

hereby ratifying and confirming any and all lawful acts of the said proxy and attorney done in conformity herewith.

In witness whereof the undersigned has caused these presents to be duly executed this — day of —, 193—.

— (Seal)

(Note: The above proxy 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 when in behalf of a corporation, by the president, vice president, or secretary thereof. A form of acknowledgment conformable to the laws of the state in which the proxy is executed shall be thereto attached.)

Attention is called to the fact that, if the producer desires to vote by proxy at the organization meeting of the District Board, an executed and acknowledged original of this form 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, pursuant to Paragraph 11 of General Order No. 3.

[fol. 87]

United States

Department of the Interior

National Bituminous Coal Commission,

Washington, D. C.

Affidavit of Tonnage

STATE OF —

County of —, ss:

—, being duly sworn on oath, deposes and says that —he makes this Affidavit of Tonnage pursuant to General Order No. 3 of the National Bituminous Coal Commission, dated the 9th day of October, 1935, and that —he is — (Individual proprietor, copartner, president, etc.) of — (Name of producer) — a- — (Whether an individual, copartnership, or corporation): that said producer is now operating one or more bituminous coal mines located in District No. —, as designated in Act of Congress, entitled "Bituminous Coal Conservation Act of 1935"; that during

the calendar year 1934 said producer actually produced bituminous coal from a mine or mines, owned, leased, or operated by —, (him, her, it), within said District, the names of which mine or mines, the respective locations thereof, and the actual number of tons of bituminous coal produced therefrom during said calendar year, being as follows, to wit:

Name of Mine	Location of Mine	1934 Tonnage of Mine
—	—	—

Affiant hereby certifies that he has mailed to the Commission, at Washington, D. C., in behalf of said producer, an acceptance of the Bituminous Coal Code, duly executed, on Form 1, pursuant to the requirements of General Order No. 3 of the Commission, and that the representations and facts aforesaid are true and correct upon — (his, her) personal knowledge thereof.

— — (Seal)

Sworn and subscribed before me this — day of —, 193—.

— — (Title of officer administering oath.)

(Note: The above affidavit when made in behalf of a partnership, must be made by one of the partners thereof; when in behalf of a corporation it must be made by either the president, vice president, or secretary thereof. This affidavit must be filed, in duplicate, with the acting deputy district secretary not later than 48 hours prior to the date and hour of the organization meeting provided in General Order No. 3 of said Commission. The acting deputy district secretary shall transmit one of such duplicate originals to the Commission at Washington, D. C. and the other to the secretary of the district board, when elected.)

Attention is called to the fact that, pursuant to Paragraph 12 of General Order No. 3, two executed and acknowledged duplicate originals of the above form 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. 88] IN SUPREME COURT OF DISTRICT OF COLUMBIA

RULE TO SHOW CAUSE—Filed October 24, 1935

On consideration of the allegations contained in the verified Bill of Complaint filed herein the 31st day of August, 1935, and the further facts appearing by affidavit of the plaintiff, James Walter Carter, filed herein on the 24th day of October, 1935, it is by the Court this 24th day of October, 1935,

Adjudged, ordered and decreed that 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 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 each of them, appear in this Court on the 28th day of October, 1935, at the hour of 1:30 o'clock p. m., or as soon thereafter as counsel may be heard before the [fol. 89] Motions Justice of this Court, provided a copy of the affidavit of James Walter Carter above mentioned and a copy of this order shall be served on them by delivering copies thereof to their respective counsel on or before the 25th day of October, 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 S. Denham as

Vice-Presidents of said Company, pending final hearing of this case, from executing or filing an acceptance of the Bituminous Coal Code, and from paying any tax attempted to be imposed upon the defendant Carter Coal Company pursuant to the Bituminous Coal Conservation Act of 1935; (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 [fol. 90] said defendant's subordinates or assistance, or to any other Government officials, respecting the collection of said taxes from defendant Carter Coal Company; (c) enjoining the defendants 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 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 said Company 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 Rev-

enue 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 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, [fol. 91] 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.

Receipt of a copy of the above rule to show cause and of the affidavit of James Walter Carter referred to therein is hereby acknowledged this — day of October, 1935.

Attorney for Defendants Carter Coal Company and
Its Officers.

Attorneys for Defendants Guy T. Helvering and
Other Government Officers.

[fol. 92] IN SUPREME COURT OF DISTRICT OF COLUMBIA

RETURN OF DEFENDANTS GUY T. HELVERING ET AL., TO RULE
TO SHOW CAUSE—Filed October 28, 1935

Come now severally 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, 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, 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. This cause is now set for trial in this Court on October 28, 1935. The tax provided for in the Bituminous Coal Conservation Act of 1935 will not become payable until January 1, 1936. Prior to that date this Court will have been able to pass upon the application for a permanent injunction. Consequently, no injury to the plaintiff herein can possibly occur during the pendency of this trial.

B. The bill of complaint herein fails to disclose that [fol. 93] 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, 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 [fol. 94] 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, 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 P. 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, 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.

[fol. 95] IN SUPREME COURT OF DISTRICT OF COLUMBIA

RETURN OF CARTER COAL CO., ET AL., TO RULE TO SHOW CAUSE
—Filed October 28, 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 S. Denham as Vice-Presidents of said Company, defendants herein and as joint return to the rule to show cause entered herein on the 24th day of October, 1935, show as follows:

1. Said defendants incorporate herein by reference their Answer in this cause, and admit the facts set forth in the affidavit of the plaintiff in support of a preliminary injunction filed herein.

2. These defendants respectfully submit to the Court the question whether or not a preliminary injunction should issue as prayed for in the Bill of Complaint, and pray that, in the event an order be made and entered herein, pendente lite, enjoining these defendants from executing or filing an acceptance of the Bituminous Coal Code pursuant to the Bituminous Coal Conservation Act of 1935, 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.

Carter Coal Company, by George L. Carter, (George L. Carter) Vice-President; George L. Carter (George L. Carter) Vice-President and a Director [fols. 96 & 97] of Carter Coal Company, C. A. Hall (C. A. Hall) Secretary-Treasurer and a Director of Carter Coal Company; John Callahan (John Callahan) Vice-President of Carter Coal Company; Joseph W. Gorman (Joseph W. Gorman) Vice-President of Carter Coal Company; Walter S. Denham (Walter S. Denham) Vice-President of Carter Coal Company, by Karl J. Hardy, Their Attorney. Karl J. Hardy (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 George L. Carter et al. Jurats omitted in printing.

[fol. 98] IN SUPREME COURT OF DISTRICT OF COLUMBIA

ORDER CONTINUING RULE TO SHOW CAUSE—Filed October
28, 1935

This cause came on to be heard this 28th day of October, 1935, at 1:30 o'clock P. M., upon a rule to show cause issued herein on October 24, 1935, and, thereupon, it is this 28th day of October, 1935.

Ordered that said Rule to Show Cause be, and the same is, hereby continued to 10 o'clock A. M., October 29, 1935.

Jesse C. Adkins, Justice.

[fol. 99] IN SUPREME COURT OF DISTRICT OF COLUMBIA
ORDER OF INJUNCTION PENDENTE LITE AGAINST DEFENDANT
CARTER COAL COMPANY AND ITS OFFICERS, AND ORDER DENY-
ING PRELIMINARY INJUNCTION AGAINST GUY T. HELVERING,
ET AL.—Filed October 30, 1935

This cause came on to be heard at this term, upon application of plaintiff for preliminary injunction against all the defendants, and also at the same time for trial upon the merits; and it appearing to this Court that the National Bituminous Coal Commission has formulated and promulgated the Bituminous Coal Code and forms of acceptance thereof; that an Acting Deputy District Secretary of the said Commission has been appointed for District No. 7, in which are included the coal mines of the defendant Carter Coal Company, and that the said Secretary has served a copy of the said Code and forms of acceptance thereof upon the said Carter Coal Company together with notice of a meeting on October 30th next at 10 a.m., for the purpose of organizing a District Board for said District No. 7; and it further appearing that the tax provision of the Bituminous Coal Conservation Act of 1935 will become effective upon November 1, 1935, and that it is imminent that the Carter Coal Company will accept and comply with the said Code in order to escape the accrual of the imposition which accrues under the terms of said Act upon all sales of coal made on and after November 1, 1935, by coal operators not assenting to and complying with the said Code;

And it appearing to this Court that the plaintiff may suffer irreparable injury, loss and damage should the defendant Carter Coal Company accept said Code prior to a decision of this cause on its merits; and it appearing that since the case is now on trial the question of the propriety of the issuance of any injunction against the defendants, [fol. 100] 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, may properly be reserved until the case has been fully heard; and thereupon, upon consideration thereof, it is this 30th day of October, 1935,

Adjudged, ordered and decreed that the defendant Carter Coal Company and the defendants George L. Carter, as Vice-President and a Director of Carter Coal Company, C. A. Hall as Secretary-Treasurer and a Director of Carter Coal Company, John Callahan, Joseph W. Gorman and Walter S. Denham as Vice-Presidents of Carter Coal Company and each of them be, and they are hereby, enjoined and restrained, pendente lite, from executing or filing an acceptance of the Bituminous Coal Code pursuant to the Bituminous Coal Conservation Act of 1935; provided, however, that the plaintiff James Walter Carter shall give a bond or understanding, with security to be approved by this Court, in the amount of \$15,000.00, to save the said defendants harmless from any loss, costs, damages or liabilities which they may incur through the issue of this preliminary injunction, and it is further

[fol. 101] Adjudged, ordered and decreed that the plaintiff's application for a preliminary injunction against the defendants Guy T. Helvering, individually and as Commissioner of Internal Revenue of the United States; M. Hamp-

ton 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, be and it is hereby denied and the rule to show cause thereon be and the same is hereby vacated and discharged.

Jesse C. Adkins, Justice.

ENTRY OF APPEAL

The plaintiff, James Walter Carter, by his attorneys, in open Court takes exception to the entry of so much of the above order as denies relief against the defendants Guy T. Helvering, et al. and directs the giving of a bond as a condition to the relief against the defendants Carter Coal Company, et al. and petitions for and notes an appeal to the United States Court of Appeals for the District of Columbia on this 30th day of October, 1935, which appeal is hereby [fol. 102] granted and noted; whereupon the maximum of an undertaking for costs is hereby fixed in the sum of One Hundred Dollars (\$100.00), with leave to deposit the sum of Fifty Dollars (\$50.00) with the clerk in lieu thereof.

Jesse C. Adkins, Justice.

MEMORANDUM

October 30, 1935.—Fifty Dollars (\$50.00) deposited in cash in lieu of undertaking on appeal.

[fol. 103] IN SUPREME COURT OF DISTRICT OF COLUMBIA

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—Filed
October 30, 1935.

Now comes James Walter Carter by his attorneys and says that in the record, and in the order entered on October

30, 1935, on the applications for preliminary injunctions pendente lite in the above entitled cause, there is error in the following respects :

1. In overruling and denying plaintiff's application for a preliminary injunction pendente lite against all of the defendants herein as prayed ;

2. In overruling and denying plaintiff's application for a preliminary injunction pendente lite, as prayed and without bond, restraining and enjoining the defendants, the Carter Coal Company and its officers, 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, from executing and filing an acceptance of the Bituminous Coal Code and from paying any tax attempted to be imposed upon the defendant Carter Coal Company pursuant to the Bituminous Coal Conservation Act of 1935 ;

3. In overruling and denying plaintiff's application for a preliminary injunction pendente lite restraining and enjoining Guy T. Helvering, individually and as Commissioner of Internal Revenue of the United States, his agents, assistants, deputies or employees, 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 [fol. 104] collect said taxes from defendant Carter Coal Company ; and from issuing any 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 ;

4. In overruling and denying plaintiff's application for a preliminary injunction pendente lite restraining and enjoining defendants 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 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, from collecting, or attempting to collect, directly or indirectly, from Carter Coal Company any tax or imposition purporting to be levied or assessed against said Company 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;

5. In overruling and denying plaintiff's application for [fol. 105] a preliminary injunction pendente lite restraining and enjoining 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, 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.

Wherefore, the appellant prays that for such errors the said order entered on applications for preliminary injunctions pendente lite entered October 30, 1935, in the above-entitled cause be reversed and the cause remanded with directions to enter an order reversing said decision and order of the lower court in said cause and ordering that a preliminary injunction pendente lite issue, as prayed and without bond, against the 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 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 [fol.106] 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 for such other and further relief as may be proper in the premises.

Frederick H. Wood, William D. Whitney, Richard H. Wilmer, Attorneys for Plaintiff-Appellant.

[fol. 107] IN SUPREME COURT OF DISTRICT OF COLUMBIA
 PRAECIPE AND DESIGNATION OF RECORD—Filed October
 30, 1935

The Clerk of the Court will please prepare the record on appeal in the above-entitled cause and include therein the following papers and proceedings:

1. Bill of Complaint for Injunction and Petition for Declaratory Judgment filed August 31, 1935.
2. Rule to Show Cause filed August 31, 1935.
3. Motion to Amend Bill of Complaint filed September 3, 1935.
4. Order filed September 3, 1935.
5. Return of Defendants Guy T. Helvering et al., to Rule to Show Cause filed September 16, 1935.

6. Return to Rule to Show Cause filed September 16, 1935.
7. Order Denying Preliminary Injunction filed September 19, 1935.
8. Motion filed September 19, 1935.
9. Order filed September 19, 1935.
10. Entry of Appearances filed September 19, 1935.
11. Stipulation filed September 19, 1935.
12. Stipulation filed September 20, 1935.
13. Joint and Several Answer of Defendants Guy T. Helvering, et al., filed October 2, 1935.
14. Answer of Defendants Carter Coal Company and its Officers to Bill of Complaint filed October 4, 1935.
15. Reply of Plaintiff to Separate Defense as set forth in Part II of Answer of Defendants Guy T. Helvering, et al., filed October 5, 1935.
16. Motion to Advance and Specially Set Case for Hearing filed October 5, 1935.
17. Memorandum of Points and Authorities in Support of Motion to Advance and Set Case Specially for Hearing filed October 5, 1935.
18. Notice to Attorneys for Defendants that Motion and Memorandum of Points and Authorities will be Presented, filed October 5, 1935.
19. Memorandum of Points and Authorities on Behalf [fol. 108] of Defendant Government Officers, Supporting Plaintiff's Motion to Advance but Opposing the Trial Date Requested by Plaintiff, filed October 9, 1935.
20. Order Advancing Case and Setting Specially the Date for Hearing, filed October 9, 1935.
21. Affidavit of James Walter Carter in Support of Preliminary Injunction filed October 24, 1935.
22. Rule to Show Cause filed October 24, 1935.
23. Return to Rule to Show Cause of Defendants Carter Coal Company and its Officers filed October 28, 1935.

24. Return to Rule to Show Cause of Defendants Guy T. Helvering, et al., filed October 28, 1935.

25. Order Continuing Rule to Show Cause, filed October 28, 1935.

26. Order on Application for Preliminary Injunctions, Pendente Lite, filed October 30, 1935.

27. Order and Entry Showing Notation and Allowance of Appeal, filed October 30, 1935.

28. Docket Entry Showing Filing of Appeal Bond.

29. Assignment of Errors, filed October 30, 1935

30. This Præcipe and Designation of Record, filed October 30, 1935.

Frederick H. Wood, William D. Whitney, Richard H. Wilmer, Attorneys for Appellant, James Walter Carter.

[fol. 109] Clerk's Certificates to foregoing transcript omitted in printing.

[fols. 110 & 111] [File endorsement omitted.]

Endorsed on cover: File No. 40,117. District of Columbia, U. S. Court of Appeals. Term No. 563. James Walter Carter, Petitioner, vs. Carter Coal Company, et al. Petition for a writ of certiorari and exhibit thereto. Filed October 31, 1935. Term No. 563 O.T. 1935.

[fol. 101] IN SUPREME COURT OF DISTRICT OF COLUMBIA

MEMORANDA

October 31, 1935.—Injunction undertaking (\$15000.00) of James Walter Carter approved and filed. Deposit of \$15000.00 to be made with Clerk in lieu of surety. Deposit by James Watler Carter (in Registry \$15000.00).

November 15, 1935.—\$15000.00 deposited in Registry by J. Walter Carter.

[fol. 102] IN SUPREME COURT OF DISTRICT OF COLUMBIA

ORDER APPROVING FURTHER SECURITY FOR UNDERTAKING—
Filed November 14, 1935

* * * * *

Upon motion of the attorney for the defendants, Carter Coal Company and its officers and directors, the plaintiff James Walter Carter hereby deposits the sum of \$15,000 with the Clerk to be held in the registry of this Court, which deposit is hereby approved as further security for the undertaking heretofore filed herein on the 31st day of October, 1935.

Jesse C. Adkins, Justice.

Dated November 14, 1935.

[fol. 103] IN SUPREME COURT OF DISTRICT OF COLUMBIA

STIPULATION AS TO HEARING, ETC.—Filed November 20, 1935

* * * * *

It is hereby stipulated and agreed by and between the parties hereto that

(1) all of the parties hereto shall file all of their proposed Findings of Fact and Conclusions of Law on or before November 26, 1935 at 10 o'clock in the forenoon of that day;

(2) that the Statement of Evidence filed by the plaintiff herein on November 16, 1935, shall be submitted for final settlement on or before December 3, 1935, and that any modifications thereof or amendments thereto proposed by any of the defendants herein shall be submitted to the [fol. 104] plaintiff on or before Dec. 2nd, 1935;

(3) that oral argument in respect of Findings of Fact and Conclusions of Law, and in respect of submission hereof for final decree, shall be had on November 26, 1935, at 10 o'clock in the forenoon of that day.

William D. Whitney, Attorney for Plaintiff James Walter Carter. Karl J. Hardy, Attorney for Defendants Carter Coal Company, et al. John Dickinson, Assistant Attorney General of the United States, Attorney for Defendants Guy T. Helvering, et al.

Washington, D. C., November 20, 1935.

[fol. 105] IN SUPREME COURT OF DISTRICT OF COLUMBIA

AMENDMENTS TO BILL OF COMPLAINT—Filed December 10,
1935

* * * * *

On motion by the plaintiff in open court on the 26th day of November, 1935, it was ordered that the bill of complaint herein be amended by adding the following at the end of paragraph 17th thereof:

“(5) The said Act is invalid in that it attempts an unlawful delegation of the legislative power of the United States in violation of Article I, Sec. 1 of the Constitution of the United States; in that it attempts unlawfully to vest executive and administrative power of the United States in violation of Article II, Sec. 2, paragraph 2 of the Constitution; and in that the attempted delegation and investment of such power in private and interested parties is arbitrary and discriminatory and violative of rights guaranteed to the plaintiff and to the Carter Coal Company by

the Fifth Amendment to the Constitution of the United States.

“(6) The penalty, imposed by the Act in the guise of a tax upon producers not accepting and complying with the Code, is violative of the Fifth Amendment if construed to be applicable for the period of the pendency of this suit, and, if so construed, is to that extent unconstitutional and void.”

In open court on November 27, 1935, on motion of plaintiff, and the defendants consenting thereto, it was ordered that the bill of complaint herein be amended by adding to paragraph 17 thereof the following numbered subparagraphs:

“(2a) Section 4 of the said Act, and the Code formulated [fol. 106] and promulgated thereunder, are unconstitutional and invalid in their entirety as applied to the defendant Carter Coal Company since they constitute regulations of its intrastate activities, the regulation of which does not constitute a regulation of commerce among the several states, or

“(2b) The price-fixing provisions of said Section 4 and said Code are invalid and unconstitutional as applied to the defendant Carter Coal Company since such provisions do not constitute regulations of commerce among the several states, and

“(2c) The labor relations provisions of said Section 4 and of said Code, and each and all of them jointly and severally, including the provisions regulating the wages and hours of mine workers, are each and all, jointly and severally, unconstitutional and invalid as not constituting regulation of commerce among the several states.”

and it was further ordered that paragraph 26 of the said bill be amended by adding the following to the end of the third sentence therein:

“and will obligate itself to accept such maximum hours and minimum wages for all its mine employees as may be established by the persons and in the manner prescribed in the statute and in the Code, regardless whether the hours

and wages so established are satisfactory to the Company or to its employees or any of them, or whether they will permit the Company, in the judgment of its management, profitably to operate its business, and that labor costs constitute so large a part of the cost of producing coal that the surrender of the rights and duties of the management of the Company in that respect will be of great injury to it.”

Jesse C. Adkins, Justice.

We consent: F. B. Critchlow, Special Assistant to the Attorney General, Counsel for Government Officer Defendants. Reynolds Robertson, Counsel for Plaintiff.

[fol. 107] IN SUPREME COURT OF DISTRICT OF COLUMBIA

ORDER GRANTING AMENDMENTS TO ANSWER—Filed December 10, 1935

* * * * *

On motion of counsel 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 Solicitor General of the United States; and Leslie C. Garnett, individually and as United States Attorney in and for the District of Columbia; counsel for the plaintiff, James Walter Carter, and for the defendants 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 [fol. 108] Callahan, Joseph W. Gorman and Walter S. Denham, as Vice Presidents of said Company, consenting, it is by the Court this — day of December, 1935,

Ordered that the answer of the defendants Guy T. Helvering, et al., be amended as follows:

(1) By adding at the end of subsection (a) in the fourth paragraph of Part II of the answer the following words: "and to substantial diversions and dislocations of such coal shipments";

(2) By adding after the word "burden" and before the word "and" in the third line of subsection (c) of the fourth paragraph of Part II of the answer the following words: "divert, dislocate,";

(3) By adding in the fourth line of subsection (c) of the fourth paragraph of Part II of the answer at the end of the sentence concluding "bituminous coal" and before the sentence beginning "Such burdens" the following words: "and to divert the flow of interstate commerce in bituminous coal to persons employing such methods.";

(4) By adding in the fourth line of subsection (c) of the fourth paragraph of Part II of the answer after the word "restraints" and before the word "and" the words: ", diversions, dislocations".

With the foregoing amendments contained in paragraphs (1), (2), (3) and (4) above, the fourth paragraph of Part II of the answer of the defendants will read as follows:

"In view of the great present importance of bituminous [fol. 109] 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 and to substantial diversions and dislocations of such coal shipments; (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; (c) to unfair and demoralized methods of competition throughout the industry which operate directly and substantially to burden, divert, dislocate, and restrain interstate commerce in bituminous coal and to divert the flow of interstate commerce in bituminous coal to persons employing such methods. Such burdens, restraints, diversions, dislocations 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 Federal courts of law and equity and necessitating the use of State militia and of Federal troops.”

[fol. 110] (5) By adding at the end of the list of hearings contained in Part II of the answer the following hearings:

Hearings before the House Committee on Mines and Mining in 1914 entitled “Conditions in the Coal Mines of Colorado, Pursuant to House Resolution No. 387”,

Hearings before a subcommittee of the Senate Committee on Education and Labor, 63d Congress, 1st Session, entitled “Conditions in the Paint Creek District of West Virginia”,

Hearings before the Senate Committee on Manufactures, 66th Congress, 3d Session, entitled “Publication of Production and Profits in Coal”,

(6) By inserting after the word “interruptions” and before the words “to such” in the fourth line of the sixth paragraph of Part II of the answer the following words: “, dislocations and diversions”;

(7) By inserting after the word “interruptions” and before the words “to interstate” in the ninth line from the bottom of the sixth paragraph of Part II of the answer the following words: “, dislocations and diversions”.

With the foregoing amendments contained in paragraphs (6) and (7) above, the sixth paragraph of Part II of the answer of the defendants will read as follows:

“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, dislocations and diversions to such commerce in bituminous coal are presently, primarily and directly due to and caused [fol. 111] 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 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, dislocations and diversions 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 [fol. 112] employees, and by otherwise eliminating the causes of strikes and lockouts.”

(8) Paragraph 17 of said answer is amended to read as follows:

“These defendants show that each and every charge or allegation contained in Paragraph 17 of plaintiff’s bill of complaint, as amended, 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, and show that the said Bituminous Coal Conservation Act of 1935 expressly provides that acceptance of the code by the Carter Company will not prejudice the right of said company to contest the constitutionality or validity of any code provision, and that full, complete and adequate judicial and administrative remedies are provided in said Act for all of the conjectural injuries referred to by plaintiff in said bill.”

(9) With respect to the amendment to paragraph 26 of the bill of complaint, paragraph 26 of the answer is amended by adding at the end thereof the following:

“Answering the allegations contained in the amendment to plaintiff’s bill of complaint with reference to the acceptance by the Carter Coal Company of maximum hours and minimum wages for its mine employees, these defendants admit that labor costs constitute a large part of the cost of producing bituminous coal. They deny the remaining allegations contained in said amendment except in so far as said remaining allegations constitute conclusions of law.”

Jesse C. Adkins, Justice.

We consent: F. B. Critchlow, Special Asst. to Attorney General, Counsel for Defendant Government Officers; Reynolds Robertson, Counsel for Plaintiff.

[fol. 113] IN SUPREME COURT OF DISTRICT OF COLUMBIA . .

ORDER GRANTING AMENDMENTS TO ANSWER—Filed December 10, 1935

* * * * *

Upon motion of counsel for the defendants Carter Coal Company, George L. Carter, as Vice President and a Di-

rector 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, counsel for the plaintiff, James Walter Carter, and 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 Solicitor General of the United States, and Leslie C. Garnett, individually and as United States Attorney in and for the District of Columbia, consenting, it is by the [fol. 114] Court this 10th day of December, 1935,

Ordered that the answer of the defendants 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, be amended as follows:

(1) With respect to plaintiff's amendments to paragraph 17 of the bill of complaint, the defendants adopt paragraph 17 of their answer heretofore filed herein;

(2) With respect to the plaintiff's amendment to paragraph 26 of the bill of complaint, the defendants adopt paragraph 26 of their answer heretofore filed herein.

Jesse C. Adkins, Justice.

We consent: F. B. Critchlow, Special Assistant to the Attorney General, Counsel for defendant Government officers. Reynolds Robertson, Counsel for plaintiff.

IN THE
SUPREME COURT
of the District of Columbia

HOLDING AN EQUITY COURT

<hr style="width: 20%; margin: 0 auto;"/> <p>JAMES WALTER CARTER, <i>Plaintiff,</i></p> <p style="text-align: center;"><i>v.</i></p> <p>CARTER COAL COMPANY, <i>et al.</i>, <i>Defendants.</i></p> <hr style="width: 20%; margin: 0 auto;"/>	}	<p>In Equity No. 59374</p>
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**FINDINGS OF FACT AND CONCLUSIONS
OF LAW**

In the above-entitled cause heard before the undersigned, Associate Justice of the Supreme Court of the District of Columbia sitting in Equity Division No. 2, the Court, from the pleadings and exhibits filed and from the hearings had and the evidence taken before it, and the matters of which it may take judicial notice, makes the following findings of fact and reaches the following conclusions of law:

FINDINGS OF FACT

A. Evidentiary Facts

I. Parties

1. The plaintiff in this suit is James Walter Carter, a citizen and resident of the State of Maryland and of the United States. He is now, and has been since prior to the filing of the bill of complaint herein, the President, a Director and a minority shareholder

of the defendant corporation, Carter Coal Company (R. 2; Tr. 161).

2. The defendant Carter Coal Company is a corporation organized and existing since 1918 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 and of the State of Delaware (R. 2; Tr. 161). The defendant George L. Carter is a citizen and a resident of the District of Columbia and is a Vice-President and Director of Carter Coal Company. The defendant C. A. Hall is an officer and Director of the defendant Carter Coal Company. 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 S. Denham is a citizen and resident of the State of Kentucky. The defendants John Callahan, Joseph W. Gorman and Walter S. Denham are Vice-Presidents of Carter Coal Company (R. 3; Tr. 162). These defendants are hereinafter referred to for convenience as "the Carter Company defendants."

3. The defendant Guy T. Helvering is the Commissioner of Internal Revenue of the United States; defendant M. Hampton Magruder is the Collector of Internal Revenue of the United States for the Collection District of Maryland; defendant Clarence C. Keiser is the Chief Field Deputy Collector of Internal Revenue for Division No. 2 of the Collection District of Maryland; defendant John B. Colpoys is United States Marshal in and for the District of Columbia; defendant Homer S. Cummings is Attor-

ney General of the United States; defendant Stanley Reed is Solicitor General of the United States and in the absence of the Attorney General is the Acting Attorney General of the United States; and defendant Leslie C. Garnett is the United States Attorney in and for the District of Columbia. These defendants are hereinafter referred to for convenience as "the Government officer defendants."

4. All of the defendants have entered appearances in this Court in this cause both in their individual and official capacities, and this Court has jurisdiction over the persons of each and all of the defendants.

II. The Statute, the Code, the Organization of the District Board, and the Tax Regulations

5. 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, hereinafter referred to as "the Act," and of the Bituminous Coal Code formulated and promulgated thereunder, hereinafter referred to as "the Code."

6. The members of the Bituminous Coal Commission (hereinafter called the "Commission") were appointed by the President on September 20, 1935, and said Commission held its first meeting on September 28, 1935, all members thereof having duly taken oath of office as such members (R. 52).

7. On October 9, 1935, the Commission formulated and promulgated the Bituminous Coal Code, which appears in the Record at R. 57-76 together

with form for acceptance thereof, which appears in the Record at R. 76-77 (Pl. Ex. 15, 16; Tr. 256).

8. On the same day the Commission issued an order providing for the organization of district boards of coal producers as provided for in the Act and in the Code, which order appointed acting deputy district secretaries (Pl. Ex. 17; Tr. 256).

9. On October 17, 1935, P. M. Snyder, the acting deputy district secretary of the Commission appointed in the order aforesaid for District No. 7, issued and delivered to the defendant Company a notice calling a meeting of the producers of bituminous coal in District No. 7 for the purpose of organizing a district board for such district, such meeting to be held October 30, 1935, at Beckley, West Virginia. A copy of the Bituminous Coal Code and form for acceptance thereof were served upon the Company at that time. The Company has not joined the Code and no representative thereof attended the meeting of such district board.

10. At the said meeting, such district board was organized and the members thereof are as follows:

J. W. Bell, General Manager,
Imperial Smokeless Coal Co.,
Quinwood, West Virginia.

William Blizzard,
United Mine Workers of America,
Charleston, West Virginia.

R. E. Brockman, General Manager,
Atlantic Smokeless Coal Co.,
Asco, West Virginia.

W. G. Caperton, Vice-President,
New River Coal Company,
Charleston, West Virginia.

O. M. Deyerle, President,
Flat Top Fuel Company,
Bluefield, West Virginia.

H. D. Everett, President,
Smokeless Fuel Company,
Charleston, West Virginia.

W. A. Richards, President,
Sovereign Pocahontas Co.,
Bluefield, West Virginia.

S. A. Scott, President,
New River Company,
Mt. Hope, West Virginia.

P. M. Snyder, Vice-President,
Koppers Coal & Transportation Co.,
Mt. Hope, West Virginia.

John L. Steinbugler, President,
William C. Atwater Co., Inc.,
New York, N. Y.

W. P. Tams, Jr., President,
Gulf Smokeless Coal Company,
Tams, West Virginia.

Such persons are either active competitors of the defendant Company in the said District No. 7 (wherein the principal mines of the defendant Company are located) (Tr. 257; Pl. Ex. 18) or are representatives of such competitors, with the exception of William Blizzard, who is a labor representative (R. 52, 53; Def. Ex. 45).

11. On November 11, 1935, the National Bituminous Coal Commission issued the following statement: "Latest estimates based upon figures by Acting

Deputy District Secretary to the National Bituminous Coal Commission show that producers representing approximately 212,252,000 tons production during 1934 have given assent to the Bituminous Coal Code. That figure represents an increase of more than 12,250,000 tons over the total tonnage reported on Friday last. Additional acceptances are coming in daily." (Tr. 1588-1589.) The national production of bituminous coal for 1934 was 358,395,000 tons (Pltfs. Ex. 19 and 21).

12. General Order No. 6 of the National Bituminous Coal Commission, dated November 7, 1935, provides that the reporting of spot orders to district boards and other agencies and the filing with them of copies of contracts, invoices, credit memoranda and other information shall be deferred until the Commission shall have prescribed and promulgated rules and regulations to effectuate the requirements that such records shall be held as the confidential records of the filing producer (Def. Ex. 44).

13. At a meeting of the District Board of District No. 7 held on November 5, 1935 it was resolved that there be incorporated in the by-laws of the board a provision for the establishment of a statistical bureau to be under the management of a director, who shall have no financial interest in the industry and shall not be in the employ of any coal producer, and that the reports of spot orders, copies of contracts, invoices, credit memoranda and other information shall be filed by code members with said statistical bureau, said records not to be available for inspection by the District Board nor any member thereof. On November 14, 1935, the said resolution and by-

law provision were approved by the Bituminous Coal Commission (Def. Ex. 45).

14. On November 1, 1935 the Commissioner of Internal Revenue issued regulations, approved October 30, 1935, by the Secretary of the Treasury, relating to the tax imposed by Sec. 3 of the Act. Such regulations (T. D. 4596) appear in the Record as Pl. Ex. 89. Art. 52 of such regulations requires that producers subject to taxes under the Act shall file a return for each calendar month "with the Collector for the district in which is situated the principal place of business of the person filing the return, on or before the first business day of the second succeeding month. For example, the return for the month of November, 1935 is due on or before January 2, 1936." Art. 53 requires that "the amount of tax shown on the return to be due shall be paid to the Collector at the time fixed for filing the return, without assesment by the Commissioner or notice from the Collector." The principal place of business of the Carter Coal Company, is in Washington, District of Columbia, which is situated within the collection district of Maryland.

III. The Controversy

15. There exists a genuine dispute between the plaintiff and the controlling stockholders of the Company. The view of said controlling stockholders and of a majority of the board of directors is that the statute is unconstitutional and is economically unsound, and that it would adversely affect the business of the Company and the interest of its shareholders for the Company to accept and comply with the Code, but that nevertheless the Company must

accept the Code because of the tax on its gross sales applicable upon its failure to accept the same which the majority are of the opinion would result in serious damage to the Company and might result in its bankruptcy. It was accordingly resolved at meetings of the directors and stockholders that the Company should join the Code, and the proper officers of the Company were authorized and directed to take action which might be necessary in the premises (Tr. 166; Pl. Ex. 6). The plaintiff seriously endeavored to persuade the controlling stockholders and a majority of the board of directors to contest the validity of the Act and to refuse to join the Code, and he did all that a reasonable and prudent man, under the circumstances, should have done to secure action favorable to his views by the board, by the stockholders and by the corporation (Tr. 194, 195). This proceeding is brought in good faith (Tr. 161; 169).

16. There is a real and substantial adverse controversy herein. The matter in controversy in this suit exceeds the sum or value of \$3,000, exclusive of interests and costs (Tr. 167); and this suit is not a collusive one to confer upon a court of the United States jurisdiction of a case over which it otherwise would not have cognizance.

IV. Organization, Business and History of Carter Coal Company

17. The defendant Carter Coal Company is incorporated under the laws of the State of Delaware which require that its business "shall be managed by a Board of Directors." (Tr. 162, 237; Pl. Ex. 8) (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) (Tr. 163, Pl. Ex. 4).

18. The defendant Carter Coal Company is engaged in the business of mining, producing and selling bituminous coal at its mines located in McDowell County, State of West Virginia, and in Tazewell County, State of Virginia, in the so-called Smokeless field (whose limits are generally coterminous with those of District 7 under the Bituminous Coal Conservation Act of 1935). It also owns mines in Bell and Knox Counties, State of Kentucky, but does not currently operate them (Tr. 164).

19. 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 regulations in respect of the health, safety and welfare of its employees and of the public. Such statutes, supervised by Departments, Commissions and 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); 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 Virginia, 1931, Chapter 23, Article I to V, inclusive). There are also provisions forbidding the employment of child labor (West Virginia Code, Chapter 21, Article VI), and statutes prohibiting child or female labor (Virginia Code, Chapter 76, Sec. 1871. (R. 4-5, Pl. Exs. 9, 10). There is no evidence that the defendant Carter Coal Company has violated any of these statutes of the States of West Virginia and Virginia at any time.

20. 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 taxes to the said States and to subdivisions thereof. In the calendar year 1934 said defendant paid to the State of West Virginia in taxes: \$35,825.75 sales tax upon its coal and other merchandise; \$55,673.43 property tax; \$547.90 license tax; a total of \$92,047.08; and in addition paid sundry license taxes in undisclosed amounts. The same year it paid to the State of Virginia property taxes in the amount of \$2,327.04, and franchise tax in the amount of \$25; to the State of Kentucky property taxes in the amount of \$3,133.90; to the State of Delaware fees and franchise tax in the amount of \$222.83; to the

State of New York franchise tax in the amount of \$25; to the District of Columbia property tax in the amount of \$259.14; and to the State of North Carolina property tax in the amount of \$8.08 (Tr. 238; Pl. Ex. 11).

21. In the calendar year 1934 said defendant paid \$78,000 to the State of West Virginia in respect of workmen's compensation (Tr. 240).

22. Substantially all of the coal mined by Carter Coal Company is sold f.o.b. mines, and substantially all of it is transported into states other than those in which produced to fill orders obtained by the Carter Coal Company from purchasers in such other states (Tr. 331). Total production of the defendant Carter Coal Company for 1934 was 2,125,046 tons, of which approximately 50,000 tons was sold into the state in which it was mined (Tr. 236-239).

23. Approximately sixty per cent. of the coal produced by the Carter Coal Company moves into the "inland western market" (comprising Illinois, Indiana, Ohio, Wisconsin and Michigan) and to the ports of the Great Lakes. Approximately 20% moves to tidewater ports on the Atlantic Seaboard, at which points it is dumped into vessels for transshipment. Approximately 20% moves into the southeastern states and into the north Atlantic states including Virginia, West Virginia, North and South Carolina, Pennsylvania, New Jersey, Delaware, Maryland and the District of Columbia (Tr. 239).

24. Carter Coal Company maintains sales offices in Washington, D. C.; New York, N. Y.; Cleveland and Cincinnati, Ohio; Chicago, Illinois; Norfolk, Virginia; and Detroit, Michigan (Tr. 329-330);

and sells coal to a subsidiary company with headquarters in Boston, Massachusetts (Tr. 332).

25. About 90% of the coal produced by Carter Coal Company comes from two mines at each of which there are substantial preparation plants where the coal is usually screened into a number of different sizes and where it is in many cases treated with chemical preparations to make it dustless and more attractive to buyers (Tr. 249-250). At two of its mines the Company has a storage yard, at each of which it can store between 50,000 and 100,000 tons of coal (Tr. 293).

26. A substantial portion of the production of the mines of Carter Coal Company is applied upon existing contracts calling for the delivery of coal over a period of months, but it frequently occurs that coal is produced and loaded into railroad cars before an order for the sale thereof has been obtained (Tr. 331).

27. Certain kinds and sizes of coal, i. e., slack or fine coal, are often sold by the Carter Coal Company at less than the average cost per ton of producing all kinds and sizes of coal. Other kinds and sizes of coal, i. e., the prepared sizes of lump, egg, stove, nut, and pea, are generally sold at more than the average cost of producing all kinds and sizes of coal (Tr. 355-356).

28. Carter Coal Company employs approximately 3,000 persons who have an average of about 3 dependents each. (Tr. 251). Living conditions, housing, educational, religious and recreational facilities, medical attention and health conditions are of a high standard in the mining villages at the Carter Coal Company mines, and likewise at the mines

of other producers in the vicinity (Tr. 1594-1597, 1599-1600).

29. Carter Coal Company does not now require and in so far as the plaintiff is advised never has required its employees as a condition of employment to agree that they will not join a labor organization (Tr. 1597). It does not require its employees to live in houses belonging to the Company or to trade at the stores maintained by it.

30. Prices at the stores maintained by Carter Coal Company, trading at which is not compulsory, are as low as or lower than prices obtaining in chain stores, which exist in the vicinity. The merchandise as to volume and variety is as good as or better than the average found in independent stores in the general community. It is customary for the Company to extend credit to its employees at its stores as a matter of convenience to its employees. During the depression period when work was not available to employees the Company, in common with other companies in the southern fields of West Virginia extended credit to those employees, the amount of credit depending upon the resources of the companies involved and the length of service of the employees. (Tr. 1600-1601.)

31. Average annual earnings of all employees of Carter Coal Company since 1922 (other than those on salaries) have been approximately as follows: 10 months in 1922, \$1,043; 1923, \$1,457; 1924, \$1,326; 1925, \$1,349; 1926, \$1,519; 1927, \$1,415; 1928, \$1,292; 1929, \$1,359; 1930, \$1,193; 1932, \$569; 1933, \$833; 1934, \$1,048 (Pl. Ex. 88). It has been the experience of the Company that the mine workers generally do not work the full number of

days available to them (Tr. 1613-1616). The average hourly rates paid common labor by the Company during the period 1926 to 1934 inclusive were at all times higher than the average hourly wage rates paid common labor in other industries in the combined South Atlantic States (Delaware, Maryland, District of Columbia, Virginia, West Virginia, North Carolina, South Carolina, Georgia, Florida). (Plaintiff's Exhibit 48, Tr. 324.) In July 1, 1932, and July 1, 1933 (at which time wages generally, including wages of the Carter Coal Company were the lowest in the 10-year period 1926-1935) the comparison with other industries in West Virginia was as follows:

Date	Carter Coal Co. hourly rate paid common labor ^a	Carter Coal Co. hourly rate paid inside common labor ^a	Average hourly entrance rates com- mon labor in other industries in West Virginia ^b
July 1, 1932	30c	35c	31.9c
July 1, 1933	28c	32c	35.1c

^a Plaintiff's Exhibit 50.

^b Defendants' Exhibit 53.

From 1926-1931, the Carter Coal Co. hourly wage rates were 40c for common labor and 45c for inside common labor; in 1934-1935 they were 51.4c for common labor and 62.3c for inside common labor. (Pl. Ex. 50.) During the period 1926 to 1931 wage rates for common labor in West Virginia were also comparably higher than they were on July 1, 1932, and July 1, 1933.

32. Carter Coal Company has been in business since 1912, and between that date and this, the total number of strikes at the mines of the Company has been two. One such strike occurred in October,

1933, at the mines in West Virginia and lasted at two of the mines a maximum of two weeks, and at the other two about two days. The Company was told unofficially that the cessation of work was in protest of the action of representatives of the miners in signing a working agreement with representatives of operators in the Appalachian Region, pursuant to the provisions of the National Recovery Act Coal Code for the Bituminous Coal Industry (Tr. 320, 321). The other strike lasted about 7 working days and occurred at the expiration of the working agreement between the miners and representatives of the operators in September, 1935 (Tr. 321).

V. The Increasing Business of the Carter Coal Company, the Value to it of the Rights of Management, and its Contract Rights.

33. Prior to February, 1922, the Carter Coal Company was controlled and managed by the plaintiff's father, George L. Carter. At that date George L. Carter sold all of the voting stock of the company to Consolidation Coal Company, and the Consolidation Coal Company agreed to purchase from George L. Carter over a period of time the preferred stock of the Carter Coal Company. The Consolidation Coal Company then assumed the management of the Carter Coal Company and during the following years lent it substantial sums of money to make improvements, for working capital and for other purposes. The Consolidation Coal Company went into receivership in 1932 at which time the Carter Coal Company was indebted to Consolidation Coal Company, as shown by the books of that company, in an amount in excess of \$10,000,000.

34. A transaction was then consummated between the receivers of Consolidation Coal Company and George L. Carter and members of his family, pursuant to which the Carter Coal Company was recapitalized. The indebtedness to the Consolidation Coal Company, as shown by the books of that company, and the Company's bonded indebtedness was cancelled in exchange for the issuance to the Consolidation Coal Company of 30,000 shares of voting stock of the Carter Coal Company. These voting shares were purchased by plaintiff. The agreement of the Consolidation Company to purchase the preferred shares was cancelled. This arrangement was consummated in March, 1933. (Tr. 1617-1620.)

35. The income account statement of the Company shows a net loss for the period 1924 through 1933 inclusive, the minimum annual loss during said period being the sum of \$209,560 for the year 1927. There was a profit of \$323,988 (after deducting Federal Income taxes) for the year 1934 (Def. Ex. 47). During the period 1924-1932 (while under the Consolidation management) annual interest charges ran from a low of \$443,991 in 1924 to a high of \$851,980 in 1932. For the first 2½ months of 1933 (under Consolidation management) interest charges were \$179,125. For the next 9½ months (under Carter management), during which period the Company operated at a loss of \$188,322, interest charges were \$8,596, and interest charges for 1934 were \$24,981. During the present year (1935) the Company is operating at a profit but the returns are less than they were in 1934 (Tr. 1555, 1557, 1558).

36. The week by week production record of Carter Coal Company has increased for the past three coal years (April-March), moving from a high of approximately 49,000 tons during the coal year April, 1933 to March, 1934 to a high of approximately 52,000 tons during the coal year April, 1934 to March, 1935, and to a high of 60,000 tons during the current coal year commencing in April 1935 (Tr. 315; Pl. Ex. 44).

37. Carter Coal Company has been doing business since 1912; has a valuable good will and established registered trade names for its products (Tr. 251-253); and presently has customers with whom it has been dealing with regularity. The good will and going concern value of the Company are of substantial value (Tr. 251-253).

38. Labor costs and prices are among the most important elements requiring business skill and judgment in the successful operation and management of a coal producing and selling corporation (R. 55). More than 60% of the production costs of Carter Coal Company are attributable to mine labor costs, and the right and duty to negotiate and contract with its miners in respect of the establishment of hours and wages is an important function of management of the Company (Tr. 319).

39. Since May 27, 1935, Carter Coal Company has entered into contracts for the sale of coal for terms of one year or longer covering an aggregate of 850,750 net tons at an aggregate price f.o.b. mines of \$1,004,765 the average price per ton being \$1.18. Of this amount approximately 230,000 net tons have been contracted for since August 30, 1935, which contracts

all provide for delivery for a period longer than 30 days from the date of the contract (Def. Ex. 48). Many of these contracts are at prices below those which were in effect under the NRA Code. Substantially all of the coal to be delivered on said contracts is slack coal and the prices at which the coal has been contracted for are, as is customary, at less than the Company's estimated average costs of production of all grades of coal (Tr. 315-317, 355-356).

VI. The Tax Applicable to Operators Not Accepting and Complying with the Code.

40. In the calendar year 1934, Carter Coal Company sold approximately 2,126,046 tons of bituminous coal, obtaining an aggregate sales price at the mine of \$3,918,266, upon which it realized a net profit in the operation of its business of \$323,998. Had a tax of 15% on the sales price at the mine been imposed, the tax payable would have been \$587,740, and had a tax of 13½% been imposed it would have amounted to \$528,966. The imposition of either of such tax rates would have completely wiped out all net profit from the operation of the business of the Company, the 15% tax creating a net loss of \$263,752 and the 13½% tax creating a net loss of \$204,968. Neither in the present year nor at any time during the past 8 years have the net profits of Carter Coal Company equalled 15% or 13½% of the total sales price received by the Company at the mine (R. 12; Tr. 251; Pl. Ex. 12; Def. Ex. 47).

41. Bituminous coal producing companies generally have not earned 13½% of their mine realization price as a net profit at any time during the last

eight or nine years (Tr. 861-875; Def. Exs. 6, 6-A, 49, 49-A). In the view of those familiar with the bituminous coal industry the tax provisions of Section 3 will in fact induce those bituminous coal producing companies who are opposed to the Code to accept and comply with the Code (Tr. 700, 702; 861-875; 943) and this is also the view of the officers and directors charged with the management of the Carter Coal Company and of all its voting shareholders (R. 8, 9, 12, 41, 251-255; Pl. Ex. 12). The weight of the tax is such, compared with the earnings of the Company, that it could not long continue in business and pay the said 13½% tax (R. 8, 9, 12, 41; Tr. 251-255; Pl. Ex. 12; Def. Ex. 47).

VII. The Importance of the Bituminous Coal Industry.

42. Bituminous coal is, and probably will continue to be, the principal source of energy in the United States. (Tr. 382, 393.) Nearly one-half of the mechanical energy is at present derived from bituminous coal. In 1934, water power supplied 9.3 per cent, natural gas 8.7 per cent, oil 28 per cent (including energy used by automobiles), anthracite coal 7.7 per cent, and bituminous coal 46.3 per cent of the total energy consumed in the United States. (Tr. 382). Bituminous coal likewise furnishes an important part of the fuel used for household heating. In 1929 bituminous coal supplied approximately 75 per cent of all primary energy used in the manufacturing industries of the country, in 1934 it supplied approximately 75 per cent of all fuel used by public utilities, and in 1933 it supplied approximately 83 per cent of all energy used by railroads for locomo-

tive power. (Tr. 383.) It is estimated by scientists that water power can never furnish a major portion of the energy requirements of the United States. The known supplies of oil and gas are limited, so that, unless new sources of energy are discovered or developed, coal will continue to be the primary source of energy. (Tr. 382-393, 497-501.)

43. Bituminous coal is consumed in every state of the United States in generating energy for the production of light, heat and power, and its use for such purposes is indispensable to the industrial and economic life and to the health and comfort, of the inhabitants of the United States and is vital to the public welfare. In view of the present importance of bituminous coal as a source of energy it is of great importance to the public welfare that the distribution and marketing of bituminous coal both in interstate and intrastate commerce be not subjected to interruptions, dislocations, burdens or restraints.

44. The resources of bituminous coal and the natural conditions of the coal deposits in the United States are favorable to low cost mining. Technical efficiency in the bituminous coal industry of the country is high and has been increasing; the output per man per day employed is high. (Tr. 393-396.) The output per man per day in the United States bituminous mines is 4.9 metric tons; for Great Britain, 1.3 metric tons; for the Ruhr District of Germany, 1.6 metric tons; for France, 1.0 metric tons; for Belgium, 0.8 metric tons. (Tr. 394.) The output per man per day in the bituminous mines of the United States has increased from 2.56 net tons in 1890 to 5.22 net tons in 1932. (Tr. 395.)

45. The railroads are primarily dependent on bituminous coal for fuel. (Tr. 383.) Between 1928 and 1934 bituminous coal comprised from 26.9 per cent to 33.8 per cent of the total freight tonnage carried by the railroads engaged in interstate commerce and from 16.2 to 19.7 per cent of the total freight revenue of the such railroads was derived from the transportation of bituminous coal. (Def. Ex. 35.)

VIII. Distribution of Bituminous Coal.

46. Commercially important deposits of bituminous coal within the United States are limited to 23 producing areas confined within the boundaries of 26 states, and more than 70 per cent of the total annual output is mined in 4 states, namely, Pennsylvania, West Virginia, Kentucky and Illinois. (Def. Ex. 9, 11. R. 33-34.)

47. In 1929 (the only year for which complete figures as to distribution are available) 23.8% of all bituminous coal produced in the United States was sold to railroads subject to the jurisdiction of the Interstate Commerce Commission, for fuel. 69.1% of such railroad fuel was delivered directly to the purchasing railroad at the mouth of the mine, no freight being paid thereon. The evidence does not show the proportion of said coal which was used by the railroad in interstate operations as distinct from local operations. 50% was shipped to consumers (other than railroads) in states other than the state of production or to consumers in foreign countries; and 26.2% was shipped to consumers (other than railroads) within the state of production (Def. Ex. 13, 14, Pl. Ex.

67; Tr. 478, 1293; 1542-3.) Bituminous coal mined in every state competes in the consuming markets with bituminous coal mined in other states. Bituminous coal in substantial quantity is received in interstate commerce from other states by every state which produces bituminous coal. (Def. Ex. 9, 10.) In every state producing bituminous coal intrastate shipments from the mines of that state meet active competition from interstate shipments. (Tr. 1947.) (Def. Ex. 9, 10, 15, 16.) The destination to which the coal produced in any one state is shipped and the determination of the direction in which it is shipped are influenced by variations in the price at which it may be sold. A change of a few cents a ton in the price at which coal is offered for sale may materially affect the decisions of consumers as to whether or not to buy coal from a particular producer, from a particular mine, or from a particular producing area. (Tr. 301.)

48. The general custom but not the invariable practice in the coal industry is for the producer to secure orders for coal through selling agents in consuming markets in various parts of the country before mining the coal. Customarily the mine is not operated unless and until orders have been previously obtained, and it is operated for the purpose of filling such orders. Since the coal as it comes out of the mine is in various sizes and since the orders secured in advance (if for sized coal) may not cover all the various sizes of coal in equal proportions, unsold coal (in the sizes for which orders have not been obtained) is also produced in the mining operation. (Tr. 283-290, 292, 565, 764, 1150.)

49. As a general rule there are no facilities for

storing coal at the mines, although (Tr. 293, 566, 766) some mines maintain storage yards. (Tr. 293.) Sized coal, tends to disintegrate into smaller sizes if stored, and the cost of dumping coal for storage and loading it again into railroad cars also tends to prevent storing at the mine. (Tr. 566.) The total amount of coal stored at the mines is infinitesimal compared with the total amount produced and shipped (Tr. 566, 766). For these reasons coal is not usually mined until orders are on hand and until railroad cars are or will be available at the mines when the coal is brought to the surface. (Tr. 886.) After being brought to the surface the coal (if the orders call for mine run) is loaded from the mine cars into railroad cars and shipped to the purchaser, but if the orders call for sized coal, the coal is separated into sizes by being run over screens and in some cases treated with chemicals for various purposes before being loaded into cars and, if sold, shipped to the purchaser (Tr. 291, 567, 765, 953).

50. Any unsold sizes, as a general rule, are loaded into railroad cars and either held on the tracks at the mine until orders are received or shipped to a consuming market in the hope that orders will be received before the coal arrives. The producer tries to move these cars as rapidly as possible since unless he has storage facilities he cannot continue to operate his mine if his tracks are filled with loaded cars. (Tr. 765.) If a producer ships the coal before orders are received, he is subject to pressure to sell it immediately, even at a price lower than the market, in order to avoid the heavy demurrage charges which will accrue if the cars are held in the railroad yards for any period of time before sale. (Tr. 1245-6.) Such

coal is known as "distress coal." (Tr. 766, 855.) Frequently it is offered for sale through a number of brokers or middle houses at the same time, and the buyer under those conditions gets the impression that there is a great deal more coal being offered on the market than really is offered. Distress coal affects the market price and depresses it. (Tr. 766.)

51. Sales of bituminous coal are customarily negotiated between producers and purchasers in the various states in terms of price f.o.b. mine, with a provision that the coal is to be consigned to purchaser at named destination. Many contracts specify that there shall be no diversion of the coal in transit without the consent of the producer. The producer generally orders the cars which are to carry the coal, loads the coal in the cars, and gives the carrier shipping instructions, and the producer's shipping clerk furnishes a bill of lading to either the buyer or the producer. (Tr. 783-784.)

52. If coal produced and sold for use in the state of production were sold at lower mine prices resulting in delivered prices lower than comparable coal produced outside the state shipments of such coal into the state would be diminished and intrastate shipments of coal within the state would be increased. (Tr. 1946, 1947.)

IX. Competition with Other Fuels.

53. Anthracite or semi-anthracite coal is produced commercially in 5 States, and 99% thereof is produced within the State of Pennsylvania (Pl. Ex. 81C-E). Anthracite is consumed and competes to some degree with bituminous coal in 20 States (Nebraska, Kansas, Iowa, Missouri, Illinois, Indiana,

Michigan, Ohio, Maryland, District of Columbia, Delaware, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire and Maine) and also in the Lake Ports (Tr. 280; Pl. Exs. 33, 34). The f.o.b. mine prices of anthracite, which has no greater heat value than bituminous, are a great deal higher than those of bituminous coal, however, so that anthracite competes primarily because of its superior cleanliness and its smokeless qualities in those markets where price is not significant or in the areas (New York, New Jersey and Pennsylvania) where it enjoys a considerable freight advantage (Tr. 1145-6). No substantial shift on a national scale to anthracite would result from a rise of 20 to 30 cents in bituminous f.o.b. mine prices, although there might be some shifts in those areas near the anthracite fields in which the two types of fuel actively compete, which include areas in which the Carter Coal Company is selling coal.

54. Fuel oil and bituminous coal compete generally in some areas, but industrial consumers without convertible equipment, because of the cost of conversion, will not ordinarily shift from coal to oil unless they are of opinion that the cost of coal will be considerably higher than that of oil over a considerable period of time. (Tr. 735.) Although the cost of installing new equipment is an important factor nevertheless slight increases in bituminous coal prices may affect the decision of large coal buyers with respect to converting their plants to competing forms of fuel (Tr. 279, 735-736, 940; Pl. Ex. 32). About one-half of the production of the Carter Coal Company is sold to large consumers either for metal-

lurgical purposes or for generating steam in large steam plants (Tr. 279).

55. There was a considerable shift from bituminous coal to oil and other competing fuels up through 1932, but in 1933 and 1934, there was a slight tendency in the opposite direction. (Tr. 733, Def. Exhibit 52.) The percentage of the total national supply of energy obtained from bituminous coal dropped from 70.3% in 1913 to 45% in 1932, substantially influenced by the tremendous increase during the period in the use of gasoline in motor vehicles. (Tr. 383, 439.) In 1934, water power supplied 9.3%, natural gas 8.7%, oil 28%, anthracite coal 7.7%, and bituminous coal 46.3% of the national energy. (Tr. 382, Def. Exhibit 52.) The tendency is for higher prices for coal in relation to the prices for gas, oil and hydro-electric power to result in increased use of such competing fuels. (Tr. 279, 940.)

X. General Conditions in Industry Affecting Competition and Prices.

56. Coal is sold as mine-run or in various sizes, such as (in order of size) lump, (the largest) egg, stove, chestnut, pea and slack (the smallest). Some of these are further subdivided into sizes. (Tr. 289-290.) Coal not screened (i.e. segregated according to size) is termed "mine-run" coal. Coal generally is sold seasonally. During the summer season it is more difficult to dispose of the larger sizes, the demand for these being primarily during the winter, since they are generally used for household or domestic purposes. (Tr. 567.) Approximately 75 per cent of the production of bituminous coal is sold by the pro-

ducers under contracts calling for the delivery of coal over a period of several months to a year. (Tr. 418.) A majority of such sales are contracted for between January 1 and March 31. (Tr. 565.)

57. The fundamental or chief underlying evil of the bituminous coal industry is over-capacity. (Tr. 537, 728, 1216.) A surplus of productive capacity over consumptive demand intensifies competition and tends to depress prices. (Tr. 548, 549, 953-4.) Surplus capacity is partly due to the necessity of maintaining capacity sufficient to meet the seasonal peak of demand in the winter and partly to over-development above and beyond the requirements of the seasonal peak. The maximum possible full-time working year is 308 days and quite a number of mines, many of which are captive mines, have actually operated 308 days; but breakdowns and power failures cause an average loss of 9 days of time. Unavoidable loss of time through the seasonal fluctuations of demand average 34 days a year over the industry as a whole. Thus, even if capacity were accurately adjusted to demand, the mines could operate only about 265 days. (Tr. 397-400.) The surplus capacity which must be maintained to meet the seasonal peak is one of the causes of the intense competition in the industry, as the operator is under pressure because of continuing fixed charges to try to sell during off-season. (Tr. 400.) There is a comparatively inelastic demand for coal. During periods of shortage the withholding of a small percentage of what the market needs will cause the price to rise sharply and substantially. In ordinary times the throwing of a small tonnage on the market above what it will absorb will depress the price. (Tr. 548-549.)

58. There has always been an excess of capacity in the industry above even the peak season requirements, and the mines on the average have never managed to operate 265 days a year. (Tr. 400-1, 531, 922, 954, 1490.) The nearest approach to this figure was 249 days during the World War. Over the last 35 years the mines have averaged 204 days. (Def. Ex. 4A.) The opportunity of the mine workers for full time employment has been correspondingly curtailed. There are more available workers for the mines than can be given full-time opportunity to work. (Tr. 696-697.)

59. It is the normal tendency in mineral economics for increases in price by an amount greater than increases in costs, to lead to increases in the number of mines, and the normal result of increases in the number of mines is a further increase in capacity. (Tr. 537, 539, 540.)

60. Shut-down costs of a bituminous coal mine are high unless the mine is permanently abandoned. If a mine is shut down with the expectation of reopening it, it often must be continually pumped, the roofs must be supported and the entries kept in repair. Taxes and royalties (if they exist) must be paid. (Tr. 954-5, 1218.) Operators often lose less money by continuing to operate a mine than to shut down altogether, even though the price received for the coal is less than the actual cost, if all items of cost are considered. For this reason, among others, it has been a common practice for operators of bituminous coal mines to continue operating although the price of coal has become less than the cost of production. (Tr. 620, 1218.)

61. The pressure to reduce overhead costs while the mine is in operation is an additional factor which prevents an adjustment between capacity and demand. Overhead costs in the operation of a mine are relatively constant, regardless of how much coal is produced. Although prices may be lower than costs, losses may be diminished if coal can be sold above actual out-of-pocket costs. (Tr. 1218, 911.) Costs per ton vary materially in proportion to the number of days of operation. There is consequently a tendency to reduce prices in order to obtain sufficient orders to keep the mine running at full capacity. Many producers accordingly seek to increase their tonnage by offering coal for sale at prices lower than the market, even if such prices are below the cost of production. (Tr. 621, 911.)

62. Although a mine operator may continue to operate his business at a loss until forced into bankruptcy, it does not follow that the capacity of his mine is removed from the market. Often when one operator becomes financially unable to operate a mine, another operator takes the mine over with the capital charges previously extant removed. The new owner thus has lower costs which enable him to undersell his competitors. (Tr. 955-6; 1618-20.)

63. Another element in the competitive situation is the existence of so-called captive mines, which are owned and operated by large coal consumers, such as steel companies, railroads and public utilities. If prices reach high enough levels, more mines may be acquired by consumers and operated as captive mines (Tr. 282).

63a. Railroad freight charges on coal are comparatively rigid and inflexible. They make up half or more of the delivered cost of coal at the consignee's siding. (Tr. 283.) Transportation charges are not reduced as delivered prices are reduced, so that substantially the full burden of such reduction is borne by the price received by the operator f.o.b. mine.

The average mine price, freight charge, and delivered cost at consignee's siding are shown below:

	1923	1928	1929	1930	1931	1932	1933
1. Average sales realization f.o.b. mine* _____	\$2.68	\$2.06	\$1.78	\$1.70	\$1.54	\$1.31	\$1.34
2. Average freight charge per ton† _____	2.36	2.27	2.25	2.23	2.22	2.26	2.20
3. Total delivered cost (1) and (2) _____	\$5.04	\$4.33	\$4.03	\$3.93	\$3.76	\$3.57	\$3.54
4. Percent freight charge of total _____	46.9%	52.5%	55.8%	56.7%	59.0%	63.3%	62.1%

* Def. Ex. 3A.

† Def. Ex. 35. Figures for 1923 from Interstate Commerce Commission Bureau of Statistics, Report No. 23,157.

Between 1923 and 1933, the average railroad freight charge was reduced 16c a ton, while the average sales realization f.o.b. mine was reduced \$1.34 a ton.

64. The cost of labor in the production of coal averages between 60 per cent and 65 per cent of the total cost of production. The remaining costs consist of such items as taxes, insurance, interest, selling and administrative expenses, depreciation and depletion, some of which are fixed and other of which offer little leeway for making reductions. (Tr. 319, 1046.) The percentage of labor cost to value is very much higher in the bituminous coal industry than in any other large industry excepting anthracite coal.

(Tr. 1219; Def. Ex. 38.) As a result, wage rates are an important element in the conduct of the business of coal mining. (Tr. 319, 1218.) Wages in the coal industries constituted in 1929 (the most recent year for which comparable figures are available) over 59 per cent of the total value of the product, whereas the general average for the four other large mining industries was 21 per cent and for the 48 large manufacturing industries 18.2 per cent. (Def. Ex. 38.) As a result the pressure of competition acts with particular force to cause wage reductions in the bituminous coal industry. Where one employer cuts his wage costs his competitors in order to maintain their share of the market, must do likewise. (Tr. 1221.)

65. The average of employment in bituminous coal mining is irregular and intermittent. Over the last 35 years the mines have averaged 204 days of operation per year, or 3.9 days a week. (Def. Ex. 4A.) This has meant an average idleness of 104 days out of the 308 days in a nominal working year. The highest average working time ever attained was 249 days in 1918, the year of the munitions demand. In 1929, the mines averaged 219 days, or 4.2 days a week. In 1933, they averaged 167 days, or 3.2 days a week. (Def. Ex. 4A.) The idle days are scattered a few days a week over much, if not all, of the year. (U. S. Coal Comm. Rep. p. 1133.) The bituminous coal industry is an industry in which unemployment, resulting from irregular operation, is chronic. (Report of U. S. Coal Comm. on Labor Relations in Coal Mining, Vol. 3, p. 1308.)

66. Adequacy of wages in the mines should also be considered in the light of the high accident hazard. In 1930 and 1934, the accident severity rate at

bituminous coal mines was higher than in any other industry reporting to the National Safety Council. The accident frequency rate in bituminous coal mines was higher than in any other industry in 1930, and in 1934 it was higher than in any other industry except anthracite coal mining and lumbering. (Tr. 1511-1512. Def. Ex. 40, 40A.) In 1934, the accident frequency rate in bituminous mines was 2.9 times as great as the average for all industries, and the accident severity rate was 6.7 times the average for all industries. (Ibid.) The actuarial chance of death in the mines, judging from the last 5 years experience, is 1 out of 10, that is 1 out of 10 men who spend their working lives in the mines will be killed in a mine accident. (Tr. 1518.) The American accident rate in the year 1933 was the highest of any important coal mining country in the world. In American bituminous coal mines 3.6 men were killed per 1,000 employed, as against 1.0 in Great Britain. (Def. Ex. 41.)

XI. Freight Rates.

67. Freight rates are an important factor in the coal industry and have a substantial relation to competition in coal sales, one-half or more of the delivered cost of coal at the consignee's siding being generally represented by transportation costs. (Tr. 283.) Competition is really based upon delivered prices (Tr. 766), and consequently one of the principal factors in determining variation of prices between different markets is transportation costs. (Tr. 294.)

68. The freight rates on coal from the smokeless fields of West Virginia (in which the principal mines

of the defendant Carter Coal Company are located) to the principal consuming points in the Central Freight Association territory (Indiana, Illinois, Ohio and Michigan points and Lake cargo ports) are greater (in amounts varying from 10c to \$1.30 per ton) than freight rates for competing coals from such important districts as Pittsburgh, Connellsville, Kenova-Thacker, Kanawha, Fairmont, Big Sandy, Jellicoe and Hazard, all of which are in Minimum Price Area No. 1, as defined in the Bituminous Coal Conservation Act of 1935 and in the Bituminous Coal Code promulgated thereunder. In respect of the bulk of their shipments north and west into such Central Freight Association territory constituting approximately 51% of their total shipments the producers in the Smokeless Fields are subject to an unfavorable differential of 25c as against said other areas nearer those consuming markets. (Pl. Ex. 53-56; Tr. 364.) The record does not show the differentials in shipments to areas to which the smokeless fields are nearer the market than the other areas named. The relative proportions shipped to the various consuming markets are shown in Defendants' Exhibit 1.

69. Car supply is also an important factor in the coal industry. Coal mines are dependent upon continuous flow of cars at the mine in order that operators may ship their products. Even at the present time, when motor truck traffic has largely increased, only about 4.6 per cent of the total output of coal is handled in trucks and that part which is sold commercially moves almost entirely in railroad cars. (Tr. 420.)

**XII. Bituminous Coal Production by States—
Growth of Proportionate Share of
Southern Mines.**

70. The only official record of bituminous coal production prior to 1820 is of 3,000 tons being produced in Maryland. By 1850 Pennsylvania had become the leading producing state, and the principal coal producing states north of the Potomac and Ohio Rivers (Pennsylvania, Ohio, Indiana and Illinois, hereinafter called the "northern states") produced approximately 70% of the total national production. In 1880 the northern states produced approximately 75%. West Virginia (which eventually became in 1934 the principal coal producer in the United States) produced less than 5% in 1880. In 1910 the northern states produced approximately 60%, and West Virginia approximately 15%. (Tr. 1167-1168, 1567-1568; Pl. Exs. 69, 69-A; Def. Exs. 28, 28-A.)

71. Total production throughout the country increased progressively until 1918. After 1918 there was a flattening of the production curve, and although there have been variations from year to year, national production has, as compared with the history prior to 1918, remained relatively steady. In 1918 the aforesaid four northern states produced approximately 60% of the national tonnage; West Virginia produced approximately 16% and West Virginia, Kentucky and Virginia together (the three principal "southern states") produced approximately 23%. (Pl. Exs. 68, 68-A, 69, 69-A.)

72. Peak production was reached during the war, the peak year being 1918. In 1923 the four northern states produced approximately 56.5% and the three

southern states approximately 29.1%. In 1927, the proportion of the northern states was 41.3 per cent and that of the southern states 43.9%. In 1930 the four northern states produced approximately 46.4%, and three southern states approximately 39.3%. In 1934, the four northern states produced approximately 46.3%, and the three southern states approximately 40.5%. (Pl. Exs. 21, 69, 69-A, 68, 68-A; Def. Exs. 28, 28-A.)

73. There has, therefore, been over the history of bituminous coal production in the United States, viewed as an entirety, a gradual though irregular increase in the share enjoyed by the states of West Virginia, Virginia and Kentucky (notably West Virginia) as contrasted with the share enjoyed by the states of Pennsylvania, Ohio, Indiana and Illinois (notably Pennsylvania). (Pl. Exs. 69, 69-A.)

74. In the years prior to 1923, the more rapid growth of the three southern states was due primarily to natural causes, such as expansion of the railroad net into the southern mountains opening up whole new fields to development, with a consequent very rapid growth of mine capacity down to and including 1923. After 1923 capacity declined in the south although it was a slight decrease in comparison with the very high mortality in the north, and the increase in southern production which continued thereafter was attained by working existing capacity more steadily. (Tr. 1545-1546.) Other causes of the relative growth of the south have been a shift in market demand from bee-hive to by-product coke in the pre-war years, (Tr. 397) superiority of southern coals over some northern coals (Tr. 821, 973) comparatively better natural conditions in the south in the

period of earlier development of the mines (Tr. 1545-6); and lower wage rates. The southern mines have always enjoyed a wage differential under the north. Some differential appears necessary to enable the south to absorb freight differentials into northern markets. (Tr. 551.)

XIII. Decline in Growth of Demand for Bituminous Coal and Reasons Therefor.

75. Prior to 1918 the demand for coal had been steadily increasing. Demand has flattened off since that date, and at no time since the war has demand reached the war peak. The principal factors in the falling off of demand have been (a) changes in the fuel-using industries, such as the tendency to produce fabricated materials instead of crude materials, like crude iron and steel products, and the substitution by iron and steel companies of scrap for virgin pig iron, resulting in the slackening off in the use of coke; (b) improvements in fuel burning equipment which have materially decreased the amount of coal required for the production of energy units; and (c) increased use of competing fuels and forms of energy, particularly oil, natural gas and hydro-electric energy (Tr. 268-270; 437-438; Pl. Exs. 20-25). In recent years the general slowing up of business due to the economic depression has further hastened the decline.

76. The slowing down in demand was due in part to a shift in manufacturing from crude heavy products to lighter products requiring less fuel and to the substitution of scrap iron for virgin pig iron. This reduced the quantity of coal required to make blast furnace coke and was an important cause of the

flattening off of demand because next to the railroads, the iron and steel industry was the largest single consumer of coal. A second factor was increasing efficiency in the use of fuel stimulated by the high prices of fuel associated with the War. In the period since the War the average saving in the consumption of fuel per unit of product in all branches of industry and transportation has been between 20% and 30%. This was the largest single factor in the slowing down of coal demand. As the result of improvements in fuel burning equipment by steam railroads, the average requirements of coal for each 1,000 gross ton miles of freight were reduced by 28.8% between 1919 and 1933; in electric power plants the coal used to generate one kilowatt hour of power was reduced by 53%; the amount of coking coal to smelt 1 ton of pig iron was reduced 19.6%; the use of the by-product oven in place of the bee-hive coke ovens account for a saving of 19% in fuel use (Tr. 437, 438; Pl. Ex. 23.) A third factor was the competition of other sources of energy. The Federal Water Power Act of 1920 had facilitated rapid development of many new power sites, and private construction was supplemented by public construction projects. There was a great increase in production of petroleum and gas. With respect to this competition with other forms of energy see Findings 53-55.

XIV. Chronological Survey of the Industry.

A. THE PRE-WAR PERIOD

77. A surplus of mine capacity existed before the World War, although the rapid and relatively constant growth of demand at that time tended to relieve

the competitive pressure exerted by it. (Tr. 401, 437.) The surplus of mines and mine capacity was the result of many causes, including the widespread ownership of coal resources and the desire of owners to realize upon them; the pressure upon land-holding companies to open mines in order to meet taxes and carrying charges; shifts in market demand which threw tonnages from one district to another district, such as the change from beehive to by-product coking which caused a transfer of a heavy load of business from some of the northern fields formerly producing beehive coke to the southern fields which were in a position to supply by-product coke in markets where by-product ovens were established; expansion of the railroad net; freight rate and wage rate structures which were, on the whole, so adjusted as to encourage development of the outlying districts; and periodic large-scale suspensions in the organized fields which caused consumers of coal during the period of the suspensions to seek sources of supply elsewhere. (Tr. 396-7.)

78. The total capacity at full time of 308 days increased from 254,000,000 tons in 1899 to 668,000,000 tons in 1914. In no year during this period did the average working time exceed 234 days. For the entire period the average time worked was 218 days. (Def. Ex. 4A and 3A.) Demand, however, was increasing in approximately the same ratio as capacity, the production rising from 193,000,000 in 1899 to 478,000,000 tons in 1913 and 423,000,000 tons in 1914. Throughout this period capacity increased in advance of demand; the rela-

tive excess of capacity showed no great change from 1899 to the time of the War. (Def. Ex. 3 and 3A.)

79. The level of wage rates in the union districts in the pre-war period is illustrated by the Illinois rate for trackmen, an occupation typical of the skilled day-wage workers underground. This rate for trackmen was \$1.90 in 1899, \$2.28 per day in 1900, and \$2.85 per day in 1913-1914. (Def. Exs. 4 and 4A.) In the comparatively active year 1913, the mines of Illinois averaged 189 days operation. This would give the Illinois day worker an annual income of about \$540. (Tr. 409.) For the industry as a whole the average number of days operated in 1913 was 232. (Def. Ex. 4A.) A man working that number of days and receiving the Illinois rate would earn \$661.

80. When union wage contracts expired, it was found difficult to renew them on terms mutually satisfactory, and at the expiration of wage contracts suspensions of mining operations in union areas took place in 1904, 1906, 1908, 1910, 1912, and 1914. (Pl. Ex. 66; Def. Ex. 4; Tr. 411, 413-415.) The suspension of 1906 involved approximately 211,000 men in 10 states and lasted in the different districts from 2 to 3 months. In the suspension of 1910, again approximately 211,000 men were involved, this time in 10 states, the duration of the dispute ranging in different states from 45 days to 157 days. (Tr. 412-414; Pl. Ex. 66.) The resistance of the union employers to renewal of the agreements was due largely to an inability to meet the competition of other operators who were free to adjust or to lower wages and were not bound by collective agreements. (Tr. 411.) The net increase in wages obtained by

the organized miners during the period from 1900 down to the World War, as illustrated by the Illinois trackmen's rate, was 57 cents a day. In 1900 the rate was \$2.28. An increase to \$2.56 a day was granted in 1903, followed by a decrease to \$2.42 effective for two years beginning 1904. In 1906 the rate was again restored to \$2.56. In 1910, after a five month's suspension, it was increased to \$2.70. In 1912 it increased to \$2.85, at which level it remained until the coming of the war boom in 1916. (Def. Exs. 4 and 4A.)

81. Strikes also occurred in the pre-war period in attempts to gain recognition of the union and to secure collective wage agreements in the non-union fields. These strikes included the following: (Pl. Ex. 66.)

Year	State	Men on Strike	Average days lost per man on strike
1902	Southern West Virginia	18,129	75
1902	Alabama	6,059	23
1903	Alabama	7,319	32
1903	Colorado	7,103	57
1904	"	3,865	125
1904	Alabama	9,518	80
1912	West Virginia	12,165	50
1913	(Paint Creek and Cabin Creek)	8,800	43
1913	Colorado	7,324	75
1914	(Ludlow Strike)	4,418	247

82. The strike of 1912-1923 in the Paint Creek and Cabin Creek District of West Virginia was accompanied by bloodshed and declaration of martial law and led to investigation by the United States Senate. (Conditions in Paint Creek District, West Virginia, Hearings before a subcommittee of Senate Committee on Education and Labor, 63d Congress, 1st Session, pursuant to S. Res. 37.) The strike in Colorado in 1913-1914 was likewise accompanied by bloodshed,

use of the state militia, and federal troops (Tr. 1270) and a Congressional investigation. (Tr. 1249-51.) (House Committee on Mines and Mining. Conditions in the Coal Mines of Colorado. Hearings before a Subcommittee on Mines and Mining, pursuant to H. R. 387.)

B. THE WAR PERIOD AND POST-WAR PERIOD
1916-1922

83. Although there was no lack of physical mine capacity at any time during the War, a shortage of bituminous coal developed in 1916 which continued through the period of the World War and led to control of prices and distribution by the Federal Government. (Tr. 422-23.) The average spot price, f.o.b. mines, (sales on the open market which ordinarily constitute approximately 25% of the total sales) rose from \$1.30 a ton in August, 1916, to \$3.87 in November and to \$4.18 in February, 1917. (Def. Ex. 5, 5A; Tr. 418.) The primary cause of the coal shortage was congestion of railway transportation. It was due in part to an increase in traffic of other commodities and in part to an increase in the movement of coal itself. Consumption of coal rose to an all-time maximum, the high prices encouraged the opening of more than a thousand new mines, each of which demanded its share of railroad cars. (Tr. 419-20.) Consumers protested against the high prices, and shortage of coal became for a time a limiting factor in the war program. (Senate Hearings on Increased Price of Coal.) Attempts by the Government to control the price by voluntary agreements with the producers were only partially

successful, and the President under the Lever Act was authorized among other things to fix prices of coal and distribute the available supply. As finally adjusted, the average price fixed, f.o.b. mines, was \$2.58 (Tr. 422; Def. Ex. 5A.) For the first six months of its work the Fuel Administration was able to accomplish little in the control of distribution (Tr. 518), and serious shortage of coal continued until March, 1918. The control of distribution as finally worked out was effected by reducing the cross-hauling of coal so as to permit the railroads to handle increased tonnage with the same equipment. Consuming markets were zoned and producing districts assigned a budget, specifying the tonnage to be supplied from each district to each zone. The zones and the budget of the Fuel Administration proved effective. Production increased sufficiently to meet all requirements, and on the day of the Armistice, consumers had been supplied with reserve stocks of 63,000,000 tons, which was twice any preceding known stock and was an amount adequate to meet any possible need. (Tr. 422-423.)

84. A second acute shortage of coal occurred in 1919 to 1920. The initial cause was a general strike of all union miners, which began November 1, 1919, and lasted to December 16. A total of 415,000 men were on strike in 22 states. (Tr. 426.) By the time the strike had reached its sixth (and last) week consumers' stocks in the territory north of the Ohio and Potomac and east of the Mississippi were dangerously low and industries were beginning to close for lack of fuel. (Coal in 1919, 1920, and 1921, p. 453.) After the miners' strike was

settled, but before consumers had succeeded in rebuilding their customary stocks, an outlaw strike of railway switchmen, beginning April 1, 1920, congested railroad terminals and created an acute shortage of cars at the mines. At the same time the British Government placed a limitation on customary exports of coal from the United Kingdom, creating an active demand for the export of American coal. These three factors drove up the price to unprecedented heights. (Tr. 427-428.) From November 1, 1919, to March 31, 1920, the Government fixed maximum prices, acting under the Lever Act. (Tr. 426.) The average spot price, f.o.b. mines, fixed by the Government as of March, 1920, was \$2.58 a ton. When the price regulations were removed, the average spot price, f.o.b. mines, rose to a peak of \$9.51 a ton in August, 1920. (Def. Exs. 5 and 5A.) The increase of prices was greatest on the eastern seaboard where sales at \$20 a ton, f.o.b. mines, were reported. The average spot price of Pocahontas coal in August was \$12.90 a ton, f.o.b. mines, and that of Somerset mine-run coal was \$11.97 a ton. (Tr. 428.) These prices refer to spot sales, which ordinarily constitute about 25 per cent of total sales. (Def. Ex. 20.) The average sales realization for the year 1920, contract and spot business for the country as a whole, was \$3.75 a ton. (Def. Exs. 3 and 3A.)

85. Another acute shortage of coal occurred in 1922. The primary cause was a suspension of mining at the expiration of the wage agreement on March 31, 1922, which affected all of the union bituminous mines and the non-union mines in a number of districts and was accompanied by a simultaneous suspension at the anthracite mines. This strike resulted

from the refusal of the union operators to renew the agreement on the basis of prevailing wages because of competition from non-union operators paying lower wages. (Tr. 1012.) In this suspension 460,000 bituminous miners went out, and at one time 73 per cent of the productive capacity of the bituminous coal fields was shut down. At the same time, 142,000 anthracite miners went out. The strike began April 1, 1922, and lasted officially to August 16, some districts remaining out into September, 1922. (Tr. 429-430.) The effects of the mine suspension were accentuated by a strike of the railway shopmen on July 1, 1922, which created a further shortage of railway cars in the non-union coal fields. (Tr. 430.) During the 1922 shortage the average spot price of bituminous coal, f.o.b. mines, rose from \$2.12 a ton in March, 1922, before the suspension, to a peak of \$6.13 a ton in August, 1922. (Def. Exs. 5 and 5A.) The average spot price for the year 1922 was \$3.64 a ton and the average sales realization, including contract as well as spot sales, was \$3.02. (Def. Exs. 3 and 3A.)

86. These shortages of coal led to intervention by the Federal Government and the individual States in attempts to protect consumers. During the shortage of 1920 the Indiana Legislature created a Special Coal and Food Commission and directed it to set maximum prices on coal produced in the state of Indiana and to distribute coal at this maximum price to domestic consumers in Indiana and to other classifications of consumers in particular need. (Tr. 433-434.)

87. During the strike of 1919 the Federal Government restored the regulations of the United States

Fuel Administration under the Lever Act, reinstated the maximum prices fixed during the War, and distributed the limited supply of coal to consumers most in need. (Tr. 426.) To arbitrate the issue in dispute at this strike the President tendered his offices and appointed the "United States Bituminous Coal Commission" which handed down its award, effective April 1, 1920. In the shortage of 1920 use was made of the powers of the Interstate Commerce Commission under the Transportation Act to declare priorities in the movement of coal. (Tr. 433.) During the strike of 1922 the President attempted to effect a settlement, (U. S. Bureau of Mines, Coal, 1922, P. 450) the priority powers of the Interstate Commerce Commission were again utilized, and a Presidential Fuel Distribution Committee was set up. In September, 1922, Congress passed an act creating the office of Federal Fuel Distributor for a period of one year. (Tr. 433-4.) Between 1917 and 1922, six Congressional Investigations were made with reference to the price and supply of coal. By an Act approved September 22, 1922, Congress created the United States Coal Commission to make an investigation of the coal industry and to report its findings and recommendations to Congress. Among other findings and recommendations, this Commission concluded that:

- (1) Coal mining is an indispensable public service.
- (2) Continuous fact-finding on the basis of compulsory submission of reports is advisable.
- (3) A Coal Division should be established in the Interstate Commerce Commission.

- (4) A Federal license should be required of shippers of coal in interstate commerce.

(Report of the U. S. Coal Commission, pp. 259, 263, 264, 269.)

88. These shortages laid a burden on the consumer of coal. See finding 84 as to 1919-1920. During the 1922 shortage buyers were frequently compelled to accept impure coal or coal from unaccustomed sources not suited to their requirements. Numerous locomotive failures on the railroads occurred as a result of inferior coal they were compelled to use. Consumers had to put in heavy stocks of coal in anticipation of a suspension of mining. Consumers' stocks at the beginning of the 1922 suspension were 60,000,000 tons, or 30,000,000 tons above what would have been needed had there been no strike. (Tr. 430.) There were many complaints to Congress by consumers concerning the high prices. (Hearings before the Select Committee on Reconstruction and Production, United States Senate, Sixty-sixth Congress, 3rd Session, Senate Resolution 350.) The following table taken from an investigation by the Interstate Commerce Commission, "Increased Cost of Railroad Fuel, 1920, Report of the Commission to the Senate of the United States in response to Senate Resolution No. 412:" (Def. Ex. 20) shows the increased cost of coal to Class 1 steam railroads in 1920 over 1919.

QUANTITY AND COST OF FUEL PURCHASED BY
CLASS I STEAM RAILROADS
IN THE CALENDAR YEARS 1919 AND 1920

	New England Region	Pocahontas Region	Total, all Regions
<i>Spot purchases</i>			
Tons purchased:			
1919	1,617,282	1,683,181	16,381,503
1920	3,346,023	2,961,299	29,857,090
Average cost per ton at mine:			
1919	\$2.46	\$2.75	\$2.83
1920	\$6.25	\$4.53	\$4.53
<i>Contract purchases</i>			
Tons purchased:			
1919	3,732,109	4,226,033	107,526,005
1920	4,028,518	3,802,532	125,486,545
Average cost per ton at mine:			
1919	\$2.52	\$2.49	\$2.56
1920	\$3.79	\$3.35	\$3.22
<i>Average delivered cost, all purchases, including freight charges</i>			
1919	\$5.17	\$2.67	\$3.15
1920	\$8.09	\$3.99	\$4.13

In 1920 the railroads purchased 19.5% of their coal at spot prices. (Tr. 494.) In general the prices paid by the railroads during the periods of shortage did not rise as high as the prices paid by other purchasers, because of the concentrated buying power of the carriers. (Tr. 493-5.)

89. From 1916 to 1922 there was a great increase in mine capacity and in number of mines. (Tr. 432.) The number of commercial mines in operation (not counting wagon mines producing less than 1,000 tons a year) increased from 5,726 in 1916 to 8,319 in 1918 and 9,299 in 1922. A further slight increase occurred in 1923, when the number of mines in operation was 9,331. (Def. Exs. 4 and 4A.)

The greatest increase in the number of mines occurred during the war; the greatest increase in mine capacity occurred somewhat later. The calculated total mine capacity on the 308-day basis increased from 673,000,000 tons in 1916 to 736,000,000 tons in 1919 and thereafter to 970,000,000 tons in 1923, an increase in the seven-year period of 44% (Def. Exs. 3 and 3A). Production in 1916 was 503,000,000 tons, in 1919 it dropped to 466,000,000 tons and in 1923 it was 565,000,000 tons, an increase of only 12% over 1916. (Def. Ex. 3-3A.)

90. While the capacity was thus increasing after the war, the demand for coal had ceased to grow as formerly. Prior to 1918, the demand was increasing at an average rate of 13,000,000 tons a year. After 1918 it flattened off, and at no time since has it equalled the war peak. (Tr. 437.) See findings ~~77~~⁷⁶ and ~~78~~⁷⁶, ante. There was, however, no actual decrease in the consumption during the decade of the 1920's. In 1929, both production and consumption were higher than the average for 1922-24, and substantially higher than for 1913. Consumption for that year was higher than at any time since the war peak, except for 1926, when bituminous coal was required to replace anthracite on account of the hard coal strike (Tr. 440-441). The trend of production, and of the net consumption, allowing for exports and changes in consumers stocks, are shown below. The figures are in million tons.

	1913	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929
Production*	478	579	466	569	416	422	565	484	520	573	518	501	535
Net consumption†.....	460	531	482	509	392	427	519	484	499	533	500	499	520

* Def. Ex. 3A.

† Allowing for exports and changes in consumers stocks. Tr. p. 437. U. S. Bureau of Mines "Coal in 1929," p. 688.

91. During the pre-war period (1900 to 1916) average sales realization on bituminous coal had not exceeded \$1.32 per ton in any year, running from a low of \$1.04 in 1900 to a high of \$1.32 in 1916. During the War period and post-War period, sales realizations were high, running from a low of \$2.26 in 1917 to a high of \$3.75 in 1920 and standing at \$3.02 in 1922.

C. THE PERIOD FROM 1923 TO 1933

92. The combination of increased surplus of capacity and a comparatively stationary demand resulted in a drastic liquidation in both mines and plant capacity in the industry after 1923. (Tr. 441-43.) By the middle of 1923 the railroads had greatly improved their service and car shortage at the mines was eliminated as a factor limiting production. In February, 1924, signature of a three-year wage contract between the miners and the organized operators, known as the Jacksonville agreement, eliminated the prospect of any national strike until 1927. (Tr. 922-25, 931.) With the causes of previous shortages removed, the great surplus of mine capacity was now free to exert its full pressure upon the market and a period of intense and destructive competition ensued. (Tr. 440.) For American business in general the years 1924 to 1929 were unusually prosperous, accompanied by increasing employment and payrolls. For bituminous coal mining the same period was marked by declining employment and payrolls and (except possibly for the year 1926) by a financial deficit for the industry as a whole. (Tr. 1216.) (Def. Ex. 6, 6A, 49, 49A.)

93. Competitive conditions after 1923 caused

thousands of mines to be shut down or abandoned. Between 1923 and 1930 the number of commercial mines in operation producing 1,000 or more tons per year, dropped from 9,331 to 5,891, a decrease of 3,440 mines. (Tr. 441-2.) (Def. Ex. 4a.)

This figure does not represent the total number of shut-downs or abandonments but the net decline in the number of such mines in operation. It is estimated that at least 4,800 individual mines had been forced out of business from 1923 to 1930, and in all probability exhaustion of the coal accounted for a very small part. In the meantime a considerable number of small trucking mines were newly opened utilizing hard roads and motor transports. (Tr. 441-442.)

94. Of these mines shut down since 1923, large numbers are idle but not finally abandoned. In 1930, there were 1,355 such mines on the books of the Bureau of Mines shut down but not permanently abandoned. Their capacity, when formerly operated, was 130,000,000 tons a year. No complete count of the mines shut down but not abandoned has been made since 1930. A test count in three states showed that, out of 291 in the class shut-down but not abandoned in 1930, 203 have since been permanently dropped, and 88 are still shut down but not finally abandoned. (Tr. 442-44.) The physical condition of such mines shut down but not abandoned varies greatly. Hundreds of them are in such condition that it is improbable they will be brought into production again short of another World War. (Tr. 443.) An appreciable number are in such condition that a sustained advance in price in excess of production costs would bring them back into the market. Their pres-

ence is an element of potential competition. While no definite figures are available, it is estimated abandonment of mines before exhaustion has resulted in a considerable waste of coal resources. (Tr. 788, 1488-89.)

95. The capacity in operation (308-day basis) was reduced from 970,000,000 tons in 1923 to 770,000,000 tons in 1930 (Def. Exs. 3 and 3A) and to 615,000,000 in 1933. In 1923 production was 565,000,000. In 1933 it was 334,000,000. In 1923 capacity was 73% in excess of production. In 1933 it was 84% in excess (Def. Ex. 3A).

96. The competitive conditions existing after 1923 caused the price of bituminous coal to fall substantially, and resulted in the average mine realization price of the industry as a whole being less than the costs of production of the industry as a whole. The average sales realization declined from \$2.68 a ton in 1923 to \$2.20 in 1924, a drop of 48 cents in one year. The decline continued thereafter, interrupted only in 1926 in which year there was a temporary recovery of 2 cents a ton. In 1925 the average sales realization was \$2.04; in 1926 it was \$2.06; in 1927 it was \$1.99; and in 1928 it was \$1.86. By 1929 the average realization had declined to \$1.78 a ton, a decrease of 90 cents a ton or 33.6% below 1923. In 1930 the average sales realization was \$1.70 and in 1931 was \$1.54. By 1932 the average realization had fallen to \$1.31 a ton. In 1933 the average sales realization price was \$1.34. (Def. Exs. 3 and 3A.) The decline of one-third in the average realization from 1923 to 1929 took place in a period of general business prosperity when the average of

commodity prices was relatively stable. After 1929 there was a period of general business depression when the average of commodity prices declined approximately one-third.

97. The trend of mine realization prices throughout the country from 1913 to 1920-1922 was generally upward with violent fluctuations during the war and post-war period, and from 1923 through 1933 was generally downward (D. Exs. 3-A, 23). The last "runaway market" in bituminous coal was in 1922 and the first five months of 1923. The only approach to such a market was in the increased spot coal prices in 1926, which were primarily due to the British strike, and also in part to the heavy purchasing in anticipation of a possible strike (which in fact developed) in 1927 upon the termination of the Jacksonville Wage Agreement (Tr. 495-496 D. Ex. 5). The spot price curve from 1923 through 1931 does not show violent fluctuations but a steady downward trend. (Tr. 496.)

98. There have been no violent fluctuations in the prices of bituminous coal for railroad fuel since 1923. The average delivered cost per net ton of bituminous coal purchased by Class I railroads gradually declined from a high of \$2.94 in 1924 to a low of \$1.95 per net ton in 1933, standing at \$2.20 per net ton in 1934. The most recent sharp increases in the cost of bituminous coals to railroads were during the years 1919 to 1923, inclusive, and such increases were caused to some extent by conditions consequent upon the World War (Pl. Ex. 58; Tr. 515-516).

99. The only available price statistics as to other commodities than coal are wholesale delivered prices, which include transportation charges. The whole-

sale delivered prices of bituminous coal include a much higher proportion of freight than do the wholesale delivered prices of other commodities. According to the Interstate Commerce Commission, Bureau of Statistics, Statement No. 3552, Freight Revenue and Value of Commodities Transported on Class I Steam Railways, 1933, freight charges represented 62% of the delivered value of bituminous coal, but only 11% of the delivered value of all commodities. During the period from 1926 to 1934 the wholesale delivered prices of bituminous coal have had considerably less fluctuation than either the average of all commodities, or the average of all raw materials, or of the following specific commodities: non-ferrous metals, petroleum products, lumber, cotton goods, and hides and skins (Tr. 1569; Pl. Exs. 60, 70-A, 70-B). During the period 1929-1935 retail prices of bituminous coal have had less fluctuation than those of meats, cereals, other foods and the average of all foods, and also of anthracite (Tr. 1571; Pl. Ex. 71).

100. From 1923 to 1925 the all-commodity wholesale delivered price index increased slightly, but the net change from 1923 to 1929 was a decrease of 5.3% and from 1929 to 1933 was a decrease of 29.2%. The following table compares the movement of bituminous coal prices, as shown by the average sales realization f.o.b. mines (which does not include transportation charges) with the movement of the all-commodity wholesale price index (which does include transpor-

tation charges), both series being represented by index numbers starting with 1923.

	1923	1924	1925	1926	1927	1928	1929	1930	1931	1932	1933
<i>Index numbers</i>											
1923 = 100.0											
All commodities, wholesale price index*	100.0	97.4	102.9	99.4	94.8	96.1	94.7	85.9	72.6	64.4	65.5
Bituminous coal, f.o.b. mines, average sales realization†	100.0	82.1	76.1	76.9	74.3	69.4	66.4	63.4	57.5	48.9	50.0
Bituminous under all-commodity index	0	-15.3	-26.8	-22.5	-20.5	-26.7	-28.3	-22.5	-15.1	-15.5	-15.5

* Def. Ex. 50.

† Def. Ex. 3A, 50

On this basis in every year after 1923, the mine operators' average sales realization was relatively below the all-commodity index. In 1929, the time of greatest disparity, the mine operators' realization was 28 points below the all-commodity index.

101. A comparison of bituminous coal delivered prices (including transportation charges) with all-commodity delivered charges also shows that bituminous prices fell much more rapidly between 1923 and 1929. Between 1929 and 1933, however, the all-commodity delivered prices fell much more rapidly than the bituminous prices. The figures are as follows:

	1923	1924	1925	1926	1927	1928	1929	1930	1931	1932	1933
<i>Index numbers</i>											
(1923 = 100.0)											
All commodities, wholesale price index*	100.0	97.4	102.9	99.4	94.8	96.1	94.7	85.9	72.6	64.4	65.5
Bituminous coal, delivered average "wholesale price"†	100.0	87.9	85.1	88.2	88.5	82.5	80.5	78.8	74.6	72.3	73.0
Bituminous under all commodity index	0	-9.5	-17.8	-11.2	-6.3	-13.6	-14.2	-7.1	+2.0	+7.9	+7.5

* Def. Ex. 50.

† Index number of the Bureau of Labor Statistics, quoted by Pl. Ex. 70B for period 1926 to 1933, here extended back to 1923, calculated on base 1923=100.0.

102. As a result of the intense competition and consequent low prices, so far as figures are available, the bituminous coal industry as a whole showed deficits during the period 1924-1933, with the possible exception of 1926. The following table gives the statistics as to net income or deficit of the coal industry, according to Treasury Department data from income tax returns (Def. Exs. 6A and 49) :

Year	Bituminous coal industry	Anthracite industry	Bituminous coal and anthracite combined
1917	\$203,918,518	*	*
1918	148,846,632	*	*
1919	62,259,694	*	*
1920	249,367,379	*	*
1921	28,889,194	*	*
1922	*	*	\$70,851,551†
1923	*	*	67,344,920†
1924	*	*	-49,250,562†
1925	-22,363,497	\$-44,359	-22,407,856
1926	*	*	+37,714,000
1927	*	*	-20,303,000
1928	-24,508,000	5,251,000	-19,257,000
1929	-11,304,000	2,422,000	-8,882,000
1930	-42,071,000	8,109,000	-33,962,000
1931	-47,745,000	-1,614,000	-49,359,000
1932	-51,167,000	-16,697,000	-67,864,000
1933	-47,549,000	*	*

* Separate or comparable data not available.

† Prior year's losses deducted.

Throughout the period from 1924 to 1933, many producers were forced into bankruptcy or receivership.

103. Of all the industries in the country, as classified by the United States Bureau of Internal Revenue (91 groups in 1928), only four others, namely, woolen and worsted goods, shipbuilding and repairing, aerial transportation and joint stock land banks showed a net loss during the period 1925 to 1929. (Def. Exs. 49 and 49A.) It is common knowledge that industry generally made profits during this

period. It is common knowledge that, starting in 1930, deficits in business became general.

104. During the period of increasing demand and production the number of men employed in such mining had increased from 271,000 in 1899 to 461,000 in 1905; to 556,000 in 1910; to 557,000 in 1915; to 640,000 in 1920, reaching an all-time high of 705,000 in 1923. After 1923, the number declined to 620,000 in 1924; to 588,000 in 1925; to 503,000 by 1929; 450,000 in 1931 and to 419,000 in 1933. (Def. Ex. 4-A.) It is a matter of common knowledge that from 1923 to 1929 other industries in general were maintaining or increasing their working forces.

105. The average number of days operated by the mines increased from 179 days in 1923 to 219 days in 1929.

106. As a result of the competitive conditions which existed in the industry in the decade following 1923, the method of fixing and correlating wages which had theretofore been employed throughout a very large part of the industry through the instrumentality of wage agreements between associations of producers representing a number of areas and states, on the one hand, and the miners' union, was almost entirely broken down. (Tr. 616-17.) At the beginning of 1923 approximately 70% of the total capacity of the industry was covered by collective wage agreements. (Tr. 1199.) Such arrangements covered the Central Competitive Field (Illinois, Indiana, Ohio and Western Pennsylvania); the Southwest Interstate Field (Missouri, Kansas, Oklahoma, northern Texas and Arkansas); the states of Michigan, Iowa, Wyoming, and Montana; parts of Washington and Colorado; most of the central Pennsylvania district; northern West Virginia; the

Kanawha, Coal River and New River districts of southern West Virginia, and portions of eastern Kentucky, western Kentucky and Tennessee. (Report of U. S. Coal Com. Vol. III, p. 1050-52.)

107. In a number of important areas, however, including several major districts in southern West Virginia, in Kentucky and in portions of Tennessee, and the States of Virginia, Utah, New Mexico and Alabama the collective method of fixing, and coordinating wages had not been adopted. Various attempts were made by the miners' union, the United Mine Workers of America, to organize these fields. Operators in these areas had successfully resisted these attempts to organize and in so doing many of them used armed guards, relied on the fact of their ownership of land and houses, obtained labor injunctions and used individual or "yellow dog" contracts of employment. (Tr. 1016, 1059-61, 1069, 1162-64 1268-9.) The attempts to organize these fields had frequently been accompanied by acts of violence and by bloodshed. (Tr. 1081-85, 1268-69.) Serious disorders occurred in West Virginia in 1920-21, culminating in a march of several thousand armed men, clashes with mine guards, and hired detectives and State militia, and intervention at the request of the State Governor of 2,000 Federal troops. (Tr. 1082-1085. Hearings before the Committee on Education and Labor. United States Senate. 67th Cong., 1st Sess., West Virginia Coal Fields). Such attempts to organize and the operators' resistance to such attempts were continued after 1923. The attempts of the miners' union, the United Mine Workers of America, to organize these fields were prompted in a large measure by the competitive pressure exerted

by the cutting of wage rates in non-union fields upon the union scale of wages in competing areas. (Tr. 1007, 1010-11.)

108. At or about the time of the execution of the Jacksonville wage agreement, which continued the pre-existing wage rates and became effective April 1, 1924, operators in the unorganized or non-union fields began to cut their prices and necessarily their wage rates. (Tr. 615-616.) This resulted in the gain of a large amount of business at the expense of the operators in the organized fields, and the producers who were operating under collective wage agreements found themselves exposed to a competition which threatened their economic existence. (Tr. 757-758.) This competition fell most heavily upon the union fields immediately adjacent to the centers of non-union production. (Tr. 768-70.) The operators in the Kanawha Valley of southern West Virginia found themselves in the face of this competition unable to pay the Jacksonville wage scale, and in order to improve their competitive position refused to renew or enter into any wage agreement. From the Kanawha Valley the area of non-union or open-shop production spread northward and westward as companies that had signed the Jacksonville wage agreement, finding themselves unable to meet the competition from the adjacent non-union areas, abrogated their wage contracts. (Tr. 1014-15.) These contract abrogations commenced in the year 1924 and continued throughout the period covered by the Jacksonville agreement. They were followed by a series of strikes, many of which were prolonged, strikes which closed down many mines in Ohio, northern West Virginia, and Pennsylvania and the closing of these mines during the strike pe-

riod substantially affected the distribution of coal in interstate commerce. (Tr. 1015-17.) When the Jacksonville wage agreement expired on March 31, 1927, practically all of the remaining union operators in the Appalachian fields, including Pennsylvania and Ohio being unwilling in the face of non-union competition to enter into any agreement providing for a fixed wage scale, offered to the union miners represented by the United Mine Workers of America a plan, known as the Miami Proposal, for a contract in which wages would be based on a sliding scale based on wages in the unorganized fields. (Pl. Ex. 62.) This proposal was rejected by the miners upon the ground that it offered them no protection against having to accept the wages, hours, and working conditions of non-union miners employed under individual contract, in non-union territory. A protracted strike followed the failure of the operators and the miners to make any wage agreement with the result that many mines were closed down in Illinois, Indiana, Ohio and parts of Pennsylvania and in the organized States of the West, during the period of the strike which lasted for periods varying from March 31, 1927, into August, September and October of that year. (Tr. 1018-27.) The conditions in the coal fields of Pennsylvania, West Virginia and Ohio resulting from this strike and the strikes in 1925-6 were the subject of investigation by the Committee on Interstate Commerce of the Senate of the United States (70th Cong., 1st Sess., 1928). The closing down because of this strike of many mines in the States mentioned substantially affected the distribution of bituminous coal in interstate commerce. (Tr. 1028.)

109. After this strike most of the operators in the States of Pennsylvania, Ohio and part of Indiana, reopened their mines on an open-shop basis at lower wage rates, in order that they might be able to meet the competition of the unorganized districts. (Tr. 617, 1028.) Further strikes in the few remaining unionized areas occurred in 1928 and 1932. (Tr. 889-890, 1120-1121.) By 1933 the total tonnage covered by collective agreements had shrunk to 20% of the national output as against 70% ten years before. (Tr. 1199.) East of the Mississippi River the only major areas still operating under collective wage agreements were Illinois, and a part of Indiana. (Tr. 1029.)

110. Unlike the strike of 1919 and the suspension of 1922, these later suspensions caused no national shortage of coal, and there was no marked increase in price. They did, however, cause shifts and diversions of shipments between the various producing states, and laid upon consumers the burden of accumulating large stocks in anticipation of shortage. (Tr. 1533-34.) At the time of the suspension of 1927, production in the State of Illinois dropped from 10,000,000 tons a month before the suspension to a negligible quantity. Individual railroads serving Illinois and adjacent fields were similarly affected, coal loadings on the Chicago, Milwaukee, St. Paul & Pacific System declining from 23,000 cars a month before the strike to approximately 2,900 cars a month during the strike. During the 7 months of the suspension, shipments from Illinois mines averaged 78 per cent below normal, and similar, though less marked de-

clines, occurred in Indiana, Ohio, and other States affected. Meantime, the non-union fields to the south, which were continuing at work, increased their tonnage, the State of Kentucky expanding its output 20 per cent during the same period. The net diversion of business during the suspension from the States affected by the stoppage to the non-union States south of the Ohio River was approximately 15,000,000 tons. (Tr. 1534.)

111. Knowing in advance that the Jacksonville agreement was to terminate on April 1, 1927, consumers of coal were enabled to get through the strike without acute shortage, partly by purchases from the non-union fields and partly by laying in a stock of 75,000,000 tons, 40,000,000 tons in excess of the usual requirements at that season of the year, in anticipation of the stoppage, (Tr. 1534; U. S. Bureau of Mines, Coal in 1927, p. 331.) Mr. Tryon, Chief Coal Economist of the U. S. Bureau of Mines, estimated the working capital tied up in the extra 40,000,000 tons at \$200,000,000, and the cost of the operation to consumers in interest charges and physical handling cost at approximately \$20,000,000. Accumulation of these stocks had begun in the summer of 1926, and the buying for storage was an auxiliary cause of the sudden rise in the spot prices of that year, the primary cause being a strike of the British miners which created ^{an} unusual demand for exports. (Defendant's Exhibits 5 and 5A.; Tr. 1534-35.) The emergency stocks built up before the strike were not reduced to normal during the period of the stoppage, and the excess continued to hang over the market for two years, exercising a depressing

effect on coal prices. The diversions of orders during the suspension tended to encourage a temporary increase in capacity in the southern fields, although the total capacity there operating showed a general decline in the years after 1923 and at no time equalled the 1923 peak. Similar unsettling effects in greater or less degree have attended other widespread suspensions of coal mining, even when there was no such shortage created, such as happened in 1919, 1920 and in 1922. (U. S. Coal Commission Report, Vol. III, p. 1291). The suspensions of 1906, 1908, 1910, 1912, and 1927 all led to sudden and wide fluctuations in the production of coal and in the use of mine capacity and railroad transport facilities in the districts affected (U. S. Bureau of Mines, Coal in 1929, p. 674); and to the accumulation of emergency stocks. (U. S. Bureau of Mines, Coal in 1922, p. 462; U. S. Coal Commission Report, Vol. I, p. 204). Even when the price did not advance sharply, the consumer had to pay the cost of emergency storage, and if the excess stocks were not used during the strike, they acted to depress the market thereafter. The diversion of orders to new channels created an illusory anticipation of profits, led to ill-advised investments in new mines or new equipment, and was one of the factors tending to create or to perpetuate the surplus of mine capacity. (Tr. 1535-37; U. S. Coal Commission Report, Vol. I, p. 204.)

112. As the area covered by collective bargaining contracted, the union wage scale in the northern districts was reduced from \$7.50 a day for inside skilled labor to \$5.00 a day. The change is illustrated by the union scale in Illinois, which remained \$7.50 until after the suspension of 1928, then dropped to \$6.10,

and after another suspension in 1932 dropped to \$5.00. (Tr. 891-92.) An indication of what these wage scales meant in terms of annual income is given in the table below, constructed from defendant's exhibits 4A and 46.

ILLINOIS		
1923	Scale, inside day labor.....	\$ 7.50
	Days operated	158
	Calculated annual income.....	\$1,185
1926	Scale, inside day labor.....	\$ 7.50
	Days operated	172
	Calculated annual income.....	\$1,290
1929	Scale, inside day labor.....	\$ 6.10
	Days operated	177
	Calculated annual income.....	\$1,080
1932	Scale, inside day labor.....	\$ 5.00
	Days operated	112
	Calculated annual income.....	\$ 560

The decrease in the Illinois rate from 1923 to 1932 was 33-1/3 per cent; the decrease in days worked was 29.1 per cent; and the decrease in annual income was 52.7 per cent.

113. During the period that the union day wage scale was reduced from \$7.50 to \$5.00, the corresponding wage scales in the non-union areas suffered a greater reduction. The wages of trackmen are typical of the skilled day wage occupations underground. Hand loaders constitute the principal piecework occupation underground. Piece workers underground constitute 67 per cent of the working force in Pennsylvania and 57 per cent in West Virginia. Day wage workers constitute 33 percent of the force in Pennsylvania and 43 per cent in West Virginia, of whom 22 per cent and 29 per cent, respectively, work underground, 11 per cent and 14 per cent, re-

spectively, working on the surface. (U. S. Bureau of Mines, Coal in 1929, p. 743.) The data in the following table have been taken from plaintiff's exhibit 82B.

	Average daily earnings in				
	Northern Group		Southern Group		
	Illinois	Ohio	Penna.	W. Va.	Kentucky
<i>Trackmen</i>					
1922.....	\$7.62	\$7.57	\$6.29	\$6.38	\$5.94
1924.....	7.49	7.57	6.77	5.23	5.22
1926.....	7.60	7.48	6.35	5.12	4.84
1929.....	6.10	*5.16	*5.77	4.82	4.87
1931.....	6.12	4.36	5.18	4.50	4.46
1933.....	4.97	3.14	3.40	3.06	2.96
Percent reduction, 1922-1933.....	-34.8%	-58.5%	-45.9%	-52.0%	-50.2%
<i>Hand loaders</i>					
1922.....	\$9.53	\$7.29	\$5.79	\$6.33	\$5.51
1924.....	8.76	6.63	6.05	5.69	5.40
1926.....	8.80	6.35	5.75	5.51	4.78
1929.....	7.03	*4.61	*4.88	4.99	4.77
1931.....	7.12	3.75	4.23	4.36	4.28
1933.....	5.06	2.50	2.65	2.84	2.80
Percent reduction, 1922-1933.....	-46.9%	-65.7%	-54.2%	-55.1%	-49.2%

* Ohio and Pennsylvania were substantially all non-union by 1929.

The largest reductions on a percentage basis in wage rates from 1922 to 1933 occurred in areas which were union in 1922 and went non-union after 1927. Throughout this period wage rates in the non-union mines were, with few exceptions, substantially below those in the union mines. The lower wage rates generally paid, and the proportionately greater wage reductions, in the non-union mines enabled them to capture business from the higher wage union mines, and to increase their operating time. The average number of days worked by the mines in the same groups of states as those contained in the last preceding table were as follows: (Data from plaintiff's exhibit 82B,

except for 1923 which are from U. S. Bureau of Mines, Coal in 1929, pp. 743-4.)

	Average number of days operated in				
	Northern Group			Southern Group	
	Illinois	Ohio	Penna.	W. Va.	Kentucky
1922 (strike year) —	120	100	154	143	140
1923.....	158	150	213	169	152
1924.....	148	143	180	182	174
1926.....	172	159	224	247	230
1929.....	177	201	230	247	222
1931.....	136	174	169	176	159
1933.....	141	169	162	196	170
Increase, 1923-1929.....	+19	+51	+17	+78	+70

114. In all the major fields there was a tendency for working time to increase from 1923 to 1929. The increase in Illinois during this period amounted to 19 days and in Pennsylvania to 17 days, whereas the increase in West Virginia was 78 days and in Kentucky 70 days. In 1923, West Virginia worked fewer days than Pennsylvania; and in 1929 more days than Pennsylvania. In 1923, Kentucky worked fewer days than Illinois and in 1929 more days than Illinois. By these changes southern mine workers obtained steadier employment than northern mine workers.

115. The steadier employment thus obtained by southern mine workers for a time acted to offset the greater reduction in their daily wages, especially during the period of the Jacksonville wage agreement. As Pennsylvania and Ohio went non-union and cut their wage rates, and as Illinois and Indiana were forced to reduce the union scale, further wage cuts were made in the South. Price reductions forced cuts in wage rates a descending spiral. (Tr. 933, 953 Def. Ex. 32A.) The annual earnings

of trackmen and hand loaders during this period were approximately as follows: (Pl. Ex. 82B.)

	Calculated annual earnings in				
	Northern Group			Southern Group	
	Illinois	Ohio	Penna.	W. Va.	Kentucky
<i>Trackmen</i>					
1922 (strike)	\$ 914	\$ 757	\$ 969	\$ 912	\$ 832
1924.....	1,109	1,083	1,219	952	908
1926.....	1,307	1,189	1,422	1,265	1,113
1929.....	1,080	1,037	1,327	1,191	1,081
1931.....	832	759	875	792	709
1933.....	701	531	551	600	503
Percent decrease,					
1926-1933	-46.4%	-55.3%	-61.3%	-52.6%	-54.8%
<i>Hand loaders</i>					
1922 (strike)	\$1,144	\$ 729	\$ 892	\$ 905	\$ 771
1924.....	1,296	948	1,089	1,036	940
1926.....	1,514	1,010	1,288	1,361	1,099
1929.....	1,244	927	1,122	1,233	1,059
1931.....	968	653	715	767	681
1933.....	713	423	429	557	476
Percent decrease,					
1926-1933	-52.9%	-58.1%	-66.7%	-59.1%	-56.7%

Between 1926 and 1933, the income of the West Virginia loader had been reduced from \$1,361 to \$557, a decrease of 59.1 per cent while the income of the Pennsylvania had been reduced from \$1,288 to \$429, a decrease of 66.7%. The West Virginia loader's opportunity to work had been reduced to the extent of 20.6 per cent, but his wage rate had been reduced 48.5 per cent. The Pennsylvania loader's opportunity to work had been reduced to the extent of 27.6 per cent, but his wage rate had been reduced 53.9 per cent.

115a. The wage and income record for the West Virginia trackman and the West Virginia hand loader and for the Pennsylvania trackman and the

Pennsylvania hand loader is summarized below (derived from Pl. Ex. 82B.)

Year	Days Mines Operated	Trackmen		Hand Loaders	
		Daily Earnings	Calculated Annual Earnings	Daily Earnings	Calculated Annual Earnings
<i>West Virginia</i>					
1926.....	247	\$5.12	\$1,265	\$5.51	\$1,361
1933.....	196	3.06	600	2.84	557
Percent decline, 1926-1933.....	-20.6%	-40.2%	-52.6%	-48.5%	-59.1%
<i>Pennsylvania</i>					
1926.....	224	\$6.35	\$1,422.40	\$5.75	\$1,288
1933.....	162	3.40	550.80	2.65	429
Percent decline 1926-1933.....	-27.6%	-46.4%	-61.3%	-53.9%	-66.7%

116. With respect to living costs, the following decreases occurred: According to the figures of the United States Bureau of Labor Statistics, which take 1913 costs as the standard (equal to 100) the retail cost of meats declined from an index number of 180 at the beginning of 1929 to an index number of 100 at the end of 1932; the retail cost of cereals declined from an index number of 165 at the beginning of 1929 to 115 at the end of 1932; the retail cost of dairy products declined from an index number of 150 at the beginning of 1929 to 95 at the end of 1932; the retail costs of other foods declined from an index of 152 at the beginning of 1929 to 90 at the end of 1932; the retail cost of all foods declined from an index of 150 in 1929 to 95 at the end of 1932 (Pl. Ex. 71); the raw materials index declined from a figure of 100 in 1926 to 56 at the end of 1932; and the all-commodities index declined from 100 in 1926 to 64 in 1932 (Pl. Ex. 70).

116a. The combined effects of the discharge of workers and cutting of wage rates resulted in a decrease in the computed annual wage payments of the

industry from \$851,000,000 in 1923 to \$588,000,000 in 1929. (Def. Ex. 54.) This reduction of \$263,000,000 took place at a time when manufacturing industries generally were increasing their total payrolls. (Tr. 1216.) After 1929 wage payments in the coal industry continued to decline, partly through discharge of workers, partly through decrease in operating time, and partly through wage cutting. The total wage payments in 1933 at the scales prevailing before the NRA code are computed at \$235,000,000. (Def. Ex. 54.)

117. With the collapse of collective bargaining on a national scale after 1927 uniformity in wage scales gradually disappeared in the non-union fields, and operators in the same fields were paying widely varying wages. (Tr. 1203-06, Def. Exs. 33, 34). In May, 1933, the rates paid to trackmen (a skilled occupation underground) at representative commercial mines varied as follows: (Defendants Exhibits 33 and 33a)

Number of mines paying daily rates of:

District	Under \$1.50	\$1.50 to 1.99	\$2.00 to 2.49	\$2.50 to 2.99	\$3.00 to 3.49	\$3.50 and over
Ohio	—	—	—	8	26	2
Western Pennsylvania	—	4	46	31	54	18
Eastern Pennsylvania	—	—	4	13	49	25
Northern W. Va.	—	2	6	51	7	1
Southern Sub. Div. No. 2	2	16	55	51	28	9
Alabama	1	7	6	9	—	—

In the Western Pennsylvania district, the rates paid ranged from \$4.00 a day to less than \$1.75. Under such conditions, the operator attempting to maintain a reasonable living wage was exposed to competition from wage cutting by other operators within the same field; and one wage cut forced another. Such com-

petition in wage cutting within the limits of the same field tended to develop wherever the wage rate was not stabilized by collective bargaining. (Tr. 1242-44.)

118. The competitive cutting of prices between 1923 and 1933 occasioned a large shift or diversion of shipments of coal from the fields north of the Ohio and Potomac rivers to the fields immediately south thereof. (Tr. 1166-1167.) A competitive trade war was in progress. It expressed itself partly in the controversy before the Interstate Commerce Commission over the lake cargo freight rates and other rates. The readjustments in freight rates made during this decade in general tended to aid the northern group of fields in competition with the southern group. (Tr. 800.)

118a. The intense competition, largely between areas from 1924 to 1927, chiefly expressed itself in price cutting and wage cutting. (Tr. 614-615, Def. Ex. 30, 30A, 32, 32A.) Thereafter, as the machinery of collective bargaining broke down in Pennsylvania and Ohio, competition in price cutting through wage cutting between operators in the same field was added to the inter-field competition. (Tr. 800-801.)

119. The extent of the shift or diversion of business which took place from the northern group of fields to the southern group during this period (1924-1927) is shown by the record of the total shipments originating in the states of Pennsylvania, Ohio, Illinois and Indiana, designated as Group A in defendants' exhibit 31, and in the states of West Virginia, Kentucky and Virginia, designated as Group B in said exhibit. (Def. Ex. 30, 30A, 31, 31A.) Within the few years prior to 1923, all seven of these states had been increasing their shipments. Penn-

sylvania reached its peak of shipments in 1923, Ohio, Indiana and Illinois each in 1918. The southern group were also increasing their total shipments during this period, but although over the three decades prior to 1914 there had been appreciable gains by the South as against the North (Pl. Ex. 69 and 69A), from 1914 to 1921 there was little change in the relative proportions between North and South (Tr. 1168, Def. Ex. 28, 28A). In 1922 the strike of the union fields caused a sudden decrease in the proportion from the North and an increase from the South. (Tr. 1013, 1171.) But in 1923 the proportion from the South fell back again. (Tr. 1171-1172.) The year 1923 is a suitable starting point against which to compare subsequent shifts in tonnage. It was a year free of any important labor dispute. The railroads were giving improved service, and car shortage entirely disappeared in the second half of the year, leaving all fields free to ship what they could sell. It was a year of general business prosperity and large consumption, a year in which the bituminous coal industry made a profit, and in which wage rates in the non-union fields approached as close to parity with those in the union fields as at any time of record. (Tr. 1178-1179.) In 1923 the proportion of the total shipments originating in the seven states which came from the southern group was 36.1%. Year by year the percentages thereafter were as follows: (Def. Ex. 28A.)

	1923	1924	1925	1926	1927	1928	1929	1930	1931	1932	1933
Percent of shipments from:											
Group A (North) —	63.9	59.6	54.7	53.0	46.1	49.6	51.8	52.7	52.6	49.3	49.8
Group B (South) —	36.1	40.4	45.3	47.0	53.9	50.4	48.2	47.3	47.5	50.7	50.2
Total —	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

120. The proportion of the shipments originating in the South increased very rapidly during the years of the Jacksonville wage agreement from 1924 to 1927 (Tr. 1180-1183). It reached its maximum in 1927 when the strike or suspension at the end of the Jacksonville agreement shut down northern mines and threw additional business during the period of the strike to the southern mines. (Tr. 1171-1172.) Similar diversions of business and shipments, though on a smaller scale, occurred at the suspension of 1928 and that of 1932. (Tr. 1172-1173.)

121. As Pennsylvania and Ohio went non-union and as Illinois and Indiana reduced their union scale, the northern group reduced their prices and recovered a part of the percentage lost to the South during the years of the Jacksonville agreement. (Tr. 1185.) They did not, however, match the price reductions of the Southern fields, and consequently the Southern group retained a large part of the percentage gains made. (Def. Ex. 31A.) Over the 10-year period the proportion from the South rose from 36.1% in 1923 to 50.2% in 1933. A measure of the actual tonnage involved in this shift of business is found by comparing shipments in 1923 and 1929, both years of active business. Between these years shipments from the northern group decreased 52,800,000 tons, and shipments from the southern group increased 50,300,000 tons. These figures represent not the cumulative shift but the total for the single year 1929. (Tr. 1173, Def. Ex. 28, 28A, 31, 31A.)

122. This shift in tonnage from North to South was not due to any expansion of capacity in the South after 1923. Prior to 1923 mine capacity had been growing very rapidly in the southern fields, due

to natural causes, as set forth in finding 74. (Tr. 1545-1546.) Between 1905 and 1913 rapid railroad expansion occurred in the South, which opened to development important new fields. By 1923 such expansion had been completed, and thereafter mine capacity declined in the South, though less rapidly than in the North. (Tr. 1540-1545-1546, 532.) Some part of this shift in tonnage from North to South after 1923 was probably due to the quality of Southern coal. West Virginia coal on the average is superior to Ohio coal. (Tr. 821.) Low volatile coal, such as is produced in a part of southern West Virginia (and also in eastern Pennsylvania) generally commands a higher price than high volatile coal. (Tr. 973.) The shift or diversion of shipments after 1923 from the northern to the southern group was primarily due to a reduction of f.o.b. mine prices in the South more rapidly than in the North, the spread between southern and northern f.o.b. mine prices being substantially increased after 1923. (Tr. 1182, Def. Ex. 31A.) The movement of prices as shown by the average realizations, f.o.b. mine, during the same period is given below. The figures are represented by index numbers, 1923 being 100. (Def. Ex. 31.)

Index numbers of same		1923	1924	1925	1926	1927	1928	1929	1930	1931	1932	1933
Group A (North)	.....	100.0	85.1	80.2	80.2	78.6	72.5	67.9	64.1	58.9	51.9	51.9
Group B (South)	.....	100.0	70.3	65.4	69.2	65.8	60.5	58.9	57.0	48.8	39.9	43.3
Spread	.....	0	-14.8	-14.8	-11.0	-12.8	-12.0	-9.0	-7.1	-10.1	-12.0	-8.6

123. The disparity between the southern and northern f.o.b. mine prices reached a maximum in 1924 and 1925, the first years of the Jacksonville agree-

ment. The price differential narrowed somewhat thereafter and increased to another maximum in 1932. Throughout the period, f.o.b. mine prices at the southern group mines were consistently lower in relation to 1923 than the f.o.b. mine prices at the northern group mines (Tr. 1184-1185, Def. Ex. 31, 31A), although the increase in the lake cargo freight differential in 1927 absorbed a part of the mine price differential on about 9 per cent of the total shipments from the two groups. (Def. Ex. 28A and 29A, Tr. 800.)

123a. There is a close correlation between the spread in f.o.b. mine prices and the diversion of shipments, although some of the diversion was due to strikes in the years 1927, 1928 and 1932 (Def. Ex. 28, 31A). A relatively small change in price differential effects a relatively large shift in tonnage. (Tr. 1182.)

124. The relatively lower southern f.o.b. mine prices after 1923 were due primarily to the greater reductions in wage rates, which the southern employers, operating on a non-union basis substantially throughout this period, were able to effect. The changes in wage rates between the two groups of fields as shown by the Bureau of Labor Statistics sample surveys are summarized below: (Tr. 1191-1199, Def. Ex. 32, 32A.)

<i>Average hourly earnings</i>	1919 Jan.-Feb.	1921-1922 Oct.-Feb.	1924 Oct.-Dec.	1926-1927 Nov.-Mar.	1929 Jan.-Mar.	1931 Jan.-Mar.	1933 Feb.
Group A (North).....	\$.745	\$.894	\$.885	\$.860	\$.707	\$.662	\$.458
Group B (South).....	.647	.819 *	.699	.670	.616	.552	.374
Differential	-.098	-.075	-.186	-.190	-.091	-.110	-.084
Percent South is below North	-13.2%	-8.4%	-21.0%	-22.1%	-12.9%	-16.6%	-18.3%

* Does not include Virginia.

The reduction of wage rates in the South had begun immediately after signature of the Jacksonville agreement in February, 1924. (Tr. 1191.) The spread between the average wage rates in the two groups increased from \$.075 an hour in the 1921-22 survey to \$.186 at the end of 1924 and increased further to \$.19 toward the end of the Jacksonville agreement. As the North abandoned collective bargaining or cut the union scale, the differential narrowed. On a percentage basis, the South continued to show a substantially greater spread below the North down to February, 1933 (Def. Ex. 32, 32A).

125. The differentials between north and south are broadly similar for wages of coal miners and for wages of labor in other industries. Average hourly entrance wage rates paid common labor and average hourly wage rates paid textile workers (skilled laborers) in the south Atlantic and east south central states (Delaware, Maryland, Virginia, West Virginia, North Carolina, South Carolina, Georgia, Florida, Kentucky, Tennessee, Alabama and Mississippi) have, during the period of the compilation of wage statistics by the Department of Labor since 1926, been in the neighborhood of two-thirds of the wage rates paid for the same classes of labor in the east north central and middle Atlantic states (Ohio, Indiana, Illinois, Michigan, Wisconsin, New York, New Jersey and Pennsylvania) (Pl. Exs. 73, 73-A, 74—74-E). Wage rates for coal miners during the same period in the two districts were, until the adoption of the National Recovery Act, roughly in the same ratio, except at the commencement of the period when a proportion-