract or subcontract by a number of methods and subsection (v) thereof provides as follows:

> "The Secretary may bring actions on behalf of the United States in the appropriate courts of the United States to recover from such contractor or subcontractor, any amount of such excessive profits actually paid to him and not withheld or eliminated by some other method under this subsection."

There was no provision made in the original 1942 Act for any other judicial determination of the contractor's rights. But, by inference, and, in order to make this part of the Act valid, due process would require that the contractor have the right to defend himself in any such lawsuit and raise the merits of the case for consideration by the court. That this inference is true is supported by the debate on the floor of the Senate on April 7, 1942, Congressional Record, p. 3765, where among other things the following appears:

> "MR. DANAHER. Is it the Senator's understanding that at that time the contractor has a right to offer in a court whatever defenses are proper -- in computing profits, for example, to offer those elements of cost which he contends are not excessive?
>
> "MR. MCKELLAR. Beyond controversy, he has such right.
>
> "MR. DANAHER. When the bill first was brought to us from the Senator's committee, it would have denied that right.
>
> "MR. MCKELLAR. It would have denied that right; and it was upon the motion of the Senator from Connecticut, as I recall, that the provision was stricken out.
>
> "MR. DANAHER. We amended it so that the contractor had a right --
>
> "MR. MCKELLAR. So that the contractor had a right to sue, and the Government had a right to sue.
>
> "MR. DANAHER. And there is not any longer any question in anybody's mind that the contractor does have a right to go into court to determine whether a proper measure of damages, let us say, has been applied in a particular case?
>
> "MR. MCKELLAR. None whatsoever".

Clearly the intent of Congress in enacting the 1942 Renegotiation Act was that every contractor or subcontractor would have his day in court, either by defending himself when sued by the government or Secretary, or by affirmatively filing a suit contesting the Secretary's claims.

On February 25, 1944 Congress as part of the Revenue Act of 1943 made certain amendments to the Renegotiation Act effective July 1, 1943. Section 403(e) (1) of that act reads as follows:

> "Any contractor or subcontractor aggrieved by an order of the Board determining the amount of excessive profits received or accrued by such contractor or subcontractor may, within ninety days * * * after the mailing of the notice of such order under subsection (c) (1), file a petition with the Tax Court of the United States for a redetermination thereof. Upon such filing such court shall have exclusive jurisdiction, by order, to finally determine the amount, if any, of such excessive profits received or accrued by the contractor or subcontractor, and such determination shall not be reviewed or redetermined by any court or agency. * * * For the purposes of this subsection the court shall have the same powers and duties, <u>insofar as applicable</u>, in respect of the contractor, <u>the subcontractor</u>, the Board and the Secretary * * *.
>
> "(2) Any contractor or subcontractor (excluding a subcontractor described in subsection (a) (5)(B) aggrieved by a determination of the Secretary made prior to the date of the enactment of the Revenue Act of 1943, with respect to a fiscal year ending before July 1, 1943, as to the existence of excessive profits, which is not embodied in an agreement with the contractor or subcontractor, <u>may, within ninety days</u> * * * after the date of the enactment of the Revenue Act of 1943, file a petition with The Tax Court of the United States for a redetermination thereof, and any such contractor or subcontractor aggrieved by a determination of the Secretary made on or after the date of the enactment of the Revenue Act of 1943, with respect to any such fiscal year, as to the existence of excessive profits, which is not embodied in an agreement with the contractor or subcontractor, may, within ninety days * * after the date of such determination, file a petition with The Tax Court of the United States for redetermination thereof. Upon such filing such court shall have the same jurisdiction, powers, and duties, and the proceeding shall be subject to the same provision, as in the case of a petition filed with the court under paragraph (1), except that the amendments made to this section by the Revenue Act of 1943 which are not made applicable as of April [illegible], [illegible], or to fiscal years ending before July 1, 1943 shall not apply." (Underlining ours.)

Under Section 403(c)(1) the following appears:

"In the absence of the filing of a petition with the Tax Court of the United States under the provisions of and within the time limit prescribed in subsection (e)(1), such order shall be final and conclusive and shall not be subject to review or redetermination by any court or other agency."

Section 403(e)(6) having reference to Section 403 (e)(1)(2)(3)(4) and (5) states:

"This subsection shall be applicable to all contracts and subcontracts, to the extent of amounts received or accrued thereunder in any fiscal year ending after June 30, 1943, whether such contracts or subcontracts were made on, prior to, or after the date of the enactment of the Revenue Act of 1943."

Thus it would certainly appear that inasmuch as Section 403 (e)(6) makes the provisions of 403(e)(1), (giving finality to a decision not appealed to the Tax Court within 90 days) applicable only to fiscal years ending after June 30, 1943, it would have no effect whatsoever on fiscal years ending on or before June 30, 1943.

Seemingly the above amendments provide that an aggrieved contractor with a fiscal year ending after July 1, 1943 must appeal such case to The Tax Court within ninety days or the determination of the Board will become final and that an aggrieved contractor with a fiscal year ending prior to July 1, 1943 may if he chooses appeal to the Tax Court but that if he chose not to so do, he would still have his right to defend on the merits against an action brought on behalf of the Government to collect the determined excessive profits tax. Despite the above provisions which apparently were intended only to afford an aggrieved contractor with a fiscal year ending before July 1, 1943 a choice of tribunals in which to defend, confirming Congressional intent in enacting the 1942 Act (see supra). The Supreme Court of the United States did under date of June 14, 1948 in the case of Lichter v. U.S. (334 U.S. 742) among other things hold that determinations of excessive profits made with respect to fiscal years ending before July 1, 1943 as well as those with respect to fiscal years ending after July, 1, 1943 became final in the absence of an appeal to the Tax Court within the prescribed ninety day period. That there is ample reason to believe that the law as established in the Lichter case is contrary to the intent of Congress is best evidenced by the following excerpt from the decision/of Justice Douglas dissenting to the majority of the court in the aforesaid case:

> ***********Section 403(c)(1) relates to orders of the Board and provides that they may be reviewed by the Tax Court. And section 403(c)(1) provides that in the absence of the filing of such a petition with the Tax Court, the orders of the Board "shall be final and conclusive".
>
> But we are concerned here not with orders of the Board but with an order of the Secretary. (The order in the Highway Construction Company case was by the Secretary). Section 403(e)(2) provides that those orders, too, may be taken to the Tax Court. But section 403(c)(2) by its terms makes inapplicable those provisions of the 1943 amendment which are not made applicable as of April 28, 1942, or to the fiscal years ending before July 1, 1943. Thus, sec. 403(c)(6) limits subsection (c) "to all contracts and subcontracts, to the extent of amounts received or accrued thereunder in any fiscal year ending after June 30, 1943 *******". ********Hence it is clear that the provision of sec 403(c)(1) which makes the orders of the Board final and conclusive in absence of the filing of a petition with the Tax Court is not applicable here. Orders of the Secretary, at least as respects 1942 business, are therefore treated differently than orders of the Board. I conclude that the purpose was to leave contracts and contractors who fell in that category with the right of access to the courts which they had enjoyed prior to the Revenue Act of 1943. In those cases jurisdiction of the Tax Court may be invoked at the option of the petitioners." (Underling and insert ours).

Thus from February 25, 1944, the date of enactment of the above amendment until June 14, 1944, the date of the decision in the Lichter case, an aggrieved contractor such as The Highway Construction Company with a fiscal year ending prior to July 1, 1943, had no way of knowing that an appeal to the Tax Court was mandatory. The result being in the case of The Highway Construction Company of Ohio, Inc., that the ninety day period during which appeal could be made to the Tax Court having expired long prior to the decision in the Lichter case, the aggrieved contractor was completely denied any chance of ever having its case heard and tried on the merits. The view that an appeal to the Tax Court was not mandatory in cases involving fiscal years ending prior to July 1, 1943 was shared by many eminent jurists and attorneys including Justice [illegible] as evidenced by his dissenting opinion set forth above. [illegible] particularly, The Highway [illegible] Company of Ohio, Inc., relying on advice of counsel [illegible] to the Tax Court. It should be noted that counsel [illegible] the Highway Construction Company of Ohio, Inc., [illegible] has since been [illegible]

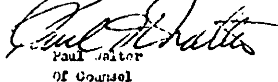
and is now serving as Judge of the Common Pleas Court, Cuyahoga County, Cleveland, Ohio. That the Government itself had considerable doubts as to the intent of the Act is evidenced by the fact that from May 9, 1945, the date of the board's final determination until long after the decision in the Lichter case, it took no action whatsoever to recoup the excessive profits claimed to be due.

9. Contrary to the statements made in the report from the Army, the legislation passed on behalf of Lichter most certainly is precedent for the legislation sought by The Highway Construction Company of Ohio, Inc. <u>Nor is the President's message of disapproval of the original legislation in the Lichter case in any way applicable here. The original legislation in the Lichter case called for an outright grant of money from the Congress to reimburse them for excessive profits refunded by them.</u> The Highway Construction Company does not request such a grant. Later legislation merely granting Lichter the right to have its case heard and tried on the merits was approved by the President. This is similar to the relief that The Highway Construction Company is seeking in this legislation.

In conclusion it is reiterated that the legislation sought on behalf of The Highway Construction Company of Ohio, Inc., does not call for a grant or refund of the money paid. It merely seeks legislation which would entitle it to have its case tried on its merits. Whether such a hearing, if granted, would result in an increase or a decrease in the amount of excessive profits determined to be due cannot be determined at this time. Throughout the entire time The Highway Construction Company of Ohio, Inc., was in precisely the same position as that of the Lichter company. Equity therefore demands that relief legislation similar to that passed on behalf of Lichter be passed for The Highway Construction Company of Ohio, Inc. To deny it is to deny the principle of "equal rights" so deeply imbedded in our form of Constitutional Government.

Respectfully submitted on behalf of
The Highway Construction Company
by Walter & Haverfield

1215 Terminal Tower
Cleveland 13, Ohio



Paul Walter
Of Counsel

Exhibit A

RESOLUTION ADOPTED BY DIRECTORS OF

THE HORVITZ COMPANY.

WHEREAS, The Horvitz Company is affiliated with The Highway Construction Company of Ohio, Inc., (hereinafter called "Debtor"), which has pending a proceeding for reorganization under Section 77-B of the Acts of Congress relating to bankruptcy as amended, in the District Court of the United States for the Northern District of Ohio, Eastern Division, and said Debtor has filed a Plan of Reorganization; and

WHEREAS, The creditors of the Debtor desire to secure from this Company assurance that, upon the approval of said Plan of Reorganization, with such amendments or modifications thereto as may be approved, this Company will not submit any bid for public work unless it is for the benefit of said Debtor; and

WHEREAS, the principal shareholders of this Company are also the principal shareholders of the Debtor, and said principal shareholders have approved the adoption of this resolution;

RESOLVED, By the Board of Directors of The Horvitz Company that the President and Secretary of this Company be and they are hereby authorized to address and deliver to the creditors of the Debtor a letter reading as follows, to-wit:

Cleveland, Ohio, May 1, 1937.

To the Creditors of The Highway
Construction Company of Ohio, Inc.

Gentlemen:

When, in May, 1936, it became necessary to file a petition in the United States District Court for the Northern District of Ohio, Eastern Division, for reorganization of The Highway Construction Company of Ohio, Inc., it was found that under Sections 1206, et seq of the General Code of Ohio it was impossible to secure a prequalification of the Company to enable it to bid on construction work for which bids were requested by the Highway Department of the State of Ohio. Accordingly, The Horvitz Company was organized under the laws of Ohio, a lease of equipment was entered into with the approval of the Federal Court, whereby the equipment of The Highway Construction Company was leased to The Horvitz Company, and The Horvitz Company prequalified to bid on highway work under the laws of Ohio.

A Plan of Reorganization has been submitted to all of the creditors of The Highway Construction Company of Ohio, Inc., and this Plan has been set for hearing before Honorable William B. Woods, Special Master, on Saturday, May 1, at 10:00 o'clock A.M. It was always contemplated that after The Highway Construction Company of Ohio, Inc. was reorganized and was ableto secure proper prequalification under the Ohio laws, The Horvitz Company would discontinue entering into contracts for public work.

For the protection of yourself and all other creditors of The Highway Construction Company of Ohio, Inc., The Horvitz Company and its principal shareholders, whose names are subscribed hereto, jointly and severally agree that after the Plan of Reorganization of The Highway Construction Company of Ohio, Inc., with any amendments or modifications thereto, has been approved by the Federal Court and has been declared effective, and after The Highway Construction Company of Ohio, Inc. has secured proper prequalification under the Ohio statutes and the necessary arrangements have been made with surety companies for bondson public contracts, The Horvitz Company will not submit any bid for public work unless it is for the benefit of The Highway Construction Company of Ohio, Inc.

The signature of the President of The Horvitz Company to this letter agreement has been authorized by a resolution of the Board of Directors of The Company at a meeting duly called and held on April 28, 1937, and morethan three-fourths of the outstanding shares of said Company are owned by the individuals who have signed this letter agreement.

Very truly yours,

THE HORVITZ COMPANY,

By S. A. Horvitz
President

And I. Horvitz
Secretary

S. A. Horvitz

I. Horvitz

provided said letter shall also be signed by S. A. Horvitz and I. Horvitz, the principal shareholders of this Company.

FURTHER RESOLVED, That the President and Secretary of this Company be and they are hereby authorized to make such changes or modifications in said letter as in their judgment are proper and for the best interests of this Company.

I, I. HORVITZ, hereby certify that I am Secretary of The Horvitz Company, an Ohio corporation; that the foregoing is a full true and correct copy of a resolution duly adopted by the Board of Directors of said Company at a meeting of said Board regularly held on the 30th day of April, 1937, at which meeting all of the Directors were present in person and participated; that the foregoing resolution hasnot been amended, modified or rescinded, and the same is now in full force and effect.

Dated May 1, 1937.

I. Horvitz

Exhibit B

CONTRACT

THIS AGREEMENT made and entered into at Cleveland, Ohio, this 8th day of November, 1937, by and between THE HIGHWAY CONSTRUCTION COMPANY OF OHIO, INC., an Ohio corporation, which with its successors and assigns is hereafter called First Party, and THE HORVITZ COMPANY, an Ohio corporation, which with its successors and assigns is hereinafter called the Second Party.

WHEREAS, on May 1, 1937, resolution was adopted by the Directors of The Horvitz Company as per copy attached, marked 'No. 1',

WHEREAS, on October 19, 1936, lease was made and entered into between THE HIGHWAY CONSTRUCTION COMPANY OF OHIO, INC. and THE HORVITZ COMPANY, as per copy attached, marked 'No. 2',

WHEREAS, on August 27, 1937, lease was made and entered into between THE HIGHWAY CONSTRUCTION COMPANY OF OHIO, INC. and THE HORVITZ COMPANY, as per copy attached, marked 'No. 3',

NOW, THEREFORE, it is understood and agreed by and between the parties hereto, as follows:

Second Party shall use the equipment owned by the First Party on all its present and future construction contracts, and at its own expense move, repair, and maintain any and all equipment to be used by it, and return same to First Party in good condition, ordinary wear and tear only excepted.

After the Plan of Reorganization of THE HIGHWAY CONSTRUCTION COMPANY OF OHIO, INC., with any amendments or modifications thereto, has been approved by the Federal Court and has been declared effective, and after THE HIGHWAY CONSTRUCTION COMPANY OF OHIO, INC. has secured proper prequalification under the Ohio statutes and the necessary arrangements have been made with surety companies for bonds on public contracts, THE HORVITZ COMPANY will not submit any bid for public work unless it is for the benefit of THE HIGHWAY CONSTRUCTION COMPANY OF OHIO, INC.

When all of the present and future contracts for construction work entered into by Second Party have been completed, accepted, and paid for, Second Party will pay to first party as rental for the use of its equipment one-half (1/2) of the net profits realized by it from the performance of all

construction contracts. The payment for rental shall not be less than the amount specified in lease dated August 27, 1937, marked "No. 5".

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands to duplicates hereof the day and year above written.

THE HIGHWAY CONSTRUCTION COMPANY OF OHIO, INC.

By [signature]
Vice President

FIRST PARTY

THE HORVITZ COMPANY

By [signature]
President

SECOND PARTY

The Highway Construction Company of Ohio, Inc.

913 Midland Building

Cleveland, Ohio

April 7, 1937.

To the Creditors and Shareholders of and Claimants Against
The Highway Construction Company of Ohio, Inc.:

On the 11th day of May, 1936, The Highway Construction Company of Ohio, Inc. filed in the District Court of the United States for the Northern District of Ohio, Eastern Division, Cause No. 39,051, its petition for reorganization under Section 77-B of the Acts of Congress Relating to Bankruptcy. The matter was referred generally by the United States District Court to the Honorable William B. Woods as Special Master

The difficulties of the Company were precipitated by the assertion by the Industrial Commission of Ohio of a claim for the sum of $170,520 22, alleged to be due from the Company for premiums to the State Insurance Fund under the provisions of the Workmen's Compensation Law of Ohio, and for the further sum of $1,705,202.20, alleged to be due from the Company as penalty for failure to pay the said alleged premiums when they should have been paid. The Company denied any liability whatever on either of said claims To enforce the said claims an action was filed against the Company by the Attorney General of Ohio on the relation of the Industrial Commission, in Franklin County, Ohio, and, without notice to the Company, the Court appointed a receiver, who came to Cleveland and took possession of the property and business of the Company. Thereupon the petition for reorganization was filed, and by order of the United States District Court possession of the property and business was restored to the Company.

The Industrial Commission then filed its said claims, and upon objections thereto extensive hearings were held before the Special Master, who recently disallowed the said claims in their entirety, and ordered the Company to file its Plan of Reorganization. The Company's proposed Plan of Reorganization was filed with the Special Master on April 1, 1937. The Special Master on April 3, 1937 entered an order relating to the notice of the filing of the Plan, the method of acceptance thereof, the classification of creditors and others in respect thereto, fixing the date for hearing thereon, and other matters. Copies of the said proposed Plan of Reorganization and of the Special Master's order relating thereto are enclosed. The said matters are set for hearing before the Special Master, 1214 Terminal Tower, Cleveland, Ohio, at 10:00 o'clock A. M. on May 1, 1937.

Forms for the acceptance of the said Plan of Reorganization by creditors are also enclosed.

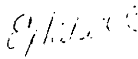
Schedules of assets and liabilities and lists of shareholders have heretofore been filed with the Court. Since the various classes of claims are treated in detail in the proposed Plan and in the schedules attached thereto, it is deemed unnecessary to make an additional statement concerning them in this communication. If, however, any creditor desires additional information, the Company will gladly furnish it, and the officers will be pleased to discuss the provisions of the proposed Plan with parties in interest.

Prompt acceptance of the Plan by all interested parties is desirable in order that the heavy expense incident to the present method of operating the Company may be avoided and it may proceed with its business in a manner which will enable it to meet its obligations to its creditors.

Very truly yours,

THE HIGHWAY CONSTRUCTION COMPANY
OF OHIO, INC.,

By S. A. Horvitz,
President.



IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN PROCEEDINGS FOR THE REORGANIZATION OF A CORPORATION

No. 39,051

IN THE MATTER OF THE HIGHWAY CONSTRUCTION COMPANY OF OHIO, INC., Debtor	AMENDED PLAN OF REORGANIZATION

I. SECURED OBLIGATIONS

(a) The Debtor is indebted to The Andwur Mortgage-Loan Company, of Elyria, Ohio, upon a promissory note secured by mortgage on Lot No. 226 East Avenue, Elyria, Ohio, the amount of which indebtedness as of May 11, 1936, is Twenty-four Thousand Seven Hundred Two Dollars, Twenty-one Cents ($24702.21). Interest on this indebtedness shall be computed and funded at the rate of four (4) per cent per annum from the 11th day of May, 1936, to the first day of the month following the date when the Court shall finally declare effective and order carried into execution the Plan of Reorganization with all amendments thereto. From said last date said mortgage obligation in the amount aforesaid plus funded interest thereon as a part of the principal shall bear interest at the rate of four (4) per cent per annum payable semi-annually until paid. Conditional upon the instalments of interest being paid when due or within fifteen (15) days thereafter and conditional upon payments being made upon said principal obligation (including funded interest) at the same time or times when payments are made by the Debtor on the principal of notes issued to the holders of unsecured claims and in amounts which are the same proportion of said principal obligations as payments so made on said notes issued to holders of unsecured claims are of said notes, but in no event less than One Thousand Dollars, ($1,000.00), during the twelve (12) months' period beginning the first day of the month following the date when the Court shall finally declare effective and order carried into execution the Plan of Reorganization with all amendments thereto and further conditional upon current taxes and assessments upon said mortgaged premises being paid as the same mature and upon compliance

by the Debtor with the statutes of Ohio with reference to payment of delinquent taxes in instalments, payment of the balance of the principal (including funded interest as aforesaid) shall be extended to July 1, 1941.

(b) The indebtedness to The Taylor Tractor Company having now been paid in full, no provision therefore is necessary in this Amended Plan.

II. DEBTS ENTITLED TO PRIORITY.

The Debtor at the time of the filing of the petition for reorganization was indebted to the Treasurer of Lorain County, Ohio, on account of unpaid personal property taxes in the sum of Eight Hundred Eighty-seven Dollars, Eighty-four Cents,($887.84); for real estate taxes on Lot No. 102 west of the river in Elyria, Ohio, in the sum of One Hundred Twenty-six Dollars, Thirty-nine Cents, ($126.39); and for real estate taxes on Lot No. 226 East Avenue, Elyria, Ohio, mortgaged to The Andwur Mortgage-Loan Company, in the sum of Twenty-nine Hundred Thirty-two Dollars, Eighty-three Cents, ($2932.83). The Debtor is likewise indebted to the Treasurer of Cuyahoga County, Ohio, on account of personal property taxes in the sum of Twenty-seven Hundred Seventy-eight Dollars, Seven Cents, ($2778.07), and for real estate taxes on Sublot No. 81 on East 146th Street in the City of Cleveland in the sum of Thirty-two Hundred Eighty-two Dollars, Seventy-nine Cents, ($3282.79).

Since said date the Debtor has paid both its current taxes upon personal property and upon real estate and has entered into undertakings under appropriate statutes of Ohio for payment of delinquent personal property and real estate taxes in ten (10) annual instalments as provided by law.

The Debtor shall continue payment of current taxes and assessments and instalments upon said undertakings for delinquent taxes until the same are paid in full in accordance with the provisions of said undertakings.

The amount heretofore found due the Industrial Commission of Ohio upon its proof of claim to-wit: The sum of Fifteen Hundred Thirty Dollars, Twenty-seven Cents, ($1530.27), with interest at six (6) per cent per annum from September 16, 1935, shall be paid in cash.

During the pendency of these proceedings the Debtor has, in accordance with the provisions of Order No. 3 of the Special Master herein, paid Fifteen Thousand Dollars, ($15,000.00), in compromise of the claim of the Commissioner of Internal Revenue of the United States of America for additional income taxes assessed against the Debtor for the years 1924 to 1930, both inclusive.

III. UNSECURED OBLIGATIONS

Upon the approval by the Court of this Plan of Reorganization, the Debtor shall present satisfactory evidence that each holder of a claim against the Debtor amounting to One Thousand Dollars, ($1,000.00), or less, either listed and/or properly proved and allowed herein, has been paid in full in cash. A schedule of such claims and the holders thereof is hereto attached as Schedule A.

The balance of the unsecured obligations of the Debtor as of May 11, 1936 totals Four Hundred Twenty-six Thousand Eight Hundred Eighty Dollars, Twelve Cents, ($426 880.12). A detailed list of the creditors holding such obligations and the amount owing to each being hereto attached as Schedule B.

Interest on the unsecured interest-bearing obligations of the Debtor (which unsecured interest-bearing obligations of the Debtor are included with non-interest-bearing obligations in said Schedule B) shall be funded by computing interest upon said interest-bearing obligations at the rate of four (4) per cent per annum from May 11, 1936 to the first day of the month following the date when the Court shall finally declare effective and order carried into execution this Plan of Reorganization with all amendments thereto, and from said last date said unsecured interest-bearing obligations (including funded interest thereon as a part of the principal) shall bear interest at the rate of four (4) per cent per annum payable semi-annually during

the first year and quarterly thereafter.

The Debtor shall issue to each of the creditors listed in Schedule B attached to this Amended Plan of Reorganization its cognovit promissory note in the amount computed in the manner provided in the preceding paragraph hereof. Each of said notes shall be in the form set forth in Schedule C attached hereto.

> (a) Each of such notes shall be dated the first day of the month following the date when the Court shall finally declare effective and order carried into execution the Plan of Reorganization with all amendments thereto; and
>
> (b) Shall bear interest at the rate of four (4) per cent per annum, payable semi-annually during the first year and quarterly thereafter, with provision for the acceleration of the maturity thereof upon the conditions set forth therein.

S. A. Horvitz and I. Horvitz shall jointly and severally unconditionally guarantee all of said notes, both as to principal and as to interest.

The Debtor at the time of the appointment of a liquidator for The Guardian Trust Company had on deposit with said Company certain funds for the purpose of guaranteeing its warranties in connection with paving contracts. The date of the making of the deposit, the pass book number thereof, the contract to secure the warranties on which the deposit was made and the amount of each such deposit are set forth in a list thereof hereto attached as Schedule D. The Debtor has now become entitled to a release of the funds so deposited with The Guardian Trust Company and the balance owing to the Liquidator of The Guardian Trust Company by the Debtor as of May 11, 1936, after such application is the sum set forth in Schedule B hereto attached.

In order to secure the payment of such notes issued by the Debtor to unsecured creditors pursuant hereto, the Debtor, its officers and directors are hereby directed to segregate and keep separate account of all moneys hereafter received by the Debtor from certain of its assets as hereinafter set forth and the Debtor shall promptly when and as moneys are realized by it from any of said assets apply the same pro rata to the payment of the notes issued to those creditors listed in Schedule B, and all other unsecured creditors whose claims against the Debtor may hereafter be allowed in these

proceedings. Subject to the provisions hereof, the notes issued to such creditors are hereby declared to be the first and best lien upon any sums realized by the Debtor from such assets, and all persons, firms or corporations hereafter becoming creditors of the Debtor are enjoined from attaching or levying execution upon such assets or the proceeds thereof. The Debtor, its officers and directors, so long as any of said notes are outstanding and unpaid are hereby enjoined from making any disposition of any of the moneys so received from such segregated assets except as herein provided. The assets of the Debtor which are segregated for the purpose of paying the interest and principal of such notes are as follows:

(a) Policy No. 6355379 issued on the life of S. A. Horvitz by The New York Life Insurance Company in the sum of One Hundred Thousand Dollars, ($100,000.00), upon which policy there is a policy loan in the principal amount of Eighteen Thousand, Eight Hundred Dollars, ($18,800.00). The Debtor shall pay the premiums on such insurance policy and the interest on such policy loan but shall have the right to increase the amount of such policy loan from time to time for the purpose of meeting its obligations for premiums or interest on such policy and loan.

(b) Policy No. 782509 issued on the life of S. A. Horvitz by The Connecticut Mutual Life Insurance Company in the sum of Twenty-five Thousand Dollars, ($25,000.00), upon which policy there is a policy loan in the principal amount of Eight Hundred Forty-eight Dollars, Sixty-seven Cents ($848.67). The Debtor shall pay the premiums on such insurance policy and the interest on such policy loan but shall have the right to increase the amount of such policy loan from time to time for the purpose of meeting its obligations for premiums or interest on such policy and loan.

(c) All sums which have heretofore been received from a certain [illegible], [illegible] August 3, 1935, [illegible] in the United States District Court, [illegible] District of Florida, [illegible] Division, [illegible] Civil No. [illegible] [illegible] 1 of [illegible]

BEST AVAILABLE COPY

by the Debtor to the extent necessary to pay the costs of these proceedings and the balance of such impounded funds shall be applied pro rata upon the notes issued to the unsecured creditors of the Debtor and to The Anchor Mortgage-Loan Company; statement of receipts and disbursements being as per Schedule E attached. The rights of The Seaboard Surety Company to any priority of payment by reason of the assignment given to it on March 20, 1934, attempting to grant a first and prior lien to said Surety Company in the proceeds of said judgment have been extinguished by a release signed by said Seaboard Surety Company and filed in these proceedings.

(d) All sums which may hereafter be received by the Debtor less costs and attorneys' fees in connection with the collection thereof and which may arise out of a certain action at law now pending in the United States District Court for the Southern District of Florida, Miami Division, wherein The Highway Construction Company of Ohio, Inc. is plaintiff and the City of Miami is defendant, said cause being known as No. 1448 M Civil. The Debtor shall continue to have full authority in the prosecution of said action and this order shall in no way impair the freedom of the Debtor in making in good faith a compromise or settlement in connection therewith providing said settlement or compromise is made under advice of counsel acting for and on behalf of the Debtor in connection with the prosecution of such litigation.

(e) All sums which the Debtor may hereafter receive from Hollywood, Inc., a Florida corporation, under and by virtue of the provisions of a contract dated the 22d day of January, 1931, by and among the Debtor, Hollywood, Inc. and Mercantile Investment and Holding Company, a Florida corporation.

The Debtor shall have the right to pay out of any sums received by it under such contract, counsel fees, costs and expenses now remaining unpaid and heretofore incurred in connection with the acquisition and protection of its rights under such contract and shall likewise have the right to pay out of any such sums, counsel fees and expenses hereafter incurred by the Debtor in the protection and enforcement of its rights under such contract. The Debtor likewise, shall have the right to reimburse itself for

any funds hereafter advanced to Hollywood, Inc. under the provisions of such contract.

To the extent that the Debtor may become liable for income taxes or excess profits taxes by reason of the receipt by it of any moneys upon the assets enumerated in Subdivisions (c), (d) and (e) above, it may deduct from any sums received from any or all of such assets the amount of such income and excess profits taxes. There is also reserved to the Debtor the right, under advice of counsel, to use any of the moneys so received from assets ennumerated in Subdivisions (c), (d) and (e) above, for the purpose of paying dividends to its shareholders; provided, however, that all the shareholders receiving any such dividends shall immediately reloan the same to the Debtor under the provisions of the next succeeding paragraph herein. The claims of the holders of any of such notes shall be subordinate to the claims of the holders of notes issued to unsecured creditors and The Andwur Mortgage-Loan Company pursuant to the terms hereof and any such notes so issued to shareholders shall so state upon the face thereof.

So long as any of the notes issued pursuant hereto are outstanding, the Debtor shall pay no dividends upon its common shares unless the amount of such dividends so paid be immediately reloaned to the Debtor by the shareholders receiving the same on notes maturing subsequent to the maturity of the notes herein provided for and the proceeds of such loans by the shareholders so receiving such dividends shall be applied by the Debtor pro rata upon the notes issued to unsecured creditors and The Andwur Mortgage-Loan Company.

Certain of the creditors listed in Schedule B now hold notes of the Debtor evidencing all or a part of the indebtedness of the Debtor to such creditors. Upon delivery of the notes herein provided for each such creditor shall surrender to the Debtor for cancellation the notes now held by it.

The action formerly pending in the Common Pleas Court of Cuyahoga County, Ohio, brought by Joan B. Faulkner against the Debtor being cause No. 397,463 in said Court having been settled and dismissed, no provision is made in this Plan of Reorganization for any payment on account thereof.

IV. COSTS

The Debtor will pay in cash all costs and expenses incurred incident to putting this Plan of Reorganization into effect and all other costs of administration and allowances made by the Court in these proceedings, provided, however, that no payment herein contemplated shall be made until the amount of the same and the payment thereof shall have been approved by order of the Court in which this Plan is filed after such notice as the Court shall determine upon and direct.

V. PAYMENT OF NON-ASSENTING CREDITORS

In respect of each class of creditors of which less than two-thirds (2/3) in amount shall accept this Plan (unless the claims of such class of creditors will not be affected by the Plan, or the Plan makes provision for the payment of their claims in cash in full) adequate protection for the realization by them of the value of their interest, claims or liens, if the property affected by such interest, claims or liens is dealt with by this Plan, shall be made in such manner as the Special Master or the Court may direct, consistent with the provisions of Section 77-B of the Acts of Congress Relating to Bankruptcy as Amended.

VI. SHAREHOLDERS NOT AFFECTED BY THE PLAN.

Since the Debtor, under the rulings of the Special Master upon the claims filed herein, is not insolvent, and the interests of the shareholders of the Debtor are not adversely affected by this Plan, no provision is made herein changing the rights of the shareholders of the Debtor.

VII. EXECUTION OF DETAILS OF PLAN.

All details in connection with carrying out the provisions of the foregoing Plan shall be subject to the order of the Court or Special Master herein, who are authorized and empowered to effect such changes and make such additions to the foregoing Plan and the documents required to be executed in connection therewith as may be necessary or advisable in order properly to carry out the purpose and intent of this Plan.

VIII. METHOD OF INDICATING ACCEPTANCE OF PLAN.

The method by which creditors and shareholders and other parties in interest may evidence their acceptance of the Plan, and, after con-

firmation of the Plan may participate therein, shall be determined by the Court or Special Master in these proceedings.

Nothing contained in this Plan or the attached Schedules is to be taken as an indication that any claim or class of claims has been admitted, filed or allowed in these proceedings.

Respectfully submitted,

THE HIGHWAY CONSTRUCTION COMPANY OF OHIO, INC.

By ______________________________

Filed ______________________

SCHEDULE A

Unsecured Creditors Whose Claims Are to be Paid in Cash.

Name	Amount
Acme Auto Radiator Company	$ 12.00
The Burdett Oxygen Company	41.43
The Burrows Brothers Company	4.59
The Carnegie Body Company	16.97
Cleveland Community Fund	250.00
City of Cleveland Division of Streets ..... $232.00 Division of Water 231.46	463.46
E. W. & M. K. Davis, Inc.	3.00
Equality Grinding & Machine Company	26.65
John E. Ertler	6.00
Lawrence E. Holocker	6.00
Independent Towel Supply Company	14.08
Industrial Advisors Bureau, Inc.	75.00
The H. F. Kolling Company	223.00
The Madison Foundry Company	70.15
Mitteg & Volger, Inc.	.75
The New York, Chicago and St. Louis Railroad	500.00
The Office Supply & Printing Company	13.59
The Ohio Ball Bearing Company	4.98
The Owen Bucket Company	45.24
The W. E. Pattison Supply Company	116.97
Pennsylvania Refining Company	144.59
The Philpott Rubber Company	37.39
John A. Roebling's Sons Co.	50.07
The W. F. Ryan Company	40.70
Scully Steel Products Company	58.12
Core Smith	5.00
The Standard Oil Company	124.58
The Standard Oil Company	21.67
The Thew Shovel Company	29.56
Western Union Telegraph Co	2.43
The Geo. Worthington Comp	[illegible]
TOTAL	[illegible]

SCHEDULE B.

List of Creditors who are to Receive Notes, and Amounts Owing to Each as of May 11, 1936.

Creditor	Amount
Boyd, Brooks and Wickham	$ 10,079.83
The Cleveland Builders Supply Company	120,764.73
Cleveland Quarries Company	23,074.03
Cleveland Terminals Building Company	9,626.62
Lorain County Savings & Trust Company	202,495.64
Seaboard Surety Company	6,130.00
* S. H. Squire, Superintendent of Banks, Guardian Trust Company, Cleveland, Ohio	49,744.89
Truscon Steel Company	4,764.38
	$426,880.12

* Amount remaining after application by the Liquidator of The Guardian Trust Company of the guarantee funds listed in Schedule D.

SCHEDULE C.

$................ Cleveland, Ohio ....

On or before five (5) years after date, for value received, the undersigned promises to pay to the order of .... the sum of .... Dollars ($................), with interest thereon at the rate of four (4) per cent per annum, payable semi-annually during the first year and payable quarterly thereafter.

In case of default for a period of thirty (30) days in the payment of any instalment of interest on this note or in case of default for a like period in the fulfillment of the orders of the District Court of the United States for the Northern District of Ohio, Eastern Division, in cause No. 39,051 for the reorganization of a corporation, with reference to the application to the payment of interest and principal on this note of the moneys which the Undersigned is obligated to pay pursuant to such order, then and in either such event this note shall become due and payable at the option of the holder hereof.

The application of certain funds to the payment of this obligation is secured by the order approving a Plan of Reorganization of the undersigned in cause No. 39,051 for the reorganization of a corporation in the District Court of the United States for the Northern District of Ohio, Eastern Division, to which order reference is hereby made.

The undersigned hereby authorizes any attorney-at-law to appear in any court of record in the State of Ohio after the above obligation becomes due, and waive the issuing and service of process and confess a judgment against it in favor of the holder hereof, for the amount then appearing due, together with costs of suit, and thereupon to release all errors and all right of appeal and stay of execution.

THE HIGHWAY CONSTRUCTION COMPANY OF OHIO, INC.,

By ______________________________

____

hereby jointly and severally [illegible]

guarantee the pay[illegible] [illegible]bove note, and [illegible]

at-law to appear for the undersigned in any court of record in the State of Ohio, at any time after the above obligation becomes due, and waive the issuance and service of process and confess a judgment against the undersigned, jointly and severally, in favor of the payee or any holder of this note, for the amount then appearing due and the costs of suit, and thereupon to release all errors and waive all right of appeal and stay of execution.

....
S. A. HORVITZ

....
I. HORVITZ

SCHEDULE D.

Funds on Deposit with The Guardian Trust Company for the Purpose of Securing Certain Outstanding Guarantees of the Company Under Contracts for Certain Public Improvements.

Date Deposited	Book No.	Contract		Amount
January 28, 1931	260606	East 55th Street	Newburg Heights	$ 151.68
December 28, 1931	265635	East 79th Street	Cleveland	1,164.61
December 31, 1931	265697	Various Streets	Shaker Heights	637.25
December 31, 1931	265718	Various Streets	Cleveland	4,260.94
March 28, 1932	267024	Euclid Blvd.	Cleveland Heights	163.39
January 14, 1933	270711	Chester Avenue	Cleveland	1,115.41
				$7,494.28

E.

Sums Received from Judgment, dated August 5, 1935, Recovered in the United States District Court, Southern District of Florida, Miami Division, Docket M Civil No. 1464 in the Cause of The Highway Construction Company of Ohio, Inc., v. the City of Miami, which said Judgment was Recorded in Judgment Book 1 of said Court, at page 686; Moneys Deposited in the Central National Bank, Special Account.

RECEIPTS

Date	Amount
January 26, 1937	$ 13,753.95
March 25, 1937	10,000.00
July 22, 1937	15,000.00
January 17, 1938	4,832.63
TOTAL RECEIPTS	$ 43,586.58

DISBURSEMENTS

Court Order Date	Date Paid	Paid To	Amount	
Dec. 29, 1937	Dec. 30, 1937	Fackler & Dye	4,000.00	
Dec. 29, 1937	Jan. 6, 1938	Boyd, Brooks & Wickham	10,000.00	
Dec. 29, 1937	Jan. 6, 1938	Wm. B. Woods	1,500.00	
Dec. 29, 1937	Jan. 6, 1938	J.A. & S. Newkirk	452.12	
Dec. 29, 1937	Jan. 10, 1938	Ethel C. Fisher	345.18	
Dec. 29, 1937	Mar. 22, 1938	Don. M. Hamilton	450.00	
Dec. 29, 1937	Mar. 22, 1938	Lee H. Kramer	150.00	
Dec. 29, 1937	Mar. 22, 1938	Geo. C. Kraegger	6.00	
Dec. 29, 1937	Mar. 22, 1938	W. A. Foster	42.00	
Sept. 7, 1938	Sep. 15, 1938	Wm. B. Woods	1,000.00	
Nov. 25, 1938	Nov. 30, 1938	Wm. B. Woods	55.00	
Nov. 25, 1938	Dec. 12, 1938	Boyd, Brooks & Wickham	5,028.63	
TOTAL DISBURSEMENTS				23,028.93
BALANCE				$20,557.65

This does not include additional amounts paid upon order of the Court to Special Master and Court Stenographers from the general funds of the Debtor.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In Proceedings for the Reorganization
of a Corporation

No. 39,051

IN THE MATTER OF THE HIGHWAY CONSTRUCTION COMPANY OF OHIO, INC., DEBTOR	)	FINAL DECREE

This 30th day of Nov. 1939, this cause came on to be heard upon the report and petition of the Debtor for a final decree, which report and petition were filed pursuant to the order of the Court contained in its decree of November 15, 1939, directing the Debtor to proceed to carry the Amended Plan of Reorganization into execution forthwith, and to make due report of its proceedings to the Court.

It appearing to the Court from said report that the Debtor has taken the following steps to comply with the said decree of November 15, 1939 and to carry said Amended Plan into execution: (a) It has paid in full with interest the preferred claim of The Industrial Commission of Ohio; (b) it has paid in full or procured the release of all claims in the amount of $1,000 or less listed in Schedule "A" attached to the Amended Plan; (c) It has paid all sums allowed by the Court to the Special Master and to counsel for fees and expenses; (d) it has executed and delivered to creditors of Class III notes in the form and manner required by said Amended Plan, aggregating the sum of $487,840.86, all dated December 1, 1939, guaranteed by Messrs. S. A. Horvitz and I. Horvitz.

And it further appearing that said Amended Plan of Reorganization has been fully carried into effect, and that there now remains in the Special Account of the Debtor at Central National Bank of Cleveland impounded by Order No. 11 of the Special Master, a balance of $16,451.23, and that said account should be released from the control of the Court, but to be held by the Debtor, together with the other assets specified in the Amended Plan of

Reorganization, in trust for the benefit of the creditors of the Debtor as the Amended Plan specified.

And the Court having examined said report and being fully advised the premises, THE COURT FINDS:

(1) That the Amended Plan of Reorganization as approved by the Court in its decree of November 15, 1939 has been fully carried into execution;

(2) That all of the proceedings of the Debtor in this cause have conformed with the requirements of Section 77-B of the Acts of Congress Relating to Bankruptcy as Amended;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED

(1) That said report of the Debtor concerning the execution of the Amended Plan be and the same is hereby approved;

(2) That the Amended Plan of Reorganization approved by the Court in its decree of November 15, 1939, be and the same is hereby declared effective and carried into execution;

(3) That the Debtor be and it is hereby discharged from all debts, claims and liabilities whatever existing on May 11, 1936 except:

(a) The secured obligation of The Andwur Mortgage-Loan Company of Elyria, Ohio, which remains in full force and effect in the amount and on the terms and conditions specified in the Amended Plan of Reorganization.

(b) The tax obligations of the Debtor to the Treasurer of Lorain County, Ohio, and to the Treasurer of Cuyahoga County, Ohio, on account of real estate and personal property taxes hereafter due and payable as specified in Section II of said Amended Plan of Reorganization.

(c) Obligations of the Debtor to the following creditors in the following amounts, to-wit:

William H. Boyd	$6,078.80
James C. Brooks	2,799.08
Don B. Wickham	2,636.60
The Cleveland Builders Supply Co.	137,618.21
Cleveland Quarries Company	26,353.10
Cleveland Terminals Building Co.	11,223.08
Lorain County Savings & Trust Co.	231,272.48
Seaboard Surety Company	7,001.14
S. H. Squire, Superintendent of Banks, Guardian Trust Co., Cleveland, Ohio	56,919.80
Truscon Steel Company	5,441.43
Total	$487,240.86

Said obligations are evidenced by the interest-bearing promissory notes of the Debtor dated December 1, 1939, guaranteed by S. A. Horvitz and I. Horvitz, the said notes and guaranty being in the form and containing the terms and provisions specified in the Amended Plan of Reorganization.

(d) The subordinated claims of Messrs. Boyd, Brooks & Wickham, of Cleveland, Ohio, and Fauver & Fauver, of Elyria, Ohio, in unliquidated amounts, for legal services rendered to the Debtor in litigation in the State of Florida, which claims are referred to in Paragraph (10) of the decree of this Court entered in these proceedings on December 29, 1937, and which unliquidated claims are expressly subordinated to all other claims of creditors, and which claims have been preserved by Order No. 17 of the Special Master.

(e) Any other claims not heretofore paid, provision for which is made in the Amended Plan of Reorganization or by order of this Court.

(f) The rights of stockholders of the Debtor, but subject to the provisions of the Amended Plan.

(g) Such debts as are by law excepted from the operation of a discharge in bankruptcy.

(4) The Andwur Mortgage-Loan Company and the creditors listed in Paragraph (3) (c) hereof to the extent of their respective claims are entitled to the benefit of the assets to be held in trust by the Debtor in accordance with the Amended Plan of Reorganization.

(5) That all creditors of, claimants against, and stockholders of the Debtor, wherever situated or domiciled, whose claims and interests are discharged by the provisions of this decree, are hereby perpetually restrained and enjoined from commencing any suits or other proceedings at law, in equity, or otherwise, against the Debtor or any of the assets or property of the Debtor, directly

or indirectly, on acc[illegible] of or based upon any such discharged right, claim or interest against the Debtor, its assets or property.

(6) That Central National Bank of Cleveland is hereby authorized and directed to release to the Debtor, or to its order, said sum of $16,451.25 in the Special Account of the Debtor impounded by Order No. 11 of the Special Master, without further order or direction of the Court, but the Debtor is ordered to use said balance only for the purposes of and in compliance with the provisions of the Amended Plan of Reorganization.

(7) That these proceedings be and the same are hereby declared terminated and finally closed.

(S) JONES
JUDGE