

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1935

No. 636

JAMES WALTER CARTER, PETITIONER,

vs.

CARTER COAL COMPANY, GEORGE L. CARTER,
AS VICE-PRESIDENT AND A DIRECTOR OF SAID
COMPANY, ET AL.

No.

GUY T. HELVERING, INDIVIDUALLY AND AS COM-
MISSIONER OF INTERNAL REVENUE OF THE
UNITED STATES, ET AL., PETITIONERS,

vs.

JAMES WALTER CARTER ET AL.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

VOL. I

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**IN SUPREME COURT OF THE DISTRICT OF
COLUMBIA**

No. 59374 In Equity

JAMES WALTER CARTER,

Address: Stevenson, Md., Plaintiff,

vs.

CARTER COAL COMPANY,
GEORGE L. CARTER as Vice-President and a Director of said
Company;
C. A. HALL as Secretary-Treasurer and a Director of said
Company,
JOHN CALLAHAN,
JOSEPH W. GORMAN and
WALTER S. DENHAM as Vice-Presidents of said Company;
GUY T. HELVERING, individually and as Commissioner of
Internal Revenue of the United States;
M. HAMPTON MAGRUDER, individually and as Collector of
Internal Revenue of the United States in and for the Col-
lection District of Maryland;
CLARENCE C. KEISER, individually and as Acting Chief Field
Deputy Collector of Internal Revenue for Division No. 2
of the Collection District of Maryland;
JOHN B. COLPOYS, individually and as United States Marshal
in and for the District of Columbia;
HOMER S. CUMMINGS, individually and as Attorney General
of the United States;
STANLEY REED, individually and as Acting Attorney Gen-
eral of the United States and as Solicitor General of the
United States; and
LESLIE C. GARNETT, individually and as United States At-
torney in and for the District of Columbia, Defendants.

[Caption omitted.]

[fol. 2] **BILL OF COMPLAINT FOR INJUNCTION AND PETITION
FOR DECLARATORY JUDGMENT**

The plaintiff, James Walter Carter, brings this, his bill
of complaint, against Carter Coal Company, George L.

Carter as Vice-President and a Director of said Company, C. A. Hall as Secretary-Treasurer and a Director of said Company; John Callahan, Joseph W. Gorman and Walter C. Denham as Vice-Presidents of said Company; Guy T. Helvering, individually and as Commissioner of Internal Revenue of the United States; Lewis M. Milbourne, individually and as Acting Collector of Internal Revenue of the United States in and for the Collection District of Maryland; Clarence C. Keiser, individually and as Acting Chief Field Deputy Collector of Internal Revenue for Division No. 2 of the Collection District of Maryland; John B. Colpoys, individually and as United States Marshal in and for the District of Columbia; Homer S. Cummings, individually and as Attorney General of the United States; Stanley Reed, individually and as Acting Attorney General of the United States and as Solicitor General of the United States; and Leslie C. Garnett, individually and as United States Attorney in and for the District of Columbia, and alleges:

1. The plaintiff, James Walter Carter, is a citizen and resident of the State of Maryland and is the President, a Director and a shareholder in the defendant corporation Carter Coal Company.

2. The defendant Carter Coal Company is a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located in Washington, District of Columbia, and is a citizen of the United States of America and of the State of Delaware.

3. The defendant George L. Carter is a citizen and resident of the District of Columbia and is a Vice-President and Director of Carter Coal Company.

4. The defendant C. A. Hall is a citizen and resident of the District of Columbia and is Secretary-Treasurer and a Director of Carter Coal Company.

5. The defendant John Callahan is a citizen and resident of the State of Maine; the defendant Joseph W. Gorman is a citizen and resident of the State of Massachusetts; and the defendant Walter C. Denham is a citizen and resident of the State of Kentucky. The defendants John Callahan, Joseph W. Gorman and Walter C. Denham are Vice-Presidents of Carter Coal Company.

6. The defendant Guy T. Helvering is a citizen and resident of the State of Kansas, and is the duly qualified and acting Commissioner of Internal Revenue of the United States.

7. The defendant Lewis M. Milbourne is a citizen and resident of the State of Maryland and is the duly qualified and acting Collector of Internal Revenue of the United States in and for the Collection District of Maryland; and the defendant Clarence C. Keiser is a citizen and resident of the District of Columbia and is the duly qualified and acting Chief Field Deputy Collector of Internal Revenue for Division No. 2 of the Collection District of Maryland.

8. The defendant John B. Colpoys is a citizen and resident of the District of Columbia and is the duly qualified and acting United States Marshal in and for the District of Columbia.

[fol. 3] 9. The defendant Homer S. Cummings is a citizen and resident of the State of Connecticut and is the duly qualified and acting Attorney General of the United States; the defendant Stanley Reed is a citizen and resident of the State of Kentucky, and is the duly qualified and acting Solicitor General of the United States, and the Acting Attorney General of the United States (U. S. Code, Title 5, sec. 293); and the defendant Leslie C. Garnett is a citizen and resident of the District of Columbia, and is the duly qualified and acting United States Attorney in and for the District of Columbia.

10. This suit arises under the Constitution and laws of the United States and involves the validity, construction, application and enforcement of the Act of Congress approved August 30, 1935, known as the "Bituminous Coal Conservation Act of 1935."

11. The matter in controversy in this suit exceeds the sum or value of \$3,000, exclusive of interest and costs, and this suit is not a collusive one to confer on a court of the United States jurisdiction of a case of which it would not otherwise have cognizance.

12. The plaintiff is now, and was at the time of the transactions herein complained of, a stockholder of Carter Coal Company, holding 15,000 shares of Class A common stock

(of one dollar par value) and 9,733 shares of preferred stock (of one hundred dollars par value).

13. The defendant Carter Coal Company is, among other things, duly authorized by law to mine, quarry and prepare for market and buy and sell and otherwise acquire and dispose of coal, iron, rock, stone, clay and all minerals, metals and timber. Said defendant is engaged in the business of producing and selling bituminous coal at its mines located in McDowell County, State of West Virginia, and in Tazewell County, State of Virginia. It also owns coal properties in Bell and Knox Counties, State of Kentucky but does not itself currently operate them. Substantially all of the coal produced by said defendant is sold to the buyers free on board cars at the defendant's said mines within the States of Virginia and West Virginia, as aforesaid. A substantial portion of the coal mined and sold by the defendant Carter Coal Company is thereafter transported in interstate commerce.

14. In the conduct of its said business of producing and selling bituminous coal within the States of Virginia and West Virginia, the defendant Carter Coal Company is subject to the regulation of statutes of the said States which provide for the health, safety and welfare of its employees and of the public. Such statutes, supervised by Departments, Commissions or Bureaus, constitute comprehensive codes making detailed regulations for the protection and promotion of the health, safety and welfare of the public and of said defendant's employees in the operation of its said business, including the qualifications of employees and of places where they shall be permitted to work in mines (Virginia Code of 1930, Chapter 76, Sections 1835 to 1887, [fol. 4] inclusive; Code of West Virginia, 1931, Chapter 22, Articles 1 and 2); provisions regulating the methods of weighing and measuring coal and the payment of employees therefor, including the employment of weighmen and checkweighmen (Code of West Virginia, 1931, Chapter 22, Article 2, Sections 73-78); and provisions requiring the payment of compensation to injured workmen and provision for their vocational rehabilitation and education (Virginia, Code of 1930, Chapters 76(A) and 76(B), Sections 1887(1) to 1887(85), inclusive; Code of West Vir-

ginia, 1931, Chapter 23, Article I to V, inclusive). In the carrying on of the said business of producing and selling bituminous coal within the States aforesaid, the said defendant is regularly subjected to the payment of heavy taxes to the said States and to subdivisions thereof.

15. The laws of the State of Delaware require that the business of the defendant, Carter Coal Company, "shall be managed by a Board of Directors." (Laws of Delaware, 1929, Chapter 135, section 4.) In conformity therewith, the By-laws of the defendant Carter Coal Company provide that "The property, affairs and business of the Corporation shall be managed by the Board of Directors," said Board to consist of three directors, who shall act by majority vote (By-laws, Art. V, Secs. 1, 2, 12).

16. The Bituminous Coal Conservation Act of 1935, aforesaid, among other things, provides for a Bituminous Coal Code which subjects the conduct of the business of producers of bituminous coal who accept it to regulation by the Federal Government through the National Bituminous Coal Commission and other agencies specified in the Act, including the regulation, among other things, of the prices at which coal may be sold by such producers and the wages and hours of labor of their employees. The said statute imposes upon bituminous coal producers who do not accept and obligate themselves to comply with the Code provided for by said Act a tax upon the sale or other disposition of all coal mined of fifteen per centum of the sale price at the mine, while producers of bituminous coal who accept the Code thereby become entitled to a drawback in the form of a credit equivalent to ninety per centum of the amount of said tax. The purpose and object sought to be accomplished by the said statute, as appears from the face thereof, is to force all coal producers to assent to and become members of the said Code, through the imposition of a heavy and confiscatory penalty under the guise of a tax, to be imposed solely upon producers not so assenting and becoming Code members; and plaintiff avers that the practical effect of said penalty will be to make it impossible for the defendant Carter Coal Company successfully to operate its business without assenting to and becoming a member of said Code.

17. The plaintiff is advised by counsel and charges that said Bituminous Coal Conservation Act of 1935 is illegal and void in that it violates the Constitution of the United States, in the following, as well as in other, respects:

[fol. 5] (1) The said Act is, in purpose, in essence, and on its face, an attempt to regulate matters not committed to the Federal Government by the Constitution, by means of the granting or withholding of a heavy penalty, called a tax, and it cannot be sustained as an exercise of the taxing power of the Federal Government.

(2) The said Act cannot be sustained under the Commerce Clause, since the regulations to which Carter Coal Company must submit as a condition to the forbearance of the tax constitute regulations of its activities in the conduct of its wholly intrastate business as aforesaid, the regulation of which does not constitute a regulation of commerce among the several States.

(3) The said Act is violative of the Tenth Amendment to the Constitution of the United States, in that it constitutes an invasion by the Federal Government of fields of regulation reserved by that Amendment to the States or to the People.

(4) The said Act is violative of the Fifth Amendment to the Constitution of the United States in that

(a) It attempts to deprive Carter Coal Company without due process of law of the liberty guaranteed to it by that Amendment;

(b) It attempts to deprive Carter Coal Company and the plaintiff of their property rights, including subsisting contract rights, without due process of law;

(c) It attempts to take the private property of Carter Coal Company for a public use without the payment of just compensation;

(d) It is wholly arbitrary, capricious and unequal.

18. On August 30, 1935, the plaintiff delivered to the Company and to the Directors thereof a formal demand that the Company should not comply with the Bituminous Coal Conservation Act, should not become a member of the Code nor pay the taxes provided for in said Act, and should

contest the validity of said statute and said Code in appropriate judicial proceedings. Said demand is in the following words and figures, to-wit:

August 30, 1935.

“To Carter Coal Company and the Board of Directors thereof:

“It is my opinion, based upon advice of counsel, that the Bituminous Coal Conservation Act of 1935 and particularly the sections thereof which purport to regulate the conduct of the business of this Company and those which are designed to coerce this Company into acceptance of the Bituminous Coal Code provided for in that Act, are unconstitutional and void and cannot lawfully be enforced as against [fol. 6] Carter Coal Company; that acceptance of the said Code and compliance therewith by Carter Coal Company would deprive the Company and its stockholders of their constitutional and property rights and would constitute a surrender of the most vital functions of the Company and its directors in the management of the business of the said Company and would be ultra vires; and that the payment of the so-called taxes provided in the said Act would constitute a waste and misappropriation of the assets of the Company.

“It is also my opinion that acceptance of the said Code would be detrimental to the interests of the Company, would increase the costs of the Company and the selling prices of the coal produced by it, which would result in a loss of customers to competitors, and destruction of the business of the Company.

“As President of the Company I suggest, and as a shareholder therein I demand, that the Company and its Directors shall refrain from complying with the Act, shall refrain from becoming a member of the Code provided for therein, and shall refuse to pay the taxes imposed thereby.

“I further suggest and demand that the Company and its Directors shall contest the constitutionality of said Act and prevent an unconstitutional and improper diversion of the assets of the Company in the payment of the taxes provided by said Act, and that the Company shall apply to a court of competent jurisdiction to determine the liability of the Company under said Act, and take such steps as

shall be necessary to protect the rights of the Company and its shareholders.

(Signed) James Walter Carter.”

19. The plaintiff called a meeting of the Board of Directors to consider his said demand and presented the demand to the Board of Directors at that meeting on August 30, 1935. The Board thereupon adopted the following resolution, against which plaintiff, as one of the members of the Board of Directors, cast his vote, to-wit:

“Whereas it is the unanimous opinion of the Members of this Board that the Bituminous Coal Conservation Act of 1935, approved August 30, 1935, is unconstitutional and is economically unsound, and that it would adversely affect the business of this Company and the interests of its shareholders for this Company to accept and obligate itself to comply with the Code provided for therein; and

“Whereas it is nevertheless the opinion of a majority of this Board that the Company must accept the Code provided for by said Act, because the extreme penalty for failure to accept the same, in the form of a 15% tax on its gross sales, would result in serious damage to the Company and might result in its bankruptcy.

“Resolved that the Company shall accept the Code provided for in said Act, and that the proper officers of the Company are hereby authorized and directed to take all action which may be necessary in the premises.”

20. The plaintiff thereupon called a special meeting of the shareholders of the Company, as provided in the By-laws thereof, to consider his demand and the resolution of the Board of Directors aforesaid. Said meeting was duly [fol. 7] held on August 30, 1935, and the following resolution was adopted by a majority in interest of the voting stockholders of the Company as provided in the By-laws, against which the plaintiff and another cast their votes, to-wit:

“Whereas this meeting has considered a demand addressed to the Company by its President and a preamble and resolution of the Board of Directors adopted on August 30, 1935, upon consideration of said demand;

“Whereas a majority in interest of the holders of voting shares of this Company fully agrees with all of the conclu-

sions set forth in said preamble and resolution of the Board of Directors ; and

“Whereas if the Company does not assent to the Code the exaction of the tax imposed by the Bituminous Coal Conservation Act of 1935 would ruin the Company financially and probably result in its bankruptcy ;

“Be it resolved that the said resolution of the Board of Directors of this Company, adopted on August 30, 1935, be and it hereby is in all respects approved, ratified and confirmed.”

21. In view of the premises aforesaid the plaintiff alleges that the said Company intends to comply with the provisions of the aforesaid Act and to accept and bind itself to comply with the provisions of the Code provided for therein, for the reason that the Act, although in form giving said Company a choice whether to assent to said Code or not, in effect and on its face compels said Company to become a Member thereof as the price of freedom from a ruinous pecuniary penalty. The plaintiff has made all possible effort to obtain such action as he desires on the part of the Directors and shareholders, but, for the reasons aforesaid, the Company will, nevertheless, comply with the statute and accept the Code unless restrained by this Honorable Court.

22. The Internal Revenue Laws of the United States impose upon the defendant Guy T. Helvering, as Commissioner of Internal Revenue of the United States, superintendence of the assessment and collection of all duties and taxes imposed by any law providing for internal revenue (U. S. Code, Title 26, sec. 2), including the direct assessment of taxes and the superintendence of the activities of Collectors of Internal Revenue (U. S. Code, Title 26, secs. 97, 102) and the Bituminous Coal Conservation Act of 1935 makes it the duty of the said defendant to promulgate regulations for the assessment and collection of the taxes provided for by said Act. The plaintiff alleges that, unless restrained by this Honorable Court, the said defendant will assess and collect from the defendant Carter Coal Company the taxes imposed by said Bituminous Coal Conservation Act of 1935, or will cause the several Collectors or Deputy Collectors of Internal Revenue of the United States, or other of his subordinates or assistants, or other Gov-

ernment officers, to assess and collect the tax from Carter Coal Company and to that end defendant will issue his regulations and instructions to his subordinates, or other officials, as aforesaid.

[fol. 8] 23. The defendant Lewis M. Milbourne, as Acting Collector of Internal Revenue of the United States in and for the Collection District of Maryland, is charged by law with the duty of collecting United States Internal Revenue taxes within the District of Columbia and is required by statute to "see that all laws and regulations relating to the collection of internal taxes are faithfully executed and complied with" within said district (U. S. Code, Title 26, secs. 34, 26); and the defendant Clarence C. Keiser, as Acting Chief Field Deputy Collector of Internal Revenue for Division No. 2 of the Collection District of Maryland, is likewise charged by law with the duty of collecting United States Internal Revenue taxes within the District of Columbia (U. S. Code, Title 26, sec 29); and the plaintiff alleges that said defendants will, under the regulations and instructions of the Commissioner of Internal Revenue, collect from the defendant Carter Coal Company the tax imposed by the Bituminous Coal Conservation Act of 1935, unless restrained by this Honorable Court.

24. It is the duty of the defendants Homer S. Cummings, as Attorney General of the United States, and Stanley Reed, as Solicitor General and Acting Attorney General of the United States (U. S. Code, Title 5, sec. 293), to enforce the statutes of the United States by all legal means, and it is the duty of the defendant, Leslie C. Garnett, as United States District Attorney in and for the District of Columbia, under the supervision and direction of the defendant Homer S. Cummings similarly to enforce the statutes of the United States within the District of Columbia (U. S. Code, Title 5, sec. 317, Title 28, sec. 481); and it is the intention of the said defendants to enforce the provisions of the Bituminous Coal Conservation Act of 1935 against the defendant Carter Coal Company and they will do so unless restrained by this Honorable Court.

25. The defendant John B. Colpoys is charged by law with the duty of executing distraint warrants issued by the defendants Lewis M. Milbourne and Clarence C. Keiser, and your complainants allege that, unless restrained by this

Honorable Court, the defendant John B. Colpoys will execute and enforce distraint warrants issued by the said defendants Milbourne or Keiser for the purpose of enforcing the penalty provided in the Bituminous Coal Conservation Act of 1935 against the defendant Carter Coal Company and its property.

26. Plaintiff further alleges that he is without any remedy in a court of law to prevent the threatened illegal, unconstitutional and ultra vires act of the defendant Carter Coal Company, and the defendant officers and Directors thereof, in assenting to and binding Carter Coal Company to become a Member of the Code provided for by the Bituminous Coal Conservation Act of 1935. Plaintiff further alleges that should said defendant become a Member of said Code it will thereby become obligated to sell its product in conformity with the regulations, and at the prices, provided for thereunder, and plaintiff is informed and believes, and apprehends and charges, that the result of compliance [fol. 9] by said defendant with said provisions will be a substantial loss and diversion of the business of said Carter Coal Company. Plaintiff further alleges and charges that by assenting to and becoming a Member of said Code said defendant will engage and obligate itself not to sell or deliver any coal at less than the minimum or more than the maximum prices fixed pursuant thereto regardless of the prices fixed in the existing contracts of said defendant, thereby subjecting itself to the risk of incurring large liabilities in damages for breach of its existing contracts with its customers, with whom it has many contracts outstanding. Plaintiff is also advised, and charges, that by assenting to the said Code and becoming a Member thereof, said Carter Coal Company will be acting in violation of the Anti-trust Laws of the United States, of the State of Virginia (Virginia Code, 1930, Chapter 185A, Constitution of Virginia, Sec. 165), and of other States, and will subject itself to criminal and civil liability therefor. The pecuniary losses caused as aforesaid will lessen and diminish the equity of the shareholders in said Carter Coal Company and the interests of the plaintiff in said Company as shareholders therein will be greatly and irreparably injured.

27. The plaintiff further alleges that if this Honorable Court should enjoin the Carter Coal Company from assent-

ing to or becoming a Member of the said Code, as herein-after prayed, there exists no adequate remedy at law to protect the constitutional and property rights of said Carter Coal Company and of the plaintiff against the assessment, collection, or payment of the so-called tax of 15% of the sale price of all bituminous coal produced, imposed by the Act aforesaid upon those who do not become Members of the Code. The plaintiff alleges that for the calendar year 1934 defendant Carter Coal Company sold approximately 2,126,046 tons of bituminous coal; that the sales price of said coal realized by said Company at the mine was approximately \$3,918,266, from which the said Company realized a net profit of approximately \$323,998 in the operation of its business; that had the 15% tax imposed by the Act aforesaid been in effect during said period, said Company would have been thereby obligated to the payment of a tax of approximately \$587,740, which would have resulted in completely wiping out all net profit from the operation of its business and in the creation of a net loss of \$263,750 from said operation for that year. Neither in the present year, nor at any time for many years prior thereto, to-wit, at least five years last past, have the net profits of Carter Coal Company equalled 15% of the total sales price received by said Company at the mine. Upon information and belief, plaintiff alleges that Carter Coal Company cannot successfully and profitably continue in the business of producing and selling coal if compelled to pay a tax of 15% on the sales price thereof at its mines, particularly if a substantial number of its competitors are required to pay a tax of but 1½% on said sales price; and the plaintiff avers that the payment or collection of the said illegal and confiscatory tax of 15% will ruin the said defendant financially and will inevitably result in the closing of the mines of said defendant and the loss of its customers and of its valuable good will, long before the rights of the plaintiff and of said defendant can be vindicated in a suit to [fol. 10] recover taxes paid under the said Act; and that the payment or collection of said tax will destroy the business of said defendant, cause its bankruptcy and force its employees to seek employment elsewhere—to prevent which there exists no remedy save in this Honorable Court.

Wherefore the plaintiff, being without remedy in the premises, except in a Court of Equity, prays:

1. That writs of subpoena be issued, directed to the defendants herein, commanding them to appear and make full, true and complete answer to this complaint, but not under oath (answers under oath being expressly waived), and to abide by and perform such orders and decrees as the Court may make in the premises.

2. That the Court order this cause to be heard upon application for a preliminary injunction (which is hereby made) within ten days after the service hereof on said defendants, and that the Court upon such application and hearing issue a preliminary injunction: (a) enjoining the defendant Carter Coal Company, and the defendants George L. Carter as Vice-President and a Director of said Company, C. A. Hall as Secretary-Treasurer and a Director of said Company, John Callahan, Joseph W. Gorman and Walter C. Denham as Vice-Presidents of said Company, pending final hearing of this case, from executing or filing an acceptance of the Bituminous Coal Code, from paying any tax attempted to be imposed upon the defendant Carter Coal Company pursuant to the Bituminous Coal Conservation Act of 1935, and from complying with the said Act; (b) enjoining the defendant Guy T. Helvering, individually and as Commissioner of Internal Revenue of the United States, his agents, assistants, deputies or employees, pending final hearing of this cause, from in any manner, directly or indirectly, assessing or collecting from the defendant Carter Coal Company the taxes imposed by said Bituminous Coal Conservation Act of 1935: from causing any Collector or Deputy Collector of Internal Revenue of the United States, or any of said defendant's subordinates or assistants, or any other Government officer, to assess or collect said taxes from defendant Carter Coal Company; and from issuing any regulations or instructions to the Collectors or Deputy Collectors of Internal Revenue or to said defendant's subordinates or assistants, or to any other Government officials, respecting the collection of said taxes from defendant Carter Coal Company; (c) enjoining the defendants Lewis M. Milbourne, individually and as Acting Collector of Internal Revenue of the United States in and for the Collection District of Maryland, Clarence C. Keiser, individually and as Acting Chief Field Deputy Collector of Internal Revenue in and for Division No. 2 of the

Collection District of Maryland, and John B. Colpoys, individually and as United States Marshal in and for the District of Columbia, their agents, assistants, deputies and employees, pending final hearing of this case, from collecting, or attempting to collect, directly or indirectly, from Carter Coal Company any tax or imposition purporting to be levied or assessed against the plaintiff under the Bituminous Coal Conservation Act of 1935 on account of the sale or other disposal of bituminous coal produced by Carter Coal Company as described in this complaint; from seizing any of the property of said Company herein because the said tax has not been paid; from distraining, seizing, entering upon, or attaching, or commencing any forfeiture proceeding against the property of said Company because the said tax has not been paid; from enforcing any of the remedies provided for the collection of internal revenue of the United States against said Company, its property, officers or agents with respect to the said tax; and (d) enjoining the defendants Homer S. Cummings, individually and as Attorney General of the United States, Stanley Reed, individually and Solicitor General and Acting Attorney General of the United States, and Leslie C. Garnett, individually and as United States Attorney in and for the District of Columbia, their agents, assistants, deputies and employees, pending final hearing of this case, from attempting to collect by suits or prosecutions, or otherwise, any tax, penalty or fine, mentioned in, or imposed by said Act, from defendant Carter Coal Company or any of its officers or Directors and from taking any steps whatever, legal or otherwise, to induce, coerce or compel the defendant Carter Coal Company or its officers or Directors to comply with the provisions of the Bituminous Coal Conservation Act of 1935 or the Code provided for thereunder.

3. That upon final hearing of this cause the Court order, adjudge and decree: (a) that the defendant Carter Coal Company and the defendants George L. Carter, as Vice-President and a Director of said Company, C. A. Hall, as Secretary-Treasurer and a director of said Company, and John Callahan, Joseph W. Gorman and Walter C. Denham, as Vice-Presidents of said Company be perpetually enjoined from filing an acceptance of the Code aforesaid, from paying any tax imposed upon defendant Carter Coal Com-

pany under the supposed authority of the Bituminous Coal Conservation Act of 1935, and from complying with the provisions of said statute or said Code; (b) that the defendant Guy T. Helvering, individually and as Commissioner of Internal Revenue of the United States, his agents, assistants, deputies or employees, be perpetually enjoined from in any manner, directly or indirectly, assessing or collecting from the defendant Carter Coal Company the taxes imposed by said Bituminous Coal Conservation Act of 1935; from causing any Collector or Deputy Collector of Internal Revenue of the United States, or any of said defendant's subordinates or assistants, or any other Government officer, to assess or collect said taxes from defendant Carter Coal Company; and from issuing any regulations or instructions to the Collectors or Deputy Collectors of Internal Revenue or to said defendant's subordinates or assistants or to any other Government officials respecting the collection of said taxes from defendant Carter Coal Company; (c) that the defendant Lewis M. Milbourne, individually and as acting Collector of Internal Revenue of the United States for the Collection District of Maryland, Clarence C. Keiser, individually and as Acting Chief Field [fol. 12] Deputy Collector of Internal Revenue of the United States for Division No. 2 of the Collection District of Maryland, and John B. Colpoys, individually and as United States Marshal in and for the District of Columbia, their agents, assistants, deputies and employees, be perpetually enjoined from directly or indirectly collecting or attempting to collect from Carter Coal Company any tax or imposition purporting to be levied or assessed against the said Company under the said Bituminous Coal Conservation Act of 1935 on account of the sale or other disposal of bituminous coal produced by said Company as described in this complaint; from seizing any of the property of said Company because the said tax has not been paid; from distraining, seizing, entering upon, or attaching, or commencing any forfeiture proceeding against the property of said Company because the said tax has not been paid; from enforcing any of the remedies provided for the collection of internal revenue of the United States against said Company, its property, officers or agents with respect to the said tax; and (d) that the defendants Homer S. Cummings,

individually and as Attorney General of the United States, Stanley Reed, individually and as Solicitor General and Acting Attorney General of the United States, and Leslie C. Garnett, individually and as United States Attorney in and for the District of Columbia, their agents, assistants, deputies and employees, be perpetually enjoined from directly or indirectly attempting to collect by suits or prosecutions, or otherwise, any tax, penalty or fine mentioned in or imposed by said Act from defendant Carter Coal Company or any of its officers or directors, and from taking any steps, legal or otherwise, to induce, coerce or compel the said defendant Carter Coal Company or its officers or directors to file an acceptance of said Code or to comply with the provisions of said Act.

4. That, upon final hearing, this Court shall declare, and order, adjudge and decree, that the Bituminous Coal Conservation Act of 1935, approved August 30, 1935, is unconstitutional and void, and is unenforceable as against Carter Coal Company or any of the officers or Directors thereof.

5. That plaintiff have such other, further and general relief as the nature of the case may require and the Court may deem just and proper in the premises.

(Signed) James Walter Carter, James Walter Carter, by (Signed) Richard H. Wilmer, His Attorney.

Cravath, de Gersdorff, Swaine & Wood, 15 Broad Street, New York, N. Y.; Frederick H. Wood, 15 Broad Street, New York, N. Y.; (Signed) Richard H. Wilmer, Transportation Building, Washington, D. C., Attorneys for the Plaintiff.

[fol. 13] *Duly sworn to by Richard H. Wilmer and James W. Carter. Jurats omitted in printing.*

[fol. 14] IN SUPREME COURT OF DISTRICT OF COLUMBIA

RULE TO SHOW CAUSE—Filed August 31, 1935

In consideration of the verified bill of complaint filed herein the 31st day of August, 1935, it is by the Court this 31st day of August, 1935,

Adjudged, ordered and decreed that the above-named defendants and each of them appear in this Court on the 16th day of September, 1935, at the hour of ten o'clock a. m., provided a copy of said bill of complaint and of this order shall be served on them on or before September 11, 1935, and show cause, if any they have, why an order should not be made and entered herein, pendente lite, to wit: (a) enjoining the defendant Carter Coal Company, and the defendants George L. Carter as Vice-President and a Director of said Company, C. A. Hall as Secretary-Treasurer and a Director of said Company, John Callahan, Joseph W. Gorman and Walter C. Denham as Vice-Presidents of said Company, pending final hearing of this case, from executing or filing an acceptance of the Bituminous Coal Code, from paying any tax attempted to be imposed upon the defendant Carter Coal Company pursuant to the Bituminous Coal Conservation Act of 1935, and from complying with the said Act; (b) enjoining the defendant Guy T. Helvering, individually and as Commissioner of Internal Revenue of the United States, his agents, assistants, deputies or employees, pending final hearing of this cause, from in any manner, directly or indirectly, assessing or collecting from the defendant Carter Coal Company the taxes imposed by said Bituminous Coal Conservation Act of 1935; from causing any Collector or Deputy Collector of Internal Revenue of the United States, or any of said defendant's subordi-[fol. 15] nates or assistants, or any other Government officer, to assess or collect said taxes from defendant Carter Coal Company; and from issuing any regulations or instructions to the Collectors or Deputy Collectors of Internal Revenue or to said defendant's subordinates or assistants, or to any other Government officials, respecting the collection of said taxes from defendant Carter Coal Company; (c) enjoining the defendants Lewis M. Milbourne, individually and as Acting Collector of Internal Revenue of the United States in and for the Collection District of Maryland, Clarence C. Keiser, individually and as Acting Chief Field Deputy Collector of Internal Revenue in and for Division No. 2 of the Collection District of Maryland, and John B. Colpoys, individually and as United States Marshal in and for the District of Columbia, their agents, assistants, deputies and employees, pending final hearing

of this case, from collecting, or attempting to collect, directly or indirectly, from Carter Coal Company any tax or imposition purporting to be levied or assessed against the complainant under the Bituminous Coal Conservation Act of 1935 on account of the sale or other disposal of bituminous coal produced by Carter Coal Company as described in this complaint; from seizing any of the property of said Company herein because the said tax has not been paid; from distraining, seizing, entering upon, or attaching, or commencing any forfeiture proceeding against the property of said Company because the said tax has not been paid; from enforcing any of the remedies provided for the collection of internal revenue of the United States against said Company, its property, officers or agents with respect to the said tax; and (d) enjoining the defendants Homer [fol. 16] S. Cummings, individually and as Attorney General of the United States, Stanley Reed, individually and as Solicitor General and Acting Attorney General of the United States, and Leslie C. Garnett, individually and as United States Attorney in and for the District of Columbia, their agents, assistants, deputies and employees, pending final hearing of this case, from attempting to collect by suits or prosecutions, or otherwise, any tax, penalty or fine, mentioned in, or imposed by said Act, from defendant Carter Coal Company or any of its officers or Directors and from taking any steps whatever, legal or otherwise, to induce, coerce or compel the defendant Carter Coal Company or its officers or Directors to comply with the provisions of the Bituminous Coal Conservation Act of 1935 or the Code provided for thereunder.

And that said defendants also show cause why plaintiff should not have such other, further, and general relief as the nature of the case may require and the Court may deem just and proper in the premises.

Alfred A. Wheat, Chief Justice.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

MOTION TO AMEND BILL OF COMPLAINT—Filed September 3,
1935

Now comes the plaintiff by his attorneys, Frederick H. Wood and Richard H. Wilmer, and moves the Honorable

Court to authorize and permit the amendment of the bill of complaint filed herein on the 31st day of August, 1935, in the following manner:

By adding and annexing to the bill of complaint the individual notarial verification of said bill of complaint of [fol. 17] the plaintiff, James Walter Carter.

Frederick H. Wood, Richard H. Wilmer, Attorneys
for Plaintiff.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

ORDER AMENDING BILL OF COMPLAINT—Filed September 3,
1935

Upon consideration of the motion of the plaintiff filed herein on the 3rd day of September, 1935, it is by the Court this 3rd day of September, 1935,

Adjudged, ordered and decreed that the bill of complaint filed herein on the 31st day of August, 1935, be amended before service thereof is had upon the respective defendants by adding and annexing to the bill of complaint the individual notarial verification thereof of the plaintiff, James Walter Carter.

Alfred A. Wheat, Chief Justice.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

RETURN OF DEFENDANTS GUY T. HELVERING ET AL., TO RULE
TO SHOW CAUSE—Filed September 16, 1935

Come now severally defendants Guy T. Helvering, individually and as Commissioner of Internal Revenue of the United States; Clarence C. Keiser, individually and as Acting Chief Field Deputy Collector of Internal Revenue for Division No. 2 of the Collection District of Maryland; John B. Colpoys, individually and as United States Marshal in and for the District of Columbia; Homer S. Cummings, as Attorney General of the United States; Stanley Reed, individually and as Acting Attorney General of the United States and as Solicitor General of the United States; and [fol. 18] Leslie C. Garnett, as United States Attorney in

and for the District of Columbia, and in response to the rule to show cause heretofore issued herein, respectfully show that plaintiff is not entitled to an injunction pendente lite under said rule, for the following reasons:

A. Plaintiff's application for a preliminary injunction is premature, in that

1. The tax, enforcement of which plaintiff seeks to enjoin, does not become effective until such time as the National Bituminous Coal Commission shall have formulated the Code contemplated by the Bituminous Coal Conservation Act of 1935. In no event do the taxing provisions of said Bituminous Coal Conservation Act become effective prior to November 1, 1935. The National Bituminous Coal Commission charged by said Act with the duty of formulating said Code has not as yet been appointed, qualified and organized.

2. No taxes under the provisions of said Act have been levied or assessed against the defendant Carter Coal Company, nor have any rules or regulations for the assessment or collection of such taxes been promulgated or adopted by the Commissioner of Internal Revenue, nor have any of these respondent defendants ever threatened to take any action, whatsoever, toward the assessment or collection of taxes under Section 3 of said Bituminous Coal Conservation Act against the defendant Carter Coal Company or its property.

3. Plaintiff in his bill (paragraph 27) rests his asserted right to enjoin these responding defendants on the assumption that this Court will enjoin the intended acceptance of said Code by the Carter Coal Company and that, in consequence, unless these responding defendants are also en-[fol. 19] joined, the said company will be exposed to the collection and enforcement of the full amount of said tax, without drawback of credit, by virtue of its non-acceptance of said Code pursuant to said injunction. Such prayer for injunction against said Carter Coal Company, upon the granting of which plaintiff's claim for injunction against these responding defendants is conditioned, is premature because neither the said Code nor the rules and regulations nor the maximum and minimum price schedules which may be established thereunder nor the form of acceptance of said Code contemplated by said Act have as yet been for-

mulated nor can be formulated until the appointment, qualification and organization of said National Bituminous Coal Commission and for some time thereafter; and it is therefore impossible for this Court, or for the officers, directors or shareholders of said company, to determine at the present time whether adherence to said contemplated Code by said Carter Coal Company would result in injury, irreparable or otherwise, to the interests of said company; and it is also impossible at the present time to determine whether adherence to said Code would constitute an abuse of discretion on the part of said officers, directors or shareholders; and the bill of complaint therefore fails to state sufficient grounds for injunctive relief at this time against acceptance of said Code by said Carter Coal Company.

4. Such injunction against acceptance of said Code by the Carter Coal Company, upon which injunctive relief against these responding defendants is based, would also be premature because the Bituminous Coal Conservation Act of 1935 provides a complete and adequate statutory form of [fol. 20] remedy for all of the injuries, if any, which plaintiff in said bill alleges as consequent upon acceptance by the Carter Coal Company of said Code; and the Bituminous Coal Conservation Act of 1935 expressly provides that the acceptance of the contemplated Code or of the drawback of taxes provided for in Section 3 of said Act by the Carter Coal Company shall not preclude or estop said company from contesting the constitutionality or validity of any provision of said Code and therefore such acceptance of said Code by the Carter Coal Company cannot injure said company, either irreparably or otherwise.

B. The said bill fails to disclose that either the plaintiff or the so-called defendant Carter Coal Company are threatened with immediate or any injury at the hands of these responding defendants, or any of them.

C. The said bill fails to disclose that either the plaintiff or the so-called defendant Carter Coal Company is in any immediate or any danger of suffering any injury at the hands of these defendants, or any of them, or the nature, extent or probability of the supposititious injuries to which plaintiff fears he may be subjected in the future.

D. The said bill affirmatively discloses that the so-called defendant Carter Coal Company has not availed itself of

the complete and adequate judicial and administrative remedies provided in said Bituminous Coal Conservation Act of 1935 for its protection, which said remedies are adequate.

E. In so far as said bill seeks to enjoin these responding defendants from collecting or attempting to collect such taxes as may hereafter be assessed against defendant Carter Coal Company under the provisions of Section 3 of said Bituminous Coal Conservation Act, the same cannot be maintained (a) because of the provisions of Section 3224, [fol. 21] R. S. (Title 26, § 154 U. S. C.) and (b) because to that extent this suit is a suit against the United States and the United States has not consented to be sued.

Wherefore, these responding defendants pray that plaintiff take nothing by reason of the issuance of said rule to show cause and that the same be vacated and discharged.

Guy T. Helvering, individually and as Commissioner of Internal Revenue of the United States; Clarence C. Keiser, individually and as Acting Chief Field Deputy Collector of Internal Revenue for Division No. 2 of the Collection District of Maryland; John B. Colpoys, individually and as United States Marshal in and for the District of Columbia; Homer S. Cummings, as Attorney General of the United States; Stanley Reed, individually and as Acting Attorney General of the United States and as Solicitor General of the United States; Leslie C. Garnett, as United States Attorney in and for the District of Columbia; by John Dickinson, Assistant Attorney General, Their Attorney. John Dickinson, Assistant Attorney General; Carl McFarland, Special Assistant to the Attorney General; F. B. Critchlow, Special Assistant to the Attorney General; David A. Pine, Assistant United States Attorney; John J. Wilson, Assistant United States Attorney. Attorneys for Responding Defendants.

Duly sworn to by F. B. Critchlow. Jurat omitted in printing.

[fol. 22] IN SUPREME COURT OF DISTRICT OF COLUMBIA
RETURN OF CARTER COAL CO. ET AL. TO RULE TO SHOW CAUSE
—Filed September 16, 1935

Now come Carter Coal Company, George L. Carter as Vice-President and Director of said Company, C. A. Hall as Secretary-Treasurer and a Director of said Company, John Callahan, Joseph W. Gorman and Walter C. Denham as Vice-Presidents of said Company, defendants herein and as joint return to the rule to show cause entered herein on the 31st day of August, 1935, show as follows:

1. Said defendants admit that the allegations set forth in the Bill of Complaint are true and correct.

2. These defendants respectfully submit to the Court the question whether or not a temporary injunction should issue as prayed for in the Bill of Complaint, but in view of the position in which these defendants have been placed by the enactment of the Bituminous Coal Conservation Act of 1935, and of the public importance of the issues raised herein and their far reaching effect upon the coal industry and the public, as well as upon the business of these defendants, respectfully pray that this cause be set down for [fols. 23 & 24] immediate hearing on the merits.

Carter Coal Company, by C. A. Hall, Secretary-Treasurer; Geo. L. Carter, Vice-President and a Director of Carter Coal Company; C. A. Hall, Secretary-Treasurer and a Director of Carter Coal Company; John Callahan, Vice-President of Carter Coal Company; by C. A. Hall, Agent; Joseph W. Gorman, Vice-President of Carter Coal Company; by C. A. Hall, Agent; Walter C. Denham, Vice-President of Carter Coal Company; by C. A. Hall, Agent. Karl J. Hardy, Transportation Building, Washington, D. C., Attorney for Defendants, Carter Coal Company; George L. Carter, Vice-President and a Director of said Company; C. A. Hall, Secretary-Treasurer, and a Director of said Company; John Callahan, Vice-President of said Company; Joseph W. Gorman, Vice-President of said Company, and Walter C. Denham, Vice-President of said Company.

Duly sworn to by C. A. Hall et al. Jurats omitted in printing.

[fol. 25] IN SUPREME COURT OF DISTRICT OF COLUMBIA

ORDER DENYING PRELIMINARY INJUNCTION—Filed
September 19, 1935

This cause came on to be heard at this term on rule to show cause why preliminary injunction should not issue and on returns thereto, and was argued by counsel, and, thereupon, upon consideration thereof, it is this 19 day of September, 1935,

Ordered that plaintiff's application for a preliminary injunction be, and it is, hereby denied without prejudice, and that the rule to show cause heretofore issued thereon be, and the same is, hereby vacated and discharged.

Daniel W. O'Donoghue, Justice.

Presented by F. B. Critchlow, David A. Pine, Attorneys for the Defendant Government Officers.

No objection as to form. Karl J. Hardy, Attorney for Carter Coal Co. and Its Defendant Officers. Cravath, de Gersdorff, Swaine & Wood, Frederick H. Wood, Richard H. Wilmer, Attorneys for Plaintiff.

Exception noted by plaintiff.

Daniel W. O'Donoghue, Justice.

[fol. 26] IN SUPREME COURT OF DISTRICT OF COLUMBIA

MOTION FOR SUBSTITUTION—Filed September 19, 1935

Now comes the plaintiff, by his attorneys, and respectfully moves the Honorable Court that M. Hampton Magruder individually and as Collector of Internal Revenue of the United States in and for the Collection District of Maryland be substituted for and in the place of defendant Lewis M. Milbourne individually and as Acting Collector of Internal Revenue of the United States in and for the Collection District of Maryland, and as grounds for said motion shows as follows:

1. That Lewis M. Milbourne, recently Acting Collector of Internal Revenue of the United States in and for the Collection District of Maryland, resigned and vacated such office on or about September 18, 1935, and was thereupon succeeded in such official capacity by M. Hampton Magruder, who was duly qualified to fill such office and has since said date acted in the capacity of Collector of Internal Revenue of the United States in and for the Collection District of Maryland.

2. That there is a substantial need for continuing this cause and substituting the successor in office of Lewis M. Milbourne as Acting Collector of Internal Revenue of the United States in and for the Collection District of Maryland.

Cravath, de Gersdorff, Swaine & Wood, Frederick H. Wood, Richard H. Wilmer, Attorneys for Plaintiff.

We consent: Karl J. Hardy, Attorney for Defendant Carter Coal Company and Its Defendant Officers. David A. Pine, Asst. U. S. Atty. F. B. Critchlow, Special Asst. to Atty. Gen., Attorneys for the Defendant, Government officers.

[fol. 27] IN SUPREME COURT OF DISTRICT OF COLUMBIA

ORDER SUBSTITUTING PARTY DEFENDANT—Filed September 19, 1935

Upon consideration of the motion filed herein by the plaintiff on the 19 day of September, 1935, it is by the Court this 19 day of September, 1935.

Ordered that M. Hampton Magruder, individually and as Collector of Internal Revenue of the United States in and for the Collection District of Maryland, be, and he hereby is, substituted for and in the place of Lewis M. Milbourne, individually and as Acting Collector of Internal Revenue of the United States in and for the Collection District of Maryland.

Daniel W. O'Donoghue, Justice.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

ENTRY OF APPEARANCES—Filed September 19, 1935

To the Clerk of the Above-entitled Court:

Please enter the appearance of the undersigned as attorneys and solicitors for the following defendants:

Guy T. Helvering, individually and as Commissioner of Internal Revenue of the United States;

M. Hampton Magruder, individually and as Collector of Internal Revenue of the United States in and for the collection district of Maryland;

Clarence C. Keiser, individually and as acting chief field deputy collector of internal revenue for Division No. 2 of the collection district of Maryland;

John B. Colpoys, individually and as United States Marshal in and for the District of Columbia;

[fol. 28] Homer S. Cummings, individually and as Attorney General of the United States;

Stanley Reed, individually and as acting Attorney General of the United States and as Solicitor General of the United States; and

Leslie C. Garnett, individually and as United States Attorney in and for the District of Columbia.

Dated this 19 day of September, 1935.

John Dickinson, Assistant Attorney General; Carl McFarland, Special Assistant to the Attorney General; F. B. Critchlow, Special Assistant to the Attorney General; David A. Pine, Assistant United States Attorney; John J. Wilson, Assistant United States Attorney.

 IN SUPREME COURT OF DISTRICT OF COLUMBIA

STIPULATION RE TIME TO ANSWER—Filed September 19, 1935

It is hereby stipulated that the following defendants, namely, Guy T. Helvering, individually and as Commissioner of Internal Revenue of the United States; M. Hampton Magruder, individually and as Collector of Internal Revenue of the United States in and for the collection district of Maryland; Clarence C. Keiser, individually and as

acting chief field deputy collector of internal revenue for Division No. 2 of the collection district of Maryland; John B. Colpoys, individually and as United States Marshal in and for the District of Columbia; Homer S. Cummings, in- [fol. 29] dividually and as Attorney General of the United States; Stanley Reed, individually and as acting Attorney General of the United States and as Solicitor General of the United States; and Leslie C. Garnett, individually and as United States Attorney in and for the District of Columbia, may have up to and including the 2d day of October, 1935, within which to answer or otherwise plead to plaintiff's bill of complaint herein.

Dated this 19th day of September, 1935.

John Dickinson, Assistant Attorney General; Carl McFarland, Special Assistant to the Attorney General; F. B. Critchlow, Spec. Asst. to Atty. General; David A. Pine, Assistant United States Attorney; John J. Wilson, Assistant United States Attorney; Attorneys for said Defendants. Cravath, de Gersdorff, Swaine & Wood, Frederick H. Wood, Richard H. Wilmer, Attorneys for Plaintiff.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

STIPULATION RE TIME TO ANSWER—Filed September 20, 1935

It is this 19th day of September, 1935, stipulated that the following defendants, namely, Carter Coal Company, George L. Carter as Vice-President and Director of said Company, C. A. Hall as Secretary-Treasurer and a Director of said Company, John Callahan, Joseph W. Gorman [fol. 30] and Walter C. Denham as Vice-Presidents of said Company, may have up to and including the 4th day of October, 1935, within which to answer or otherwise plead to plaintiff's bill of complaint herein.

Cravath, de Gersdorff, Swaine & Wood, Frederick H. Wood, Richard H. Wilmer, Attorneys for Plaintiff; Karl J. Hardy, Attorney for Carter Coal Company and Its Defendant Officers.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

JOINT AND SEVERAL ANSWER OF DEFENDANTS GUY T. HELVERING, INDIVIDUALLY AND AS COMMISSIONER OF INTERNAL REVENUE OF THE UNITED STATES; M. HAMPTON MAGRUDER, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE OF THE UNITED STATES IN AND FOR THE COLLECTION DISTRICT OF MARYLAND; CLARENCE C. KEISER, INDIVIDUALLY AND AS ACTING CHIEF FIELD DEPUTY COLLECTOR OF INTERNAL REVENUE FOR DIVISION NO. 2 OF THE COLLECTION DISTRICT OF MARYLAND; JOHN B. COLPOYS, INDIVIDUALLY AND AS UNITED STATES MARSHAL IN AND FOR THE DISTRICT OF COLUMBIA; HOMER S. CUMMINGS, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE UNITED STATES; STANLEY REED, INDIVIDUALLY AND AS ACTING ATTORNEY GENERAL OF THE UNITED STATES AND AS SOLICITOR GENERAL OF THE UNITED STATES; AND LESLIE C. GARNETT, INDIVIDUALLY AND AS UNITED STATES ATTORNEY IN AND FOR THE DISTRICT OF COLUMBIA—Filed October 2, 1935.

Come now these defendants, reserving all manner of exceptions that may be had to the uncertainties and imperfections of plaintiff's bill of complaint and in answer thereto, or to so much thereof as they are advised is material to be answered, say:

I

1. They admit the allegations of paragraph one of said bill of complaint.
2. They admit the allegations of paragraph two of said [fol. 31] bill.
3. They admit the allegations of paragraph three of said bill.
4. They admit the allegations of paragraph four of said bill.
5. They admit the allegations of paragraph five of said bill.
6. They admit the allegations of paragraph six of said bill.
7. They admit that defendant M. Hampton Magruder, heretofore substituted herein for defendant Lewis M. Mil-

bourne, is a citizen and resident of the State of Maryland and is the duly qualified and acting Collector of Internal Revenue of the United States in and for the Collection District of Maryland; admit the remaining allegations of paragraph seven of said bill.

8. They admit the allegations of paragraph eight of said bill.

9. They admit the allegations of paragraph nine of said bill.

10. With reference to the allegations contained in paragraph ten of the bill these defendants show that said allegations are conclusions of law and that they are not required to answer the same.

11. These defendants are without knowledge concerning the matters alleged in paragraph eleven of said bill, except that defendants are informed and believe and upon such information and belief allege that this cause involves no real case or controversy between plaintiff and the defendant Carter Coal Company, its officers and directors, but is as to such parties brought for the purpose merely of obtaining [fol. 32] an advisory opinion from this Court.

12. These defendants are without knowledge concerning the matters alleged in paragraph twelve of said bill.

13. They admit the allegations contained in paragraph thirteen of said bill except that they have no knowledge as to what proportion if any of the coal produced by the Carter Coal Company is sold to buyers free on board cars at the mines of said company.

14. These defendants admit that the defendant Carter Coal Company is subject to the payment of taxes to the States of Virginia and West Virginia and to subdivisions thereof, but are without knowledge as to the burden of such taxes. With reference to the remaining allegations contained in paragraph fourteen of said bill defendants show that they are not required to make answer thereto in that the construction, validity and scope of the State statutes therein referred to, if material in this cause, are questions of law to be determined by this Honorable Court.

15. They admit the allegations of paragraph fifteen of said bill.

16. These defendants are without knowledge as to whether or not it would be possible for the defendant Carter Coal Company to operate its business successfully should it elect not to become a member of said code and to pay said tax. These defendants show that there is no reason for them to answer the remaining allegations contained in paragraph sixteen of said bill because said remaining allegations contain mere conclusions of the pleader relative to the contents and purposes of and the obligations imposed by the Bituminous Coal Conservation Act of 1935, of the actual terms and provisions of which this Court will take judicial notice.

[fol. 33] 17. These defendants show that each and every charge or allegation contained in paragraph seventeen of plaintiff's bill of complaint is a conclusion of law and that they are not required to make answer thereto. Defendants nevertheless deny each and every charge or allegation contained therein.

18. These defendants are without knowledge concerning any of the matters alleged in paragraph eighteen of said bill of complaint.

19. These defendants are without knowledge concerning any of the matters alleged in paragraph nineteen of said bill.

20. These defendants are without knowledge concerning any of the matters alleged in paragraph twenty of said bill.

21. These defendants are without knowledge concerning any of the matters alleged in paragraph twenty-one of said bill except that these defendants admit that the said Carter Coal Company intends to accept said code unless it be restrained from so doing by this Honorable Court.

22. For answer to the twenty-second paragraph of the bill of complaint defendants admit that defendant Guy T. Helvering is Commissioner of Internal Revenue of the United States and is by reason of such office charged with the performance of certain duties prescribed by law. As to the nature and extent of the duties so prescribed defendants respectfully invite the Court's attention to the statutes governing the same. Further answering said paragraph defendants aver that the taxing provisions of the Bituminous Coal Conservation Act of 1935 have not yet

become effective and that no tax whatever has been levied, assessed or imposed against the defendant Carter Coal Company under the provisions of said Act, and further [fol. 34] that no such tax whatever will in any event become subject to collection from said Carter Coal Company prior to the first day of the second succeeding month after the formulation by the National Bituminous Coal Commission of the code contemplated by said Act.

23. For answer to the twenty-third paragraph of said bill these defendants admit that defendants M. Hampton Magruder and Clarence C. Keiser are respectively Collector of Internal Revenue for the Collection District of Maryland and Acting Chief Field Deputy Collector of Internal Revenue for Division No. 2 of said Collection District and are by reason of such offices respectively charged with the performance of certain duties prescribed by law. As to the nature and extent of the duties so prescribed defendants respectfully invite the Court's attention to the statutes governing the same. Further answering said paragraph defendants aver that the taxing provisions of the Bituminous Coal Conservation Act of 1935 have not as yet become effective and that no tax whatever has been levied, assessed or imposed against the defendant Carter Coal Company under the provisions of said Act, and further that no such tax whatever will in any event become subject to collection from said Carter Coal Company prior to the first day of the second succeeding month after the formulation by the National Bituminous Coal Commission of the code contemplated by said Act.

24. Answering paragraph twenty-four of said bill defendants admit that defendant Homer S. Cummings is Attorney General of the United States, that defendant Stanley Reed is Solicitor General and in the absence of the Attorney General is the Acting Attorney General of the United States, that defendant Leslie C. Garnett is United States Attorney [fol. 35] in and for the District of Columbia, and that said defendants are by reason of such offices respectively charged with the performance of certain duties prescribed by law. As to the nature and extent of the duties so prescribed defendants respectfully invite the Court's attention to the statutes governing the same, and particularly to the provisions of the Bituminous Coal Conservation Act of 1935 relative to the method of its enforcement, namely by means

of judicially reviewable administrative orders. Said defendants disavow any intention of taking any action or instituting any proceeding against the defendant Carter Coal Company except such actions or proceedings as are authorized by law. As to all such actions or proceedings the legal remedy of the defendant Carter Coal Company is adequate.

25. Answering paragraph twenty-five of said bill defendants admit that defendant John B. Colpoys is United States Marshal in and for the District of Columbia and as such officer is charged with the performance of certain duties prescribed by law. As to the nature and extent of such duties defendants respectfully invite the Court's attention to the rules and statutes governing the same. Further answering said paragraph defendants aver that no distraint warrant against the property of defendant Carter Coal Company has ever been issued or threatened to be issued by defendants M. Hampton Magruder and Clarence C. Keiser or either of them or by anyone acting in their place or stead in connection with any tax imposed under the provisions of the Bituminous Coal Conservation Act of 1935.

26. Answering paragraph twenty-six of said bill these defendants deny that the acceptance by the said Carter Coal [fol. 36] Company of the code provided for by the Bituminous Coal Conservation Act of 1935 would be illegal, unconstitutional or ultra vires and also deny upon information and belief that the result of compliance with such code will be a substantial loss or diversion of the business of said Company. Defendants are without knowledge of what the minimum or maximum prices will be if and when such minimum and maximum are established pursuant to said code, and are also without knowledge concerning said Carter Coal Company's existing contracts with its customers and are consequently without knowledge concerning the effect, if any, of such minimum and maximum prices upon such existing contracts. Defendants deny that the said Carter Coal Company by assenting to said code or by becoming a member thereof will be acting in violation of the Antitrust Laws of the United States or of the State of Virginia or of other States. Although plaintiff has failed to disclose in his bill the manner or extent to which he claims the said Carter Coal Company will be subject to pecuniary losses by reason of its assenting to said code, these defendants deny that said Company or its shareholders will suffer any pecuniary

loss or injury by reason of such acceptance, but on the contrary allege on information and belief that acceptance of said code will result in a pecuniary advantage to said Company. The remaining allegations contained in paragraph twenty-six of the bill being conclusions of law, the defendants are not required to answer.

27. Answering the allegations contained in paragraph twenty-seven of said bill defendants show that plaintiff has [fol. 37] disclosed in his bill no good or sufficient equitable ground or reason for the issuance by this Court of an injunction restraining said Carter Coal Company from assenting to or becoming a member of said code and deny that the said Carter Coal Company is without an adequate remedy at law to protect its rights and property as the same may be affected by such tax or taxes as may hereafter be imposed under the provisions of said Bituminous Coal Conservation Act of 1935. Defendants are without knowledge of the amount of the production of the Carter Coal Company in the year 1934 or in previous years or of price or the profit realized by said Company upon the sale of the coal produced by it during said periods. Defendants are also without knowledge of the effect the payment of said 15% tax would have upon the business of the Carter Coal Company should said Company elect to pay the same rather than to subject itself to the regulatory provisions of said contemplated code.

28. These defendants deny each and every allegation contained in the said bill not hereinabove admitted, explained or denied.

II.

Further answering the bill of complaint and as a separate defense thereto, these defendants say:

Bituminous coal is consumed in every State of the United States in generating energy for the production of light, heat and power. It furnishes approximately 45 percent of the total energy consumed for such purposes in the United States. Its use for the aforesaid purposes is indispensable to the industrial and economic life and to the health and comfort of the inhabitants of every State and is vital to the national public welfare.

Commercially important deposits of bituminous coal [fol. 38] within the United States are limited to 23 produc-

ing areas confined within the boundaries of 26 States and more than 70 percent of the total annual output is mined in four States. Approximately 85 percent of the bituminous coal produced within the United States is consumed (a) in States other than the State in which it was mined, or (b) by railroads engaged in interstate commerce. Over 20 percent of the total annual production of bituminous coal is required for the use of such interstate railroads as fuel. The distribution of bituminous coal from the producing areas to the consuming public throughout the nation supplies over 17 percent of the total gross freight revenues of the railroads engaged in interstate commerce.

In view of the great present importance of bituminous coal as a source of energy for industrial and domestic purposes, and in view of the necessity of transporting it across State lines to reach the great majority of the users, it is of particular importance to the national public welfare that the distribution and marketing of bituminous coal in interstate commerce be not subjected to interruptions, dislocations, burdens, or restraints. For many years the distribution and marketing of bituminous coal in interstate commerce has been subject (a) to sudden unforeseeable, recurrent and prolonged interruptions and stoppages in the shipment of such coal from the producing areas to the consuming markets; (b) to sudden, recurrent and extremely wide fluctuations in the price of such coal to the consuming public, resulting in hardship and inconvenience to the consuming public in other States than the State of production, and tending directly and substantially to restrict and control the movement of coal in interstate commerce; [fol. 39] (c) to unfair and demoralized methods of competition throughout the industry which operate directly and substantially to burden and restrain interstate commerce in bituminous coal. Such burdens, restraints and interruptions have operated so as to affect seriously and injuriously a multitude of consumers of bituminous coal throughout the country, to cause a substantial waste of the coal resources of the nation, to bring about the bankruptcy of many coal producers and to result in widespread unemployment. Such conditions have resulted in serious and widespread reigns of disorder and violence requiring resort on the part of public authorities and of the private parties directly concerned therewith to the State and Fed-

eral courts of law and equity and necessitating the use of State militia and of Federal troops.

For the purpose of determining the cause or causes of the burdens, restraints and interruptions aforesaid and of providing appropriate legislative measures to remove or control the same, various Congresses of the United States have, since the year 1918, made or caused to be made, among others, the following fact-finding investigations into the conditions under which bituminous coal is produced, distributed and marketed throughout the United States, viz.

- Hearings before the Committee on Manufactures of the Senate on Shortage of Coal (65th Cong., 2nd Sess., 1918) ;
- Hearings before the Committee on Interstate Commerce of the Senate on Increased Price of Coal (66th Cong., 1st Sess., 1919, 1920, 1921) ;
- Hearings before the Committee on Reconstruction and Production of the Senate on Coal and Transportation (66th Cong., 3rd Sess., 1920, 1921) ;
- Hearings before the Committee on Education and Labor of the Senate on Conditions in the West Virginia Coal Fields (67th Cong., 1st Sess., 1921, 1922) ;
- [fol. 40] Hearings before the Committee on Labor of the House of Representatives on Labor Conditions in the Coal Industry (67th Cong., 2nd Sess., 1922) ;
- Report of the United States Coal Commission pursuant to the Act of September 22, 1922, published in 1925 ;
- Hearings before the Committee on Interstate and Foreign Commerce of the House of Representatives on Coal Legislation (69th Cong., 1st Sess., 1926) ;
- Hearings before the Committee on Interstate Commerce of the Senate on Conditions in the Coal Fields of Pennsylvania, West Virginia, and Ohio (70th Cong., 1st Sess., 1928) ;
- Hearings before the Committee on Interstate Commerce of the Senate on Proposed Bituminous Coal Legislation (70th Cong., 2nd Sess., 1929) ;
- Hearings before the Committee on Mines and Mining of the Senate on the Creation of a Bituminous Coal Commission (72nd Cong., 1st Sess., 1932) ;
- Hearings before the Committee on Interstate Commerce of the Senate on Stabilization of the Bituminous Coal Mining Industry (74th Cong., 1st Sess., 1935) ;

Hearings before the Committee on Ways and Means of the House of Representatives on Stabilization of the Bituminous Coal Mining Industry (74th Cong., 1st Sess., 1935).

From the facts disclosed in and by the aforesaid legislative investigations, and otherwise, it was and is made evident, and these defendants aver the facts to be, that the aforesaid burdens and restraints upon and interruptions to such commerce in bituminous coal are presently, primarily and directly due to and caused and occasioned by the existence of an abnormal and destructive competitive rivalry for markets between the said several producing areas and between the producing units therein contained; that such unbridled competition has resulted in a reduction of the average mine realization price of bituminous coal to a level frequently below the average cost of production of such coal; that over 60 percent of the cost [fol. 41] of producing bituminous coal in the United States is attributable to the cost of labor going directly into its production and that such labor cost is the only cost element that is subject to appreciable adjustment; that as a direct result of such competition wages in said industry have been progressively forced down to a point below subsistence levels; that numerous controversies resulting in strikes and lockouts and in the interruption, cessation and dislocation of production and distribution have resulted directly from such price and wage reductions and from the refusal of employers to bargain collectively relative thereto and from various unfair labor practices; that to remove or control the aforesaid direct and substantial burdens upon and interruptions to interstate commerce in bituminous coal it is necessary that competition between the various producing areas aforesaid in the consuming markets of the several states be regulated by the elimination of unfair competitive marketing practices, by the fixing between fair and reasonable limits of the price at which such coal may be distributed in such consuming markets and by stabilizing and equalizing as between producing areas, and between the producing units therein contained, the wages and hours of labor of employees, and by otherwise eliminating the causes of strikes and lockouts.

The defendant Carter Coal Company is engaged in the business of producing bituminous coal for distribution and sale in interstate commerce and of distributing and selling bituminous coal in such commerce and in the conduct of such business is subject and amenable to federal regulation to the extent and in the manner prescribed by the code provided for in Section 4 of the said Bituminous Coal Conservation Act of 1935.

[fol. 42]

III

For a further, separate and distinct defense in point of law arising upon the face of the bill of complaint herein, defendants say that the facts alleged in said bill are insufficient to constitute a cause of action in equity because

1. The bill fails to disclose that the intended acceptance of the contemplated code by the Carter Coal Company will cause an irreparable or any injury to the said company or to plaintiff;

2. The Bituminous Coal Conservation Act of 1935 provides that acceptance of the code by the Carter Coal Company will not prejudice the right of said company to contest the constitutionality or validity of any code provision. The provisions of the code are not self-executing, but depend for their enforcement upon orders of the National Bituminous Coal Commission. Should any order be made by said Commission which the Carter Coal Company deems detrimental or injurious to its interest the constitutionality and the validity of the same may in the light of the terms of such order and of the facts and circumstances then existing under the express provisions of the Act be speedily and adequately tested by the Carter Coal Company before one of the Circuit Courts of Appeals of the United States or the United States Court of Appeals for the District of Columbia. The mere acceptance of said code by said Carter Coal Company can therefore cause said company no irreparable or any injury, and it follows also that by the express provisions of said Act the said Carter Coal Company has an adequate judicial remedy for any future injury to which it may hereafter feel itself exposed. It also follows that the [fol. 43] bill as to these defendants is premature.

3. The bill as to the defendants Carter Coal Company and its directors is premature.

4. The bill discloses no real case or controversy between plaintiff and the defendant Carter Coal Company, its officers and directors.

5. The bill states no grounds for an injunction to restrain these defendants from the collection of the 1½% tax imposed by the Act, and, since the bill discloses that the defendant Carter Coal Company intends to become a member of the code when the same is formulated, and will therefore not be subject to the 15% tax provided for in the Act, it also states no grounds for an injunction to restrain the collection of such 15% tax.

6. Insofar as the bill seeks an injunction against these defendants it is premature in that no tax has been levied or assessed against the defendant Carter Coal Company.

7. Insofar as the bill seeks an injunction against the collection of any tax which may hereafter be assessed against the defendant Carter Coal Company under the provisions of Section 3 of the Bituminous Coal Conservation Act of 1935 it cannot be maintained because of the provisions of Section 3224 of the Revised Statutes of the United States (U. S. C. Title 26, § 154).

8. The defendant Carter Coal Company has an adequate remedy at law for all of the conjectural injuries referred to by plaintiff in said bill, and the said bill is premature in that the said defendant Carter Coal Company has not availed itself of the complete and adequate administrative and judicial remedies provided in said Bituminous Coal Conservation Act of 1935 for its protection.

9. Plaintiff is not entitled to a declaratory judgment as [fol. 44] prayed for in said bill of complaint because no actual controversy is herein involved and this Court has jurisdiction to render a declaratory judgment only in cases of actual controversy.

10. Plaintiff is not entitled to a declaratory judgment as prayed for in said bill of complaint because by an amendment to the Federal Declaratory Judgments Act enacted by the Congress on August 30, 1935, it is provided that the federal courts have no jurisdiction to render declaratory judgments with respect to federal taxes (Public No. 407, 74th Congress, Sec. 405).

Wherefore, having thus made answer to all the matters and things contained in plaintiff's bill of complaint, these defendants pray that plaintiff take nothing by reason thereof and that they be hence dismissed with their costs.

John Dickinson, Assistant Attorney General of the United States; Leslie C. Garnett, United States Attorney in and for the District of Columbia, Attorneys for the Aforesaid Defendants. Carl McFarland, F. B. Critchlow, Special Assistants to the Attorney General, David A. Pine, John J. Wilson, Assistant United States Attorneys.

Duly sworn to by F. B. Critchlow. Jurat omitted in printing.

[fol. 45] Received copy of the foregoing answer this 2nd day of October, 1935.

Frederick H. Wood, Richard H. Wilmer, Attorneys for Plaintiff.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

ANSWER OF DEFENDANTS, CARTER COAL COMPANY, GEORGE L. CARTER, C. A. HALL, JOHN CALLAHAN, JOSEPH W. GORMAN, AND WALTER C. DENHAM, TO BILL OF COMPLAINT—
Filed October 4, 1935.

Now come the defendants, Carter Coal Company, George L. Carter as Vice-President and Director of said Company, C. A. Hall as Secretary-Treasurer and a Director of said Company, John Callahan, Joseph W. Gorman and Walter S. Denham as Vice-Presidents of said Company, and for answer to the Bill of Complaint filed herein on the 31st day [fol. 46] of August, 1935, jointly show to the Court as follows:

1. The defendants admit the allegations of paragraph 1 of the Bill of Complaint.
2. The defendants admit the allegations of paragraph 2 of the Bill of Complaint.
3. The defendants admit the allegations of paragraph 3 of the Bill of Complaint.

4. The defendants admit the allegations of paragraph 4 of the Bill of Complaint.

5. The defendants admit the allegations of paragraph 5 of the Bill of Complaint, except that they allege that the true and correct name of defendant Walter C. Denham is Walter S. Denham.

6. The defendants admit the allegations of paragraph 6 of the Bill of Complaint.

7. The defendants admit the allegations of paragraph 7 of the Bill of Complaint.

8. The defendants admit the allegations of paragraph 8 of the Bill of Complaint.

9. The defendants admit the allegations of paragraph 9 of the Bill of Complaint.

10. The defendants admit the allegations of paragraph 10 of the Bill of Complaint.

11. The defendants admit the allegations of paragraph 11 of the Bill of Complaint.

12. The defendants admit the allegations of paragraph 12 of the Bill of Complaint.

13. The defendants admit the allegations of paragraph 13 of the Bill of Complaint.

[fol. 47] 14. The defendants admit the allegations of paragraph 14 of the Bill of Complaint.

15. The defendants admit the allegations of paragraph 15 of the Bill of Complaint.

16. The defendants admit the allegations of paragraph 16 of the Bill of Complaint.

17. The defendants are advised that the allegations of paragraph 17 are conclusions of law and with respect to such allegations they are not required to make answer.

18. The defendants admit the allegations of paragraph 18 of the Bill of Complaint.

19. The defendants admit the allegations of paragraph 19 of the Bill of Complaint.

20. The defendants admit the allegations of paragraph 20 of the Bill of Complaint.

21. The defendants admit the allegations of paragraph 21 of the Bill of Complaint.

22. The defendants admit the allegations of paragraph 22 of the Bill of Complaint.

23. The defendants admit the allegations of paragraph 23 of the Bill of Complaint.

24. The defendants admit the allegations of paragraph 24 of the Bill of Complaint.

25. The defendants admit the allegations of paragraph 25 of the Bill of Complaint.

26. The defendants admit the allegations of fact contained in paragraph 26 of the Bill of Complaint, but are advised that certain of the allegations contained in said paragraph are conclusions of the pleader as to which they are not required to make answer.

[fol. 48] 27. The defendants admit the allegations of paragraph 27 of the Bill of Complaint.

And for further answer to the Bill of Complaint said defendants allege:

(a) That they intend to accept and bind the Carter Coal Company to comply with the provisions of the Bituminous Coal Code provided for in the Bituminous Coal Conservation Act of 1935, for the reason that the penalty for failure to accept the said code, in the form of a fifteen per cent tax upon all sales of bituminous coal by said defendant company, would result in irreparable and serious damage to the Company and might result in its bankruptcy.

(b) That the enactment of the Bituminous Coal Conservation Act and the actions authorized thereunder and directed thereby have embarrassed these defendants in the operation of the business of said Company, and that the business of said Company can not be carried on normally until the questions of the validity of the said statute and the said Code raised by the Bill of Complaint herein are authoritatively determined by this Honorable Court.

Wherefore, the defendants, having answered the Bill of Complaint filed herein, pray that if the Court should grant

an injunction restraining these defendants from assenting to or filing an acceptance of the said Code binding the defendant Carter Coal Company to observe the same, then in that event the Court issue its writ of injunction enjoining the collection of the fifteen per cent tax provided for by the Bituminous Coal Conservation Act of 1935; and the defendants further pray that this cause be set down for im-[fols. 49 and 50] mediate hearing on the merits in order to remove the obstruction to the conduct of the business of the defendant Carter Coal Company caused by the uncertainties of the existing situation, as aforesaid.

Carter Coal Company, by C. A. Hall, Secretary-Treasurer; Geo. L. Carter, Vice-President and a Director of Carter Coal Company; C. A. Hall, Secretary-Treasurer and a Director of Carter Coal Company; John Callahan, Vice-President of Carter Coal Company, by C. A. Hall, Agent; Joseph W. Gorman, Vice-President of Carter Coal Company, by C. A. Hall, Agent; Walter S. Denham, Vice-President of Carter Coal Company, by C. A. Hall, Agent. Karl J. Hardy, Transportation Building, Washington, D. C., Attorney for Defendants, Carter Coal Company; George L. Carter, Vice-President and a Director of said Company; C. A. Hall, Secretary-Treasurer and a Director of said Company; John Callahan, Vice-President of said Company; Joseph W. Gorman, Vice-President of said Company, and Walter S. Denham, Vice-President of said Company.

Duly sworn to by C. A. Hall et al. Jurats omitted in printing.

[fol. 51] IN SUPREME COURT OF DISTRICT OF COLUMBIA

REPLY OF PLAINTIFF TO SEPARATE DEFENSE AS SET FORTH IN PART II OF ANSWER OF DEFENDANTS, GUY T. HELVERING, INDIVIDUALLY AND AS COMMISSIONER OF INTERNAL REVENUE OF THE UNITED STATES ET AL.—Filed October 5, 1935.

For its reply to the separate defense of the defendants Guy T. Helvering, individually and as Commissioner of

Internal Revenue of the United States, M. Hampton Magruder, individually and as Collector of Internal Revenue of the United States in and for the Collection District of Maryland; Clarence C. Keiser, individually and as Acting Chief Field Deputy Collector of Internal Revenue for [fol. 52] Division No. 2 of the Collection District of Maryland, John B. Colpoys, individually and as United States Marshal in and for the District of Columbia, Homer S. Cummings, individually and as Attorney General of the United States, Stanley Reed, individually and as Acting Attorney General of the United States and as Solicitor General of the United States, and Leslie C. Garnett, individually and as United States Attorney in and for the District of Columbia, which separate defense is contained in Part II of the answer of said defendants, the plaintiff, denying the relevance or materiality to this case of any of the allegations contained in said separate defense, admits the following allegations :

1. That bituminous coal is consumed in every State of the United States in generating energy for the production of light, heat and power ;
2. That it furnishes approximately 45% of the total energy consumed for such purposes in the United States ;
3. That its use for the aforesaid purposes is indispensable to the industrial and economic life and to the health and comfort of the inhabitants of every State and of the District of Columbia ;
4. That commercially important deposits of bituminous coal within the United States are limited to 23 producing areas confined within the boundaries of 26 States and that more than 70% of the total annual output is mined in four States ;
5. That approximately 85% of the bituminous coal produced within the United States is consumed (a) in States other than the State in which it was mined, or (b) by railroads engaged in interstate commerce ;
6. That over 20% of the total annual production of [fol. 53] bituminous coal is required for the use of such interstate railroads as fuel ;

7. That the distribution of bituminous coal from the producing areas to the consuming public throughout the nation supplies over 17% of the total gross freight revenues of the railroads engaged in interstate commerce;

8. That bituminous coal has great present importance as a source of energy for industrial and domestic purposes, and that it is transported across State lines to reach the great majority of the users, and that in view of the foregoing it is important that the distribution and marketing of bituminous coal be not subjected to interruption dislocations, burdens or restraints;

9. That the hearings before the various Congressional Committees and the Commission alleged in the answer have been held;

10. That there has been competitive rivalry for markets between the several producing areas in the bituminous coal industry and between the producing units therein contained;

11. That over 60% of the cost of producing bituminous coal in the United States is attributable to the cost of labor going directly into its production.

The plaintiff denies each and every allegation contained [fol. 54] in the said separate defense not hereinabove admitted.

James Walter Carter.

Cravath, de Gersdorff, Swaine & Wood, 15 Broad Street, New York, N. Y.; Frederick H. Wood, 15 Broad Street, New York, N. Y.; William D. Whitney, 15 Broad Street, New York, N. Y.; Richard H. Wilmer, Transportation Building, Washington, D. C., Attorneys for Plaintiff.

Duly sworn to by James W. Carter. Jurat omitted in printing.

[fol. 55] IN SUPREME COURT OF DISTRICT OF COLUMBIA

NOTICE OF MOTION TO ADVANCE—Filed October 5, 1935

To: Karl J. Hardy, Esquire, Attorney for Defendants Carter Coal Company, George L. Carter, C. A. Hall, John Callahan, Joseph W. Gorman and Walter C. Denham; John Dickinson, Esquire, Assistant Attorney General, F. B. Critchlow, Esquire, Special Assistant to the Attorney General, David A. Pine, Esquire, Assistant United States Attorney, John J. Wilson, Esquire, Assistant United States Attorney, attorneys for the defendants Guy T. Helvering, individually and as Commissioner of Internal Revenue of the United States, M. Hampton Magruder, individually and as Collector of Internal Revenue of the United States in and for the Collection District of Maryland, Clarence C. Keiser, individually and as Acting Chief Field Deputy Collector of Internal Revenue for Division No. 2 of the Collection District of Maryland, John B. Colpoys, individually and as United States Marshal in and for the District of Columbia, Homer S. Cummings, individually and as Attorney General of the United States, Stanley Reed, individually and as Acting Attorney General of the United States and as Solicitor General of the United States, and Leslie C. Garnett, individually and as United States Attorney in and for the District of Columbia:

Please take notice that at 10 o'clock A. M. on Wednesday, October 9, 1935, or as soon thereafter as counsel may be heard before the Motions Court, counsel for the plaintiff will move the Motions Court to hear the attached motion to advance and to specially set the case for hearing.

William D. Whitney, Richard H. Wilmer, Attorneys
for the Plaintiff.

Receipt of the foregoing notice is hereby acknowledged
this 5th day of October, 1935.

Karl J. Hardy, Attorney for Defendant Carter Coal
Company, et al.; John Dickinson, F. B. Critchlow,
David A. Pine, John J. Wilson, Attorneys for De-
fendants Guy T. Helvering, et al.

[fol. 56] IN SUPREME COURT OF DISTRICT OF COLUMBIA
 MOTION TO ADVANCE AND SPECIALLY SET CASE FOR HEARING—
 Filed October 5, 1935

Comes now the plaintiff, by his attorneys, and moves the Honorable Court to advance the above-entitled cause and set it down for hearing on Monday, October 14, 1935, or the earliest possible date thereafter, and, for reasons in support of his motion, assigns the following:

This case arises on a stockholder's bill and answers thereto raising the question of the constitutionality of the Bituminous Coal Conservation Act of 1935. The plaintiff, a stockholder in the Carter Coal Company, seeks to enjoin that company from carrying out its announced intention to become a member of the code provided for in said Act, and also seeks to enjoin the collection of the 15% tax imposed by the statute upon the sale of coal by operators not becoming code members. The question presented is one of national importance. The right of the plaintiff to the relief prayed for in the bill requires an early determination, inasmuch as the tax referred to begins to accrue, under the provisions of Sections 3 and 20 of the statute, on November 1 next, unless the Coal Commission, which has recently been appointed, is unable to formulate the code by that time, in which event the tax begins to accrue upon the date of the formulation of said code.

William D. Whitney, Richard H. Wilmer, Attorneys
 for the Plaintiff.

[fol. 57] IN SUPREME COURT OF DISTRICT OF COLUMBIA
 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
 MOTION TO ADVANCE AND SET CASE SPECIALLY FOR HEAR-
 ING—Filed October 5, 1935

As appears from the bill of complaint and the grounds of the motion filed herein to advance and to set the case for hearing on a day certain, the instant case presents issues of a character the early and immediate determination of which is indispensable.

The granting of the motion is within the sound discretion of the Court.

The Court's attention is respectfully invited to Law Rule 75 of this Honorable Court wherein it is provided that one of the justices shall be designated by the Court in general term from time to time to act as the assignment justice. By Law Rule 32 of this Honorable Court that justice who has been designated the motions justice shall dispose of all motions. It, therefore, follows that this motion to advance is rightfully before the Motions Court for determination and the grounds of the motion, it is respectfully submitted, commend themselves as sound bases for the Court to exercise its discretion in the advancing of the case for hearing on October 14, 1935, or the earliest possible date thereafter.

Respectfully submitted, William D. Whitney, Richard H. Wilmer, Attorneys for the Plaintiff.

Receipt of a copy of the within motion to advance and specially set case for hearing and points and authorities [fol. 58] in support thereof is hereby acknowledged this 5th day of October, 1935.

Karl J. Hardy, Attorney for Carter Coal Company, et al.; John Dickinson, F. B. Critchlow, David A. Pine, John J. Wilson, Attorneys for Guy T. Helvering, et al.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

MEMORANDUM OF POINTS AND AUTHORITIES ON BEHALF OF
DEFENDANT GOVERNMENT OFFICERS, SUPPORTING PLAINTIFF'S MOTION TO ADVANCE BUT OPPOSING THE TRIAL DATE REQUESTED BY PLAINTIFF—Filed October 9, 1935

This cause involves the question of the constitutionality of the Bituminous Coal Conservation Act of 1935, a statute enacted by the 74th Congress for the purpose of stabilizing the bituminous coal mining industry and promoting its interstate commerce. Said industry is vital to the industrial and economic welfare of the nation and the determination of the question thus presented is of great importance to the members of said industry and to the country at large. The defendant Government Officers desire as speedy a determination of said question as may be possible considering the nature and importance of the issues involved and consequently join with plaintiff in requesting that an order

be made herein advancing the case for trial. Defendants are opposed, however, to the setting of the case for trial on October 14, the date requested by plaintiff, or on any date prior to the 25th day of November for the reasons hereafter stated.

[fol. 59] In the view of these defendants the constitutionality of said Act depends upon the existence of the burdens, dislocations, restraints and interruptions to interstate commerce in bituminous coal specified in the separate defense set up in sub-division II of defendant's answer and upon the facts relative to the causes and effects thereof, as therein set forth, and also upon facts relative to the reasonableness under the due process clause of the Fifth Amendment of the regulatory provisions of the proposed coal code. All of these averments are denied by plaintiff and involve the determination of issues of fact which, due to the magnitude of the bituminous coal industry and the competitive conditions existing as between the various producing fields and the consuming markets, are very complex and require, in order that they may be properly presented in evidence, the examination of many witnesses from many different sections of the country, the inspection of many documents and the preparation of many exhibits.

The determination of such factual issues upon proper evidence is of primary importance in cases of this sort as is amply evidenced by the decisions of the Supreme Court of the United States in the following cases: *Schechter Poultry Corporation v. United States* (— Sup. Ct. —); *Chastleton Corporation v. Sinclair* (264 U. S. 543); *Hammond v. Schappi Bus Line* (275 U. S. 164); *Bordens Company v. Baldwin* (293 U. S. 194). In the case last cited the Court said (p. 210):

“With the notable expansion of the scope of governmental regulations, and the consequent assertion of violation of constitutional rights, it is increasingly important that when it becomes necessary for the Court to deal with the facts relating to particular commercial or industrial conditions, they should be presented concretely with appropriate determinations upon evidence so that conclusions shall not be reached without adequate factual support.”

“Respondents' counsel, referring to the difficulties of price regulation, say that ‘apparently the fixing of prices

by government discovered as many troubles as were loosed from Pandora's box.' This complexity of problems, however, makes it the more imperative that the Court in discharging its duty, in sustaining governmental authority within its sphere and in enforcing individual rights, shall not proceed upon false assumption."

The Act in question here was approved August 30, 1935. This suit was filed on August 31 and became at issue with the filing of plaintiff's reply on October 5. As above stated, the factual issues have to do with complex operations and interrelations of an immense nation-wide industry. The determination of these issues is of national concern and it is, of course, important that government counsel be given a full opportunity to adequately prepare the case and present the facts in evidence in a proper and orderly fashion.

The only basis for plaintiff's request that the trial of the case be set for as early as October 14 is the following statement contained in plaintiff's motion:

"The tax referred to begins to accrue, under the provisions of Sec. 3 and 20 of the statute, on November 1st, next, unless the coal commission which has been recently appointed, is unable to formulate the code by that time, in which event the tax begins to accrue upon the date of the formulation of the code."

In this connection defendants show that as appears from plaintiff's bill and also from his motion to advance the defendant, Carter Coal Company, intends to accept the code contemplated by the Act and that in such event said company will not be subject to the 15% tax of which plaintiff [fol. 61] complains.

This being the case, the necessity, from plaintiff's viewpoint, of a trial upon the merits before November 1st is made to depend entirely upon whether the acceptance of the code by the defendant company will result in any immediate or serious injury to said company's business. The only allegations contained in the bill which bear upon this question consist of the vague and general allegation in paragraph 26 that "plaintiff is informed and believes and apprehends and charges that the result of compliance by said

defendant with said provisions will be a substantial loss and diversion of the business of said Carter Coal Company," which general allegation is supported only by the particular averment that said company, by assenting to the code and complying with its price-fixing provisions, will subject itself to liability for damages for breach of its existing contracts with its customers. In connection with this particular averment attention is called to the fact that the provisions of the Act relative to the determination of minimum and maximum prices are such as to make it evident that a very considerable time must elapse after the formulation of the code before any such price determinations can be made. It is, therefore, apparent that even though the National Coal Commission should formulate the code on or prior to November 1st, and the Carter Coal Company accept the same, such acceptance could cause neither an immediate nor a serious injury to the business of the company. This is also apparent from the allegation contained in paragraph 27(b) of the Coal Company's answer to the [fol. 62] bill in which the effect of the Act upon the company's operations is described only in the following vague and uncertain language:

That the enactment of the Bituminous Coal Conservation Act and actions authorized thereunder and directed thereby have embarrassed these defendants in the operation of the business of said company, and that the business of said company cannot be carried on normally until the questions of the validity of the said statute and the said code raised by the bill of complaint herein are authoritatively determined by this Honorable Court.

Since the formulation of the code and the contemplated acceptance of the same by the defendant, Carter Coal Company, cannot immediately or seriously injure the business of said company, and since in no event can any tax imposed by the provisions of said Act become subject to collection before the 1st day of January, 1935, it is evident that even from plaintiff's standpoint there is no necessary or pressing reason for a trial of this cause prior to the 25th day of November, 1935. In view of the nature of the factual issues involved, it is also evident that defendants will require until said 25th day of November, 1935 to properly and ade-

quately prepare said case for presentation to this Honorable Court.

These defendants, therefore, respectfully submit that plaintiff's motion to advance this case be granted and that the Assignment Commissioner be directed to place the same upon the ready calendar upon the 25th day of November, 1935, for assignment at that time to the First Equity Division of this Court available thereafter.

Respectfully submitted,

John Dickinson, Assistant Attorney General. Leslie
C. Garnett, United States Attorney for the District
of Columbia. Attorneys for said Defendants.

[fol. 63] IN SUPREME COURT OF DISTRICT OF COLUMBIA

ORDER ADVANCING CASE AND SETTING SPECIALLY THE DATE
FOR HEARING—Filed October 9, 1935

Upon consideration of the motion of the plaintiff to advance and specially set the above-entitled case for hearing filed herein on the 5th day of October, 1935, it is by the Court this 9th day of October, 1935,

Adjudged, ordered and decreed that said motion be, and it hereby is, granted and that the case be, and it hereby is, set specially for hearing on 28th, October, 1935.

Alfred A. Wheat, Chief Justice.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

AFFIDAVIT OF JAMES WALTER CARTER IN SUPPORT OF PRELIMINARY INJUNCTION—Filed October 24, 1935

DISTRICT OF COLUMBIA, SS.

James Walter Carter, being first duly sworn, upon oath deposes and says:

1. Your affiant has had experience in the production of coal extending over many years, he having first taken an active part in the coal business in 1915, and having followed the business closely since that time and been engaged during much of that time in the management end of that busi-

ness. Your affiant is now the President and a director of, [fol. 64] and owner of a minority of the stock in, the defendant Carter Coal Company.

2. All the statements of fact set forth in the bill of complaint in the above-entitled cause are hereby incorporated by reference into this affidavit with the same force and effect as if herein set out in full.

3. On the 20th day of September, 1935, the President of the United States appointed George E. Acret, Charles S. Hosford, Jr., Walter H. Maloney, C. E. Smith, and Percy Tetlow as the five members to compose the National Bituminous Coal Commission provided for by Sec. 2(a) of the Bituminous Coal Conservation Act of 1935. The said Walter H. Maloney duly took oath of office as a member of said Commission on Saturday, September 28, 1935, and the said George E. Acret, Charles S. Hosford, Jr., C. E. Smith and Percy Tetlow duly took oath of office as such members on Thursday, September 26, 1935, and the said Commission held its first meeting on Saturday, September 28, 1935.

4. On October 9, 1935, this cause was advanced by Mr. Chief Justice Wheat of this Court and assigned for trial on Monday, October 28 next, and later on the same day the National Bituminous Coal Commission aforesaid formulated the Bituminous Coal Code and forms for acceptance thereof.

5. On the same day, October 9, 1935, the said National Bituminous Coal Commission issued an order providing for the organization of district boards of coal producers as provided for in the said statute and the said Code, which order appointed Acting Deputy District Secretaries for each of the districts provided for in said statute and in said Code. Said Acting Deputy District Secretaries are authorized by said order to call meetings for the purpose [fol. 65] of organizing district boards.

6. On October 17, 1935, P. M. Snyder, the Acting Deputy District Secretary of the National Bituminous Coal Commission appointed by the order aforesaid, issued and delivered to the defendant Carter Coal Company a notice calling a meeting of all producers of bituminous coal in District No. 7 as defined by the statute and Code aforesaid for the purpose of organizing a district board for said

district, such meeting to be held on October 30, 1935, at 10 o'clock a. m. at Black Knight Country Club, Beckley, West Virginia. The said notice, and the papers delivered to Carter Coal Company annexed thereto (including a copy of the Bituminous Coal Code and forms for the acceptance thereof), is attached hereto as Exhibit A to this affidavit and incorporated herein by reference with the same force and effect as if herein set out in full.

7. Your affiant is informed and believes and alleges that the penalty imposed by Section 3 of the Bituminous Coal Conservation Act of 1935 in the form of a tax of 15% upon all sales of bituminous coal by producers who do not assent to and become members of the Code aforesaid will begin to accrue against all such producers on November 1, 1935, pursuant to the provisions of Sections 3 and 20 of the Bituminous Coal Conservation Act aforesaid.

8. Should the defendant Carter Coal Company assent to and become a member of the said Code, as it has stated that it intends to do and has threatened to do (in order to escape the destructive effect of the accrual of the penalty taxes aforesaid), then immediate, substantial and irreparable injury and loss will occur to the said Company and to the rights of the affiant, in the following, among other, [fol. 66] respects:

9. The said Code requires that:

“All code members shall, in their respective districts, report all spot orders to the district board and shall file with it copies of all contracts for the sale of coal, copies of all invoices, copies of all credit memoranda, and such other information concerning the preparation, cost, sale, and distribution of coal as the Commission may authorize or require. All such records shall be held by the district board as the confidential records of the code member filing such information.”

Both the Bituminous Coal Conservation Act and the Code require that the district board shall (except for one labor member) be composed of producers of coal, and consequently shall be principally composed of the competitors of the Carter Coal Company. Should the Carter Coal Company become a member of the Code, it would obligate itself

immediately to supply to a board principally composed of its competitors all of the most confidential records of its business, thereby depriving it of its constitutional rights should the Bituminous Coal Conservation Act be declared invalid, and subjecting it to grave, immediate and irreparable injury.

10. The said Code requires the district boards and the Commission to fix minimum prices for the sale of coal to be binding on all Code members. Your affiant believes and apprehends and alleges that the said district boards and the said Commission will proceed promptly to perform their statutory duty of fixing such minimum prices.

11. As a result of his study of the aforesaid Code in the light of his long experience in the coal business, and his knowledge of the business conditions therein, your affiant believes and avers and alleges that the minimum prices so fixed pursuant to the said Code will inevitably be higher than the prices at which coal is now sold by the defendant [fol. 67] Carter Coal Company to its customers, as a result of which the Carter Coal Company will be unable to retain its present volume of sales and its business will be substantially and irreparably ruined.

12. Section 8 of the said Code requires that Code members shall refuse to sell or deliver any coal (with certain exceptions) at a price below the minimum or above the maximum therefor approved and established by the Commission, thereby requiring them to breach some or all of their existing contracts. Your affiant believes and charges that whatever prices may be fixed pursuant to the Bituminous Coal Code will inevitably differ from those now fixed in some at least of the existing contracts upon which the Carter Coal Company is committed to deliver coal in the future, so that the Carter Coal Company, by joining the Code, will undertake to breach at least some of its existing contracts. Your affiant is advised and believes and alleges that the Bituminous Coal Conservation Act of 1935 and the Code promulgated thereunder are unconstitutional and, therefore, would afford no protection to the Company for the breach of such contracts, and that such breach would render the Company liable to the payment of damages, whereby it will inevitably incur financial loss.

13. Your affiant is informed and believes that by joining the said Code the Carter Coal Company would surrender to its competitors the right not only to fix the minimum and maximum prices at which the coal of the Carter Coal Company may be sold (subject only to appeal to the Bituminous Coal Commission, and thence to the courts on questions of [fol. 68] law), but the right to determine the hours of labor of the employees of the Carter Coal Company and the wages to be paid them by the Company. Your affiant knows of his own knowledge and alleges that labor costs and prices are two of the important elements requiring business skill and judgment in the successful operation and management of a coal producing and selling corporation.

14. Your affiant is advised and believes and, therefore, apprehends and charges, that the Bituminous Coal Code will constitute, as between those assenting to and becoming bound thereby, an agreement between competitors for the maintenance of prices and that as such the mere joining of said Code, whether or not any prices are ever fixed thereunder will constitute a violation of the anti-trust laws of the United States or of the several States; and that, therefore, the mere act of assenting to the said Code, without more, will render the said Company and its officers and directors (including your affiant who is an officer and director of said Company) liable to heavy criminal and pecuniary damages for violation of said laws; and that since the Bituminous Coal Conservation Act and the Code are both unconstitutional they would afford the Company and your affiant no protection whatever against such immediate irreparable and serious jeopardy and loss.

15. Your affiant alleges that by joining the said Code, Carter Coal Company will undertake a liability for its proportionate share of the expense of administering the Bituminous Coal Conservation Act. Your affiant is familiar with the proportionate share of the expense borne by the [fol. 69] Carter Coal Company for the administration of the Bituminous Coal Code under the National Industrial Recovery Act which was in de facto operation in 1933 and 1934, and is further informed and believes that the Bituminous Coal Code imposed under the Bituminous Coal Conservation Act follows closely the so-called Code of Fair Competition for the Bituminous Coal Industry imposed

under the supposed authority of said National Industrial Recovery Act. Your affiant believes and apprehends and therefore alleges that the proportionate share of the Carter Coal Company of the expense of administering the Code under the Bituminous Coal Conservation Act of 1935 will likewise be substantial, and your affiant is unwilling to have his interest in the said Company burdened and damaged by the heavy expense of administering this unworkable and unconstitutional statute.

16. Your affiant further apprehends, as a result of his own experience in the coal business and as a result of his experience during the period of the operation of a similar scheme of governmental regulation in the bituminous industry under the supposed authority of the National Industrial Recovery Act, that the effect of surrender of the above-mentioned most vital functions in the successful management of a coal company to the domination, control and absolute regulation of federal commissions, acting in reliance upon and in collaboration with boards or associations of competitors, will imperil the business of the Carter Coal Company by empowering its competitors to take an active [fol. 70] part in regulating its prices, wages and markets. Your affiant has a large financial interest in the assets and business, good will and going concern value of the Carter Coal Company, and he is unwilling, unless required by law, to entrust the maintenance of that business and of that good will and value to the management of competitors of the Carter Coal Company, or of Government commissions or boards, as to whose competence and intentions he has no knowledge. Your affiant is advised by counsel, and believes, that such surrender of the control of the business of the Carter Coal Company is also ultra vires the corporation and its officers and directors, and is illegal.

17. Your affiant further apprehends that the fact that the statute gives "full authority" to the district boards (to be composed, as above mentioned, principally of competitors of your affiant) to classify coals and price variations as to individual mines may be used as the basis of prejudicial and highly damaging discrimination against individual producers (including the defendant Carter Coal Company) against which the elaborate machinery for appeal to a government commission and then to a circuit court of appeals can never in practice provide timely and adequate relief.

18. Your affiant received this morning (October 23) Bulletin No. 1396 of the National Coal Association containing inter alia the following:

“National Bituminous Coal Commission News

* * * * *

“Officials of the Internal Revenue Bureau disclosed to press representatives in Washington this week that the Bureau is rapidly making its arrangements for the collection of the tax on the sale price of bituminous coal levied under the Bituminous Coal Conservation Act of 1935. Deputy Commissioner Bliss said their forms and regulations were well advanced but that he could not say just now when they would be made public.”

James Walter Carter.

Subscribed and sworn to before me this 24th day of October, 1935. Kenneth C. Robertson, Notary Public, D. C. [Notarial Seal.]

[fol. 72] EXHIBIT “A” TO AFFIDAVIT

United States

Department of the Interior

National Bituminous Coal Commission

Washington, D. C.

Notice to Bituminous Coal Producers of District Board
Organization Meeting

Notice is hereby given to all producers of bituminous coal in District No. 7, as defined by Act of Congress, entitled “Bituminous Coal Conservation Act of 1935,” that:

A meeting will be held at 10:00 o'clock A. M., on the 30th day of October, 1935, at Black Knight Country Club, Beckley, West Virginia, for the above named District No. 7, as defined by the said Act, of all qualified producers of bituminous coal, for the purpose of determining the number of members of a district board and for the election of its members, as the same is provided for in the said Act, and to consider and pass upon such other matters as may lawfully come before said meeting under the provisions of said Act.

Only qualified producers, as defined in General Order No. 3 of the National Bituminous Coal Commission, shall be entitled to participate in the said meeting and vote therein. Copies of General Orders No. 1, 2, and 3, and of Forms 1, 4, and 5, of said Commission may be procured from the undersigned Deputy at the address below stated.

All qualified producers voting by proxy must comply with said General Order No. 3.

Dated this 17th day of October, 1935.

P. M. Snyder, Acting Deputy District Secretary of
the National Bituminous Coal Commission. Ad-
dress: Mount Hope, West Virginia.

Instructions to Acting Deputy District Secretaries

(Not to be included in notice published in the newspaper)

A copy of the above notice and of General Orders No. 1, 2, and 3, and the following Forms of the Commission: in duplicate, Form 4, and in triplicate, Forms 1 and 5, shall be mailed to all known producers in the district in accordance with the provisions of said General Order No. 3.

[fol. 73] United States Department of the Interior

National Bituminous Coal Commission, Washington, D. C.

General Order No. 1

An Order Promulgating the Bituminous Coal Code

Pursuant to Act of Congress, entitled "Bituminous Coal Conservation Act of 1935," the National Bituminous Coal Commission, by said Act duly created, in regular meeting duly assembled on this 9th day of October, 1935, for the purpose of carrying out the declared policy of said Act, hereby formulates and prescribes a working agreement, effective as provided in said Act, to be known as the "Bituminous Coal Code," as follows, to wit:

Bituminous Coal Code

The Act of Congress, entitled "Bituminous Coal Conservation Act of 1935," is hereinafter referred to as the "Act." The National Bituminous Coal Commission, created by said Act, is hereinafter referred to as the "Com-

mission.” This Bituminous Coal Code is hereinafter referred to as the “Code.” A “Code Member,” as hereinafter referred to, is a producer accepting the Code in the manner provided by the Commission, whose membership shall not have been terminated. The Bituminous Coal Labor Board, created by said Act, is hereinafter referred to as the “Labor Board.” The term “bituminous coal” as used in this Code shall include all bituminous, semibituminous, and subbituminous coal and lignite. The term “producer” shall include all persons, firms, associations, corporations, trustees, and receivers engaged in mining bituminous coal.

Part I—Organization and Production

Sec. 1. Twenty-three district boards of coal producers shall be organized. Each district board shall consist of not less than three nor more than seventeen members. The number of members of the district board shall, subject to the approval of the Commission, be determined by the majority vote of the district tonnage during the calendar year 1934 represented at a meeting of the producers of the district called for the purpose of such determination and for the election of such district board; and all known producers within the district shall be given notice of the time and place of the meeting. All but one of the members of the district board shall be producers or representatives of producers truly representative of all the mines of the district. The number of such producer members shall be an even number. One-half of such producer members shall be elected by the majority in number of the producers of the district represented at the aforesaid meeting. The other producer members shall be elected by votes cast in the proportion of the annual tonnage output for the preceding calendar year of the producers in the district, with the right on the part of the producers to vote their tonnage cumulatively: Provided, That not more than one officer or employee of any producer within a district shall be a member of the district board at the same time. The remaining member of each district board shall be selected by the organization of employees representing the preponderant number of employees in the industry of the district in ques-

tion. The term of district board members shall be two years and until their successors are elected.

In case any marketing agency comprising a substantial number of code members in any producing field within a district establishes, to the satisfaction of the Commission, that it has no representation upon the district board and that it is fairly entitled thereto, the Commission may, in its discretion, after hearing, increase the membership of such district board so as to provide for such representation.

Marketing agencies may be established or maintained within any district by a voluntary association of producers within any producing field therein, as such producing field may be defined by the district board, and function under [fol. 74] such general rules and regulations as may be prescribed by the district board, with the approval of the Commission, for the purpose of marketing their coal with due respect for the standards of unfair competition as defined in said Act. Each such marketing agency shall impose no unreasonable or inequitable conditions of membership and shall be truly representative of at least one-third of the tonnage of any producing field or group of producing fields.

The term "marketing agency" or "agencies" as used in said Act shall include any trade association of coal producers complying with the requirements of a marketing agency and exercising the functions thereof.

The district boards and marketing agencies shall each have power to adopt bylaws and rules of procedure, subject to approval of the Commission, and to appoint officers from their own membership, to fix their terms and compensation, to provide for reports, and to employ such committees, employees, arbitrators, and other persons necessary to effectuate their purposes. Members of the district board shall serve, as such, without compensation, but may be reimbursed for their reasonable expenses. The territorial boundaries or limits of such twenty-three districts are set forth in the schedule entitled "Schedule of Districts" and annexed to this code: Provided, That the territorial boundaries or limits of any district or districts may be changed, or said districts may be divided or consolidated, after hearing, by the Commission.

Sec. 2. The expense of administering this code by the respective district boards shall be borne by those subject to the jurisdiction of such boards, respectively, each paying his proportionate share, as assessed, computed on a tonnage basis, in accordance with regulations prescribed by such boards with the approval of the Commission. Such assessments may be collected by the district board by action in any court of competent jurisdiction.

Sec. 3. Nothing contained in said Act shall constitute the members of a district board partners for any purpose. Nor shall any member of a district board be liable in any manner to any one for any act of any other member, officer agent or employee of the district board. Nor shall any member of a district board, exercising reasonable diligence in the conduct of his duties under said Act, be liable to any one for any action or omission to act under said Act, except for his own willful misfeasance, or for nonfeasance involving moral turpitude.

Part II—Marketing

Sec. 4. All code members shall, in their respective districts, report all spot orders to the district board and shall file with it copies of all contracts for the sale of coal, copies of all invoices, copies of all credit memoranda, and such other information concerning the preparation, cost, sale, and distribution of coal as the Commission may authorize or require. All such records shall be held by the district board as the confidential records of the code member filing such information.

Each district board may set up and maintain a statistical bureau, and the district board may require that such reports and other information in this section described shall be filed with such statistical bureau in lieu of the filing thereof with the district board.

Each district board shall, from time to time on its own motion or when directed by the Commission, establish minimum prices free on board transportation facilities at the mines for kinds, qualities, and sizes of coal produced in said district, with full authority, in establishing such minimum prices, to make such classification of coals and price variations as to mines and consuming market areas as it

may deem necessary and proper. In order to sustain the stabilization of wages, working conditions, and maximum hours of labor, said prices shall be established so as to yield a return per net ton for each district in a minimum price area, as such districts are identified and such area is defined in the subjoined table designated "Minimum-price area table," equal as nearly as may be to the weighted average of the total costs, per net ton, determined as hereinafter provided, of the tonnage of such minimum price area. The computation of the total costs shall include the cost of labor, supplies, power, taxes, insurance, workmen's compensation, royalties, depreciation, and depletion (as determined by the Bureau of Internal Revenue in the computation of the Federal income tax) and all other direct expenses of production, coal operator's association dues, district board assessments for Board operating expenses only levied under this code, and reasonable costs of selling and the cost of administration.

Minimum-Price-Area Table

Area 1: Eastern Pennsylvania, district 1; western Pennsylvania, district 2; northern West Virginia, district 3; Ohio, district 4; Michigan, district 5; Panhandle, district 6; Southern numbered 1, district 7; Southern numbered 2, district 8; West Kentucky, district 9; Illinois, district 10; Indiana, district 11; Iowa, district 12; that part of Southeastern, district 13, comprising Van Buren, Warren, and McMinn Counties in Tennessee.

[fol. 75] Area 2: Southeastern, district 13, except Van Buren, Warren, and McMinn Counties in Tennessee.

Area 3: Arkansas-Oklahoma, district 14.

Area 4: Southwestern, district 15.

Area 5: Northern Colorado, district 16; southern Colorado, district 17; New Mexico, district 18.

Area 6: Wyoming, district 19; Utah, district 20.

Area 7: North Dakota and South Dakota, district 21.

Area 8: Montana, district 22.

Area 9: Washington, district 23.

The minimum prices so established shall reflect, as nearly as possible, the relative market value of the various kinds, qualities, and sizes of coal, shall be just and equitable as between producers within the district, and shall have due

regard to the interests of the consuming public. The procedure for establishment of minimum prices shall be in accordance with rules and regulations to be approved by the Commission.

A schedule of such minimum prices, together with the data upon which they are computed, including, but without limitation, the factors considered in determining the price relationship, shall be submitted by the district board to the Commission, which may approve, disapprove, or modify the same to conform to the requirements of this section, and such approval, disapproval, or modification shall be binding upon all code members within the district, subject to such modification therein as may result from the coordination provided for in the succeeding section 5: Provided, That all minimum prices established for any kind, quality, or size of coal for shipment into any consuming market area shall be just and equitable as between producers within the district: And provided further, That no minimum price shall be established that permits dumping.

As soon as possible after its creation, each district board shall determine the weighted average of the total costs of the ascertainable tonnage produced in the district in the calendar year 1934. The district board shall adjust the average costs so determined, as may be necessary to give effect to any changes in wage rates, hours of employment, or other factors substantially affecting costs, exclusive of seasonal changes, so as to reflect as accurately as possible any change or changes which may have been established since January 1, 1934. Such determination and the computations upon which it is based shall be promptly submitted to the Commission by each district board in the respective minimum-price area. The Commission shall thereupon determine the weighted average of the total costs of the tonnage for each minimum-price area in the calendar year 1934, adjusted as aforesaid, and transmit it to all the district boards within such minimum-price area. Said weighted average of the total costs shall be taken as the basis for the establishment of minimum prices to be effective until changed by the Commission. Thereafter, upon satisfactory proof made at any time by any district board of a change in excess of 2 cents per net ton of two thousand pounds in the weighted average of the total costs in the minimum-price area, exclusive of seasonal changes, the

Commission shall increase or decrease the minimum prices accordingly. The weighted average figures of total cost determined as aforesaid shall be available to the public.

Each district board shall, on its own motion or when directed by the Commission, establish reasonable rules and regulations incidental to the sale and distribution of coal by code members within the district. Such rules and regulations shall not be inconsistent with the requirements of this code and shall conform to the standards of fair competition hereinafter established. Such rules and regulations shall be submitted by the district board to the Commission with a statement of the reasons therefor, and the Commission may approve, disapprove, or modify the same, and such approval, disapproval, or modification shall be binding upon all code members within the district.

Sec. 5. District boards shall, under rules and regulations established by the Commission, coordinate in common consuming market areas upon a fair competitive basis the minimum prices and the rules and regulations established by them, respectively, under section 4 hereof. Such coordination, among other factors, but without limitation, shall take into account the various kinds, qualities, and sizes of coal, and transportation charges upon coal. All minimum prices established for any kind, quality, or size of coal for shipment into any consuming market area shall be just and equitable, and not unduly prejudicial or preferential, as between and among districts, and shall reflect, as nearly as possible, the relative market values, at points of delivery in each common consuming market area, of the various kinds, qualities and sizes of coal produced in the various districts; to the end of affording the producers in the several districts substantially the same opportunity to dispose of their coals upon a competitive basis as has heretofore existed. The minimum prices established as a result of such coordination shall not, as to any district, reduce or increase the return per net ton upon all the coal produced therein below or above the minimum return as provided in section 4 of this code by an amount greater than necessary to accomplish such coordination, to the end that the return per net [fol. 76] ton upon the entire tonnage of the minimum price area shall approximate and be not less than the weighted average of the total costs per net ton of the tonnage of such minimum price area. Such coordinated prices and rules

and regulations, together with the data upon which they are predicated, shall be submitted to the Commission, which may approve, disapprove, or modify the same to establish and maintain such fair competitive relationship, and such approval, disapproval, or modification shall be binding upon all code members within the affected districts. No minimum price shall be established that permits dumping. On the petition of any district board or other party in interest or on its own motion, after notice to the district boards, the Commission may at any time conduct hearings to determine whether the foregoing method of fixing minimum prices under section 4 is prejudicial to any district with respect to the fair opportunity of such district to market its coal. Should the Commission so find, and further find that the prejudice cannot be removed through the coordination of minimum prices as provided for in this section 5, then the Commission may establish a different basis for determining minimum prices in such district, to the end that fair and competitive prices shall prevail in the marketing of the coal produced in such district: Provided, That the minimum prices so established as to any such district shall yield a return, per net ton, not less than the weighted average of the total costs, per net ton, of the tonnage of such district.

Sec. 6. When, in the public interest, the Commission deems it necessary to establish maximum prices for coal in order to protect the consumer of coal against unreasonably high prices therefor, the Commission shall have the right to fix maximum prices free on board transportation facilities for coal in any district. Such maximum prices shall be established at a uniform increase above the minimum prices in effect within the district at the time, so that in the aggregate the maximum prices shall yield a reasonable return above the weighted average total cost of the district: Provided, That no maximum price shall be established for any mine which shall not return cost plus a reasonable profit.

Sec. 7. If any code member or district board, or any State or political subdivision of a State, shall be dissatisfied with such coordination of prices or rules and regulations, or by a failure to establish such coordination of prices or rules and regulations, or by the maximum prices estab-

lished for him or it pursuant to section 6 of this code, he or it shall have the right, by petition, to make complaint to the Commission, and the Commission shall, under rules and regulations established by it, and after notice and hearing, make such order as may be required to effectuate the purpose of sections 5 and 6 of this code, which order shall be binding upon all parties in interest. Pending final disposition of such petition, and upon reasonable showing of necessity therefor, the Commission may make such preliminary or temporary order as in its judgment may be appropriate, and not inconsistent with the provisions of said Act.

Sec. 8. Subject to the exceptions provided in section 12 of said Act, no coal shall be sold or delivered at a price below the minimum or above the maximum therefor approved or established by the Commission, and the sale or delivery of coal at a price below such minimum or above such maximum shall constitute a violation of this code.

Subject to the exceptions provided in section 12 of said Act, a contract for the sale of coal at a price below the minimum or above the maximum therefor approved or established by the Commission at the time of the making of the contract shall constitute a violation of this code, and such contract shall be invalid and unenforceable.

From and after the date of approval of said Act, until prices shall have been established pursuant to sections 4 and 5 of part II of this code, no contract for the sale of coal shall be made providing for delivery for a period longer than thirty days from the date of the contract.

While said Act is in effect no code member shall make any contract for the sale of coal for delivery after the expiration date of said Act at a price below the minimum or above the maximum therefor approved or established by the Commission and in effect at the time of making the contract.

The minimum prices established in accordance with the provisions of this code shall not apply to coal sold by a code member and shipped outside the domestic market. The domestic market shall include all points within the continental United States and Canada, and car-ferry shipments to the Island of Cuba. Bunker coal delivered to steamships for consumption thereon shall be regarded as shipped within the domestic market. Maximum prices es-

tablished in accordance with the provisions of this code shall not apply to coal sold by a code member and shipped outside the continental United States.

Sec. 9. All data, reports, and other information in the possession of the National Recovery Administration in relation to bituminous coal shall be available to the Commission for the administration of said Act.

Sec. 10. The price provisions of said Act shall not be evaded or violated by or through the use of docks or other storage facilities or transportation facilities, or by or [fol. 77] through the use of subsidiaries, affiliated sales of transportation companies or other intermediaries or instrumentalities, or by or through the absorption, directly or indirectly, of any transportation or incidental charge of whatsoever kind or character, or any part thereof. The Commission is hereby authorized, after investigation and hearing, and upon notice to the interested parties, to make and issue rules and regulations to make this section effective.

Sec. 11. All sales and contracts for the sale of coal shall be subject to the code prices herein provided for and in effect at the time of the making of such sales and contracts. The Commission shall prescribe the price allowance to and receivable by persons who purchase coal for resale, and resell it in not less than cargo or railroad car-load lots; and shall require the maintenance by such persons, in the resale of coal, of the minimum prices established under said Act.

Unfair Methods of Competition

Sec. 12. The following practices shall be unfair methods of competition and shall constitute violations of this code:

1. The consignment of unordered coal, or the forwarding of coal which has not actually been sold, consigned to the producer or his agent: Provided, however, That coal which has not actually been sold may be forwarded, consigned to the producer or his agent at rail or track yards, tidewater ports, river ports, or lake ports, or docks beyond such ports. Such limitations on the consignment of coal shall not apply to the following classes: Bunker

coal, coal applicable against existing contracts, coal for storage (other than in railroad cars) by the producer or his agent in rail or track yards or on docks, wharves, or other yards for resale by the producer or his agent.

2. The adjustment of claims with purchasers of coal in such manner as to grant secret allowances, secret rebates, or secret concessions, or other price discrimination.

3. The prepayment of freight charges with intent to or having the effect of granting a discriminatory credit allowance.

4. The granting in any form of adjustments, allowances, discounts, credits, or refunds to purchasers or sellers of coal, for the purposes or with the effect of altering retroactively a price previously agreed upon, in such manner as to create price discrimination.

5. The predating or postdating of any invoice or contract for the purchase or sale of coal, except to conform to a bona fide agreement for the purchase or sale entered into on the predate.

6. The payment or allowance in any form or by any device of rebates, refunds, credits, or unearned discounts, or the extension to certain purchasers of services or privileges not extended to all purchasers under like terms and conditions, or under similar circumstances.

7. The attempt to purchase business, or to obtain information concerning a competitor's business by concession, gifts, or bribes.

8. The intentional misrepresentation of any analysis or of analyses, or of sizes, or the intentional making, causing, or permitting to be made, or publishing, of any false, untrue, misleading, or deceptive statement by way of advertising, invoicing, or otherwise concerning the size, quality, character, nature, preparation, or origin of any coal bought, sold or consigned.

9. The unauthorized use, whether in written or oral form, of trade marks, trade names, slogans, or advertising matter already adopted by a competitor, or any deceptive approximation thereof.

10. Inducing or attempting to induce, by any means or device whatsoever, a breach of contract between a competitor and his customer during the term of such contract.

11. Splitting or dividing commissions, broker's fees, or brokerage discounts, or otherwise in any manner directly or indirectly using brokerage commissions or jobbers' arrangements or sales agencies for making discounts, allowances, or rebates, or prices other than those determined under said Act, to any industrial consumer or to any retailers, or to others, whether of a like or different class.

12. Selling to, or through, any broker, jobber, commission account, or sales agency, which is in fact or in effect an agency or an instrumentality of a retailer or an industrial consumer or of an organization of retailers or industrial consumers, whereby they or any of them secure either directly or indirectly a discount, dividend, allowance, or rebates, or a price other than that determined in the manner prescribed by said Act.

13. Violations of the provisions of this code.

It shall not be an unfair method of competition or a violation of this code or any requirement of said Act (1) to sell to or through any bona fide and legitimate farmer's cooperative organization duly organized under the laws of any State, Territory, the District of Columbia, or the United States whether or not such organization grants [fol. 78] rebates, discounts, patronage dividends, or other similar benefits to its members, (2) to sell through any intervening agency to any such cooperative organization, or (3) to pay or allow to any such cooperative organization or to any such intervening agency any discount, commission, rebate, or dividend ordinarily paid or allowed, or permitted by this code to be paid or allowed, to other purchasers for purchases in wholesale or middleman quantities.

Sec. 13. The Commission shall have jurisdiction to hear and determine written complaints made charging any violation of this code specified in this part II. It shall make and publish rules and regulations for the consideration and hearing of any such complaint, and all interested parties shall be required to conform thereto. The Commission shall make due effort toward adjustment of such com-

plaints and shall endeavor to compose the differences of the parties, and shall make such order or orders in the premises, from time to time, as the facts and the circumstances warrant. Any such order shall be subject to review as are other orders of the commission.

Part III—Labor Relations

Sec. 14. Employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from interference, restraint, or coercion of employers, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; and no employee and no one seeking employment shall be required as a condition of employment to join any company union.

Sec. 15. Employees shall have the right of peaceable assemblage for the discussion of the principles of collective bargaining, shall be entitled to select their own checkweighman to inspect the weighing or measuring of coal, and shall not be required as a condition of employment to live in company houses or to trade at the store of the employer.

Sec. 16. The Labor Board shall have authority to adjudicate disputes arising under sections 14 and 15 of this part III, and to determine whether or not an organization of employees has been promoted, or is controlled or dominated by an employer in its organization, management, policy, or election of representatives; and for the purpose of determining who are the freely chosen representatives of the employees the Board may order and under its supervision may conduct an election of employees for that purpose. The Labor Board may order a code member to meet the representatives of its employees for the purpose of collective bargaining.

Sec. 17. The Labor Board may offer its services as mediator in any dispute between a producer and its employees where such dispute is not determined by the tribunal set up in a bona fide collective contract; and upon the written submission by the parties requesting an award on a stated matter signed by the duly accredited representatives of

the employer and employees, the Labor Board may arbitrate the matter submitted.

Sec. 18. Whenever the maximum daily and weekly hours of labor are agreed upon in any contract or contracts negotiated between the producers of more than two-thirds the annual national tonnage production for the preceding calendar year and the representatives of more than one-half the mine workers employed, such maximum hours of labor shall be accepted by all the code members. The wage agreement or agreements negotiated by collective bargaining in any district or group of two or more districts, between representatives of producers of more than two-thirds of the annual tonnage production of such district or each of such districts in a contracting group during the preceding calendar year, and representatives of the majority of the mine workers therein, shall be filed with the Labor Board and shall be accepted as the minimum wages for the various classifications of labor by the code members operating in such district or group of districts.

Annex to Code—Schedule of Districts

Eastern Pennsylvania

District 1. The following counties in Pennsylvania: Bedford, Blair, Bradford, Cambria, Cameron, Centre, Clarion, Clearfield, Clinton, Elk, Forest, Fulton, Huntingdon, Jefferson, Lycoming, McKean, Mifflin, Potter, Somerset, Tioga.

Armstrong County, including mines served by the P. & S. R. R. on the west bank of the Allegheny River, and north of the Conemaugh division of the Pennsylvania Railroad.

Fayette County, all mines on and east of the line of Indian Creek Valley branch of the Baltimore and Ohio Railroad.

Indiana County, north of but excluding the Saltsburg branch of the Pennsylvania Railroad between Edri and Blairsville, both exclusive.

Westmoreland County, including all mines served by the Pennsylvania Railroad, Torrance, and east.

[fol. 79] All coal-producing counties in the State of Maryland.

The following counties in West Virginia: Grant, Mineral, and Tucker.

Western Pennsylvania

District 2. The following counties in Pennsylvania: Allegheny, Beaver, Butler, Greene, Lawrence, Mercer, Venango, Washington.

Armstrong County, west of the Allegheny River and exclusive of mines served by the P. & S. R. R.

Indiana County, including all mines served on the Saltsburg branch of the Pennsylvania Railroad north of Coneaugh River.

Fayette County, except all mines on and east of the line of Indian Creek Valley branch of the Baltimore and Ohio Railroad.

Westmoreland County, including all mines except those served by the Pennsylvania Railroad from Torrance, east.

Northern West Virginia

District 3. The following counties in West Virginia: Barbour, Braxton, Calhoun, Doddridge, Gilmer, Harrison, Jackson, Lewis, Marion, Monongalia, Pleasants, Preston, Randolph, Ritchie, Roane, Taylor, Tyler, Upshur, Webster, Wetzel, Wirt Wood.

That part of Nicholas County including mines served by the Baltimore and Ohio Railroad and north.

Ohio

District 4. All coal-producing counties in Ohio.

Michigan

District 5. All coal-producing counties in Michigan.

Panhandle

District 6. The following counties in West Virginia: Brooke, Hancock, Marshall, and Ohio.

Southern Numbered 1

District 7. The following counties in West Virginia: Greenbrier, Mercer, Monroe, Pocahontas, Summers.

Fayette County, east of Gauley River and including the Gauley River branch of the Chesapeake and Ohio Railroad and mines served by the Virginia Railway.

McDowell County, that portion served by the Dry Fork branch of the Norfolk and Western Railroad and east thereof.

Raleigh County, excluding all mines on the Coal River branch of the Chesapeake and Ohio Railroad.

Wyoming County, that portion served by the Gilbert branch of the Virginian Railroad lying east of the mouth of Skin Fork of Guyandot River and that portion served by the main line and the Glen Rogers branch of the Virginian Railroad.

The following counties in Virginia: Montgomery, Pulaski, Wythe, Giles, Craig.

Tazewell County, that portion served by the Dry Fork branch to Cedar Bluff and from Bluestone Junction to Boissevain branch of the Norfolk and Western Railroad and Richlands-Jewell Ridge Branch of the Norfolk and Western Railroad.

Buchanan County, that portion served by the Richlands-Jewell Ridge branch of the Norfolk and Western Railroad and that portion of said county on the head waters of Dismal Creek, east of Lynn Camp Creek (a tributary of Dismal Creek).

Southern Numbered 2

District 8. The following counties in West Virginia: Boone, Clay, Kanawha, Lincoln, Logan, Mason, Mingo, Putnam, Wayne, Cabell.

Fayette County, west of, but not including mines of the Gauley River branch of the Chesapeake and Ohio Railroad.

McDowell County, that portion not served by and lying west of the Dry Fork branch of the Norfolk and Western Railroad.

Raleigh County, all mines on the Coal River branch of the Chesapeake and Ohio Railroad and north thereof.

Nicholas County, that part south of and not served by the Baltimore and Ohio Railroad.

Wyoming County, that portion served by Gilbert branch of the Virginian Railroad lying west of the mouth of Skin Fork of Guyandot River.

The following counties in Virginia: Dickinson, Lee, Russell, Scott, Wise.

All of Buchanan County, except that portion on the head waters of Dismal Creek, east of Lynn Camp Creek (tributary of Dismal Creek) and that portion served by the Richlands-Jewell Ridge branch of the Norfolk and Western Railroad.

Tazewell County, except portions served by the Dry Fork branch of Norfolk and Western Railroad and branch from Bluestone Junction to Boissevain of Norfolk and Western Railroad and Richlands-Jewell Ridge branch of the Norfolk and Western Railroad.

[fol. 80] The following counties in Kentucky: Bell, Boyd, Breathitt, Carter, Clay, Elliott, Floyd, Greenup, Harlan, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Letcher, Leslie, McCreary, Magoffin, Martin, Morgan, Owsley, Perry, Pike, Rockcastle, Wayne, Whitley.

The following counties in Tennessee: Anderson, Campbell, Claiborne, Cumberland, Fentress, Morgan, Overton, Roane, Scott.

The following counties in North Carolina: Lee, Chatham, Moore.

West Kentucky

District 9. The following counties in Kentucky: Butler, Christian, Crittenden, Daviess, Hancock, Henderson, Hopkins, Logan, McLean, Muhlenberg, Ohio, Simpson, Todd, Union, Warren, Webster.

Illinois

District 10. All coal-producing counties in Illinois.

Indiana

District 11. All coal-producing counties in Indiana.

Iowa

District 12. All coal-producing counties in Iowa.

Southeastern

District 13. All coal-producing counties in Alabama.

The following counties in Georgia: Dade, Walker.

The following counties in Tennessee: Marion, Grundy, Hamilton, Bledsoe, Sequatchie, White, Van Buren, Warren, McMinn, Rhea.

Arkansas-Oklahoma

District 14. The following counties in Arkansas: All counties in the State.

The following counties in Oklahoma: Haskell, Le Flore, Sequoyah.

Southwestern

District 15. All coal-producing counties in Kansas. All coal-producing counties in Texas. All coal-producing counties in Missouri.

The following counties in Oklahoma: Coal, Craig, Latimer, Muskogee, Okmulgee, Pittsburg, Rogers, Tulsa, Wagoner.

Northern Colorado

District 16. The following counties in Colorado: Adams, Arapahoe, Boulder, Douglas, Elbert, El Paso, Jackson, Jefferson, Larimer, Weld.

Southern Colorado

District 17. The following counties in Colorado: All counties not included in northern Colorado district.

The following counties in New Mexico: All coal-producing counties in the State of New Mexico, except those included in the New Mexico district.

New Mexico

District 18. The following counties in New Mexico: Grant, Lincoln, McKinley, Rio Arriba, Sandoval, San Juan, San Miguel, Santa Fe, Socorro.

Wyoming

District 19. All coal-producing counties in Wyoming.

Utah

District 20. All coal-producing counties in Utah.

North Dakota-South Dakota

District 21. All coal-producing counties in North Dakota. All coal-producing counties in South Dakota.

Montana

District 22. All coal-producing counties in Montana.

Washington

District 23. All coal-producing counties in Washington.
Approved, August 30, 1935.

Dated this 9th day of October, 1935.

National Bituminous Coal Commission, by C. F. Hosford, Jr., Chairman; George E. Acret, Walter H. Maloney, C. E. Smith, Percy Tetlow, Commissioners. (Seal.)

[fol. 81]

United States

Department of the Interior

National Bituminous Coal Commission

Washington, D. C.

General Order No. 2

An Order Providing the Form of Acceptance of the
Bituminous Coal Code

Pursuant to authority contained in Act of Congress, entitled "Bituminous Coal Conservation Act of 1935", it is hereby ordered, for the purposes, and to be effective as, contemplated by said Act, that the form of acceptance for membership in the Bituminous Coal Code, formulated and prescribed by this Commission, in its General Order No. 1, on the 9th day of October, 1935, shall be as follows:

Form 1

Acceptance of Membership in the Bituminous Coal Code

The undersigned bituminous coal producer, hereby accepts the Bituminous Coal Code, formulated and prescribed October 9, 1935, by the National Bituminous Coal Commission, in General Order No. 1 of said Commission, pursuant to and under the provisions of an Act of Congress, entitled "Bituminous Coal Conservation Act of 1935."

Neither this acceptance, nor compliance with the provisions of said Code, nor acceptance of the drawback provided by said Act, shall be held to preclude or estop the undersigned from contesting the constitutionality of any provision of said Code or of said Act, or the validity thereof as applicable to the undersigned, in any proceeding authorized by said Act or any other appropriate proceeding at law or in equity.

Dated this day of, 193....

— —, (Seal)
 — —, (Seal)
 — —, (Seal)

(Note: The above form of acceptance may not be altered by the acceptors in any respect whatsoever and must be signed and acknowledged before an officer qualified to administer an oath. When in behalf of a partnership, it must be signed and acknowledged by a partner thereof, and in behalf of a corporation, by the president or vice president, and attested by the secretary or assistant secretary. A form of acknowledgment conformable to the laws of the state in which the acceptance is executed shall be thereto attached.)

The above form of acceptance shall be known as "Form 1", and, if the producer desires to accept the Code, must be signed and acknowledged in triplicate, one triplicate original to be filed with the National Bituminous Coal Commission at Washington, D. C., another with the District Board Secretary, and another retained in the files of the producer. Said acceptance shall become effective only when properly executed and filed with the Commission at Washington, D. C.

Dated this 9th day of October, 1935.

National Bituminous Coal Commission. By C. F. Hosford, Jr., Chairman, George E. Acret, Walter H. Maloney, C. E. Smith, Percy Tetlow, Commissioners. (Seal.)

Department of the Interior

National Bituminous Coal Commission

Washington, D. C.

General Order No. 3

An Order Providing for the Organization of the District
Boards

Pursuant to authority contained in Act of Congress, entitled "Bituminous Coal Conservation Act of 1935", it is hereby ordered by the National Bituminous Coal Commission, in regular meeting assembled, as follows:

1. District boards of coal producers shall be forthwith organized pursuant to the provisions of said Bituminous Coal Conservation Act of 1935 and in conformity with the provisions of this order.

2. The following are hereby appointed acting deputy district secretaries for this Commission in their respective districts:

	<i>District</i>	<i>Name</i>	<i>Address</i>
1	W. A. Jones	c/o	Central Pennsylvania Coal Producers Association, Altoona, Pennsylvania.
2	B. H. Canon	Oliver Building,	Pittsburgh, Pennsylvania.
3	T. J. Ashcraft	P. O. Box 1164,	Fairmont, West Virginia.
4	Ezra Van Horn	Rockefeller Bldg.,	Cleveland, Ohio.
5	Warren E. Pippin	Graebner Building,	Saginaw, Michigan.
6	Geo. A. Blackford	500 Board of Trade Building,	Wheeling, West Virginia.
7	P. M. Snyder	Mt. Hope,	West Virginia.
8	C. E. Bockus	75 West Street,	New York City.
9	C. E. Reed	Starks Building,	Louisville, Kentucky.

	<i>District</i>	<i>Name</i>	<i>Address</i>
10	Fred Wilkey		309 West Jackson Boulevard, Chicago, Illinois.
11	Jonas Waffle		Opera House Block, Terre Haute, Indiana.
12	M. G. Youngquist		Polk Building, Des Moines, Iowa.
13	James L. Davidson		Webb Crawford Building, Bir- mingham, Alabama.
14	S. A. Bramlette		Merchants National Bank Building, Fort Smith, Ar- kansas.
15	W. E. Blucher		540 Dwight Building, Kansas City, Missouri.
16	N. C. Brooks		308 Sugar Building, Denver, Colorado.
17	F. O. Sandstrom		Boston Building, Denver, Colo- rado.
18	A. R. Litts		Box 623, Albuquerque, New Mexico.
19	L. W. Mitchell		610 Boyd Building, Cheyenne, Wyoming.
20	B. P. Manley		Ezra Thompson Building, Salt Lake City, Utah.
21	E. M. Hendricks		307 Broadway, Bismarck, North Dakota.
22	M. F. Purcell		c/o Montana Coal Operators Ass'n., Billings, Montana.
23	D. S. Hanley		Chamber of Commerce Build- ing, Seattle, Washington.

The appointment of an acting deputy district secretary shall be effective upon his taking and signing an oath of office before a notary public or other officer qualified to administer an oath.

[fol. 83] 3. Each of such acting deputy district secretaries shall serve without compensation but shall be reimbursed by his district board, when such district board shall be organized, for his actual expenses incurred in complying with this order.

4. Each of the above named acting deputy district secretaries shall accept his appointment by telegraphing, prepaid, to this Commission at Washington, D. C., such ac-

ceptance within 24 hours of the receipt of this order, stating therein the date, hour, and place of such meeting and the quantity of forms required for his use in organizing his district in conformity with this order. The Commission reserves the right, at any time, to revoke the appointment of any acting deputy district secretary without prior notice or hearing.

5. The duties of an acting deputy district secretary shall be as follows:

(a) To fix the time and place of a meeting for the organization of the district board in conformity with the provisions of this order and of said Act, such meeting to be held within 15 days of the date of the receipt of this order.

(b) To give notice, in the manner and form herein provided, of the time and place of such meeting to all known bituminous coal producers in his district, and to make distribution of all forms as required by this order.

(c) To call said meeting to order at the time and place fixed in said notice.

(d) To receive and safely keep for delivery to the district board, when organized, all proxies and tonnage affidavits herein provided for and, prior to the meeting, to list and arrange such proxies and affidavits in a manner such as to best facilitate their use at the meeting.

(e) To act as temporary chairman of said meeting and to do such other things as the Commission may by its subsequent instructions or orders direct.

(f) Within five days after said meeting, to file with the Commission at Washington, D. C., a full report of the proceedings of said meeting, together with proof of service and proof of publication of said notice in conformity with the requirements of this order, and upon the filing of such report the appointment of such acting deputy district secretary shall terminate.

6. The notice of said meeting shall be in the form attached to this order, marked "Form 2", and made a part hereof.

7. Not less than ten days prior to the day fixed for said meeting, said notice shall be published once in a newspaper

of general circulation in the district, and, not less than ten days prior to the day fixed for said meeting, a copy of said notice upon said Form 2 shall be mailed, postage prepaid, to all known bituminous coal producers in the district, together with a copy of General Orders No. 1, 2, and 3, and, in duplicate, Form 4, and in triplicate, Forms 1, and 5.

8. Proof of service of said notice shall be made in the form attached to this order, marked "Form 3", and made a part hereof. Proof of publication of said notice shall be made by affidavit of the publisher of the newspaper in a form customary in the district.

9. Qualified coal producers, as defined in this order, and properly represented at the meeting, shall proceed to a determination of the number of members to comprise the district board in accordance with the provisions of Sub-Section (a) of Part I of Section 4 of said Act. Thereafter, an election of members of the district board shall be proceeded with as provided in said Section 4 and in this order, provided: That one vacancy shall be left in the total number of members of the board, such vacancy to be thereafter filled by selection by an organization of employees as provided in said Act, and provided further: That the number of members elected at the meeting shall be an even number.

10. Each qualified coal producer may attend said meeting and vote in person, or by proxy, in the manner provided in said Act.

11. All proxies shall be in the form attached to this order, marked "Form 4", and made a part hereof, and shall be in fact filed with the acting deputy district secretary not less than 48 hours prior to the date and hour fixed for said meeting. No proxies shall under any circumstances have any validity which shall not have been so filed.

[fol. 84] 12. A producer may not vote by proxy or otherwise unless he be a qualified producer. A qualified producer, within the meaning of this order, shall be a producer, as defined in Section 19 of said Act, who, 48 hours prior to the date and hour of said meeting, has performed each of the following acts: (a) Mailed to the Commission at

Washington, D. C., his or its acceptance of the Bituminous Coal Code, duly executed, on Form 1, pursuant to General Order No. 1 of the Commission. (b) Filed with (actually in the possession of) the acting deputy district secretary, for his delivery to the secretary of the district board when elected, a duplicate original of said acceptance. (c) Filed, in duplicate, with the acting deputy district secretary, an affidavit of tonnage in the form hereinafter provided, sworn to before an officer qualified to administer an oath.

13. The affidavit of tonnage, to be executed by producers desiring to qualify, shall be made in duplicate upon the form attached hereto, marked "Form 5," and made a part hereof. One duplicate original of the affidavit of tonnage received by the acting deputy district secretary shall be filed with the Commission at Washington, D. C., and the other duplicate original delivered to the secretary of the district board when elected.

14. No producer, who shall not be a qualified producer as herein provided, shall have any vote or voice at said meeting, or right to the floor thereof.

15. Following the election of the members of the district board, the board shall proceed to organize as promptly as possible, and shall transmit to the Commission, for its consideration and approval, a full report of said meeting, which report shall be duly certified. Said report shall include such information as will inform the Commission as to whether or not members of the said board are truly representative of all the mines of the district, as provided in Section 4, Part I, Sub-Section (a) of said Act, and as to whether or not said meeting was held in a locality suitable to the convenience of a majority of the producers of the district.

16. District boards, immediately following said meeting, shall levy an initial assessment upon all those subject to their jurisdiction, as provided in said Act, each paying his proportionate share computed on the basis of his tonnage for the calendar year 1934, and thereafter shall levy quarterly assessments upon the same, each paying his proportionate share computed on the basis of his tonnage for the preceding quarter.

17. District boards, when organized, shall be known as "Bituminous Coal Producers Board for District No. —."

18. No district board organized at a meeting called, noticed, or held prior to the date of the issuance of this order, or organized other than in conformity therewith, will be recognized by the Commission.

Dated this 9th day of October, 1935.

National Bituminous Coal Commission, by C. F. Hosford, Jr., Chairman; George E. Acret, Walter H. Maloney, C. E. Smith, Percy Tetlow, Commissioners. (Seal)

[fol. 85] United States Department of the Interior

National Bituminous Coal Commission

Washington, D. C.

Name of Producer, — —.

Post Office Address, —.

District No., —.

Acceptance of Membership in the Bituminous Coal Code

The undersigned, bituminous coal producer, hereby accepts the Bituminous Coal Code, formulated and prescribed October 9, 1935, by the National Bituminous Coal Commission, in General Order No. 1 of said Commission, pursuant to and under the provisions of an Act of Congress, entitled "Bituminous Coal Conservation Act of 1935."

Neither this acceptance, nor compliance with the provisions of said Code, nor acceptance of the drawback provided by said Act, shall be held to preclude or estop the undersigned from contesting the constitutionality of any provision of said Code or of said Act, or the validity thereof as applicable to the undersigned, in any proceeding authorized by said Act or any other appropriate proceeding at law or in equity.

Dated this — day of —, 193—.

— —, (Seal)

— —, (Seal)

— —, (Seal)

(Note: The above form of acceptance may not be altered by the acceptors in any respect whatsoever and must be signed and acknowledged before an officer qualified to administer an oath. When in behalf of a partnership it must be signed and acknowledged by a partner thereof, and in behalf of a corporation, by the president or vice president, and attested by the secretary or assistant secretary. A form of acknowledgment conformable to the laws of the state in which the acceptance is executed shall be thereto attached.)

Attention is called to the fact that, pursuant to Paragraph 12 of General Order No. 3, an executed and acknowledged duplicate original of the above form must be mailed to the Commission at Washington, D. C., and an executed and acknowledged duplicate original thereof must be filed with (actually in the possession of) the acting deputy district secretary at least 48 hours prior to the date and hour fixed for the District Board meeting.

[fol. 86]

United States

Department of the Interior
National Bituminous Coal Commission,
Washington, D. C.

Proxy for Organization Meeting of District Boards

STATE OF ———

County of ———, ss:

The undersigned, a coal producer in District No. —, as defined by the Bituminous Coal Conservation Act of 1935, having become a qualified producer on the — day of —, 1935, in conformity with General Order No. 3 of the National Bituminous Coal Commission, does hereby make, constitute, and appoint — his, her or its true and lawful proxy and attorney, to attend the organization meeting of the bituminous coal producers of the said district, to be held at — o'clock, —M., on the — day of —, 1935, and any adjournment or adjournments of the said meeting, and there to cast any and all votes the undersigned could or would cast, if personally present, in creating the district board and voting upon any and all matters necessary thereto and properly coming before the said meeting;